

05-20-2002

Form PTO-1595
(Rev. 03/01)

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U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

OMB No. 0651-0027 (exp. 5/31/2002)

Tab settings ⇌ ⇌ ⇌ ▼

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To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Brush Engineered Materials, Inc. and

Brush Wellman, Inc. 5115'02

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

3. Nature of conveyance:



Assignment



Merger



Security Agreement



Change of Name



Other _____

Execution Date: September 28, 2001

2. Name and address of receiving party(ies)

Name: National City Bank

Internal Address: _____

Street Address: 1900 East Ninth Street

City: Cleveland State: OH Zip: 441114

Additional name(s) & address(es) attached? ☐ Yes ☒ No

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is: _____

A. Patent Application No.(s)

09/522,134 09/525,630 09/387,894 (cont)

B. Patent No.(s)

4,657,601 6,001,196 5,993,574 5,840,135 (cont.)

Additional numbers attached? ☒ Yes ☐ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: David E. Rogers

Internal Address: Two Renaissance Square

40 North Central Avenue, Suite 2700

Phoenix, Arizona 85004-4498

Street Address: Two Renaissance Square

40 North Central Avenue, Suite 2700

City: Phoenix State: AZ Zip: 85004-4498

6. Total number of applications and patents involved: 59

7. Total fee (37 CFR 3.41).....\$ 2,360.00



Enclosed



Authorized to be charged to deposit account

8. Deposit account number:

19-3878

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

David E. Rogers, Reg. No. 38,287

Name of Person Signing

Signature

Date

Total number of pages including cover sheet, attachments, and documents: 59

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patents & Trademarks, Box Assignments
Washington, D.C. 20231

05/20/2002 LNUELLER 00000050 09522134

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2360.00 OP

PATENT
REEL: 012852 FRAME: 0693

**ATTACHMENT FOR SECURITY AGREEMENT
CONTINUATION OF ITEM 4**

Patent Application Numbers	Patent Numbers
09/797,465	6,190,468
09/797,336	5,911,948
09/706,465	5,324,914
09/897,842	5,217,158
09/882,904	5,578,146
09/571,809	4,599,120
09/544,706	4,724,013
09/758,088	5,651,844
08/971,062	4,551,187
	4,565,586
	5,257,733
	6,153,031
	6,307,173
	5,686,676
	5,760,473
	5,826,159
	6,056,186
	6,153,449
	5,993,731
	6,114,048
	5,413,644
	6,057,989
	6,042,658
	5,370,753
	5,124,119
	5,268,334
	5,304,426
	5,642,773
	5,679,182
	5,551,997
	5,716,467
	5,475,549
	5,667,600
	5,901,336
	6,022,426
	5,525,753
	5,686,190
	5,777,259
	5,783,317
	5,761,799
	5,583,317
	5,198,044
	5,279,353

BRUSH ENGINEERED MATERIALS INC.
as an Assignor

THE OTHER ASSIGNORS NAMED HEREIN
as Assignors

With

NATIONAL CITY BANK,
as Collateral Agent

SECURITY AGREEMENT

dated as of

September 28, 2001

SECURITY AGREEMENT

SECURITY AGREEMENT, dated as of September 28, 2001 (as amended, modified, or supplemented from time to time, this "**Agreement**"), among **BRUSH ENGINEERED MATERIALS INC.**, an Ohio corporation (the "**Parent**"), and **BRUSH WELLMAN INC.**, an Ohio corporation and a wholly-owned subsidiary of Parent ("**Brush Wellman**") (each, together with its successors and assigns, an "**Assignor**" and collectively, the "**Assignors**"), and **NATIONAL CITY BANK**, a national banking association, as collateral agent (herein, together with its successors and assigns in such capacity, the "**Collateral Agent**"), for the benefit of the Secured Creditors (as defined below):

PRELIMINARY STATEMENTS:

(1) Except as otherwise defined herein, terms used herein and defined in the Credit Agreement (as defined below) shall be used herein as therein defined. Certain terms used herein are defined in section 9 hereof.

(2) Parent and Brush Wellman have entered into the Credit Agreement, dated as of June 30, 2000 (herein, as amended, modified, restated or replaced from time to time, the "**Credit Agreement**"), with the financial institutions named as lenders and the swing line lender therein (herein, together with their successors and assigns, the "**Lenders**"), and National City Bank, as the Administrative Agent (the "**Administrative Agent**") for the Lenders under the Credit Agreement and as swing line lender, providing, among other things, for loans or advances or other extensions of credit to or for the benefit of the Assignors of up to \$65,000,000, with such loans or advances being evidenced by promissory notes (the "**Notes**", such term to include all notes and other securities issued in exchange therefor or in replacement thereof).

(3) Brush Wellman has also entered into the Master Lease Agreement, dated as of December 30, 1996 (including all schedules and exhibits thereto, all as amended, modified, restated or supplemented from time to time and all agreements and instruments entered into in connection therewith, the "**Master Lease Agreement**"), with National City Bank, for itself and as agent for certain participants, as lessor (the "**Lease Creditor**"), under which the Lease Creditor agreed to lease to Brush Wellman certain equipment to be used by Brush Wellman at its Elmore, Ohio, facility, subject to certain conditions and in accordance with the terms thereof, and the Parent, pursuant to the Guaranty Agreement, dated as of May 16, 2000, in favor of the Lease Creditor (as amended, modified, restated or supplemented from time to time, the "**Lease Guaranty**"; and collectively with the Master Lease Agreement, the "**Lease Agreements**"), has guaranteed the payment of all obligations by Brush Wellman under the Master Lease Agreement, and the performance and observance by Brush Wellman of all of its obligations under the Master Lease Agreement, to the Lease Creditor, and the Lease Creditor shall benefit hereunder as herein provided.

(4) Brush Wellman has also entered into (a) that certain Reimbursement Agreement, dated as of February 1, 1994 (as amended, modified, restated or supplemented from time to time, the "**1994 NCB Reimbursement Agreement**"), with National City Bank (the "**NCB LOC Creditor**"), under which the NCB LOC Creditor issued its direct-pay Letter of Credit No. 4299 (the "**1994 Letter of Credit**"), subject to certain conditions and in accordance with the terms thereof, and (b) that certain Reimbursement Agreement, dated as of November 1, 1996 (as amended, modified, restated or supplemented from time to time, the "**1996 NCB Reimbursement Agreement**", together with the 1994 NCB Reimbursement Agreement, The "**NCB Reimbursement Agreements**"), with the NCB LOC Creditor, under which the NCB LOC Creditor issued its direct-pay Letter of Credit No. 4935 (the "**1996 Letter of Credit**"), subject to certain conditions and in accordance with the terms thereof, and the Parent, pursuant to the Guaranty Agreement, dated as of August 31, 2000, in favor of the NCB LOC Creditor (as amended, modified, restated or supplemented from time to time, the "**NCB LOC Guaranty**"; and collectively with the Reimbursement Agreements, the "**NCB LOC Agreements**"), has guaranteed the payment of all obligations by Brush Wellman under the NCB Reimbursement Agreements, and the

performance and observance by Brush Wellman of all of its obligations under the NCB Reimbursement Agreements, to the NCB LOC Creditor and the NCB LOC Creditor shall benefit hereunder as herein provided.

(5) Brush Wellman has also entered into the ISDA Master Agreement, dated as of December 6, 1996 (as amended, modified, restated or supplemented from time to time, and including all confirmation letters and supplements the "*Swap Agreement*"), with National City Bank (the "*Swap Creditor*"), under which Brush Wellman and the Swap Creditor have entered into the following swap transactions: an interest rate swap for a notional amount of US\$60,911,908 evidenced by a confirmation letter agreement dated December 6, 1996; and an interest rate swap for a notional amount of US\$54,818,486 evidenced by a confirmation letter agreement dated December 6, 1996, and the Parent, pursuant to the Guaranty Agreement, dated as of August 31, 2000, in favor of the Swap Creditor (as amended, modified, restated or supplemented from time to time, the "*Swap Guaranty*"; and collectively with the Swap Agreement, the "*Swap Documents*"), has guaranteed the payment of all obligations by Brush Wellman under the Swap Agreement, and the performance and observance by Brush Wellman of all of its obligations under the Swap Agreement, to the Swap Creditor and the Swap Creditor shall benefit hereunder as herein provided.

(6) Fifth Third Bank has issued on behalf of Brush Wellman (a) its stand-by Letter of Credit No. SB11412 in the amount of \$1,300,000 effective November 5, 1998 (the "*1998 Fifth Third Letter of Credit*"), subject to certain conditions and agreements set forth in the Application for Irrevocable Stand-By Letter of Credit and in accordance with the terms thereof, and (b), its stand-by Letter of Credit No. SB11650 in the amount of \$320,000 effective June 14, 1999 (the "*1999 Fifth Third Letter of Credit*", together with the 1998 Fifth Third Letter of Credit, the "*Fifth Third LOC Documents*"), subject to certain conditions and agreements set forth the Application for Irrevocable Stand-By Letter of Credit and in accordance with the terms thereof.

(7) The Secured Creditors entered into the Intercreditor and Collateral Agency Agreement, dated as of September 28, 2001, approved by the Assignors and certain of their Subsidiaries (as amended, modified, restated or supplemented from time to time, and including all confirmation letters and supplements the "*Intercreditor Agreement*"), pursuant to which the Secured Creditors appointed National City Bank as the Collateral Agent to act on behalf of all Secured Creditors regarding the Collateral and defined the rights, duties, authority and responsibilities of the Collateral Agent and the relationship among the Secured Creditors regarding the relative rights and priorities with respect to the Collateral.

(8) Assignors understand that the Secured Creditors are willing to amend certain provisions of the foregoing agreements and instruments and grant certain waivers thereunder to avoid defaults by the Assignors thereunder and continue to grant or otherwise make available financial accommodations to Assignors, only upon certain terms and conditions, one of which is that Assignors and their Subsidiaries grant to Collateral Agent, for the Benefit of the Secured Creditors, a security interest in and an assignment of the Collateral and this Agreement is being executed and delivered in consideration of each financial accommodation granted to Assignors by the Secured Creditors and for other valuable considerations.

NOW, THEREFORE, in consideration of the benefit accruing to each Assignor, the receipt and sufficiency of which are hereby acknowledged, each Assignor hereby makes the following representations and warranties and hereby covenants and agrees as follows:

1. SECURITY INTERESTS.

1.1. Grant of Security Interests. (a) Subject to Section 1.2 below, as security for the prompt and complete payment and performance when due of all of the Secured Obligations, each Assignor does hereby sell, assign and transfer unto the Collateral Agent for collateral purposes, and does hereby grant to the Collateral Agent, for the benefit of the Collateral Agent and the Secured Creditors, a continuing security interest in, all of the right, title and interest of such Assignor in, to and under all of the following, whether now existing or hereafter from time to time acquired (collectively, the "*Collateral*");

- (i) each and every Receivable,
- (ii) all Contracts, together with all Contract Rights arising thereunder,
- (iii) all Inventory,
- (iv) all Equipment,
- (v) all Marks, together with the registrations and right to all renewals thereof, and the goodwill of the business of such Assignor symbolized by the Marks,
- (vi) all Patents and Copyrights,
- (vii) all Software of such Assignor and all intellectual property rights therein and all other Proprietary Information of such Assignor, including, but not limited to, Trade Secrets,
- (viii) all Permits,
- (ix) the Cash Collateral Account and all monies, securities and instruments deposited or required to be deposited in such Cash Collateral Account,
- (x) all other Goods, General Intangibles, Payment Intangibles, Chattel Paper, Documents, Instruments, Promissory Notes, Investment Property, Letter of Credit Rights and other personal property of every kind, type and description, and
- (xi) all Proceeds and products of any and all of the foregoing.

(b) The security interest of the Collateral Agent under this Agreement extends to all Collateral of the kind, type and description which is the subject of this Agreement which either Assignor may acquire at any time during the continuation of this Agreement.

1.2. Excluded Collateral. Notwithstanding the foregoing provisions of this Section 1, any security interest created by this Agreement shall not extend to, and the term "Collateral" shall not include the following:

- (a) Any and all personal property of any type or description now or hereafter subject to the Master Lease Agreement and the proceeds thereof;
- (b) The capital stock (or similar interests) of any subsidiary of either Assignor; provided, however, that this Agreement does not amend, modify or replace the Pledge Agreement dated as of June 30, 2000 among Parent, Brush Wellman and National City Bank; and
- (c) Any property or assets subject to an agreement (i) the governing terms of which (as in effect on the date hereof) prohibit the grant of a lien thereon or the assignment thereof to the Secured Creditors, or (ii) with respect to which the consent of a person (as in effect on the date hereof) is required and not received.

In any such event described in section 1.2(c), the Assignors shall use their commercially reasonable efforts to cause the applicable counterparty to deliver such consent, authorization or approval or otherwise cause such other action to be taken promptly. In addition, any such property or assets shall constitute Collateral (without any act by any person) on and after the date on which any such applicable prohibition of grant or requirement of consent ceases to be in effect.

1.3 Subordination of Certain Security Interests. The security interests in Bullion granted pursuant to this Agreement shall be subordinate to any security interest in Bullion in favor of (A) Mitsui & Co. (U.S.A.), Inc. in connection with the Mitsui Agreement, (B) Englehard Corporation in connection with the Englehard Agreement, and (C) Fleet Precious Metals Inc. in connection with the Fleet Agreement, that is perfected on or prior to January 31, 2002.

1.4. Power of Attorney. Each Assignor hereby constitutes and appoints the Collateral Agent its true and lawful attorney, irrevocably, with full power, after and during the continuance of an Event of Default, (in the name of such Assignor or otherwise) to act, require, demand, receive, compound and give acquittance for any and all monies and claims for monies due or to become due to the Assignor under or arising out of the Collateral, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Collateral Agent may deem to be necessary or advisable in the premises, which appointment as attorney is coupled with an interest.

2. GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS.

Each Assignor represents, warrants and covenants, which representations, warranties and covenants shall survive execution and delivery of this Agreement, as follows:

2.1. Necessary Filings. Assuming the filing in the appropriate filing offices of those UCC-1 financing statements listed on Annex A and except for the required filings of the patent, trademark and copyright security agreements with the United States Patent and Trademark Office and the United States Copyright Office and except with respect to any deposit account, any letter-of credit right perfected only by control, any tort claim, any Collateral subject to a certificate of title, any Collateral that is located outside of the United States of America and money, all filings, registrations and recordings necessary or appropriate to create, preserve, protect and perfect the security interest granted by such Assignor to the Collateral Agent hereby in respect of the Collateral have been accomplished and the security interest granted to the Collateral Agent pursuant to this Agreement in and to the Collateral constitutes a first priority, subject to Permitted Liens (as defined in the Credit Agreement), perfected security interest therein superior and prior to the rights of all other persons therein and subject to no other Liens (except Permitted Liens) and is entitled to all the rights, priorities and benefits afforded by the Uniform Commercial Code or other relevant law as enacted in any relevant jurisdiction to perfected security interests, subject to compliance with the Assignment of Claims Act of 1940, as amended.

2.2. No Liens. Each Assignor is, and as to Collateral acquired by it from time to time after the date hereof such Assignor will be, the owner of all Collateral free from any Lien, security interest, encumbrance or other right, title or interest of any person (other than Permitted Liens), and such Assignor shall defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein adverse to the Collateral Agent.

2.3. Other Financing Statements. There is no financing statement (or similar statement or instrument of registration under the law of any jurisdiction in the United States) covering or purporting to cover any interest of any kind in the Collateral except in respect of Permitted Liens or as disclosed in Annex B hereto and so long as the Commitment (as defined in the Credit Agreement) has not been terminated, any Letter of Credit (as defined in the Credit Agreement), any letter of credit issued pursuant to the NCB Reimbursement Agreements, any letter of credit issued pursuant to the Fifth Third LOC Agreements, any Swap Document remains outstanding or any of the Secured Obligations remain unpaid, no Assignor will execute or authorize to be filed in any public office any financing statement (or similar statement or instrument of registration under the law of any jurisdiction) or statements relating to the Collateral, except financing statements filed or to be filed in respect of and covering the security interests granted hereby by such Assignor or financing statements relating to Permitted Liens.

2.4. Chief Executive Office, etc; Records. The chief executive office (and the registered office of each Assignor which is a corporation) of each Assignor is located at the address indicated on Annex C hereto. For each Assignor that is a registered organization under state law, the state of organization of such Assignor and the name of such Assignor as indicated on the public record of that Assignor's jurisdiction of organization is set forth on Annex C

hereto. The U.S. Federal Tax I.D. Number of each Assignor is set forth on Annex C hereto. No Assignor will change the location of its chief executive office (or registered office in the case of an Assignor which is a corporation) or change its state of organization except to such new location or state, respectively, as such Assignor may establish in accordance with the last sentence of this section 2.4. The originals of all documents evidencing all Receivables and Contract Rights of such Assignor and the only original books of account and records of such Assignor relating thereto are, and will continue to be, kept at such chief executive office, or at such new locations as such Assignor may establish in accordance with the last sentence of this section 2.4. All Receivables and Contract Rights of such Assignor are, and will continue to be, maintained at, and controlled and directed (including, without limitation, for general accounting purposes) from, the office locations described above, or such new locations as such Assignor may establish in accordance with the last sentence of this section 2.4. No Assignor shall establish new locations for such offices or change its state of organization until (i) it shall have given to the Collateral Agent not less than 30 days' prior written notice (or such lesser notice as shall be reasonably acceptable to the Collateral Agent in the case of a new record location to be established in connection with newly acquired Contracts) of its intention so to do, clearly describing such new location or stating the new state of organization and providing such other information in connection therewith as the Collateral Agent may reasonably request, and (ii) with respect to such new location or state of organization, it shall have taken all action, satisfactory to the Collateral Agent, to maintain and continue the security interest of the Collateral Agent in the Collateral intended to be granted hereby at all times fully perfected and in full force and effect.

2.5. Location of Inventory and Equipment. All Inventory and Equipment located in the United States of America held on the date hereof by each Assignor is located at one of the locations shown on Annex D attached hereto. Each Assignor agrees that all Inventory and Equipment in the United States of America now held or subsequently acquired by it shall be kept at (or shall be in transport to or from) any one of the locations shown on Annex D hereto, or such new location as such Assignor may establish in accordance with the last sentence of this section 2.5. An Assignor may establish a new location for Inventory and Equipment in the United States of America only if (i) it shall have given to the Collateral Agent not less than 30 days' prior written notice of its intention so to do, clearly describing such new location and providing such other information in connection therewith as the Collateral Agent may reasonably request, and (ii) with respect to such new location, it shall have taken all action reasonably satisfactory to the Collateral Agent to maintain and continue the security interest of the Collateral Agent in the Collateral intended to be granted hereby at all times in fully perfected and in full force and effect.

2.6. Trade Names; Change of Name. No Assignor has or operates in any jurisdiction under, or in the preceding five years has had or has operated in any jurisdiction under, any trade names, fictitious names or other names (including, without limitation, any names of divisions or operations) except its legal name as reflected in the public records of its state of organization and such other trade, fictitious or other names as are listed on Annex E hereto. Each Assignor has only operated under each name set forth in Annex E in the jurisdiction or jurisdictions set forth opposite each such name on Annex E. No Assignor shall change its legal name or assume or operate in any jurisdiction under any trade, fictitious or other name except those names listed on Annex E hereto in the jurisdictions listed with respect to such names and new names (including, without limitation, any names of divisions or operations) and/or jurisdictions established in accordance with the last sentence of this section 2.6. No Assignor shall assume or operate in any jurisdiction under any new trade, fictitious or other name or operate under any existing name in any additional jurisdiction until (i) it shall have given to the Collateral Agent not less than 30 days' prior written notice of its intention so to do, clearly describing in such new name and/or jurisdiction and, in the case of a new name, the jurisdictions in which such new name shall be used and providing such other information in connection therewith as the Collateral Agent may reasonably request, and (ii) with respect to such new name and/or new jurisdiction, it shall have taken all action satisfactory to the Collateral Agent to maintain and continue the security interest of the Collateral Agent in the Collateral intended to be granted hereby at all times fully perfected and in full force and effect.

2.7. Recourse. This Agreement is made with full recourse to the relevant Assignor and pursuant to and upon all the warranties, representations, covenants, and agreements on the part of such Assignor contained herein, and otherwise in writing in connection herewith or therewith.

3. SPECIAL PROVISIONS CONCERNING RECEIVABLES; CONTRACT RIGHTS; INSTRUMENTS.

3.1. Additional Representations and Warranties. As of the time when each of its Receivables arises, each Assignor shall be deemed to have represented and warranted that, except in such respects as do not impair in any material respect the value or collectibility of its accounts receivable taken as a whole, and except in such other respects as may from time to time be disclosed by such Assignor to the Administrative Agent in writing: such receivable, and all records, papers and documents relating thereto (if any) are, to the best knowledge of the Assignor after due inquiry, genuine and in all respects what they purport to be, and that all papers and documents (if any) relating thereto, to the best knowledge of the Assignor, (i) will represent the genuine, legal, valid and binding obligation of the account debtor, subject to adjustments customary in the business of such Assignor, and evidencing indebtedness unpaid and owed by the respective account debtor arising out of the performance of labor or services or the sale or lease and delivery of the merchandise listed therein, or both, and (ii) will be the only original writings evidencing and embodying such obligation of the account debtor named therein (other than copies created for general accounting purposes).

3.2. Maintenance of Records. Each Assignor will keep and maintain at its own cost and expense complete records of its Receivables and Contracts, including, but not limited to, the originals or true and correct copies of all documentation (including each Contract) with respect thereto, records of all payments received, all credits granted thereon, all merchandise returned and all other dealings therewith, and such Assignor will make the same available to the Collateral Agent for inspection, at such Assignor's own cost and expense, at any and all reasonable times upon demand and upon reasonable advance notice. If the Collateral Agent so directs, each Assignor shall legend, in form and manner reasonably satisfactory to the Collateral Agent, the Receivables and Contracts, as well as books, records and documents of such Assignor evidencing or pertaining to the Receivables with an appropriate reference to the fact that the Receivables and Contracts have been assigned to the Collateral Agent and that the Collateral Agent has a security interest therein.

3.3. Modification of Terms; etc. No Assignor shall rescind or cancel any indebtedness evidenced by any Receivable or under any Contract, or modify any term thereof or make any adjustment with respect thereto, or extend or renew the same, or compromise or settle any material dispute, claim, suit or legal proceeding relating thereto, or sell any Receivable or Contract, or interest therein, without the prior written consent of the Collateral Agent, except (i) as permitted by section 3.4 hereof and (ii) so long as no Event of Default is then in existence in respect of which the Collateral Agent has given notice that this exception is no longer applicable, the Assignor may rescind, cancel, modify, make adjustments with respect to, extend or renew any Contracts or indebtedness evidenced by any Receivable, or compromise or settle any such dispute, claim, suit, or legal proceeding, or sell any Receivable or Contract or interest therein, in the ordinary course of business. Each Assignor will use commercially reasonable efforts to fulfill all material obligations on its part to be fulfilled under or in connection with the Receivables and Contracts and will do nothing to materially impair the rights of the Collateral Agent in the Receivables or Contracts.

3.4. Collection. Each Assignor shall endeavor to cause to be collected from the account debtor named in each of its Receivables or obligor under any Contract, as and when due (including, without limitation, amounts which are delinquent, such amounts to be collected in accordance with generally accepted lawful collection procedures) any and all amounts owing under or on account of such Receivable or Contract, and apply forthwith upon receipt thereof all such amounts as are so collected to the outstanding balance of such Receivable or under such Contract, except that, so long as no Event of Default is then in existence in respect of which the Collateral Agent has given notice that this exception is no longer applicable, such Assignor may allow in the ordinary course of business as adjustments to amounts owing under its Receivables and Contracts (i) an extension or renewal of the time or times of payment, or settlement for less than the total unpaid balance, which such Assignor finds appropriate in accordance with sound business judgment and (ii) a refund or credit due as a result of returned or damaged merchandise or improperly performed services. The reasonable out-of-pocket costs and expenses (including, without limitation, attorneys' fees) of collection, whether incurred by such Assignor or the Collateral Agent, shall be borne by such Assignor.

3.5. Direction to Account Debtors, etc. Upon the occurrence and during the continuance of a Collateral Enforcement Event of Default, and if the Collateral Agent so directs the relevant Assignor, to the extent permitted by applicable law, such Assignor agrees (x) to cause all payments on account of the Receivables to be made directly to the Cash Collateral Account, (y) that the Collateral Agent may, at its option, directly notify the obligors with respect to any Receivables to make payments with respect thereto as provided in preceding clause (x), and (z) that the Collateral Agent may enforce collection of any such Receivables and may adjust, settle or compromise the amount of payment thereof. The Collateral Agent may apply any or all amounts then in, or thereafter deposited in, the Cash Collateral Account in the manner provided in section 7.4 of this Agreement. The out-of-pocket costs and expenses (including attorneys' fees) of collection, whether incurred by such Assignor or the Collateral Agent, shall be borne by such Assignor.

3.6. Instruments. If either Assignor owns or acquires any Instrument other than an Instrument representing indebtedness of an Assignor or any Subsidiary of an Assignor that is subject to the Pledge Agreement, such Assignor will within 10 days notify the Collateral Agent thereof, and upon request by the Collateral Agent promptly deliver such Instrument to the Collateral Agent appropriately endorsed to the order of the Collateral Agent as further security hereunder.

3.7. Further Actions. Each Assignor will, at its own expense, make, execute, endorse, acknowledge, file and/or deliver to the Collateral Agent from time to time such vouchers, invoices, schedules, confirmatory assignments, conveyances, financing statements, transfer endorsements, powers of attorney, certificates, reports and other assurances or instruments and take such further steps relating to its Receivables, Contracts, Instruments and other property or rights covered by the security interest hereby granted, as the Collateral Agent may reasonably require to give effect to the purposes of this Agreement. Upon the request of the Collateral Agent, each Assignor hereby agrees to execute and deliver the documentation necessary or appropriate to make filings of patent, trademark and copyright security agreements with the United States Patent and Trademark Office and the United States Copyright Office, as requested by and satisfactory to the Collateral Agent

4. SPECIAL PROVISIONS CONCERNING TRADEMARKS.

4.1. Additional Representations and Warranties. Each Assignor represents and warrants that it is the true and lawful owner or licensee of the Marks listed in Annex F attached hereto and that said listed Marks constitute all the marks registered in the United States Patent and Trademark Office that such Assignor now owns or uses in connection with its business. Each Assignor represents and warrants that it owns or is licensed to use all Marks that it now owns or uses. Each Assignor further warrants that it has no knowledge of any third party claim that any aspect of such Assignor's present or contemplated business operations infringes or will infringe any trademark or service mark in a manner which could have a material effect on the financial condition, business or property of such Assignor.

4.2. Licenses and Assignments. Each Assignor hereby agrees not to divest itself of any right under a Mark that is in commercial use or that is material to its business other than in the ordinary course of business absent prior written approval of the Collateral Agent.

4.3. Infringements. Each Assignor agrees, promptly upon learning thereof, to notify the Collateral Agent in writing of the name and address of, and to furnish such pertinent information that may be available with respect to, any party who it believes is infringing or otherwise violating any of such Assignor's rights in and to any Mark, or with respect to any party claiming that such Assignor's use of any Mark violates any property right of that party, to the extent that such infringement or violation could have a material effect on the financial condition, business or property of such Assignor. Each Assignor further agrees, unless otherwise directed by the Collateral Agent, diligently to prosecute any person infringing any Mark in a manner consistent with its past practice and in the ordinary course of business.

4.4. Preservation of Marks. Each Assignor agrees to use or license the use of its Marks that are being commercially used or that are material to its business in interstate commerce during the time in which this Agreement

is in effect, sufficiently to retain its rights in such Marks as trademarks or service marks registered under the laws of the United States.

4.5. Maintenance of Registration. Each Assignor shall, at its own expense, diligently process all documents required by the Trademark Act of 1946, 15 U.S.C. §§1051 *et seq.* to maintain trademark registration which are commercially being used or that are material to its business and would reasonably be expected to have a Material Adverse Effect, including but not limited to affidavits of use and applications for renewals of registration in the United States Patent and Trademark Office for all of its Marks that are commercially being used or that are material to its business pursuant to 15 U.S.C. §§1058(a), 1059 and 1065, and shall pay all fees and disbursements in connection therewith, and shall not abandon any such filing of affidavit of use or any such application of renewal of commercially used Marks or Marks that are material to its business prior to the exhaustion of all administrative and judicial remedies without prior written consent of the Collateral Agent, which consent shall not be unreasonably withheld.

4.6. Future Registered Marks. If any mark registration issues hereafter to an Assignor as a result of any application now or hereafter pending before the United States Patent and Trademark Office, within 30 days of receipt of such certificate such Assignor shall deliver a copy of such certificate, and a grant of security in such mark to the Collateral Agent, confirming the grant thereof hereunder, the form of such confirmatory grant to be substantially the same as the form hereof.

4.7. Remedies. If a Collateral Enforcement Event of Default shall occur and be continuing, the Collateral Agent may, by written notice to the relevant Assignor, take any or all of the following actions: (i) declare the entire right, title and interest of such Assignor in and to each of the Marks, together with all trademark rights and rights of protection to the same, vested, in which event such rights, title and interest shall immediately vest, in the Collateral Agent for the benefit of the Secured Creditors, in which case such Assignor agrees to execute an assignment in form and substance reasonably satisfactory to the Collateral Agent, of all its rights, title and interest in and to the Marks to the Collateral Agent for the benefit of the Secured Creditors; (ii) take and use or sell the Marks and the goodwill of such Assignor's business symbolized by the Marks and the right to carry on the business and use the assets of the Assignor in connection with which the Marks have been used; and (iii) direct such Assignor to refrain, in which event such Assignor shall refrain, from using the Marks in any manner whatsoever, directly or indirectly, and, if requested by the Collateral Agent, change such Assignor's corporate name to eliminate therefrom any use of any Mark and execute such other and further documents that the Collateral Agent may request to further confirm this and to transfer ownership of the Marks and registrations and any pending trademark application in the United States Patent and Trademark Office to the Collateral Agent.

5. SPECIAL PROVISIONS CONCERNING PATENTS AND COPYRIGHTS.

5.1. Additional Representations and Warranties. Each Assignor represents and warrants that it is the true and lawful owner or licensee of all rights in the Patents listed in Annex G attached hereto and in the Copyright registrations listed in Annex H attached hereto, that said Patents constitute all the United States patents and applications for United States patents that such Assignor now owns and that said Copyrights constitute all the registered United States copyrights that such Assignor now owns. Each Assignor represents and warrants that it owns or is licensed to practice under all Patents and Copyright registrations that it now owns, uses or practices under. Each Assignor further warrants that it has no knowledge of any third party claim that any aspect of such Assignor's present or contemplated business operations infringes or will infringe any patent or any copyright in a manner which could have a material effect on the financial condition, business or property of such Assignor.

5.2. Licenses and Assignments. Each Assignor hereby agrees not to divest itself of any right under a Patent or Copyright other than in the ordinary course of business absent prior written approval of the Collateral Agent, which such approval shall not be unreasonably withheld.

5.3. Infringements. Each Assignor agrees, promptly upon learning thereof, to furnish the Collateral Agent in writing with all pertinent information available to such Assignor with respect to any infringement or other violation of such Assignor's rights in any Patent or Copyright, or with respect to any claim that practice of any Patent or Copyright violates any property right of that party, to the extent that such infringement or violation could have a material effect on the financial condition, business or property of such Assignor. Each Assignor further agrees, absent direction of the Collateral Agent to the contrary, diligently to prosecute any person infringing any Patent or Copyright about which it has knowledge in a manner consistent with its past practice and in the ordinary course of business.

5.4. Maintenance of Patents. At its own expense, each Assignor shall make timely payment of all post-issuance fees required pursuant to 35 U.S.C. § 41 to maintain in force rights under each Patent that is of commercial value or that is material to its business.

5.5. Prosecution of Patent Applications. At its own expense, each Assignor shall diligently prosecute all applications for United States patents listed on Annex G hereto, and shall not abandon any such application that is of commercial value or that is material to its business, except in favor of a continuation application based on such application, prior to exhaustion of all administrative and judicial remedies, absent written consent of the Collateral Agent, which such consent shall not be unreasonably withheld.

5.6. Other Patents and Copyrights. Within 30 days of acquisition of a United States Patent or Copyright, or of filing of an application for a United States Patent or Copyright, the relevant Assignor shall deliver to the Collateral Agent a copy of said Patent or Copyright, as the case may be, with a grant of security as to such Patent or Copyright, as the case may be, confirming the grant thereof hereunder, the form of such confirmatory grant to be substantially the same as the form hereof.

5.7. Remedies. If a Collateral Enforcement Event of Default shall occur and be continuing, the Collateral Agent may by written notice to the relevant Assignor take any or all of the following actions: (i) declare the entire right, title and interest of such Assignor in each of the Patents and Copyrights vested, in which event such right, title and interest shall immediately vest in the Collateral Agent for the benefit of the Secured Creditors, in which case such Assignor agrees to execute an assignment in form and substance reasonably satisfactory to the Collateral Agent of all its right, title, and interest to such Patents and Copyrights to the Collateral Agent for the benefit of the Secured Creditors; (ii) take and practice or sell the Patents and Copyrights; (iii) direct such Assignor to refrain, in which event such Assignor shall refrain, from practicing the Patents and Copyrights directly or indirectly, and such Assignor shall execute such other and further documents as the Collateral Agent may request further to confirm this and to transfer ownership of the Patents and Copyrights to the Collateral Agent for the benefit of the Secured Creditors.

6. PROVISIONS CONCERNING ALL COLLATERAL.

6.1. Protection of Collateral Agent's Security. Each Assignor will do nothing to impair the rights of the Collateral Agent in the Collateral, subject to the existence of Permitted Liens. Each Assignor will at all times maintain the insurance required by section 8.3 of the Credit Agreement as in effect on the date hereof, with provisions satisfactory to the Collateral Agent. All policies or certificates with respect to such insurance shall be endorsed to the Collateral Agent's satisfaction for the benefit of the Collateral Agent (including, without limitation, by naming the Collateral Agent as an additional insured and as loss payee, as its interest may appear). Any such policies of insurance shall (a) provide for no fewer than thirty (30) days prior written notice of cancellation to Collateral Agent, (b) provide that the respective insurers irrevocably waive any and all rights of subrogation with respect to the Collateral Agent and the Secured Creditors, and (c) in the case of any such certificates or endorsements in favor of the Collateral Agent, be delivered to or deposited with the Collateral Agent. Any sums received by the Collateral Agent, for the benefit of the Secured Creditors, in payment of insurance losses, returns, or unearned premiums under the policies shall be held as Collateral and distributed pursuant to section 6.5 or shall be otherwise handled as provided in section 6.5. If an Assignor shall fail to insure such Collateral as herein provided, or if such Assignor shall fail to so endorse all policies or certificates with respect thereto, the Collateral Agent shall have the right (but shall be under no obligation) to procure

such insurance and such Assignor agrees to reimburse the Collateral Agent for all costs and expenses of procuring such insurance. Each Assignor assumes all liability and responsibility in connection with the Collateral acquired by it and the liability of such Assignor to pay its obligations shall in no way be affected or diminished by reason of the fact that such Collateral may be lost, destroyed, stolen, damaged or for any reason whatsoever unavailable to such Assignor.

6.2. Warehouse Receipts Non-negotiable. Each Assignor agrees that if any warehouse receipt or receipt in the nature of a warehouse receipt is issued with respect to any of its Inventory, such warehouse receipt or receipt in the nature thereof shall not be "negotiable" (as such term is used in section 7-104 of the Uniform Commercial Code as in effect in any relevant jurisdiction or under other relevant law).

6.3. Further Actions. Each Assignor will, at its own expense, make, execute, endorse, acknowledge, file and/or deliver to the Collateral Agent from time to time such lists, descriptions and designations of its Collateral, warehouse receipts, receipts in the nature of warehouse receipts, bills of lading, documents of title, vouchers, invoices, schedules, confirmatory assignments, conveyances, financing statements, transfer endorsements, powers of attorney, certificates, reports and other assurances or instruments and take such further steps relating to the Collateral and other property or rights covered by the security interest hereby granted, which the Collateral Agent reasonably deems appropriate or advisable to perfect, preserve or protect its security interest in the Collateral.

6.4. Financing Statements. Upon the request of the Collateral Agent, each Assignor agrees to sign and deliver to the Collateral Agent such financing statements, in form acceptable to the Collateral Agent, as the Collateral Agent may from time to time reasonably request or as are necessary or desirable in the opinion of the Collateral Agent to establish and maintain a valid, enforceable, first priority, subject to Permitted Liens, security interest in the Collateral as provided herein and the other rights and security contemplated hereby all in accordance with the Uniform Commercial Code as enacted in any and all relevant jurisdictions or any other relevant law. Each Assignor will pay any applicable filing fees and related expenses with respect to such financing statements. Each Assignor authorizes the Collateral Agent to file any such financing statements with or without the signature of such Assignor.

6.5. Certain Proceeds of an Event of Loss. (a) Should any Event of Loss occur to any insured Collateral, the Assignor that owns such Collateral must give written notice to the Collateral Agent within three Business Days of the Assignor becoming aware of such occurrence and will not adjust or settle such loss without the written consent of the Collateral Agent, which consent shall not be unreasonably withheld, which may make proof of loss if not promptly made by Assignor. Any cash payments from an Event of Loss ("**Cash Proceeds**") received in connection with an insured loss shall be applied as a mandatory prepayment of the Secured Obligations as set forth in the Intercreditor Agreement.

(b) Notwithstanding subsection (a), in the event any Collateral suffers an Event of Loss and (a) the Cash Proceeds are less than or equal to \$1,500,000, (b) no Default or Event of Default exists, (c) the Assignor suffering the Event of Loss notifies the Collateral Agent in writing that it intends to rebuild, repair, replace or restore the affected property and that such rebuilding, repairing, replacing or restoration can be accomplished within six (6) months, or such other time period agreed to by Collateral Agent not to exceed one (1) year, out of such Cash Proceeds and other funds available to such Assignor, then no such prepayment of the Secured Obligations shall be required and the Cash Proceeds shall be paid directly to such Assignor solely for the purpose of rebuilding, repairing, replacing or restoring the Collateral and for no other purpose.

(c) Notwithstanding subsection (a), in the event any Collateral suffers an Event of Loss and (a) the Cash Proceeds exceed \$1,500,000, (b) no Default or Event of Default exists, (c) the Assignor suffering the Event of Loss notifies the Collateral Agent in writing that it intends to rebuild, repair, replace or restore the affected property, that such rebuilding, repairing, replacing, or restoration can be accomplished within six (6) months, or such other time period agreed to by Collateral Agent not to exceed one (1) year, out of such Cash Proceeds and other funds available to such Assignor, then no such prepayment of the Secured Obligations shall be required and the Cash Proceeds shall be immediately deposited in the Cash Collateral Account over which the Collateral Agent shall have sole dominion and control, and which shall constitute part of the Collateral under this Agreement. So long as no Default or Event of

Default has occurred and is continuing, the Collateral Agent is authorized to disburse amounts from the Cash Collateral Account for application to the costs of rebuilding, repairing, replacing or restoring the affected property upon reasonable request by the Assignor and subject to such conditions as may reasonably be required by the Collateral Agent. Any amounts not so applied to the costs of rebuilding, repairing, replacing or restoring shall be applied to the prepayment of the Secured Obligations in the manner set forth in the Intercreditor Agreement.

7. REMEDIES UPON OCCURRENCE OF COLLATERAL ENFORCEMENT EVENT OF DEFAULT.

7.1. Remedies; Obtaining the Collateral Upon Default. Each Assignor agrees that, if any Collateral Enforcement Event of Default shall have occurred and be continuing, then and in every such case, subject to any mandatory requirements of applicable law then in effect, the Collateral Agent, in addition to any rights now or hereafter existing under applicable law, shall have all rights as a secured creditor under the Uniform Commercial Code in all relevant jurisdictions and may:

(i) personally, or by agents or attorneys, immediately retake possession of the Collateral or any part thereof, from such Assignor or any other person who then has possession of any part thereof with or without notice or process of law, and for that purpose may enter upon such Assignor's premises where any of the Collateral is located and remove the same and use in connection with such removal any and all services, supplies, aids and other facilities of such Assignor;

(ii) instruct the obligor or obligors on any agreement, instrument or other obligation (including, without limitation, the Receivables) constituting the Collateral to make any payment required by the terms of such instrument or agreement directly to the Collateral Agent;

(iii) withdraw any or all monies, securities and/or instruments in the Cash Collateral Account for application to the Secured Obligations in accordance with section 7.4 hereof; and

(iv) take possession of the Collateral or any part thereof, by directing such Assignor in writing to deliver the same to the Collateral Agent at any place or places designated by the Collateral Agent, in which event such Assignor shall at its own expense:

(A) forthwith cause the same to be moved to the place or places so designated by the Collateral Agent and there delivered to the Collateral Agent,

(B) store and keep any Collateral so delivered to the Collateral Agent at such place or places pending further action by the Collateral Agent as provided in section 7.2, and

(C) while the Collateral shall be so stored and kept, provide such guards and maintenance services as shall be necessary to protect the same and to preserve and maintain them in good condition;

it being understood that such Assignor's obligation so to deliver the Collateral is of the essence of this Agreement and that, accordingly, upon application to a court of equity having jurisdiction, the Collateral Agent shall be entitled to a decree requiring specific performance by the Assignor of said obligation.

7.2. Remedies; Disposition of the Collateral. Upon the occurrence and continuance of a Collateral Enforcement Event of Default, any Collateral repossessed by the Collateral Agent under or pursuant to section 7.1 and any other Collateral whether or not so repossessed by the Collateral Agent, may be sold, assigned, leased or otherwise disposed of under one or more contracts or as an entirety, and without the necessity of gathering at the place of sale of the property to be sold, and in general in such manner, at such time or times, at such place or places and on such terms

as the Collateral Agent may, in compliance with any mandatory requirements of applicable law, determine to be commercially reasonable. Any of the Collateral may be sold, leased or otherwise disposed of, in the condition in which the same existed when taken by the Collateral Agent or after any overhaul or repair which the Collateral Agent shall determine to be commercially reasonable. Any such disposition which shall be a private sale or other private proceedings permitted by such requirements shall be made upon not less than 10 days' written notice to such Assignor specifying the time at which such disposition is to be made and the intended sale price or other consideration therefor, and shall be subject, for the 10 days after the giving of such notice, to the right of the relevant Assignor or any nominee of the relevant Assignor to acquire the Collateral involved at a price or for such other consideration at least equal to the intended sale price or other consideration so specified. Any such disposition which shall be a public sale permitted by such requirements shall be made upon not less than 10 days' written notice to the relevant Assignor specifying the time and place of such sale and, in the absence of applicable requirements of law, shall be by public auction (which may, at the Collateral Agent's option, be subject to reserve), after publication of notice of such auction not less than 10 days prior thereto in two newspapers in general circulation in the city where such Collateral is located. To the extent permitted by any such requirement of law, the Collateral Agent on behalf of the Secured Creditors (or certain of them) may bid for and become the purchaser (by bidding in Secured Obligations or otherwise) of the Collateral or any item thereof, offered for sale in accordance with this section without accountability to the relevant Assignor (except to the extent of surplus money received as provided in section 7.4). If, under mandatory requirements of applicable law, the Collateral Agent shall be required to make disposition of the Collateral within a period of time which does not permit the giving of notice to the Assignor as hereinabove specified, the Collateral Agent need give the relevant Assignor only such notice of disposition as shall be reasonably practicable in view of such mandatory requirements of applicable law.

7.3. Waiver of Claims. Except as otherwise provided in this Agreement, **EACH ASSIGNOR HEREBY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, NOTICE AND JUDICIAL HEARING IN CONNECTION WITH THE COLLATERAL AGENT'S TAKING POSSESSION OR THE COLLATERAL AGENT'S DISPOSITION OF ANY OF THE COLLATERAL, INCLUDING, WITHOUT LIMITATION, ANY AND ALL PRIOR NOTICE AND HEARING FOR ANY PREJUDGMENT REMEDY OR REMEDIES AND ANY SUCH RIGHT WHICH THE ASSIGNOR WOULD OTHERWISE HAVE UNDER THE CONSTITUTION OR ANY STATUTE OF THE UNITED STATES OR OF ANY STATE,** and each Assignor hereby further waives, to the extent permitted by law:

- (i) all damages occasioned by such taking of possession except any damages which are the direct result of the Collateral Agent's gross negligence or willful misconduct;
- (ii) all requirements as to the time, place and terms of sale or other requirements with respect to the enforcement of the Collateral Agent's rights here-under; and
- (iii) all rights of redemption, appraisalment, valuation, stay, extension or moratorium now or hereafter in force under any applicable law in order to prevent or delay the enforcement of this Agreement or the absolute sale of the Collateral or any portion thereof, and each Assignor, for itself and all who may claim under it, insofar as it or they now or hereafter lawfully may, hereby waives the benefit of all such laws.

Any sale of, or the grant of options to purchase, or any other realization upon, any Collateral shall operate to divest all right, title, interest, claim and demand, either at law or in equity, of the relevant Assignor therein and thereto, and shall be a perpetual bar both at law and in equity against the relevant Assignor and against any and all persons claiming or attempting to claim the Collateral so sold, optioned or realized upon, or any part thereof, from, through and under the relevant Assignor.

7.4. Application of Proceeds. (a) The proceeds of any Collateral obtained pursuant to section 7.1 or disposed of pursuant to section 7.2 shall be applied to the Secured Obligations owed to the Collateral Agent and the other Secured Creditors as provided in the Intercreditor Agreement.

(b) All payments required to be made to the Lenders hereunder shall be made to the Administrative Agent for the account of the respective Lenders.

7.5. Remedies Cumulative. Each and every right, power and remedy hereby specifically given to the Collateral Agent shall be in addition to every other right, power and remedy specifically given under this Agreement, the Credit Documents (as defined in the Credit Agreement), the Lease Agreements, the NCB LOC Agreements, the Fifth Third LOC Agreements, or the Swap Documents or now or hereafter existing at law or in equity, or by statute and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time or simultaneously and as often and in such order as may be deemed expedient by the Collateral Agent. All such rights, powers and remedies shall be cumulative and the exercise or the beginning of exercise of one shall not be deemed a waiver of the right to exercise of any other or others. No delay or omission of the Collateral Agent in the exercise of any such right, power or remedy and no renewal or extension of any of the Secured Obligations shall impair any such right, power or remedy or shall be construed to be a waiver of any Default, Event of Default or Collateral Enforcement Event of Default or an acquiescence therein. In the event that the Collateral Agent shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Collateral Agent may recover reasonable expenses, including reasonable attorneys' fees, and the amounts thereof shall be included in such judgment.

7.6. Discontinuance of Proceedings. In case the Collateral Agent shall have instituted any proceeding to enforce any right, power or remedy under this Agreement by foreclosure, sale, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Collateral Agent, then and in every such case the relevant Assignor, the Collateral Agent and each holder of any of the Secured Obligations shall be restored to their former positions and rights hereunder with respect to the Collateral subject to the security interest created under this Agreement, and all rights, remedies and powers of the Collateral Agent shall continue as if no such proceeding had been instituted.

7.7. Collateral Agent to Act on Behalf of Secured Creditors. The Secured Creditors agree by their acceptance of the benefits hereof that this Agreement may be enforced on their behalf only by the action of the Collateral Agent, acting upon the instructions of the Required Lenders. No other Secured Creditor shall have any right individually to seek to enforce or to enforce this Agreement or to realize upon the security to be granted hereby, it being understood and agreed that such rights and remedies may be exercised by the Collateral Agent, for the benefit of the Secured Creditors, upon the terms of this Agreement.

8. INDEMNITY.

8.1. Indemnity. (a) The Assignors jointly and severally agree to indemnify, reimburse and hold the Collateral Agent, each Secured Creditor and its respective successors, assigns, employees, agents and servants (hereinafter in this section 8.1 referred to individually as "*Indemnitee*", and collectively as "*Indemnitees*") harmless from any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, suits, judgments and any and all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and expenses) (for the purposes of this section 8.1 the foregoing are collectively called "*expenses*") of whatsoever kind and nature imposed on, asserted against or incurred by any of the Indemnitees in any way relating to or arising out of this Agreement, any other Credit Document, any Lease Agreement, any NCB LOC Agreement, any Fifth Third LOC Agreement, any Swap Document or the documents executed in connection herewith and therewith or in any other way connected with the enforcement of any of the terms of, or the preservation of any rights under any thereof, or in any way relating to or arising out of the Assignor's manufacture, ownership, ordering, purchase, delivery, control, acceptance, lease, financing, possession, operation, condition, sale, return or other disposition, or use of the Collateral (including, without limitation, latent or other defects, whether or not discoverable), the violation of the laws of any country, state or other governmental body or unit, any tort (including, without limitation, claims arising or imposed under the doctrine of strict liability, or for or on account of injury to or the death of any person (including any Indemnitee), or property damage), or contract claims arising in connection therewith; *provided* that no Indemnitee shall be indemnified pursuant to this section 8.1(a) for losses, damages or liabilities to the extent caused by the gross negligence or willful misconduct of such person to be

indemnified or of any other Indemnatee who is such person or an affiliate of such person. If any claim is asserted against any Indemnatee, such Indemnatee shall promptly notify the Assignor and each Indemnatee may, and if requested by the Assignor shall, in good faith, contest the validity, applicability and amount of such claim with counsel selected by such Indemnatee, and shall permit the Assignor to participate in such contest. In addition, in connection with any claim covered by this section 8.1 against more than one Indemnatee, all such Indemnatees shall be represented by the same legal counsel selected by such Indemnatees; *provided, however*, that if such legal counsel determines in good faith that representing all such Indemnatees would or could result in a conflict of interest under the laws or ethical principles applicable to such legal counsel or that a defense or counterclaim is available to an Indemnatee that is not available to all such Indemnatees, then to the extent reasonably necessary to avoid such a conflict of interest or to permit unqualified assertion of such defense or counterclaim, each Indemnatee shall be entitled to separate representation by a legal counsel selected by that Indemnatee. Each Assignor agrees that upon written notice by any Indemnatee of the assertion of such a liability, obligation, loss, damage, penalty, claim, demand, action, judgment or suit, such Assignor shall assume full responsibility for the defense thereof. Each Indemnatee agrees to use its best efforts to promptly notify the relevant Assignor of any such assertion of which such Indemnatee has knowledge.

(b) Without limiting the application of section 8.1(a), the Assignors jointly and severally agree to pay, or reimburse the Collateral Agent for (if the Collateral Agent shall have incurred fees, costs or expenses because an Assignor shall have failed to comply with its obligations under this Agreement or any Credit Document), any and all out-of-pocket fees, costs and expenses of whatever kind or nature incurred in connection with the creation, preservation or protection of the Collateral Agent's Liens on, and security interest in, the Collateral, including, without limitation, all fees and taxes in connection with the recording or filing of instruments and documents in public offices, payment or discharge of any taxes or Liens upon or in respect of the Collateral, premiums for insurance with respect to the Collateral and all other fees, costs and expenses in connection with protecting, maintaining or preserving the Collateral and the Collateral Agent's interest therein, whether through judicial proceedings or otherwise, or in defending or prosecuting any actions, suits or proceedings arising out of or relating to the Collateral.

(c) Without limiting the application of section 8.1(a) or (b), the Assignors jointly and severally agree to pay, indemnify and hold each Indemnatee harmless from and against any loss, costs, damages and expenses which such Indemnatee may suffer, expend or incur in consequence of or growing out of any material misrepresentation by an Assignor in this Agreement, or in any statement or writing contemplated by or made or delivered pursuant to or in connection with this Agreement.

(d) If and to the extent that the obligations of either Assignor under this section 8.1 are unenforceable for any reason, each Assignor hereby agrees to make the maximum contribution to the payment and satisfaction of such obligations which is permissible under applicable law.

8.2. Indemnity Obligations Secured by Collateral; Survival. Any amounts paid by any Indemnatee as to which such Indemnatee has the right to reimbursement shall constitute Secured Obligations secured by the Collateral. The indemnity obligations of the Assignors contained in this section 8 shall continue in full force and effect notwithstanding the full payment of all the Notes issued under the Credit Agreement and all of the other Secured Obligations and notwithstanding the discharge thereof.

9. DEFINITIONS.

The following terms shall have the meanings herein specified unless the context otherwise requires. Such definitions shall be equally applicable to the singular and plural forms of the terms defined. Terms defined in other documents, agreements and instruments that are satisfied, discharged or terminated shall, for purposes of this Agreement, continue to have the meaning set forth therein immediately before such satisfaction, discharge or termination.

"Agreement" shall mean this Security Agreement as the same may be modified, supplemented or amended from time to time in accordance with its terms.

"Assignor" shall have the meaning specified in the first paragraph of this Agreement.

"Bullion" shall mean, at any time, (i) any and all inventory of either Assignor of precious or semi-precious metal (including, without limitation, gold, platinum, palladium and silver) or copper (collectively, **"Metal"**) held by that Assignor or a Subsidiary or affiliate of that Assignor pursuant to the Mitsui Agreement, the Englehard Agreement or the Fleet Agreement; and (ii) an undivided interest in each product of any inventory containing Metal outstanding to the extent provided in the Mitsui Agreement, the Englehard Agreement or the Fleet Agreement.

"Business Day" means any day excluding Saturday, Sunday and any day which shall be at the Payment Office of the Administrative Agent a legal holiday or a day on which banking institutions are authorized by law or other governmental action to close.

"Cash Collateral Account" shall mean a cash collateral account maintained with, and in the sole dominion and control of, the Collateral Agent for the benefit of the Secured Creditors (such cash collateral account shall be interest bearing if it is the general policy of the Collateral Agent in syndicated credit agreements in which it acts as collateral agent to establish such cash collateral accounts as interest bearing accounts; otherwise such cash collateral account shall be non-interest bearing).

"Chattel Paper" shall have the meaning assigned that term under the Uniform Commercial Code as in effect from time to time in the State of Ohio.

"Collateral" shall have the meaning provided in section 1.1(a).

"Collateral Agent" shall have the meaning specified in the first paragraph of this Agreement.

"Collateral Enforcement Event of Default" shall mean the following:

(i) a default in the payment when due, beyond any applicable grace period, of any amount of the principal, interest or other scheduled payment of Secured Obligations;

(ii) any representation, warranty or statement made by the Assignors or their Subsidiaries in any Credit Document, Lease Agreement, NCB LOC Agreement, Fifth Third LOC Agreement or Swap Document or in any statement or certificate delivered or required to be delivered pursuant thereto shall prove to be untrue in any material respect on the date as of which made or deemed made;

(iii) one or more judgments or decrees shall be entered against an Assignor or any of its Subsidiaries involving a liability equal to or more than \$5,000,000 in the aggregate for all such judgments and decrees for the Assignors and the Subsidiaries of the Assignors (excluding any judgment covered by insurance as to which the carrier has adequate claims paying ability and has not reserved its rights), and any such judgments or decrees shall not have been vacated, discharged or stayed or bonded pending appeal within 30 days from the entry thereof;

(iv) any of the Credit Documents, Lease Agreements, NCB LOC Agreements, Fifth Third LOC Agreements or Swap Documents shall cease for any reason (other than termination in accordance with its terms) to be in full force and effect;

(v) an Assignor or any Material Subsidiary (as defined in the Credit Agreement) of an Assignor shall commence a voluntary case concerning itself under Title 11 of the United States Code entitled "Bankruptcy," as now or hereafter in effect, or any successor thereto (the **"Bankruptcy Code"**); or an

involuntary case is commenced against an Assignor or any Material Subsidiary of an Assignor and the petition is not controverted within 30 days, or is not dismissed within 45 days, after commencement of the case; or a custodian (as defined in the Bankruptcy Code) is appointed for, or takes charge of, all or substantially all of the property of an Assignor or any Material Subsidiary of an Assignor; or either of the Assignors or any Material Subsidiary of an Assignor commences (including by way of applying for or consenting to the appointment of, or the taking of possession by, a rehabilitator, receiver, custodian, trustee, conservator or liquidator (collectively, a "*conservator*") of itself or all or any substantial portion of its property) any other proceeding under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency, liquidation, rehabilitation, conservatorship or similar law of any jurisdiction whether now or hereafter in effect relating to an Assignor or any Material Subsidiary of an Assignor; or any such proceeding is commenced against an Assignor or any Material Subsidiary of an Assignor to the extent such proceeding is consented to by such person or remains undismissed for a period of 45 days; or an Assignor or any Material Subsidiary of an Assignor is adjudicated insolvent or bankrupt; or any order of relief or other order approving any such case or proceeding is entered; or an Assignor or any Material Subsidiary of an Assignor suffers any appointment of any conservator or the like for it or any substantial part of its property which continues undischarged or unstayed for a period of 45 days; or an Assignor or any Material Subsidiary of an Assignor makes a general assignment for the benefit of creditors; or any corporate (or similar organizational) action is taken by an Assignor or any Material Subsidiary of an Assignor for the purpose of effecting any of the foregoing; or

(vi) any of the following (other than as described in (i), (ii), (iii), (iv) or (v) above) shall have occurred and be continuing for five days: any Event of Default as defined in the Credit Agreement, any NCB LOC Agreement, any Fifth Third LOC Agreement or any Swap Document; any Default as defined in the Lease Agreement; or any failure by any Assignor or Subsidiary of an Assignor to perform or observe any of its obligations under any of the Credit Documents, the Lease Agreements, the NCB LOC Agreements, the Fifth Third LOC Agreements or the Swap Documents beyond any applicable grace or cure period and after receiving any applicable notice required therein.

"Contract Rights" shall mean all rights of an Assignor (including, without limitation, all rights to payment) under each Contract.

"Contracts" shall mean all contracts between an Assignor and one or more additional parties (but shall include Cash Equivalents).

"Copyrights" shall mean any U.S. copyright to which an Assignor now or hereafter has title, as well as any application for a U.S. copyright hereafter made by such Assignor.

"Credit Agreement" shall have the meaning provided in the Preliminary Statements of this Agreement.

"Default" shall mean an event, condition, action, inaction or other occurrence which constitutes (or which the lapse of any applicable grace period or the giving of notice or both would constitute) an Event of Default as defined herein.

"Documents" shall have the meaning assigned that term under the Uniform Commercial Code as in effect from time to time in the State of Ohio.

"Englehard Agreement" shall mean that certain Letter Agreement, dated September 18, 1998, between Williams Advanced Materials Inc. and Englehard Corporation.

"Equipment" shall mean any "equipment," as such term is defined in the Uniform Commercial Code as in effect from time to time in the State of Ohio, now or hereafter owned by an Assignor and, in any event, shall include, but shall not be limited to, all machinery, equipment, furnishings, fixtures and vehicles now or hereafter owned by an

Assignor and any and all additions, substitutions and replacements of any of the foregoing, wherever located, together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto.

"Event of Default" shall mean any Event of Default as defined in the Credit Agreement, any NCB LOC Agreement, Fifth Third LOC Agreement or Swap Document and any Default as defined in the Lease Agreement and any other failure by any Assignor to perform or observe any of its obligations under, or any other default under any other Lease Agreement, NCB LOC Agreement, Fifth Third LOC Agreement or Swap Document beyond any applicable grace or cure period and after receiving any applicable notice required therein.

"Event of Loss" shall mean any occurrence resulting in an insurance claim with respect to any Collateral under a policy of insurance.

"Fleet Agreement" shall mean that certain Master Copper Lease Agreement, dated March 2001, between Brush Wellman and Fleet Precious Metals Inc.

"General Intangibles" shall have the meaning assigned that term under the Uniform Commercial Code as in effect from time to time in the State of Ohio.

"Goods" shall have the meaning assigned that term under the Uniform Commercial Code as in effect from time to time in the State of Ohio.

"Indemnitee" shall have the meaning provided in section 8.1.

"Instrument" shall have the meaning assigned that term under the Uniform Commercial Code as in effect from time to time in the State of Ohio (but shall not include Cash Equivalents).

"Inventory" shall mean merchandise, inventory and goods, and all additions, substitutions and replacements thereof, wherever located, together with all goods, supplies, incidentals, packaging materials, labels, materials and any other items used or usable in manufacturing, processing, packaging or shipping same; in all stages of production -- from raw materials through work-in-process to finished goods -- and all products and proceeds of whatever sort and wherever located and any portion thereof which may be returned, rejected, reclaimed or repossessed by the Collateral Agent or an Assignor from an Assignor's customers, and shall specifically include all "inventory" as such term is defined in the Uniform Commercial Code as in effect from time to time in the State of Ohio, now or hereafter owned by the Assignor.

"Investment Property" shall have the meaning assigned that term under the Uniform Commercial Code as in effect from time to time in the State of Ohio.

"Lenders" shall have the meaning provided in the Preliminary Statements of this Agreement.

"Letter of Credit Rights" shall have the meaning assigned that term under the Uniform Commercial Code as in effect from time to time in the State of Ohio.

"Marks" shall mean any trademarks and service marks now held or hereafter acquired by an Assignor, which are registered in the United States Patent and Trademark Office, as well as any unregistered marks used by an Assignor in the United States and trade dress including logos and/or designs in connection with which any of these registered or unregistered marks are used.

"Material Adverse Effect" shall mean any or all of the following: (i) any material adverse effect on the business, operations, property, prospects, assets, liabilities or condition (financial or otherwise) of, when used with reference to the Assignors and/or any of their Subsidiaries, the Assignors and their Subsidiaries, taken as a whole, or when used with reference to any other person, such person and its Subsidiaries, taken as a whole, as the case may be; (ii) any material adverse effect on the ability of each of the Assignors to perform its obligations under the Credit

Documents, or any of the Lease Agreements, the NCB LOC Agreements, the Fifth Third LOC Agreements or the Swap Documents, to which it is a party; (iii) any material adverse effect on the ability of the Assignors and their Subsidiaries, taken as a whole, to pay their liabilities and obligations as they mature or become due; or (iv) any material adverse effect on the validity, effectiveness or enforceability, as against any Assignor, of any Credit Document or any Lease Agreement, NCB LOC Agreement, the Fifth Third LOC Agreement or Swap Document to which it is a party.

"Mitsui Agreement" means that certain Standard Metal Consignment Agreement, dated January 6, 2000, between Williams Advanced Materials Inc. and Mitsui & Co. (U.S.A.), Inc.

"Payment Intangibles" shall have the meaning assigned that term under the Uniform Commercial Code as in effect from time to time in the State of Ohio.

"Patents" shall mean any U.S. patent to which an Assignor now or hereafter has title, as well as any application for a U.S. patent now or hereafter made by an Assignor.

"Permits" shall mean, to the extent permitted to be assigned by the terms thereof of by applicable law, all licenses, permits, rights, orders, variances, franchises or authorizations of or from any governmental authority or agency.

"Proceeds" shall have the meaning assigned that term under the Uniform Commercial Code as in effect in the State of Ohio on the date hereof or under other relevant law and, in any event, shall include, but not be limited to, (i) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to the Collateral Agent or an Assignor from time to time with respect to any of the Collateral, (ii) any and all payments (in any form whatsoever) made or due and payable to an Assignor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any governmental authority (or any person acting under color of governmental authority) and (iii) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

"Promissory Notes" shall have the meaning assigned that term under the Uniform Commercial Code as in effect from time to time in the State of Ohio.

"Proprietary Information" means all information and know-how worldwide, including, without limitation, technical data; manufacturing data; research and development data; data relating to compositions, processes and formulations, manufacturing and production know-how and experience; management know-how; training programs; manufacturing, engineering and other drawings; specifications; performance criteria; operating instructions; maintenance manuals; technology; technical information; software; engineering and computer data and databases; design and engineering specifications; catalogs; promotional literature; financial, business and marketing plans; inventions and invention disclosures.

"Receivables" shall mean any "account" as such term is defined in the Uniform Commercial Code as in effect from time to time in the State of Ohio, now or hereafter owned by an Assignor and, in any event, shall include, but shall not be limited to, all of an Assignor's rights to payment for goods sold or leased or services performed by an Assignor, whether now in existence or arising from time to time hereafter, including, without limitation, rights evidenced by an account, note, contract, security agreement, chattel paper, or other evidence of indebtedness or security, together with (a) all security pledged, assigned, hypothecated or granted to or held by an Assignor to secure the foregoing, (b) all of an Assignor's right, title and interest in and to any goods, the sale of which gave rise thereto, (c) all guarantees, endorsements and indemnifications on, or of, any of the foregoing, (d) all powers of attorney for the execution of any evidence of indebtedness or security or other writing in connection therewith, (e) all books, records, ledger cards, and invoices relating thereto, (f) all evidences of the filing of financing statements and other statements and the registration of other instruments in connection therewith and amendments thereto, notices to other creditors or secured parties, and certificates from filing or other registration officers, (g) all credit information, reports and memoranda relating thereto, and (h) all other writings related in any way to the foregoing.

"Secured Creditors" shall have the meaning provided in the Preliminary Statements of this Agreement.

"Secured Obligations" shall mean any and all of the following:

(i) the full and prompt payment when due (whether at the stated maturity, by acceleration or otherwise) of all obligations (including obligations which, but for the automatic stay under section 362(a) of the Bankruptcy Code, would become due) of the Assignor and/or its Subsidiaries and Affiliates to any of the Agents or the Lenders, whether now existing or hereafter incurred under, arising out of or in connection with the Credit Agreement and the other Credit Documents to which the Assignor or any of its Subsidiaries or Affiliates is now or hereafter may become a party, and the due performance and compliance by the Assignor and each of its Subsidiaries and Affiliates with all of the terms, conditions and agreements contained in the Credit Agreement and such other Credit Documents, including without limitation, all such obligations and indebtedness of the Assignors and their Subsidiaries and Affiliates under the Credit Agreement and the other Credit Documents (all such obligations and liabilities under this clause (i), being herein collectively called the **"Credit Document Obligations"**);

(ii) the full and prompt payment when due (whether at the stated maturity, by acceleration or otherwise) of all obligations (including obligations which, but for the automatic stay under section 362(a) of the Bankruptcy Code, would become due) and liabilities of each Assignor or any other Subsidiary of the Assignor now existing or hereafter incurred under, arising out of or in connection with the Lease Agreements and the other Lease Documents to which the Assignor or any of its Subsidiaries or Affiliates is now or hereafter may become a party, and the due performance and compliance by the Assignor and each of its Subsidiaries and Affiliates with all of the terms, conditions and agreements contained in the Lease Agreements, including without limitation (x) in the case of the Brush Wellman, all such obligations and indebtedness of the Assignor and its Subsidiaries and Affiliates under the Master Lease Agreement, and (y) in the case of Parent, all such obligations and indebtedness under the Lease Guaranty (all such obligations and liabilities under this clause (i), being herein collectively called the **"Lease Obligations"**);

(iii) the full and prompt payment when due (whether at the stated maturity, by acceleration or otherwise) of all obligations (including obligations which, but for the automatic stay under section 362(a) of the Bankruptcy Code, would become due) and liabilities of each Assignor or any other Subsidiary of the Assignor now existing or hereafter incurred under, arising out of or in connection with the NCB Reimbursement Agreements and the other NCB LOC Agreements to which the Assignor or any of its Subsidiaries or Affiliates is now or hereafter may become a party, and the due performance and compliance by the Assignor and each of its Subsidiaries and Affiliates with all of the terms, conditions and agreements contained in the NCB LOC Agreements, including without limitation (x) in the case of the Brush Wellman, all such obligations and indebtedness of the Assignor and its Subsidiaries and Affiliates under the NCB Reimbursement Agreements, and (y) in the case of Parent, all such obligations and indebtedness under the NCB LOC Guaranty (all such obligations and liabilities under this clause (iii), being herein collectively called the **"NCB LOC Obligations"**);

(iv) the full and prompt payment when due (whether at the stated maturity, by acceleration or otherwise) of all obligations (including obligations which, but for the automatic stay under section 362(a) of the Bankruptcy Code, would become due) and liabilities of each Assignor or any other Subsidiary of the Assignor now existing or hereafter incurred under, arising out of or in connection with the Swap Agreement and the other Swap Documents to which the Assignor or any of its Subsidiaries or Affiliates is now or hereafter may become a party, and the due performance and compliance by the Assignor and each of its Subsidiaries and Affiliates with all of the terms, conditions and agreements contained in the Swap Documents, including without limitation (x) in the case of the Brush Wellman, all such obligations and indebtedness of the Assignor and its Subsidiaries and Affiliates under the Swap Agreement, and (y) in the case of Parent, all such obligations and indebtedness under the Swap Guaranty (all such obligations and liabilities under this clause (iv), being herein collectively called the **"Swap Obligations"**);

(v) the full and prompt payment when due (whether at the stated maturity, by acceleration or otherwise) of all obligations (including obligations which, but for the automatic stay under section 362(a) of the Bankruptcy Code, would become due) and liabilities Brush Wellman now existing or hereafter incurred under, arising out of or in connection with the Fifth Third LOC Agreements to which Brush Wellman is now or hereafter may become a party (all such obligations and liabilities under this clause (v), being herein collectively called the "***Fifth Third LOC Obligations***");

(vi) any and all sums advanced by the Collateral Agent in order to preserve the Collateral or preserve its security interest in the Collateral; and

(vii) in the event of any proceeding for the collection or enforcement of any indebtedness, obligations, or liabilities of either Assignor referred to in clauses (i) through (v) above, after an Event of Default or Collateral Enforcement Event of Default shall have occurred and be continuing, the reasonable expenses of re-taking, holding, preparing for sale or lease, selling or otherwise disposing of or realizing on the Collateral, or of any exercise by the Collateral Agent of its rights hereunder, together with reasonable attorneys' fees and court costs.

"***Software***" shall have the meaning assigned that term under the Uniform Commercial Code as in effect from time to time in the State of Ohio.

"***Trade Secrets***" means any secretly held existing engineering and other data, information, production procedures and other know-how relating to the design, manufacture, assembly, installation, use, operation, marketing, sale and servicing of any products or business of an Assignor worldwide whether written or not written.

10. MISCELLANEOUS.

10.1. Notices. All notices and other communications hereunder shall be in writing and shall be delivered or mailed by first class mail, postage prepaid, addressed:

- (i) if to either Assignor, at its address contained in the Credit Agreement;
- (ii) if to the Collateral Agent, at:

National City Bank,
as Collateral Agent
National City Center
1900 East Ninth Street
Cleveland, Ohio 44114
Attn.: Large Corporate Division
Locator No. 2070;

with copies to:

Baker & Hostetler LLP
1900 E. 9th Street
3200 National City Center
Cleveland, Ohio 44114
Attn.: Gary R. Martz, Esq.
Tel. No.: (216) 861-7644
Fax No.: (216) 696-0740

(iii) if to any Lender (other than the Collateral Agent), at such address as such Lender shall have specified in the Credit Agreement;

(iv) if to any other Secured Creditor, at such address as such Secured Creditor shall have specified in writing to each Assignor and the Collateral Agent;

or at such other address as shall have been furnished in writing by any person described above to the party required to give notice hereunder.

10.2. Waiver; Amendment. (a) None of the terms and conditions of this Agreement may be changed, waived, modified or varied in any manner whatsoever unless in writing duly signed by each Assignor and the Collateral Agent.

(b) No delay on the part of the Collateral Agent in exercising any of its rights, remedies, powers and privileges hereunder or partial or single exercise thereof, shall constitute a waiver thereof. No notice to or demand on either Assignor in any case shall entitle it to any other or further notice or demand in similar or other circumstances or constitute a waiver of any of the rights of the Collateral Agent to any other or further action in any circumstances without notice or demand.

10.3. Obligations Absolute. The obligations of each Assignor under this Agreement shall be absolute and unconditional and shall remain in full force and effect without regard to, and shall not be released, suspended, discharged, terminated or otherwise affected by, any circumstance or occurrence whatsoever, including, without limitation:

(a) any lack of validity or enforceability of the Credit Agreement, the Notes, any other Credit Document, any Lease Agreement, any NCB LOC Agreement, any Fifth Third LOC Agreement or any Swap Document or any other agreement or instrument relating thereto;

(b) any renewal, extension, amendment or modification of, or addition or supplement to, or any waiver, consent, extension, indulgence or other action or inaction under or in respect of, the Credit Agreement, the Notes, any other Credit Document, any Lease Agreement, any NCB LOC Agreement, any Fifth Third LOC Agreement or any Swap Document, or any other agreement or instrument relating thereto, including, without limitation, any increase in the Secured Obligations resulting from the extension of additional credit to the Assignor or any of its Subsidiaries or otherwise;

(c) any taking, exchange, release or non-perfection of any Collateral, or any taking, release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Secured Obligations;

(d) any manner of application of Collateral, or proceeds thereof, to all or any of the Secured Obligations, or any manner of sale or other disposition of any Collateral for all or any of the Secured Obligations or any other assets of the Assignor or any of its Subsidiaries;

(e) any change, restructuring or termination of the corporate structure or existence of the Assignor or any of its Subsidiaries;

(f) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to the Assignor or any of its Subsidiaries or Affiliates, or any action taken with respect to this Agreement by any trustee or receiver, or by any court, in any such proceeding, whether or not an Assignor shall have notice or knowledge of any of the foregoing; or

(g) any other circumstance which might otherwise constitute a defense available to, or a discharge of, an Assignor as a guarantor or surety for the Secured Obligations.

This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Secured Obligations is rescinded or must otherwise be returned by the Collateral Agent, the Administrative Agent or any Secured Creditor upon the insolvency, bankruptcy or reorganization of the Assignor or any of its Subsidiaries or Affiliates or otherwise, all as though such payment had not been made.

10.4. Successors and Assigns. This Agreement shall be binding upon each Assignor and its successors and assigns and shall inure to the benefit of the Collateral Agent and its successors and assigns, *provided* that no Assignor may transfer or assign any or all of its rights or obligations hereunder without the written consent of the Collateral Agent. All agreements, statements, representations and warranties made by each Assignor herein or in any certificate or other instrument delivered by such Assignor or on its behalf under this Agreement shall be considered to have been relied upon by the Secured Creditors and shall survive the execution and delivery of this Agreement and the other Credit Documents regardless of any investigation made by the Secured Creditors on their behalf.

10.5. Headings Descriptive. The headings of the several sections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

10.6. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.7. Governing Law. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAW OF THE STATE OF OHIO.

10.8. Assignors' Duties. It is expressly agreed, anything herein contained to the contrary notwithstanding, that each Assignor shall remain liable to perform all of the obligations, if any, assumed by it with respect to the Collateral and the Collateral Agent shall not have any obligations or liabilities with respect to any Collateral by reason of or arising out of this Agreement, nor shall the Collateral Agent be required or obligated in any manner to perform or fulfill any of the obligations of an Assignor under or with respect to any Collateral.

10.9. Termination: Release. (a) After the termination of the Commitment, when no Note, Letter of Credit, Lease Agreement, letter of credit issued pursuant to the NCB Reimbursement Agreements, letter of credit issued pursuant to the Fifth Third LOC Agreements, or Swap Document is outstanding and when all Loans and other Secured Obligations have been paid in full, this Agreement shall terminate, and the Collateral Agent, at the request and expense of the Assignors, will execute and deliver to the relevant Assignor a proper instrument or instruments (including Uniform Commercial Code termination statements on form UCC-3) acknowledging the satisfaction and termination of this Agreement, and will duly assign, transfer and deliver to the relevant Assignor (without recourse and without any representation or warranty) such of the Collateral as may be in the possession of the Collateral Agent and as has not theretofore been sold or otherwise applied or released pursuant to this Agreement.

(b) So long as no payment default on any of the Secured Obligations is in existence or would exist after the application of proceeds as provided in the Intercreditor Agreement, the Collateral Agent shall, at the request of the relevant Assignor, release any or all of the Collateral, *provided* that (x) such release is permitted by the terms of the Credit Agreement and the Intercreditor Agreement and (y) the proceeds of such Collateral are delivered to the Collateral Agent and are to be applied as required pursuant to the Intercreditor Agreement or any consent or waiver entered into with respect thereto.

(c) At any time that an Assignor desires that the Collateral Agent take any action to give effect to any release of Collateral pursuant to the foregoing section 10.9(a) or (b), it shall deliver to the Collateral Agent a certificate signed by a principal executive officer stating that the release of the respective Collateral is permitted pursuant to section 10.9(a) or (b). In the event that any part of the Collateral is released as provided in section 10.9(b), the Collateral Agent, at the request and expense of an Assignor, will duly release such Collateral and assign, transfer and deliver to such Assignor (without recourse and without any representation or warranty) such of the Collateral as is then being (or has been) so sold and as may be in the possession of the Collateral Agent and has not theretofore been released pursuant to this Agreement. The Collateral Agent shall have no liability whatsoever to any Secured Creditor as the result of any release of Collateral by it as permitted by this section 10.9. Upon any release of Collateral pursuant to section 10.9(a) or (b), none of the Secured Creditors shall have any continuing right or interest in such Collateral, or the proceeds thereof.

11. WAIVER OF JURY TRIAL.

EACH ASSIGNOR AND THE COLLATERAL AGENT EACH HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered by their duly authorized officers as of the date first above written.

<p>BRUSH ENGINEERED MATERIALS INC., <i>as an Assignor</i></p> <p>By: <u>[Signature]</u> Name: <u>JOE HORVYCHAK</u> Its: <u>VP, Treasurer & Security</u></p>	<p>BRUSH WELLMAN INC., <i>as an Assignor</i></p> <p>By: <u>[Signature]</u> Name: <u>GARY SCHIAVONI</u> Its: <u>ASSISTANT TREASURER AND ASSISTANT SECRETARY</u></p>
<p>NATIONAL CITY BANK, <i>as Collateral Agent</i></p> <p>By: <u>[Signature]</u> Name: <u>JANICE E. FOCKE</u> Its: <u>SENIOR VICE PRESIDENT</u></p>	

ANNEX A**SCHEDULE OF FINANCING STATEMENTS TO BE FILED**

DEBTOR	JURISDICTION	SECURED PARTY	DESCRIPTION OF COLLATERAL
Brush Engineered Material Inc.	Ohio Secretary of State	National City Bank, as Collateral Agent	As set forth in Section 1 of the Agreement.
Brush Wellman Inc.	Ohio Secretary of State	National City Bank as Collateral Agent	As set forth in Section 1 of the Agreement.

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ANNEX B

SCHEDULE OF EXISTING FINANCING STATEMENTS

DEBTOR	JURISDICTION	SECURED PARTY	FILING DATE/ NUMBER
Brush Engineered Materials Inc.			None.
Brush Wellman Inc.	Ohio Secretary of State	National City Bank as Trustee	10/11/1996 10119604102
		Director of Development Ohio Department of Development	10/11/1996 AN09912
		AT&T Credit Corporation	10/22/1996 AN12684
		National City Bank as Agent	01/02/1997 AN30114
		General Electric Capital Computer Leasing Corporation	03/26/1997 AN50520
		Toledo-Lucas County Port Authority	04/25/1997 AN59403
		Banc One Leasing Corporation	05/27/1997 AN68032
		Banc One Leasing Corporation	05/27/1997 AN68034
		General Electric Capital Computer Leasing Corporation	06/05/1997 AN70988
		IBM Credit Corporation	10/14/1997 AO02720
		Banc One Leasing Corporation	01/08/1998 AP0015825
		IBM Credit Corporation	01/21/1998 AP0019427
		ICX Corporation	06/02/1998 AP0057541
		Banc One Leasing Corporation	09/08/1998 AP0083374
		Timminco Metals	04/21/1999 AP0136056
		IBM Credit Corporation	10/18/1999 AP0187331
		ICX Corporation	11/23/1999 AP0198576
		Banc One Leasing Corporation	12/09/1999 AP0200392
		Heller Financial Leasing Inc.	05/08/2000/ AP0200392
		Heller Financial Leasing Inc.	05/08/2000 AP0239167
		De Lage Landen	10/16/2000

		Financial Services Inc.	AP285286
		Fleet Precious Metals Inc.	05/03/2001 AP334975
		Great America Leasing Corporation	06/14/2001 OH00035488972
		National City Bank Cleveland, OH	01/02/1997 1363300
	Ohio - Cuyahoga County Recorder	General Electric Capital Computer Leasing Co. Emeryville, AC	03/26/1997 130526
		Banc One Leasing Corp. Columbus, OH	05/22/1997 1386211
		Banc One Leasing Corp. Columbus, OH	05/22/1997 1386212
		General Electric Capital Computer Leasing Emeryville, CA	06/05/1997 1387488
		IBM Credit Corp. White Plains, NY	10/14/1997 1399078
		Bank One Leasing Corp. Columbus, OH	01/07/1998 1407259
		IBM Credit Corporation White Plains, NY	01/26/1998 1408864
		ICX Corporation Cleveland, OH	06/02/1998 1421687
		Banc One Leasing Corporation Columbus, OH	09/10/1998 1431082
		ICCX Corporation Cleveland, OH	11/22/1999 199911229198
		Banc One Leasing Corporation Columbus, OH	12/10/1999 199912109071
		MRK Technologies Independence, OH. Assignee Heller Financial Leasing Inc. Chicago, IL.	05/24/2000 200005249036
		MRK Technologies Independence, OH, Assignee Heller Financial Leasing Inc. Chicago, IL	05/24/2000 200005249040
		ICX Corp. Cleveland, OH	09/14/2000 200009149015
		DE Lage Landen Financial Services, Inc. Berwyn, PA	10/16/2000 200010169191
		Fleet Precious Metals Inc Providence, RI	05/02/2001 200105029097
		Ikon Office Solutions	03/09/1998

			1821038
	New Jersey - Department of Treasury Commercial Recording	ICX Corp	06/01/1998 2890685
	Pennsylvania - Department of State Uniform Commercial Code Section	ICX Corp.	07/19/1999 30501469
		Fleet Precious Metals Inc.	05/02/2001 33900566
		Banc One Leasing Corporation	01/06/1998 510342
	Ohio - Lorain County Recorder	Banc One Leasing Corporation	09/09/1988 561377
		ICX Corporation	06/16/1998 98-1500
	Pennsylvania - Berks County Prothonotary	Fleet Precious Metals, Inc.	05/02/2001 01-1023

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PATENT
REEL: 012852 FRAME: 0723

ANNEX C
to
SECURITY AGREEMENT

SCHEDULE OF CHIEF EXECUTIVE OFFICES

ASSIGNOR	STATE OF ORGANIZATION	TAX I.D. NO.	ADDRESS
Brush Engineered Materials Inc.	Ohio	34-1919973	17876 St. Clair Avenue Cleveland, Ohio 44110 ¹
Brush Wellman Inc.	Ohio	34-0119320	17876 St. Clair Avenue Cleveland, Ohio 44110 ¹

¹ Address of principal executive office and registered office. Michael C. Hasychak is the registered agent for service of process.

ANNEX D
to
SECURITY AGREEMENT

SCHEDULE OF EQUIPMENT
AND INVENTORY LOCATIONS

ASSIGNOR	ADDRESS
Brush Engineered Materials Inc.	Brush Engineered Materials is a holding company and does not hold any Equipment or Inventory.
Brush Wellman Inc.	17876 St. Clair Avenue Cleveland, Ohio 44110 14710 W. Portage River S. Rd. Elmore, Ohio 43416 44036 S. Grimmer Blvd. Fremont, California 94538 7375 Industrial Pkwy. Lorain, Ohio 44053 Shomakersville Rd. Shoemakersville, PA 19555 606 Lamont Road Elmhurst, Illinois 60126 180 Passiac Ave. Fairfield, New Jersey 07004 18720 Crenshaw Blvd. Torrance, California 90504 27555 College Park Drive Warren, Michigan 48093

ANNEX E
to
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SCHEDULE OF TRADE AND FICTITIOUS NAMES

Name

Jurisdiction Where Used

None.

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ANNEX F
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SCHEDULE OF MARKS

All Marks in this table are owned by Brush Wellman Inc.

Trademark	Filing Date	Registration Number	Registration Date
ABLECAST	27-Mar-1996	2,162,525	02-Jun-1998
ALBEMET	04-Mar-1999	2,395,001	17-Oct-2000
BECOOOL	22-Dec-1993	1,877,307	07-Feb-1995
BECOOOL (STYLIZED)	25-Apr-1995	2,011,518	29-Oct-1996
BRUSH	19-Nov-1962	0,757,120	24-Sep-1963
BRUSH	19-Nov-1962	0,756,691	17-Sep-1963
BRUSH 1915	10-Dec-1991	1,786,074	03-Aug-1993
BRUSH WELLMAN INC.	27-Dec-1995	2,088,708	19-Aug-1997
BRUSHBRONZE	18-Feb-1998	2,414,374	19-Dec-2000
BRUSHCAST	13-Jan-1999	2,485,697	04-Sep-2001
BRUSHFORM	29-Jul-1981	1,216,370	16-Nov-1982
CUPACK	24-Jun-1996	2,131,864	27-Jan-1998
I-400	16-Aug-1965	0,806,874	12-Apr-1966
MOLDMAX	02-Nov-1989	1,597,170	22-May-1990
MOLDMAX HH	28-Aug-1997	2,322,188	22-Feb-2000
MOLDMAX LH	28-Aug-1997	2,322,189	22-Feb-2000
MOLDMAX XL	28-Aug-1997	2,355,691	06-Jun-2000
NIBRYL	24-May-1993	1,819,682	08-Feb-1994
PHASE3HP	14-Oct-1993	1,869,214	27-Dec-1994
PHASE3HP AND DESIGN	14-Oct-1993	1,875,032	24-Jan-1995
PROTHERM	02-Nov-1989	1,597,171	22-May-1990
Q-MAX	06-Mar-1995	2,063,787	20-May-1997
THERMALOX	14-Feb-1964	0,780,830	01-Dec-1964
THERMALSTRATES	25-Mar-1982	1,261,370	20-Dec-1983
TOUGHMET	18-Feb-1998	2,419,524	09-Jan-2001
UOX	29-Jul-1959	0,695,510	05-Apr-1960
WELDPACK	20-Jul-1992	1,847,231	26-Jul-1994

ANNEX G
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SCHEDULE OF PATENTS AND APPLICATIONS

U.S. Patents Owned by Brush Wellman Inc.

Title	Patent Number	Issue Date
THERMOMECHANICAL PROCESSING OF BERYLLIUM-COPPER ALLOYS	4,657,601	14-Apr-1987
LEAN, HIGH CONDUCTIVITY, RELAXATION-RESISTANT BERYLLIUM-NICKEL-COPPER ALLOYS	6,001,196	14-Dec-1999
LEAN, HIGH CONDUCTIVITY, RELAXATION-RESISTANT BERYLLIUM-NICKEL-COPPER ALLOYS	5,993,574	30-Nov-1999
ALUMINUM-BERYLLIUM ALLOYS HAVING HIGH STIFFNESS AND LOW THERMAL EXPANSION FOR MEMORY DEVICES	5,840,135	24-Nov-1998
METAMORPHIC PROCESSING OF ALLOYS AND PRODUCTS THEREOF	6,190,468	20-Feb-2001
MACHINABLE LEAN BERYLLIUM-NICKEL ALLOYS CONTAINING COPPER FOR GOLF CLUBS AND THE LIKE	5,911,948	15-Jun-1999
METHOD AND APPARATUS FOR WELDING PRECIPITATION HARDENABLE MATERIALS*	5,324,914	28-Jun-1994
PROCESS FOR THERMODYNAMICALLY TREATING A REGION JOINING TWO MEMBERS	5,217,158	08-Jun-1993
ALUMINUM-BERYLLIUM ALLOYS HAVING HIGH STIFFNESS AND LOW THERMAL EXPANSION FOR MEMORY DEVICES	5,578,146	26-Nov-1996
PROCESSING OF COPPER ALLOYS	4,599,120	08-Jul-1986
PROCESSING OF COPPER ALLOYS AND PRODUCT	4,724,013	09-Feb-1988
METAMORPHIC PROCESSING OF ALLOYS AND PRODUCTS THEREOF	5,651,844	29-Jul-1997
COPPER ALLOY	4,551,187	05-Nov-1985
PROCESSING OF COPPER ALLOYS	4,565,586	21-Jan-1986
PROCESS FOR THERMODYNAMICALLY TREATING A REGION JOINING TWO MEMBERS AND PRODUCT THEREOF	5,257,733	02-Nov-1993
LEAN, HIGH CONDUCTIVITY, RELAXATION-RESISTANT BERYLLIUM-NICKEL-COPPER ALLOYS	6,153,031	28-Nov-2000
WELD GUN ARM CASTING	6,307,173	23-Oct-2001
PROCESS FOR MAKING IMPROVED COPPER/TUNGSTEN COMPOSITES	5,686,676	11-Nov-1997
PROCESS FOR RETARDING SPONTANEOUS COMBUSTION OF POWDERY MIXTURES	5,760,473	02-Jun-1998
PROCESS FOR MAKING IMPROVED NET SHAPE OR NEAR NET SHAPE METAL	5,826,159	20-Oct-1998
METHOD FOR BONDING A CERAMIC TO A METAL WITH A COPPER-CONTAINING SHIM	6,056,186	02-May-2000
METHOD FOR CREATING A HERMETIC SEAL AND PACKAGE MADE THEREBY	6,153,449	28-Nov-2000
PROCESS FOR MAKING IMPROVED NET SHAPE OR NEAR NET SHAPE METAL PARTS	5,993,731	30-Nov-1999
FUNCTIONALLY GRADED METAL SUBSTRATES AND PROCESS FOR MAKING SAME	6,114,048	05-Sep-2000
BERYLLIUM-CONTAINING ALLOYS OF MAGNESIUM	5,413,644	09-May-1995
COMPOSITE DISK DRIVE ARMSET	6,057,989	02-May-2000
ALUMINUM-BERYLLIUM ACTUATOR ARMSET	6,042,658	28-Mar-2000

Title	Patent Number	Issue Date
PROCESS FOR CLADDING PRECIOUS METALS TO PRECIPITATION HARDENABLE MATERIALS	5,370,753	06-Dec-1994
METHOD OF MAKING BERYLLIUM-BERYLLIUM OXIDE COMPOSITES	5,124,119	23-Jun-1992
PRODUCTION OF BERYLLIUM OXIDE POWDERS WITH CONTROLLED MORPHOLOGY AND QUALITY	5,268,334	07-Dec-1993
BERYLLIUM-BERYLLIUM OXIDE COMPOSITES	5,304,426	19-Apr-1994
ALUMINUM ALLOYS CONTAINING BERYLLIUM AND INVESTMENT CASTING OF SUCH ALLOYS	5,642,773	01-Jul-1997
SEMI-SOLID PROCESSING OF BERYLLIUM-CONTAINING ALLOYS OF MAGNESIUM	5,679,182	21-Oct-1997
BERYLLIUM-CONTAINING ALLOYS OF ALUMINUM AND SEMI-SOLID PROCESSING OF SUCH ALLOYS	5,551,997	03-Sep-1996
BERYLLIUM-CONTAINING ALLOYS OF ALUMINUM AND SEMI-SOLID PROCESSING OF SUCH ALLOYS	5,716,467	10-Feb-1998
MAGNESIUM-BERYLLIUM DISK DRIVE ARMSET	5,475,549	12-Dec-1995
ALUMINUM ALLOYS CONTAINING BERYLLIUM AND INVESTMENT CASTING OF SUCH ALLOYS	5,667,600	16-Sep-1997
BONDING BERYLLIUM TO COPPER ALLOYS USING POWDER METALLURGY COMPOSITIONAL GRADIENTS	5,901,336	04-May-1999
MULTILAYER LAMINATE PROCESS	6,022,426	08-Feb-2000
MULTILAYER LAMINATE PROCESS	5,525,753	11-Jun-1996
MULTILAYER LAMINATE PROCESS	5,686,190	11-Nov-1997
HEAT EXCHANGER ASSEMBLY AND METHOD FOR MAKING THE SAME	5,777,259	07-Jul-1998
MULTILAYER METAL COMPOSITE FOR MICROWAVE TUBING AND THE LIKE	5,783,317	21-Jul-1998
METHOD OF MAKING MULTILAYER METAL SYSTEM	5,761,799	09-Jun-1998
MULTILAYER LAMINATE HEAT SINK ASSEMBLY	5,583,317	10-Dec-1996

* Patent number 5,324,914 is jointly owned by Brush Wellman Inc. and Holt A. Murray.

Brush Wellman U.S. Patent Applications

Title	Application Number	Filing Date
THREADED SPACER	09/522,134	09-Mar-2000
CRIMPABLE ELECTRICAL CONNECTOR	09/525,630	14-Mar-2000
IMPROVED DIES FOR DIE CASTING ALUMINUM AND OTHER METALS	09/387,894	01-Sep-1999
CASTINGS FROM ALLOYS HAVING LARGE LIQUIDUS/SOLIDUS TEMPERATURE	09/797,465	01-Mar-2001
MUD MOTOR	09/797,336	01-Mar-2001
RAPID QUENCH OF LARGE SELECTION PRECIPITATION HARDENABLE ALLOYS	09/706,465	03-Nov-2000
MANUFACTURE OF FINE-GRAINED ELECTROPLATING ANODES	09/897,842	02-Jul-2001
SHOT BLOCKS FOR USE IN DIE CASTING	09/882,904	15-Jun-2001
HIGH CONDUCTIVITY COPPER/REFRACTORY METAL COMPOSITES AND METHOD	09/571,809	16-May-2000
HIGH-RIGIDITY, MULTI-LAYERED, SEMICONDUCTOR PACKAGE AND METHOD	09/544,706	06-Apr-2000
HIGH-RIGIDITY, MULTI-LAYERED, SEMICONDUCTOR PACKAGE AND METHOD	09/758,088	10-Jan-2001
HIGH STRENGTH CAS ALUMINUM-BERYLLIUM ALLOYS	08/971,062	14-Nov-1997

Patents Licensed for Use by Brush Wellman

Title	Licensor	Patent Number	Issue Date
Copper Alloy and Process for its Preparation	Shell Research Limited	5,198,044	30-Mar-1993
Method and Apparatus to Effect a Fine Grain Size and Continuous Cast Metals	Castech, Inc. and William D. Nielsen, Sr.	5,279,353	18-Jan-1994

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SCHEDULE OF COPYRIGHTS AND APPLICATIONS

None.

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RECORDED: 05/15/2002

**PATENT
REEL: 012852 FRAME: 0731**