

02-27-2003

Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005)



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

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):

Elite Group Marketing Corp.

2.25.03

- Individual(s) Association General Partnership Limited Partnership Corporation-State Other

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

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date:

2. Name and address of receiving party(ies)

Name: Gerber Trade Finance Inc.

Internal Address: 7FL

Street Address: 110 East 55th Street.

City: NY State: NY Zip: 10025

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State NY Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

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

A. Trademark Application No.(s) 75608324

B. Trademark Registration No.(s)

Additional number(s) attached Yes No

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

Name: Vadim Toyberman

Internal Address: C/O Gerber Trade Finance, Inc

Street Address: 110 East 55th Street, 7FL

City: NY State: NY Zip: 10022

6. Total number of applications and registrations involved:

1

7. Total fee (37 CFR 3.41) \$ 40.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

Vadim Toyberman

Name of Person Signing

Vadim Toyberman

Signature

02/20/03

Date

Total number of pages including cover sheet, attachments, and document: 28

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

FACILITY AND SECURITY AGREEMENT

TRANSACTION SUMMARY AS OF THE DATE OF THIS AGREEMENT

<u>Facility Amount:</u>	\$300,000 with a \$200,000 cash sub-limit.
<u>Interest Rate:</u>	Prime Rate plus 2%
FEES	
<u>Service Fee:</u>	2%
<u>Minimum Loan Turnover:</u>	The product of (a) the shortfall between the Minimum Loan Amount and the aggregate principal amount of all Loans times (b) 2%
<u>Audit Fees:</u>	\$350 per person per day

The Credit Extensions described generally here are established and governed by the terms and conditions set forth below in this Agreement and the other Credit Documents, and if there is any conflict between this general description and the express terms and conditions below or elsewhere in the Credit Documents, such other express terms and conditions shall control.

This Facility and Security Agreement is dated as of August 21, 2002 by and between **ELITE GROUP MARKETING CORP.**, a New Jersey corporation ("**Borrower**"), and **GERBER TRADE FINANCE INC.**, a New York corporation ("**Lender**").

BACKGROUND

Borrower has requested that Lender provide certain Credit Extensions to or for the account of Borrower on a case by case basis, each transaction requiring the approval of Lender and subject to the terms and conditions of this Agreement and any amendment thereto.

AGREEMENT

NOW THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto agree as follows:

I. DEFINITIONS; SCHEDULES

1.1. Specific Definitions. Capitalized terms used throughout this Agreement shall have the meanings assigned to them in Schedule I hereto.

1.2. Other Definitions. Any accounting term used in this Agreement or the other Credit Documents shall have, unless otherwise specifically provided therein, the meaning customarily given such term in accordance with GAAP, and all financial computations thereunder shall be computed, unless otherwise specifically provided therein, in accordance with GAAP consistently applied; provided, that all financial covenants and calculations in the Credit

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Documents shall be made in accordance with GAAP as in effect on the date of this Agreement unless Borrower and Lender shall otherwise specifically agree in writing. That certain items or computations are explicitly modified by the phrase "in accordance with GAAP" shall in no way be construed to limit the foregoing. All other undefined terms contained in this Agreement or the other Credit Documents shall, unless the context indicates otherwise, have the meanings provided for by the Code. The words "herein", "hereof" and "hereunder" or other words of similar import refer to this Agreement as a whole, including the exhibits and schedules thereto, as the same may from time to time be amended, modified or supplemented, and not to any particular section, subsection or clause contained in this Agreement.

1.3. Schedules. Each of the schedules, attachments and exhibits to this Agreement are hereby incorporated herein by reference herein and made a part of this Agreement.

II. AMOUNT AND TERMS OF CREDIT FACILITY

2.1. Credit Extensions. Subject to the terms and conditions set forth herein, Lender, in its sole discretion, at any time and from time to time on and after the date hereof, may (i) make loans (collectively, the "**Loans**") to Borrower, (ii) arrange for the issuance of Letters of Credit for the benefit of Borrower and (iii) issue Letters of Guaranty for the account of Borrower. The sum of all such Loans, Letters of Credit and Letters of Guaranty shall not at any time exceed an amount equal to the Facility Amount, provided that the sum of all Loans does not exceed \$200,000. Borrower acknowledges that each request for a Credit Extension shall be by written notice to Lender substantially in the form of Exhibit A (a "**Request for Credit Extension**") and shall be subject to the approval of Lender pursuant to the terms and conditions of this Agreement.

2.2. No Commitment. Borrower expressly acknowledges, represents and agrees that: (i) Lender has made no commitment or agreement to make, provide or arrange for any one or more Credit Extensions hereunder; (ii) Lender may at any time determine not to provide or arrange for any Credit Extension requested by Borrower hereunder; and (iii) although the absence of commitments or agreements to provide or arrange for Credit Extensions hereunder at any time may cause significant risk to Borrower's business, Borrower in acknowledging its understanding of this Agreement as modified or amended in writing or orally, is willing to assume such risk based upon its independent evaluation.

2.3. Loans. The entire principal amount of each Loan shall be repaid in full no later than 60 days after the date of such Loan or payment by the LC Issuer or Lender under the Letter of Credit or Letter of Guaranty as the case may be, provided that no more than 45 days have elapsed from the date of shipment of the goods financed by such Loan, Letter of Credit or Letter of Guaranty at the time each request for payment is made (the "**Loan Date**"). All invoices to be paid with the proceeds of a Loan shall be reviewed by Borrower and forwarded to Lender accompanied by a letter detailing the payee, the invoice number and amount and the total amount payable, together with Borrower's irrevocable instructions to make payment. The Loans and all of the other Obligations of Borrower to Lender shall constitute one general obligation of Borrower secured by the Collateral.

2.4. Use of Loan Proceeds. Each of the Credit Extensions shall be utilized to finance the purchase of Inventory by Borrower in the ordinary course of business and such other business purposes as Lender in its discretion agrees to.

2.5. Letters of Credit; Letters of Guaranty.

(a) Each Letter of Credit shall be subject to the Uniform Customs and, to the extent not inconsistent therewith, the laws of the State of New York.

(b) Each payment by the LC Issuer or Lender pursuant to a Letter of Credit or Letter of Guaranty, as the case may be, shall be deemed to be a Loan on the date of such payment in a principal amount equal to the amount so paid. Borrower shall be obligated to reimburse Lender for each payment made under or in respect of any Letter of Credit or Letter of Guaranty (including, the payment of principal, fees and interest on any Loan made pursuant to the immediately preceding sentence and any payment made by Lender in reimbursement of any payment made under a Letter of Credit by an LC Issuer together with such other amounts that become due pursuant to this agreement or other instrument).

(c) The obligations of Borrower under Section 2.5(b) hereof shall be absolute, unconditional and irrevocable under any and all circumstances and shall be paid strictly in accordance with this Agreement irrespective of: (i) any lack of validity or enforceability of any Letter of Credit or any Letter of Guaranty, or of any demand, application, reimbursement agreement or other agreement or instrument relating thereto (collectively, the "**Related Documents**"); (ii) the existence of any claim, setoff, defense or other right that Borrower or any other Person may at any time have against the beneficiary under any Letter of Credit or Letter of Guaranty, Lender, the LC Issuer, any of their correspondents or any other Person; (iii) any improper or erroneous or mistaken payment by any LC Issuer or Lender under any Letter of Credit or Letter of Guaranty; (iv) any supplement or waiver of or any consent to depart from the terms of any Letter of Credit, Letter of Guaranty or Related Document; and (v) any other circumstance or event whatsoever, whether or not similar to any of the foregoing.

2.6. Fees; Charges.

(a) Borrower shall pay Lender a service fee equal to two percent (2%) of all payments and disbursements made by Lender on behalf of Borrower relating to or in connection with each Credit Extension, including but not limited to principal, reimbursement obligations, interest, indemnities, fees, charges, costs or otherwise. Service fees shall be earned on the date of each Credit Extension and payable on the maturity date thereof. Lender shall discount the service fee by three-quarters of one percent (0.75%) if Borrower repays such Credit Extension in full (including all fees, interest and costs associated therewith) within 30 days of the date of such Loan giving rise to the Credit Extension. The minimum service fee per transaction shall be \$250.00.

(b) Borrower shall pay Lender for the twelve (12) month period following the date hereof and on each anniversary of such date, a fee equal to two percent (2%) of the shortfall between the Minimum Loan Amount and the aggregate principal amount of all Loans provided

during such period. Once the Minimum Loan Amount is satisfied each year and all Obligations are paid in full, Lender agrees that the Borrower shall be entitled to terminate this Agreement by a signed writing. Upon such termination, Lender will release all liens within three weeks.

(c) In addition to the fees provided for in Section 2.6, Borrower agrees to pay Lender such commissions, fees and charges as Lender may establish from time to time with respect to the Credit Extensions, this Agreement or the other Credit Documents. Schedule III hereto sets forth commissions, fees and charges currently charged.

(d) Borrower shall pay Lender, on demand, all charges and expenses paid or incurred by Lender in connection with the Credit Extensions (including the cost of compliance with any reserve or similar requirement applicable to any LC Issuer or any of its correspondents which may be imposed on or in connection with any Letter of Credit or any draft, instrument, demand or acceptance related thereto and any cost of Lender in connection with any forward foreign currency or similar contract entered into in connection with any Credit Extension).

(e) In the event any amount payable hereunder or under any of the other Credit Documents shall be extended as to time, or should Lender, in its sole and absolute discretion, at the request of Borrower, agree to postpone the due date of any amount payable, in addition to Lender's other rights and remedies, an extension fee equal to one and one-quarter percent (1.25%) of such extended amount shall be charged on the date of such extension. All such charges shall be payable on demand.

(f) In the event of any Letter of Credit or Letter of Guaranty issued by Lender on behalf of Borrower being canceled, expiring or not being drawn against for any reason whatsoever, Lender shall be entitled to recover from Borrower the service fee as determined in Section 2.6 (a) on the outstanding face amount of the Letter of Credit or Letter of Guaranty.

(g) Borrower shall reimburse Lender at the rate of \$350 per person per day, plus out-of-pocket expenses for audit reviews, field examinations and collateral examinations conducted by or on behalf of Lender.

2.7. Interest.

(a) In addition to all other fees and charges set forth in the Credit Documents and subject to Section 2.7(b) hereof, Borrower shall pay to Lender interest on the aggregate unpaid principal amount of the Loans as well as all fees, disbursements and charges from the Loan Date to the earlier of the date (i) of payment in full or (ii) payment is due (whether by acceleration or otherwise), at a rate per annum equal to with respect to each Loan, the sum of (x) the Prime Rate in effect on the Loan Date and (y) the Interest Rate Margin. With respect to each Loan, interest shall be charged in advance on each Loan Date and to the extent not paid in advances or to the extent interest accrues or remains payable, upon demand by Lender.

(b) If Borrower shall default in the payment of the principal of or interest on any one or more Loans or any other amount becoming due hereunder or under any other Credit Document, by acceleration or otherwise, Borrower shall on demand from time to time pay

interest, to the extent permitted by law, on such defaulted amount from the date when due until the date of actual payment (after as well as before judgment) at a rate per annum equal to the Default Rate.

(c) All computations of interest and fees, hereunder shall be made by Lender on the basis of a 360-day year for the actual number of days elapsed. Each determination by Lender of an interest rate hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.8. Payments.

(a) All payments of principal, interest and other amounts due hereunder and under the other Credit Documents shall be made to Lender at the Payment Office, not later than 11:00 A.M. (New York City time) on the date when due, in lawful money of the United States of America in immediately available funds and shall be applied by Lender to amounts due in such order as Lender shall in its discretion determine. Whenever any payment to be made hereunder is stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall in each such case be included in the computation of interest hereunder. For purposes of computing interest and fees, all payments shall be deemed received by Lender five (5) Business Days following receipt of immediately available funds by Lender. Notwithstanding that Lender may have in its discretion extended the due date of invoices, all payments received by Lender shall be applied first to the invoices for which the payment dates have been extended.

(b) All payments of principal, interest and other amounts hereunder and under the other Credit Documents shall be made without set-off, deduction or counterclaim and free and clear of, and without deduction for, any present or future withholdings or other taxes or duties, including stamp duties, or other charges of any nature imposed on such payments by or on behalf of any Governmental Authority. In the event that Borrower is required by law to withhold or deduct any sum from payments required hereunder, Borrower shall increase the amount paid by Borrower to Lender as may be necessary so that Lender shall receive an amount which, after all required withholdings or deductions are so made (including withholding or deductions resulting from additional sums payable by reason or this sentence), shall be equal to the amount that Lender would have received had no withholding or deduction been made.

2.9. Evidence of Credit Extensions. Lender shall, and hereby is authorized by Borrower to record on its books or records the date, principal amount, amount and date of all payments of principal of and interest on each Credit Extension, and the outstanding principal balance of the Credit Extensions and such recordation shall constitute prima facie evidence as to all such information contained therein. Lender shall provide Borrower on a monthly basis with a statement and accounting of such recordations but any failure on the part of Lender to keep such recordation (or any errors therein) or to send a statement thereof to Borrower shall not limit or otherwise affect the obligation of Borrower to repay (with applicable interest) any Credit Extensions. Except to the extent that Borrower shall, within thirty (30) days after such statement and accounting is sent, notify Lender in writing of any objection Borrower may have thereto (stating with particularity the basis for such objection), such statement and accounting shall be

deemed final, binding and conclusive upon Borrower, absent manifest error. The Credit Extensions made by Lender will be evidenced by a promissory note (the "**Revolving Credit Note**") of Borrower, in the form annexed to this Agreement as Exhibit B. Borrower will execute the Revolving Credit Note in blank simultaneously with the execution of this Agreement, and Lender, is hereby authorized to record on the Schedule to such Revolving Credit Note the date and amount of each Credit Extension made by Lender under this Agreement, and the date and amount of each repayment made by Borrower, and Lender may also make appropriate notations with respect to interest thereon; provided, however, that the failure of Lender to record any of the foregoing on the Schedule to the Revolving Credit Note will not limit, excuse or otherwise affect the obligations of Borrower with respect to Credit Extensions made hereunder.

2.10. General Terms and Conditions. Borrower hereby agrees to the terms and conditions set forth in Schedule II hereto, which relate to the Credit Extensions and the goods financed thereby.

2.11. Interest Rate Limitation. Notwithstanding anything to the contrary, if at any time the applicable interest rate, together with all fees and charges that are treated as interest under applicable law (collectively, the "**Interest Charges**"), as provided for herein or in any other Credit Document, or otherwise contracted for, charged, received, taken or reserved by Lender, shall exceed the maximum lawful rate (the "**Maximum Rate**") that may be contracted for, charged, taken, received or reserved by Lender in accordance with applicable law, the rate of interest payable on the Credit Extensions, together with all Interest Charges payable to Lender shall be limited to the Maximum Rate.

2.12. Review Date. On or about the Review Date, Lender will conduct a financial review of Borrower, which review shall include, a review of the financial books and records of Borrower to determine whether to grant additional Credit Extensions to Borrower. Borrower agrees to cooperate fully with Lender in the review. Failure by Borrower to cooperate fully with Lender may result in a denial of further Credit Extensions. Should Lender, in its sole discretion determine that an interim review is necessary, it may do so prior to the Review Date. In the event that Lender, for whatever reason and howsoever arising is unable to complete the review of the financial condition in a timely manner, Lender at its sole discretion may make additional Credit Extensions from time to time to Borrower pending the financial review. It is further agreed that the terms and conditions of this Agreement and any amendments, modifications or alterations made thereto shall apply to each and every Credit Extension made to Borrower by Lender.

III. CONDITIONS PRECEDENT

3.1. Conditions Precedent to Initial Credit Extension. Without limitation of the discretionary nature of each Credit Extension hereunder, the initial Credit Extension to be made by Lender shall be subject to the fulfillment (to the satisfaction of Lender) of each of the conditions precedent set forth on Schedule IV.

3.2. Conditions Precedent to each Credit Extension. Without limitation of the discretionary nature of each Credit Extension hereunder, each of the Credit Extensions (including the initial Credit Extension) to be made by Lender shall be subject to the fulfillment

(to the satisfaction of Lender) of each of the following conditions as of the date of each Credit Extension:

(a) Lender shall have received a Request for Credit Extension for such Credit Extension in form and in substance satisfactory to Lender;

(b) The representations and warranties set forth in this Agreement and in the other Credit Documents, shall be true and correct in all material respects on and as of the date of such Credit Extension with the same effect as though made on and as of such date, except to the extent that any such representation or warranty is expressly stated to relate to a specific earlier date, in which case, such representation and warranty shall be true and correct as of such earlier date;

(c) No Default or Event of Default shall have occurred and be continuing at the time of and after giving effect to such Credit Extension;

(d) Lender shall have received all such invoices, documents of title, bills of lading, proof of shipment, warehouse receipts, policies and/or certificates of insurance and other documentation regarding the transaction to be financed by such Credit Extension, as Lender may request;

(e) Lender shall have received all fees due and payable on or prior to such date;

(f) All legal matters incident to such Credit Extension shall be satisfactory to Lender and its counsel; and

(g) Lender shall have received proof that at least 70% of the Inventory financed by each Credit Extension has been pre-sold to Account Debtors which have been credit approved by Borrower's Factor.

IV. REPRESENTATIONS, WARRANTIES AND COVENANTS

To induce Lender to enter into this Agreement and to make the Loans, Borrower represents and warrants to Lender (each of which representations and warranties shall survive the execution and delivery of this Agreement), and promises to and agrees with Lender until the Termination Date as follows:

4.1. Corporate Existence; Compliance with Law. Borrower: (a) is, as of the Closing Date, and will continue to be (i) a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation, (ii) duly qualified to do business and in good standing in each other jurisdiction where its ownership or lease of property or the conduct of its business requires such qualification, except where the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect, and (iii) in compliance with all Requirements of Law and Contractual Obligations, except to the extent failure to comply therewith could not, individually or in the aggregate, reasonably be expected to

have a Material Adverse Effect; and (b) has and will continue to have (i) the requisite power and authority and the legal right to execute, deliver and perform its obligations under the Credit Documents, and to own, pledge, mortgage or otherwise encumber and operate its properties, to lease the property it operates under lease, and to conduct its business as now, heretofore or proposed to be conducted, and (ii) all licenses, permits, franchises, rights, powers, consents or approvals from or by all Persons or Governmental Authorities having jurisdiction over Borrower which are necessary or appropriate for the conduct of its business.

4.2. Names; Organizational Information; Collateral Locations. Disclosure Schedule 4.2 sets forth Borrower's name as it appears in official filing in the state of its incorporation or other organization, the type of entity of Borrower, the state of Borrower's incorporation or organization and organizational identification number issued by Borrower's state of incorporation or organization or a statement that no such number has been issued. The location of Borrower's chief executive office, corporate offices, warehouses, other locations of Collateral and locations where records with respect to Collateral are kept (including in each case the county of such locations) are as set forth in Disclosure Schedule 4.2 and, except as set forth in such Disclosure Schedule, such locations have not changed during the preceding twelve months. With respect to each of the premises identified in Disclosure Schedule 4.2 on or prior to the Closing Date a bailee, landlord or mortgagee agreement acceptable to Lender has been obtained. As of the Closing Date, during the prior five years, except as set forth in Disclosure Schedule 4.2, Borrower has not been known as or conducted business in any other name (including trade names).

4.3. Power; Authorization; Enforceable Obligations. The execution, delivery and performance by Borrower of the Credit Documents to which it is a party, and the creation of all Liens provided for herein and therein: (a) are and will continue to be within Borrower's power and authority; (b) have been and will continue to be duly authorized by all necessary or proper action; (c) are not and will not be in violation of any Requirement of Law or Contractual Obligation of Borrower; (d) do not and will not result in the creation or imposition of any Lien (other than Permitted Encumbrances) upon any of the Collateral; and (e) do not and will not require the consent or approval of any Governmental Authority or any other Person. As of the Closing Date, each Credit Document shall have been duly executed and delivered on behalf of Borrower, and each such Credit Document upon such execution and delivery shall be and will continue to be a legal, valid and binding obligation of Borrower, enforceable against it in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency and other similar laws affecting creditors' rights generally.

4.4. Financial Statements and Projections; Books and Records.

(a) The Financial Statements delivered by Borrower to Lender for its most recently ended Fiscal Year and Fiscal Month, are true, correct and complete and reflect fairly and accurately the financial condition of Borrower as of the date of each such Financial Statement in accordance with GAAP. The Projections most recently delivered by Borrower to Lender have been prepared in good faith, with care and diligence and use assumptions that are reasonable under the circumstances at the time such Projections were prepared and as of the date delivered to Lender and all such assumptions are disclosed in the Projections.

(b) Borrower shall keep adequate Books and Records with respect to the Collateral and its business activities in which proper entries, reflecting all financial transactions, and payments and credits received on, and all other dealings with, the Collateral, will be made in accordance with GAAP and all Requirements of Law and on a basis consistent with the Financial Statements.

4.5. Material Adverse Change. Between the date of Borrower's most recently audited Financial Statements delivered to Lender and the Closing Date: (a) Borrower has not incurred any obligations, contingent or non-contingent liabilities, or liabilities for Charges, long-term leases or unusual forward or long-term commitments which are not reflected in the Projections delivered on the Closing Date and which could, alone or in the aggregate, reasonably be expected to have a Material Adverse Effect; (b) there has been no material deviation from such Projections; and (c) no events have occurred which alone or in the aggregate has had or could reasonably be expected to have a Material Adverse Effect. No Requirement of Law or Contractual Obligation of Borrower has or have had or could reasonably be expected to have a Material Adverse Effect. Borrower is not in default, and to Borrower's knowledge no third party is in default, under or with respect to any of its Contractual Obligations, which alone or in the aggregate has had or could reasonably be expected to have a Material Adverse Effect.

4.6. Real Estate: Property. The real estate listed in Disclosure Schedule 4.6 constitutes all of the real property owned, leased, or used by Borrower in its business, and Borrower will not execute any material agreement or contract in respect of such real estate after the date of this Agreement without giving Lender prompt prior written notice thereof. Borrower holds and will continue to hold good and marketable fee simple title to all of its owned real estate, and good and marketable title to all of its other properties and assets, and valid and insurable leasehold interests in all of its leases (both as lessor and lessee, sublessee or assignee), and none of the properties and assets of Borrower are or will be subject to any Liens, except Permitted Encumbrances.

4.7. Ventures, Subsidiaries and Affiliates; Outstanding Stock and Indebtedness. Except as set forth in Disclosure Schedule 4.7, as of the Closing Date Borrower has no Subsidiaries, is not engaged in any joint venture or partnership with any other Person, or is an Affiliate of any other Person. All of the issued and outstanding Stock of Borrower (including all rights to purchase, options, warrants or similar rights or agreements pursuant to which Borrower may be required to issue, sell, repurchase or redeem any of its Stock) as of the Closing Date is owned by each of the Stockholders (and in the amounts) set forth on Disclosure Schedule 4.7. All outstanding Indebtedness of Borrower as of the Closing Date is described in Disclosure Schedule 6(b).

4.8. Government Regulation: Margin Regulations. Borrower is not subject to or regulated under or any Federal or state statute, rule or regulation that restricts or limits Borrower's ability to incur Indebtedness, pledge its assets, or to perform its obligations under the Credit Documents. The making of a Credit Extension, the application of the proceeds and repayment thereof, and the consummation of the transactions contemplated by the Credit Documents do not and will not violate any Requirement of Law. Borrower is not engaged, nor

will it engage in the business of extending credit for the purpose of "purchasing" or "carrying" any "margin security" as such terms are defined in Regulation U of the Federal Reserve Board as now and hereafter in effect (such securities being referred to herein as "**Margin Stock**"). Borrower owns no Margin Stock, and none of the proceeds of any Credit Extension or other extensions of credit under any Credit Document will be used, directly or indirectly, for the purpose of purchasing or carrying any Margin Stock or reducing or retiring any Indebtedness which was originally incurred to purchase or carry any Margin Stock. Borrower will not take or permit to be taken any action which might cause any Credit Document to violate any regulation of the Federal Reserve Board.

4.9. Taxes; Charges. Except as disclosed on Disclosure Schedule 4.9 all tax returns, reports and statements required by any Governmental Authority to be filed by Borrower have, as of the Closing Date, been filed and will, until the Termination Date, be filed with the appropriate Governmental Authority and no tax Lien has been filed against Borrower or any of Borrower's property. Proper and accurate amounts have been and will be withheld by Borrower from its employees for all periods in complete compliance with all Requirements of Law and such withholdings have and will be timely paid to the appropriate Governmental Authorities. Disclosure Schedule 4.9 sets forth as of the Closing Date those taxable years for which Borrower's tax returns are currently being audited by the IRS or any other applicable Governmental Authority and any assessments or threatened assessments in connection with such audit, or otherwise currently outstanding. Except as described on Disclosure Schedule 4.9, Borrower and its respective predecessors are not liable for any Charges: (a) under any agreement (including any tax sharing agreements or agreement extending the period of assessment of any Charges) or (b) to Borrower's knowledge, as a transferee. As of the Closing Date, Borrower has not agreed or been requested to make any adjustment under IRC Section 481(a), by reason of a change in accounting method or otherwise, which could reasonably be expected to have a Material Adverse Effect.

4.10. Payment of Obligations. Borrower will pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all of its Charges and other obligations of whatever nature, except where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of Borrower and none of the Collateral is or could reasonably be expected to become subject to any Lien or forfeiture or loss as a result of such contest.

4.11. ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other existing ERISA Events, could reasonably be expected to result in a liability of Borrower of more than the Minimum Actionable Amount. The present value of all accumulated benefit obligations of Borrower under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent Financial Statements reflecting such amounts, exceed the fair market value of the assets of such Plan by more than the Minimum Actionable Amount, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Account Standards No. 87) did not, as of the date of the most recent Financial Statements reflecting such amounts, exceed the fair

market value of the assets of such underfunded Plans by more than the Minimum Actionable Amount. Neither Borrower nor ERISA Affiliate has incurred or reasonably expects to incur any Withdrawal Liability in excess of the Minimum Actionable Amount.

4.12. Litigation. No Litigation is pending or, to the knowledge of Borrower, threatened by or against Borrower or against Borrower's properties or revenues (a) with respect to any of the Credit Documents or any of the transactions contemplated hereby or thereby, or (b) which could reasonably be expected to have a Material Adverse Effect. Except as set forth on Disclosure Schedule 4.12, as of the Closing Date there is no Litigation pending or threatened against Borrower which seeks damages in excess of \$50,000 or injunctive relief or alleges criminal misconduct of Borrower. Borrower shall notify Lender in writing within five [5] Business Days of learning of the existence, threat or commencement of any Litigation against Borrower any ERISA Affiliate or any Plan or any allegation of criminal misconduct against Borrower.

4.13. Intellectual Property. As of the Closing Date, all material Intellectual Property owned or used by Borrower is listed, together with application or registration numbers, where applicable, in Disclosure Schedule 4.13. Borrower owns, or is licensed to use, all Intellectual Property necessary to conduct its business as currently conducted except for such Intellectual Property the failure of which to own or license could not reasonably be expected to have a Material Adverse Effect. Borrower will maintain the patenting and registration of all Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office, or other appropriate Governmental Authority and Borrower will promptly patent or register, as the case may be, all new Intellectual Property and notify Lender in writing five (5) Business Days prior to filing any such new patent or registration. With respect to Intellectual Property licensed by Borrower, an agreement acceptable to Lender from the licensor of such Intellectual Property has been obtained permitting Lender to use such Intellectual Property or sell the Goods containing such Intellectual Property following the occurrence of a Default.

4.14. Full Disclosure. No information contained in any Credit Document, the Financial Statements or any written statement furnished by or on behalf of Borrower under any Credit Document, or to induce Lender to execute the Credit Documents, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which they were made.

4.15. Hazardous Materials. Except as set forth on Disclosure Schedule 4.15, as of the Closing Date, (a) each real property location owned, leased or occupied by Borrower (the "**Real Property**") is maintained free of contamination from any Hazardous Material, (b) Borrower is not subject to any Environmental Liabilities or, to Borrower's knowledge, potential Environmental Liabilities, in excess of \$50,000 in the aggregate, (c) no notice has been received by Borrower identifying it as a "potentially responsible party" or requesting information under CERCLA or analogous state statutes, and to the knowledge of Borrower, there are no facts, circumstances or conditions that may result in Borrower being identified as a "potentially responsible party" under CERCLA or analogous state statutes; and (d) Borrower has provided to Lender copies of all existing environmental reports, reviews and audits and all written information pertaining to actual or potential Environmental Liabilities, in each case relating to Borrower. Borrower: (i) shall comply in all material respects with all applicable Environmental

Laws and environmental permits; (ii) shall notify Lender in writing within seven days if and when it becomes aware of any Release, on, at, in, under, above, to, from or about any of its Real Property; and (iii) shall promptly forward to Lender a copy of any order, notice, permit, application, or any communication or report received by it or Borrower in connection with any such Release.

4.16. Insurance. As of the Closing Date, Disclosure Schedule 4.16 lists all insurance of any nature maintained for current occurrences by Borrower, as well as a summary of the terms of such insurance. Borrower shall deliver to Lender certified copies and endorsements to all of its (a) "All Risk" and business interruption insurance policies naming Lender loss payee, and (b) general liability and other liability policies naming Lender as an additional insured. All policies of insurance on real and personal property will contain an endorsement, in form and substance acceptable to Lender, showing loss payable to Lender (Form 438 BFU or equivalent) and extra expense and business interruption endorsements. Such endorsement, or an independent instrument furnished to Lender, will provide that the insurance companies will give Lender at least thirty (30) days prior written notice before any such policy or policies of insurance shall be altered or canceled and that no act or default of Borrower or any other Person shall affect the right of Lender to recover under such policy or policies of insurance in case of loss or damage. Borrower shall direct all present and future insurers under its "All Risk" policies of insurance to pay all proceeds payable thereunder directly to Lender. If any insurance proceeds are paid by check, draft or other instrument payable to Borrower and Lender jointly, Lender may endorse Borrower's name thereon and do such other things as Lender may deem advisable to reduce the same to cash. Lender reserves the right at any time, upon review of Borrower's risk profile, to require additional forms and limits of insurance. Borrower shall, on each anniversary of the Closing Date and from time to time at Lender's request, deliver to Lender a report by a reputable insurance broker, satisfactory to Lender, with respect to such Person's insurance policies.

4.17. Deposit and Disbursement Accounts. Disclosure Schedule 4.17 lists all banks and other financial institutions at which Borrower, maintains deposits and/or other accounts and correctly identifies the name, address and telephone number of each such depository, the name in which the account is held, a description of the purpose of the account, and the complete account number.

4.18. Accounts. Borrower has not made, nor will Borrower make, any agreement with any Account Debtor for any extension of time for the payment of any Account, any compromise or settlement for less than the full amount thereof, any release of any Account Debtor from liability therefor, or any deduction therefrom except a discount or allowance for prompt or early payment allowed by Borrower in the ordinary course of its business consistent with historical practice and as previously disclosed to Lender in writing. With respect to the Accounts pledged as collateral pursuant to any Credit Document (a) the amounts shown on all invoices, statements and reports which may be delivered to the Lender with respect thereto are actually and absolutely owing to Borrower as indicated thereon and are not in any way contingent; (b) no payments have been or shall be made thereon except payments immediately delivered to Lender as required hereunder; and (c) to Borrower's knowledge all Account Debtors have the capacity to contract.

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4.19. Conduct of Business. Borrower (a) shall conduct its business substantially as now conducted or as otherwise permitted hereunder, and (b) shall at all times maintain, preserve and protect all of the Collateral and Borrower's other property, used or useful in the conduct of its business and keep the same in good repair, working order and condition and make, or cause to be made, all necessary or appropriate repairs, replacements and improvements thereto consistent with industry practices.

4.20. Further Assurances. At any time and from time to time, upon the written request of Lender and at the sole expense of Borrower, Borrower shall promptly and duly execute and deliver any and all such further instruments and documents and take such further action as Lender may reasonably deem desirable (a) to obtain the full benefits of this Agreement and the other Credit Documents, (b) to protect, preserve and maintain Lender's rights in any Collateral, or (c) to enable Lender to exercise all or any of the rights and powers herein granted.

V. FINANCIAL REPORTS; FINANCIAL COVENANTS

5.1. Reports and Notices. From the Closing Date until the Termination Date, Borrower shall deliver to Lender:

(a) within ten (10) days following the end of each Fiscal Month, a Monthly Statement Report in the form of Exhibit C as of the last day of the previous Fiscal Month;

(b) within forty five (45) days following the end of each Fiscal Quarter, the Financial Statements for such Fiscal Quarter, which shall provide comparisons to budget and actual results for the corresponding period during the prior Fiscal Year, both on a quarterly and year-to-date basis, and accompanied by a certification in the form of Exhibit D by the Chief Executive Officer or Chief Financial Officer of Borrower that such Financial Statements are complete and correct, that there was no Default (or specifying those Defaults of which he or she was aware), and showing in reasonable detail the calculations used in determining compliance with the financial covenants hereunder;

(c) within ninety (90) days following the close of each Fiscal Year, the Financial Statements for such Fiscal Year certified without qualification by an independent certified accounting firm acceptable to Lender, which shall provide comparisons to the prior Fiscal Year, and shall be accompanied by (i) a statement in reasonable detail showing the calculations used in determining compliance with the financial covenants hereunder, (ii) a report from Borrower's accountants to the effect that in connection with their audit examination nothing has come to their attention to cause them to believe that a Default has occurred or specifying those Defaults of which they are aware, and (iii) any management letter that may be issued; and

(d) no later than five (5) days after receipt by Borrower from Factor, copies of the ledger reports and other reports and notices provided by Factor to Borrower.

5.2. Financial Covenants. Borrower shall not breach any of the financial covenants set forth in Schedule V.

5.3. Other Reports and Information. Borrower shall advise Lender promptly, in reasonable detail, of: (a) any Lien, other than Permitted Encumbrances, attaching to or asserted against any of the Collateral or any occurrence causing a material loss or decline in value of any Collateral and the estimated (or actual, if available) amount of such loss or decline; (b) any material change in the composition of the Collateral; and (c) the occurrence of any Default, Event of Default or other event which has had or could reasonably be expected to have a Material Adverse Effect. Borrower shall, upon request of Lender, furnish to Lender such other reports and information in connection with the affairs, business, financial condition, operations, prospects or management of Borrower or the Collateral as Lender may request, all in reasonable detail.

5.4. Good Standing Certificates. Borrower shall not less frequently than once during each calendar quarter, provide to Lender a certificate of good standing from its state of incorporation or organization.

VI. NEGATIVE COVENANTS

Borrower covenants and agrees that, without Lender's prior written consent, from the Closing Date until the Termination Date, Borrower shall not, directly or indirectly, by operation of law or otherwise:

(a) form any Subsidiary or merge with, consolidate with, acquire all or substantially all of the assets or capital stock of, or otherwise combine with or make any investment in or, except as provided in clause 6(c) below, loan or advance to, any Person;

(b) cancel any debt owing to it or create, incur, assume or permit to exist any Indebtedness, except: (i) the Obligations, (ii) Indebtedness existing as of the Closing Date set forth on Disclosure Schedule 6(b), (iii) deferred taxes, (iv) by endorsement of instruments or items of payment for deposit to the general account of Borrower, (v) for Guaranteed Indebtedness incurred for the benefit of Borrower if the primary obligation is permitted by this Agreement; and (vi) additional Indebtedness (including Purchase Money Indebtedness) incurred after the Closing Date in an aggregate outstanding amount for Borrower not exceeding \$50,000;

(c) enter into any lending, borrowing or other commercial transaction with any of its employees, directors or Affiliates (including upstreaming and downstreaming of cash and intercompany loan and advances) other than loans or advances to employees in the ordinary course of business in an aggregate outstanding amount not exceeding \$10,000;

(d) make any changes in any of its business objectives, purposes, or operations which could reasonably be expected to adversely affect repayment of the Obligations or could reasonably be expected to have a Material Adverse Effect or engage in any business other than that presently engaged in or proposed to be engaged in the Projections delivered to Lender on the Closing Date or amend its charter or by-laws or other organizational documents;

(e) create or permit any Lien (through a pledge of assets or otherwise) on any of its properties or assets, except for Permitted Encumbrances;

(f) sell, transfer, issue, convey, assign or otherwise dispose of any of its assets or properties, including its Accounts or any shares of its Stock or engage in any sale-leaseback, synthetic lease or similar transaction (provided, that the foregoing shall not prohibit the sale of Inventory or obsolete or unnecessary Equipment in the ordinary course of its business);

(g) change its name, state of incorporation or organization, chief executive office, corporate offices, warehouses or other Collateral locations, or location of its records concerning the Collateral, or acquire, lease or use any real estate after the Closing Date without Borrower, in each instance, giving thirty (30) days prior written notice thereof to Lender and taking all actions deemed necessary or appropriate by Lender to continuously protect and perfect Lender's Liens upon the Collateral or store or hold any assets of another Person;

(h) establish any depository or other bank account of any kind with any financial institution (other than the accounts set forth on Disclosure Schedule 4.17) without Lender's prior written consent;

(i) make or permit any Restricted Payment; or

(j) enter into any modification amendment or waiver of the Factoring Agreement.

VII. Security Interest

7.1. Grant of Security Interest and Perfection.

(a) As collateral security for the prompt and complete payment and performance of all of the Obligations, Borrower hereby grants to the Lender a security interest in and Lien upon all of its property and assets, whether real or personal, tangible or intangible, and whether now owned or hereafter acquired, or in which it now has or at any time in the future may acquire any right, title, or interest, including all of the following property in which it now has or at any time in the future may acquire any right, title or interest: all Accounts; all Deposit Accounts and all funds on deposit therein; all cash and cash equivalents; all commodity contracts; all investments, Stock and Investment Property; all Inventory; all Equipment; all Goods; all Chattel Paper, all Documents; all Instruments; all Books and Records; all General Intangibles; all Supporting Obligations; all Letter-of-Credit Rights; and to the extent not otherwise included, all Proceeds and products of all and any of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing, but excluding in all events Hazardous Waste (all of the foregoing, together with any other collateral pledged to the Lender pursuant to any other Credit Document, collectively, the "**Collateral**").

(b) Borrower and Lender agree that this Agreement creates, and is intended to create, valid and continuing Liens upon the Collateral in favor of Lender. Borrower represents, warrants and promises to Lender that: (i) Borrower is the sole owner of each item of the Collateral upon which it purports to grant a Lien pursuant to the Credit Documents, and has good and marketable title thereto free and clear of any and all Liens or claims of others, other than

Permitted Encumbrances; (ii) the security interests granted pursuant to this Agreement will constitute valid perfected security interests in all of the Collateral in favor of Lender as security for the prompt and complete payment and performance of the Obligations, enforceable in accordance with the terms hereof against any and all creditors of and purchasers from Borrower (other than purchasers of Inventory in the ordinary course of business) and such security interests are prior to all other Liens on the Collateral in existence on the date hereof except for Permitted Encumbrances which have priority by operation of law; and (iii) no effective security agreement, financing statement, equivalent security or Lien instrument or continuation statement covering all or any part of the Collateral is or will be on file or of record in any public office, except those relating to Permitted Encumbrances. Borrower promises to defend the right, title and interest of Lender in and to the Collateral against the claims and demands of all Persons whomsoever, and Borrower shall take such actions, including (x) the prompt delivery of all negotiable Documents, original Instruments, Chattel Paper and certificated Stock owned by Borrower to Lender, (y) notification of Lender's interest in Collateral at Lender's request, and (z) the institution of litigation against third parties as shall be prudent in order to protect and preserve Borrower's and Lender's respective and several interests in the Collateral. Borrower shall mark its Books and Records pertaining to the Collateral to evidence the Credit Documents and the Liens granted under the Credit Documents. All Chattel Paper shall be marked with the following legend: "This writing and the obligations evidenced or secured hereby are subject to the security interest of Gerber Trade Finance Inc."

(c) Borrower shall obtain or use its best efforts to obtain waivers or subordinations of Liens from landlords and mortgagees, and Borrower shall in all instances obtain signed acknowledgments of Lender's Liens from bailees having possession of Borrower's Goods that they hold for the benefit of Lender.

(d) Borrower shall obtain authenticated control letters from each issuer of uncertificated securities, securities intermediary, or commodities intermediary issuing or holding any financial assets or commodities to or for Borrower.

(e) Borrower shall establish and maintain the cash management system described in Schedule VI. All payments in respect of the Collateral, shall be made to or deposited in the blocked account or lockbox accounts described in Schedule VI in accordance with the terms thereof.

(f) Borrower shall promptly, and in any event within two (2) Business Days after becoming a beneficiary under a letter of credit, notify Lender thereof and enter into a tri-party agreement with Lender and the issuer and/or confirmation bank with respect to Letter-of-Credit Rights assigning such Letter-of-Credit Rights to Lender and directing all payments thereunder to Lender, all in form and substance reasonably satisfactory to Lender.

(g) Borrower shall take all steps necessary to grant Lender control of all electronic chattel paper in accordance with the Code and all "transferable records" as defined in each of the Uniform Electronic Transactions Act and the Electronic Signatures in Global and National Commerce Act.

(h) Borrower hereby irrevocably authorizes Lender at any time and from time to time to file in any filing office in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (i) indicate the Collateral (x) as all assets of Borrower or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Code or such jurisdiction, or (y) as being of an equal or lesser scope or with greater detail, and (ii) contain any other information required by Part 5 of Article 9 of the Code or the filing office for acceptance of any financing statement or amendment, including whether Borrower is an organization, the type of organization and any organization identification number issued to Borrower, and in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Borrower agrees to furnish any such information to Lender promptly upon request. Borrower also ratifies its authorization for Lender to have filed any initial financing statements or amendments thereto if filed prior to the date hereof.

(i) Borrower shall promptly, and in any event within two (2) Business Days after the same is acquired by it, notify Lender of any commercial tort claim (as defined in the Code) acquired by it and unless otherwise consented by Lender, Borrower shall enter into a supplement to this Agreement, granting to Lender a Lien in such commercial tort claim.

(j) It is the intent of Borrower and Lender that none of the Collateral is or shall be regarded as Fixtures and Borrower represents and warrants that it has not made and is not bound by any lease or other agreement that is inconsistent with such intent. Nevertheless, if the Collateral or any part thereof is or is to become attached or affixed to any real estate, Borrower will, upon request, furnish Lender with a disclaimer or subordination in form satisfactory to Lender of their interests in the Collateral from all Persons having an interest in the real estate to which the Collateral is attached or affixed, together with the names and addresses of the record owners of, and all other persons having interest in, and a general description of, such real estate.

7.2. Lender's Rights.

(a) Lender may, (i) at any time in Lender's own name or in the name of Borrower, communicate with Account Debtors, parties to Contracts, and obligors in respect of Instruments, Chattel Paper or other Collateral to verify to Lender's satisfaction, the existence, amount and terms of any such Accounts, Contracts, Instruments or Chattel Paper or other Collateral, and (ii) at any time and without prior notice to Borrower notify Account Debtors, parties to Contracts, and obligors in respect of Chattel Paper, Instruments, or other Collateral that the Collateral has been assigned to Lender and that payments shall be made directly to Lender. Upon the request of Lender, Borrower shall so notify such Account Debtors, parties to Contracts, and obligors in respect of Instruments, Chattel Paper or other Collateral. Borrower hereby constitutes Lender or Lender's designee Borrower's attorney with power to endorse Borrower's name upon any notes, acceptance drafts, money orders or other evidences of payment or Collateral.

(b) Borrower shall remain liable under each Contract, Instrument and License to observe and perform all the conditions and obligations to be observed and performed by it thereunder, and Lender shall have no obligation or liability whatsoever to any Person under any Contract, Instrument or License (between Borrower and any Person other than Lender) by reason of or arising out of the execution, delivery or performance of this Agreement, and Lender shall not be required or obligated in any manner (i) to perform or fulfill any of the obligations of Borrower, (ii) to make any payment or inquiry, or (iii) to take any action of any kind to collect, compromise or enforce any performance or the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times under or pursuant to any Contract, Instrument or License.

(c) Borrower shall, with respect to each owned, leased, or controlled property (including public warehouses), during normal business hours and upon reasonable advance notice (unless a Default or Event of Default shall have occurred and be continuing, in which event no notice shall be required and Lender shall have access at any and all times): (i) provide access to such property to Lender and any of its officers, employees and agents, as frequently as Lender determines to be appropriate; (ii) permit Lender and any of its officers, employees and agents to inspect, audit and make extracts and copies (or take originals if reasonably necessary) from all of Borrower's Books and Records; and (iii) permit Lender to inspect, review, evaluate and make physical verifications and appraisals of the Inventory and other Collateral in any manner and through any medium that Lender considers advisable, and Borrower agrees to render to Lender, at Borrower's cost and expense, such clerical and other assistance as may be reasonably requested with regard thereto.

(d) After the occurrence and during the continuance of a Default or Event of Default, Borrower at its own expense, shall cause the certified public accountant then engaged by Borrower to prepare and deliver to Lender at any time and from time to time, promptly upon Lender's request, the following reports: (i) a reconciliation of all Accounts; (ii) an aging of all Accounts; (iii) trial balances; and (iv) test verifications of such Accounts as Lender may request. Borrower, at its own expense, shall cause its certified independent public accountants to deliver to Lender the results of any physical verifications of all or any portion of the Inventory made or observed by such accountants when and if such verification is conducted. Lender shall be permitted to observe and consult with Borrower's accountants in the performance of these tasks.

7.3. Lender's Appointment as Attorney-in-Fact. On the Closing Date, Borrower shall execute and deliver a Power of Attorney in the form attached as Exhibit E. The power of attorney granted pursuant to the Power of Attorney and all powers granted under any Credit Document are powers coupled with an interest and shall be irrevocable until the Termination Date. The powers conferred on Lender under the Power of Attorney are solely to protect Lender's interests in the Collateral and shall not impose any duty upon it to exercise any such powers. Lender agrees, except for the powers granted in clause (h) of the Power of Attorney, not to exercise any power or authority granted under the Power of Attorney unless an Event of Default has occurred and is continuing. Borrower authorizes Lender to file any financing or continuation statement without the signature of Borrower to the extent permitted by applicable law. NONE OF LENDER OR ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL BE RESPONSIBLE TO ANY GRANTOR FOR

ANY ACT OR FAILURE TO ACT UNDER ANY POWER OF ATTORNEY OR OTHERWISE, EXCEPT IN RESPECT OF DAMAGES ATTRIBUTABLE SOLELY TO THEIR OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS FINALLY DETERMINED BY A COURT OF COMPETENT JURISDICTION, NOR FOR ANY PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES.

7.4. Grant of License to Use Intellectual Property Collateral. Borrower hereby grants to Lender an irrevocable, non-exclusive license (exercisable upon the occurrence and during the continuance of an Event of Default) without payment of royalty or other compensation to Borrower to use, transfer, license or sublicense any Intellectual Property now owned, licensed to, or hereafter acquired by Borrower, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof, and represents, promises and agrees that any such license or sublicense is not and will not be in conflict with the contractual or commercial rights of any third Person; provided, that such license will terminate on the Termination Date.

7.5. Terminations; Amendments Not Authorized. Borrower acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Lender and agrees that it will not do so without the prior written consent of Lender, subject to Borrower's rights under Section 9-509(d)(2) of the Code.

VIII. EVENTS OF DEFAULT; RIGHTS AND REMEDIES

8.1. Events of Default. If any one or more of the following events (each, an "**Event of Default**") shall occur and be continuing:

(a) Borrower shall fail to pay the principal of or interest on any Credit Extension or any fees or other Obligations when and as the same shall become due and payable (whether at maturity, by acceleration or otherwise); or

(b) any representation or warranty made or deemed made in or in connection with this Agreement or any other Credit Document or as an inducement to enter into this Agreement or any other Credit Document or any representation, warranty, statement or information contained in any report, certificate, financial statement or other instrument or agreement furnished in connection with or pursuant to this Agreement or any other Credit Document shall prove to have been false or misleading in any material respect when made, deemed to be made or furnished; or

(c) Borrower or any other Credit Party (other than Lender) shall fail or neglect to perform, keep or observe any term, covenant or agreement contained in this Agreement or in any other Credit Document; or

(d) this Agreement or any other Credit Document shall not be for any reason, or shall be asserted by Borrower or any other Credit Party not to be, in full force and effect in all

material respects in accordance with its terms or the Lien granted or intended to be granted to Lender pursuant to this Agreement or any other Credit Document shall cease to be a valid and perfected Lien having the first priority (or a lesser priority if expressly permitted in this Agreement or another Credit Document); or

(e) any judgment shall be rendered against Borrower or any other Credit Party or there shall be any attachment or execution against any of the assets or properties of Borrower or any other Credit Party, and such judgment, attachment or execution remains unpaid, unstayed or undismissed for a period of fourteen (14) days from the date of such judgment; or

(f) Borrower or any other Credit Party shall be dissolved or shall generally not pay, or shall be generally unable to pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted or a petition shall be filed by or against Borrower or any other Credit Party seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property; or Borrower or any other Credit Party shall take any action to authorize any of the actions set forth above in this clause (f); or


(g) Borrower shall (i) fail to pay any principal or interest, regardless of amount, due in respect of Indebtedness when and as the same shall become due and payable or (ii) fail to observe or perform any other term, covenant, condition or agreement contained in any agreements or instruments evidencing or governing any Indebtedness if the effect of any failure referred to in this clause (ii) is to cause, or to permit the holder or holders of such indebtedness or a trustee on its or their behalf to cause, such indebtedness to become due prior to its stated maturity; or

(h) the occurrence of a Change of Control; or

(i) there shall be commenced against Borrower or any other Credit Party any Litigation seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of an order for any such relief which remains unstayed or undismissed for thirty (30) consecutive days; or Borrower or any other Credit Party shall have concealed, removed or permitted to be concealed or removed, any part of its property with intent to hinder, delay or defraud any of its creditors or made or suffered a transfer of any of its property or the incurring of an obligation which may be fraudulent under any bankruptcy, fraudulent transfer or other similar law; or

(j) any other event shall have occurred which has had or could reasonably be expected to have a Material Adverse Effect; or

(k) an ERISA Event shall have occurred that, in the opinion of the Lender, when taken together with all other ERISA Events that have occurred and are then continuing,

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could reasonably be expected to result in liability of any Credit Party in an aggregate amount exceeding the Minimum Actionable Amount; then, and in any such event and at any time thereafter, if such or any other Event of Default shall then be continuing, Lender in its sole discretion may declare any or all of the Obligations to be due and payable, and the same shall immediately become due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived; provided, however, that if there shall occur an Event of Default under paragraph (f) above, then any and all of the Obligations shall be immediately due and payable without any necessary action or notice by Lender; or

(l) any breach or default shall occur under the terms of the Factoring Agreement or the Factor Intercreditor Agreement; or

(m) the Factoring Agreement shall have been terminated or Borrower shall have received from or delivered to Factor a notice of termination or intent to terminate the Factoring Agreement.

8.2. Remedies.

(a) In addition to the rights and remedies set forth in Section 8.1, if any Event of Default shall have occurred and be continuing, Lender may, without notice, take any one or more of the following actions: (i) require that all Letter of Credit Obligations be fully cash collateralized pursuant to Schedule II; or (ii) exercise any rights and remedies provided to Lender under the Credit Documents or at law or equity, including all remedies provided under the Code.

(b) Without limiting the generality of the foregoing, Borrower expressly agrees that upon the occurrence of any Event of Default, Lender may collect, receive, assemble, process, appropriate and realize upon the Collateral, or any part thereof, and may forthwith sell, lease, assign, give an option or options to purchase or otherwise dispose of and deliver said Collateral (or contract to do so), or any part thereof, in one or more parcels at public or private sale or sales, at any exchange at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. Lender shall have the right upon any such public sale, to the extent permitted by law, to purchase for the benefit of Lender the whole or any part of said Collateral so sold, free of any right of equity of redemption, which right Borrower hereby releases. Such sales may be adjourned or continued from time to time with or without notice. Lender shall have the right to conduct such sales on Borrower's premises or elsewhere and shall have the right to use Borrower's premises without rent or other charge for such sales or other action with respect to the Collateral for such time as Lender deems necessary or advisable.

(c) Upon the occurrence and during the continuance of an Event of Default and at Lender's request, Borrower further agrees to assemble the Collateral and make it available to Lender at places which Lender shall reasonably select, whether at its premises or elsewhere. Until Lender is able to effect a sale, lease, or other disposition of the Collateral, Lender shall have the right to complete, assemble, use or operate the Collateral or any part thereof, to the extent that Lender deems appropriate, for the purpose of preserving such Collateral or its value or for any other purpose. Lender shall have no obligation to Borrower to maintain or preserve the rights of Borrower as against third parties with respect to any Collateral while such Collateral is

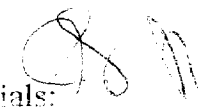
in the possession of Lender. Lender may, if it so elects, seek the appointment of a receiver or keeper to take possession of any Collateral and to enforce any of Lender's remedies with respect thereto without prior notice or hearing. To the maximum extent permitted by applicable law, Borrower waives all claims, damages, and demands against Lender, its Affiliates, agents, and the officers and employees of any of them arising out of the repossession, retention or sale of any Collateral except such as are determined in a final judgment by a court of competent jurisdiction to have arisen solely out of the gross negligence or willful misconduct of such Person. Borrower agrees that ten (10) days prior notice by Lender to Borrower of the time and place of any public sale or of the time after which a private sale may take place is reasonable notification of such matters. Borrower shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all amounts to which Lender is entitled.

(d) Lender's rights and remedies under this Agreement shall be cumulative and nonexclusive of any other rights and remedies which Lender may have under any other Credit Document or at law or in equity. Recourse to the Collateral shall not be required. All provisions of this Agreement are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited, to the extent necessary, so that they do not render this Agreement invalid or unenforceable, in whole or in part.

8.3. Waivers. Except as otherwise provided for in this Agreement and to the fullest extent permitted by applicable law, Borrower waives: (a) presentment, demand and protest, and notice of presentment, dishonor, intent to accelerate, acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all Credit Documents, the Notes or any other notes, commercial paper, Accounts, Contracts, Documents, Instruments, Chattel Paper and guaranties at any time held by Lender on which Borrower may in any way be liable, and hereby ratifies and confirms whatever Lender may do in this regard; (b) all rights to notice and a hearing prior to Lender's taking possession or control of, or to Lender's replevy, attachment or levy upon, any Collateral or any bond or security which might be required by any court prior to allowing Lender to exercise any of its remedies; and (c) the benefit of all valuation, appraisal and exemption laws. Borrower acknowledges that it has been advised by counsel of its choices and decisions with respect to this Agreement, the other Credit Documents and the transactions evidenced hereby and thereby.

8.4. Proceeds. The Proceeds of any sale, disposition or other realization upon any Collateral shall be applied by Lender upon receipt to the Obligations in such order as Lender may deem advisable in its sole discretion (including the cash collateralization of any Letter of Credit Obligations), and after the indefeasible payment and satisfaction in full in cash of all of the Obligations, and after the payment by Lender of any other amount required by any provision of law, including the Code (but only after Lender has received what Lender considers reasonable proof of a subordinate party's security interest), the surplus, if any, shall be paid to Borrower or their representatives or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

IX. MISCELLANEOUS

Initials: 

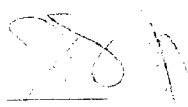
9.1. No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of Lender, any right, remedy, power or privilege under this Agreement or any other Credit Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. No notice to or demand on Borrower in any case shall, of itself, entitle it to any other or further notice or demand in similar or other circumstances. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

9.2. Amendments and Waivers. No amendment, modification or waiver of or with respect to any provision of this Agreement or any other Credit Document shall in any event be effective unless it shall be in writing and signed by Lender, and then such amendment, modification, waiver or consent shall be effective only in the specific instance and for the purpose for which given.

9.3. Expenses; Indemnity.

(a) Borrower agrees to pay or reimburse Lender for all costs and expenses (including, without limitation, the fees and expenses of all counsel, advisors, consultants and auditors) incurred by Lender in connection with: (i) the preparation, negotiation, execution, delivery, performance and enforcement of this Agreement and the other Credit Documents, any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated shall be consummated); (ii) the enforcement or protection of Lender's rights in connection with this Agreement and the other Credit Documents or in connection with the Credit Extensions; (iii) any advice in connection with the administration of the Credit Extensions or the rights under this Agreement or the other Credit Documents; (iv) any litigation, dispute, suit, proceeding or action (whether instituted by or between any combination of Lender, Borrower or any other Person), and an appeal or review thereof, in any way relating to the Collateral, this Agreement, any other Credit Document, or any action taken or any other agreements to be executed or delivered in connection therewith, whether as a party, witness or otherwise; and (v) any effort (x) to monitor the Credit Extensions, (y) to evaluate, observe or assess Borrower or any other Credit Party or the affairs of such Person, and (z) to verify, protect, evaluate, assess, appraise, collect, sell, liquidate or otherwise dispose of the Collateral. Borrower further agrees to indemnify Lender from and agrees to hold it harmless against any documentary taxes, assessments or charges made by any governmental authority by reason of the execution and delivery of this Agreement or any of the other Credit Documents.

(b) Borrower agrees to indemnify Lender, the LC Issuers, their correspondents and each of their respective directors, shareholders, officers, employees and agents (each, an "**Indemnified Person**") against, and agrees to hold each Indemnified Person harmless from, any and all losses, claims, damages, liabilities and related expenses, including reasonable counsel fees, charges and disbursements, incurred by or asserted against any Indemnified Person arising out of, in any way connected with or as a result of (i) the use of any of the proceeds of any Loan or the use of any Credit Extension, (ii) the goods or transactions financed by the Credit Extensions, (iii) this Agreement, any other Credit Document or any other

Initials: 

document contemplated hereby or thereby, the performance by the parties hereto or thereto of their respective obligations hereunder and thereunder or the consummation of the transactions contemplated hereby and thereby, or (iv) any claim, litigation, investigation or proceedings relating to any of the foregoing, whether or not any Indemnified Person Indemnity is a party thereto; provided, however, that such indemnity shall not, as to any Indemnified Person, apply to any such losses, claims, damages, liabilities or related expenses to the extent that they result from the gross negligence or willful misconduct of Lender.

(c) The provisions of this Section 9.3 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement and the repayment of the Credit Extensions. All amounts due under this Section 9.3 shall be payable on written demand therefor.

9.4. Further Assurances. Borrower will take, or cause to be taken, all such further actions and execute, or cause to be executed, all such further documents and instruments as Lender may at any time reasonably request or determine to be necessary or advisable to further carry out and consummate the transactions contemplated by this Agreement and the other Credit Documents.

9.5. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Borrower and its successors and to the benefit of Lender and its successors and assigns. The rights and obligations of Borrower under this Agreement shall not be assigned or delegated without the prior written consent of Lender, and any purported assignment or delegation without such consent shall be null and void. Lender reserves the right at any time to create and sell participations in the Credit Extensions and the Credit Documents and to sell, transfer or assign any or all of its rights in the Credit Extensions and under the Credit Documents.

9.6. Descriptive Headings. The descriptive headings of the various provisions of this Agreement are inserted for convenience of reference only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

9.7. Rules of Construction. For purposes of this Agreement and the other Credit Documents, the following additional rules of construction shall apply, unless specifically indicated to the contrary: (a) wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural; (b) all references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations; and (c) all references to any instruments or agreements, including references to any of the Credit Documents, shall include any and all modifications or amendments thereto and any and all extensions or renewals thereof. The words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation" the word "or" is not exclusive; references to Persons include their respective successors and assigns (to the extent and only to the extent permitted by the Credit Documents) or, in the case of governmental Persons, Persons succeeding to the relevant functions of such Persons; and all references to statutes and related regulations shall include any amendments of the same and any successor statutes and regulations.

9.8. Notices. Except as otherwise provided herein, whenever any notice, demand, request or other communication shall or may be given to or served upon any party by any other party, or whenever any party desires to give or serve upon any other party any communication with respect to this Agreement, each such communication shall be in writing and shall be deemed to have been validly served, given or delivered (a) upon the earlier of actual receipt and three (3) days after deposit in the United States Mail, registered or certified mail, return receipt requested, with proper postage prepaid, (b) upon transmission, when sent by telecopy or other similar facsimile transmission (with such telecopy or facsimile promptly confirmed by delivery of a copy by personal delivery or United States Mail as otherwise provided in this Section 9.8, (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid or (d) when hand-delivered, all of which shall be addressed to the party to be notified and sent to the address or facsimile number indicated in Schedule VII or to such other address (or facsimile number) as may be substituted by notice given as herein provided. Failure or delay in delivering copies of any such communication to any Person (other than Borrower or Lender) designated in Schedule VII to receive copies shall in no way adversely affect the effectiveness of communication.

9.9. 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.

9.10. Entire Agreement; Counterparts. This Agreement and the other Credit Documents represent the agreement of Borrower and Lender with respect to the subject matter hereof, and there are no promises, undertakings, representations or warranties by Borrower or Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Credit Documents. Nothing in this Agreement or in the other Credit Documents, express or implied, is intended to confer upon any party, other than the parties hereto and thereto, any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Credit Documents. This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

9.11. **SUBMISSION TO JURISDICTION. BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY: (a) SUBMITS FOR ITSELF AND ITS PROPERTY IN ANY LEGAL ACTION OR PROCEEDING, DIRECTLY OR INDIRECTLY, RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT TO WHICH IT IS A PARTY, OR FOR RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT IN RESPECT THEREOF, TO THE NON-EXCLUSIVE GENERAL JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK IN THE COUNTY OF NEW YORK AND THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK; (b) CONSENTS THAT ANY SUCH ACTION OR PROCEEDING MAY BE BROUGHT IN SUCH COURTS AND WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT**

COURT AND AGREES NOT TO PLEAD OR CLAIM THE SAME; (c) AGREES THAT SERVICE OF PROCESS IN ANY SUCH ACTION OR PROCEEDING MAY BE EFFECTED BY MAILING A COPY THEREOF BY REGISTERED OR CERTIFIED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL), POSTAGE PREPAID, TO IT AT ITS ADDRESS SET FORTH IN SCHEDULE VII TO THIS AGREEMENT OR AT SUCH OTHER ADDRESS OF WHICH LENDER SHALL HAVE BEEN NOTIFIED PURSUANT TO SECTION 9.8; AND (d) AGREES THAT NOTHING HEREIN SHALL AFFECT THE RIGHT TO EFFECT SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT TO SUE IN ANY OTHER JURISDICTION.

9.12. WAIVER OF TRIAL BY JURY, CERTAIN DAMAGES AND SETOFFS. IN ANY LEGAL ACTION OR PROCEEDING, DIRECTLY OR INDIRECTLY, RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT OR ANY DOCUMENT, INSTRUMENT OR AGREEMENT DELIVERED PURSUANT HERETO OR THERETO, (A) EACH OF BORROWER AND LENDER HEREBY, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, IRREVOCABLY AND UNCONDITIONALLY WAIVES THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY SUCH LEGAL ACTION OR PROCEEDING, (B) EACH OF BORROWER AND LENDER HEREBY, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY SUCH LEGAL ACTION OR PROCEEDING ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES OTHER THAN, ACTUAL DAMAGES AND (C) BORROWER HEREBY, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, IRREVOCABLY AND UNCONDITIONALLY WAIVES THE RIGHT TO INTERPOSE ANY NON-COMPULSORY SETOFF, RECOUPMENT, COUNTERCLAIM OR CROSS-CLAIM IN CONNECTION WITH ANY SUCH LEGAL ACTION OR PROCEEDING. BORROWER AGREES THAT THIS SECTION 9.12 IS A SPECIFIC AND MATERIAL ASPECT OF THIS AGREEMENT AND ACKNOWLEDGES THAT LENDER WOULD NOT EXTEND TO BORROWER ANY CREDIT EXTENSIONS HEREUNDER IF THIS SECTION 9.12 WERE NOT PART OF THIS AGREEMENT.

9.13. GOVERNING LAW THIS AGREEMENT, THE OTHER CREDIT DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE, WITHOUT REGARD TO THE CONFLICT OF LAW PRINCIPLES THEREOF.

9.14. Reinstatement. This Agreement shall continue to be effective, or be reinstated, as the case may be, if at any time payment of all or any part of the Obligations is rescinded or must otherwise be returned or restored by Lender upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Borrower, or otherwise, all as though such payments had not been made.

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

ELITE GROUP MARKETING CORP.

By: [Signature]
Name: Timothy Francis
Title: President

GERBER TRADE FINANCE INC.

By: [Signature]
Name: [Signature]
Title: Executive Vice President

Initials: [Signature]