

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM404411

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	SECURITY INTEREST		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
GUTTERGLOVE, INC.	FORMERLY COMMERCIAL GUTTER	01/29/2016	Corporation: CALIFORNIA
RECEIVING PARTY DATA			
Name:	California Bank of Commerce		
Street Address:	160 West Santa Clara Street, #700		
City:	San Jose		
State/Country:	CALIFORNIA		
Postal Code:	95113		
Entity Type:	Corporation: CALIFORNIA		
PROPERTY NUMBERS Total: 4			
Property Type	Number	Word Mark	
Serial Number:	85218526	GUTTERGLOVE	
Serial Number:	85218445	LEAFBLASTER	
Serial Number:	87097957	GUTTER GUARD BY GUTTERGLOVE	
Serial Number:	78355811	GUTTERGLOVE	
CORRESPONDENCE DATA			
Fax Number:			
	<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>		
Phone:	4082943600		
Email:	kimwrenn@msn.com		
Correspondent Name:	Wm. Thomas Lewis		
Address Line 1:	150 Almaden Blvd., Suite 950		
Address Line 4:	San Jose, CALIFORNIA 95113		
NAME OF SUBMITTER:	Wm. Thomas Lewis		
SIGNATURE:	/s/ Wm. Thomas Lewis		
DATE SIGNED:	11/03/2016		
Total Attachments: 37			
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OP \$115.00 85218526

LOAN AND SECURITY AGREEMENT

This LOAN AND SECURITY AGREEMENT is entered into as of January 29, 2016 by and between GUTTERGLOVE, INC., a California corporation, f/k/a COMMERCIAL GUTTER ("Borrower"), and CALIFORNIA BANK OF COMMERCE ("Lender").

Borrower has requested that Lender provide financial accommodations to Borrower and Lender is willing to do so in accordance with this Agreement, as such financial accommodations are more fully set forth herein and in the Loan Documents. Under this Agreement, and among other things, Borrower will assign its Accounts and other Collateral to and for the benefit of Lender.

NOW, THEREFORE, in consideration of the promises contained herein, for good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), and intending to be legally bound hereby, the parties hereby agree as follows:

1. Certain Definitions and Index to Definitions.

1.1. Accounting Terms. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared in accordance with GAAP (consistently applied).

1.2. Definitions. All other terms contained in this Agreement which are not specifically defined herein, shall have the meanings provided in the UCC. All references herein to the singular or plural shall also mean the plural or the singular, respectively. The term "including" is not limiting, and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Any section, subsection, clause, schedule, and exhibit references are to this Agreement unless otherwise specified. Any reference in this Agreement or in the Loan Documents to this Agreement or any of the Loan Documents shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, and supplements, thereto and thereof, as applicable. As used herein, the following terms shall have the following meanings:

1.2.1. "Accounts" - all currently existing and hereafter arising accounts, contract rights, and all other forms of obligations owing to Borrower (less, at Lender's option, all trade discounts, sales, excise and similar taxes, or other deductions) arising out of the sale or lease of goods or the rendition of services by Borrower, irrespective of whether earned by performance, any and all credit insurance, guaranties, or security therefore, and any cash or non-cash proceeds thereof.

1.2.2. "Advance Rate" - eighty percent (80%) of the Net Collateral; provided, however that if on the date of determination the Dilution Ratio (expressed as a percentage) for the preceding calendar month exceeds the Dilution Base Ratio, then the Advance Rate shall decrease one percentage point (1%) for each percentage point (or portion thereof) that the Dilution Ratio (expressed as a percentage) for the preceding calendar month exceeds of the Dilution Base Ratio and forty percent (40%) of Eligible Purchase Orders with respect to PO Advances.

1.2.3. "Advances" - see Section 2.1 hereof.

1.2.4. "Agreement" - this Loan and Security Agreement, together with all exhibits and schedules hereto, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

1.2.5. "Allowable Amount" - the lesser of the Borrowing Base or the Maximum Amount. In the event the amount of the Advances from time to time outstanding exceeds the Allowable Amount at any time and for any reason, then Borrower shall immediately repay Lender such sum as will be required to reduce the outstanding principal balance of the Obligations to the Allowable Amount.

1.2.6. "Allowable PO Sublimit" - the lesser of the forty percent (40%) of the Eligible Purchase


Initials

Orders or Five Hundred Dollars (\$500,000). In the event that the amount of the PO Advances from time to time outstanding exceeds the Allowable PO Sublimit at any time and for any reason, then Borrower shall immediately repay Lender such portion of the PO Advances as will be required to reduce the outstanding principal balance of the PO Advances to the Allowable PO Sublimit.

1.2.7. "Alternative Interest Rate" - Six percent (6%) per annum in excess of the interest rate otherwise attributable to such loan and Advance. To the extent the Alternative Interest Rate is calculated with reference to the Base Rate, any change in the Alternative Interest Rate shall be effective as of the date of any change in the Base Rate.

1.2.8. "Audit Fee" - the greater of (a) the sum of Nine Hundred Fifty Dollars (\$950.00) per day (or portion thereof) for each day or (b) the amount recited in any invoice received by Lender from such auditor, plus any reimbursable expenses charged by such auditor.

1.2.9. "Average Unused Portion of Maximum Amount" - the Maximum Amount less the average daily Obligations that were outstanding during the immediately preceding month.

1.2.10. "Balance Subject to Interest" - the unpaid balance of (a) Advances (b) other loans, advances, or extensions of credit made by Lender for which Borrower is liable to Lender (including, without limitation, the Lender Expenses), and (c) accrued but unpaid interest on the foregoing.

1.2.11. "Base Rate" - the variable rate of interest, per annum, from time to time published in the Wall Street Journal, Western Edition (the "Journal") as the "prime rate." In the event the Journal publishes a range of rates as the "prime rate", Lender's "Base Rate" shall be determined by reference to the highest number in the range. Lender's "Base Rate" is one of Lender's base rates with respect to transactions making reference thereto and may not be the lowest of Lender's rates. In the event that the Base Rate announced by Lender is, from time to time hereafter, changed, adjustment in the rate of interest chargeable on Borrower's obligations under this Agreement shall be made on the effective date of the change in the Base Rate. The rate of interest, as adjusted, shall apply until the Base Rate is adjusted again. Any change in the Base Rate for purposes of computing the rate of interest chargeable on Borrower's obligations under this Agreement shall be effective on the first business day after the date of such change.

1.2.12. "Borrower" - the party or parties set forth in the Preamble hereof. If more than one party shall execute this Agreement as "Borrower", the obligations of each such party shall be joint and several.


1.2.13. "Borrower's Account" - Borrower's account maintained by Borrower with CALIFORNIA BANK OF COMMERCE. If Borrower's Account is maintained at an institution other than Lender (each, a "Third Party Institution"), then (at Lender's option) Lender may require that Lender, Borrower and such Third Party Institution enter into a control agreement or similar document required to perfect Lender's security interest in Borrower's Account at such Third Party Institution (each, a "Control Agreement"), Borrower agrees to cooperate with Lender in securing such Control Agreement, and the failure to secure a Control Agreement on terms and conditions acceptable to Lender shall constitute a default or Event of Default hereunder.

1.2.14. "Borrower's Books" - all of Borrower's books and records including ledgers, records indicating, summarizing, or evidencing Borrower's properties or assets or liabilities, all information relating to Borrower's business operations or financial condition, and all computer programs, disc or tape files, printouts, runs, or other computer prepared information, and the equipment containing such information.

1.2.15. "Borrower's Federal Employer Identification Number" - 94-3387627.

1.2.16. "Borrower's Vendors" - all accountants, bookkeepers, banks, financial institutions, securities intermediaries, vendors, suppliers, warehousemen, bailees, shippers, transporters, Account debtors, Obligated Parties, and Obligors. The phrase shall be construed in its broadest sense.

1.2.17. "Borrowing Base" - The sum of (i) the product of (1) the Advance Rate and (2) the sum of the Net Collateral plus (ii) the Eligible Inventory Permitted Advance, plus and as applicable (iii) the Eligible PO Advance, as the amounts of same may change from time to time, less the amount of any Reserves, as such Reserves may from time


Initials

to time be established by Lender (provided, however, that the aggregate amount of all Eligible Inventory Permitted Advances shall not exceed at any time the limits on same set forth herein and provided further that the aggregate amount of all PO Advances shall not exceed at any time the Allowable PO Sublimit). Commencing on the earlier of (a) one hundred twenty (120) days after the date of the funding of the first draw request under the purchase order sub facility or (b) the Termination Date, the purchase order sub facility shall end without prior notice or demand and all PO Advances thereunder shall be immediately due and payable.

1.2.18. "Borrowing Base Certificate" - a request for an Advance, in such form as may be from time to time specified by Lender.

1.2.19. "Business Day" - any day which is not a Saturday, Sunday, or other day on which Lender is closed.

1.2.20. "Clearance Days" - Three (3) Business Days.

1.2.21. "Clearance Day Payments" - collections, payments and proceeds received by Lender, in whatever form and from whatever source (including, without limitation, collections, payments and proceeds of Monetary Collateral).

1.2.22. "Closing Date" - the date on which this Agreement is accepted by Lender.

1.2.23. "Collateral" - all of Borrower's presently existing or hereinafter acquired personal property assets, including without limitation the following present and future assets of Borrower, together with all collateral now or hereafter described in any form UCC-1 filed against Borrower naming Lender as the secured party and together with all collateral now or hereafter in Lender's possession, custody or control. Without limiting the generality of the foregoing, the Collateral shall expressly include (without limitation) the following:

(a) All Accounts, interests in goods represented by accounts, returned, reclaimed or repossessed goods with respect thereto and rights as an unpaid vendor; contract rights; general intangibles (including, but not limited to, tax and duty refunds, refunds and rebates from any source, registered and unregistered patents, trademarks, service marks, copyrights, trade names and applications for the foregoing, trade secrets, goodwill, processes, drawings, blueprints, customer lists, licenses, whether as licensor or licensee, choses in action and other claims, and existing and future leasehold interests in equipment, and fixtures); documents; instruments; letters of credit; deposit accounts;

(b) All goods, including, but not limited to:

All Inventory;

All Equipment;


All consumer goods, farm products, crops growing or to be grown, timber to be cut, minerals or the like (including, but not limited to, oil and gas), wherever located and of whatever kind, nature or description;

(c) All other personal property in or upon which Lender has or may hereafter have a security interest, lien or right of setoff either under this Agreement or under applicable law;

(d) All real property in or upon which Lender has or may hereafter have an express mortgage, deed of trust, or other lien;

(e) All Borrower's Books;

(f) Any claim of Borrower on any policy of insurance, including claims for premium refund under any workmen's compensation policy, or claims under any business interruption or similar coverage;


Initials

- (g) All investment property;
- (h) All Negotiable Collateral; and
- (i) All products and proceeds of the foregoing, in whatever form and wherever located, including, but not limited to, all insurance proceeds, all claims against third parties for loss or destruction of or damage to any of the foregoing, and all income from the lease or rental of any of the foregoing.

1.2.24. "Collateral Monitoring Fee" -- a fee in the amount of fifteen one hundredths of one percent (0.15%) per month or portion thereof of the average monthly Balance Subject to Interest during each calendar month. Such fee may also be referred to as an "Account Monitoring Fee."

1.2.25. "Credit Accommodation" - any advance or other extension of credit by Lender to or on behalf of Borrower hereunder or under any Special Credit Accommodation.

1.2.26. "Current Accounting Period" - the Accounting Period (as defined in Section 7.1.2) following the Accounting Period to which such the Financial Statements, Reports and Certifications relate.

1.2.27. "Default Rate" -- Eighteen percent (18%) per annum in excess of the interest rate otherwise attributable to such loan and Advance. To the extent the Default Rate is calculated with reference to the Base Rate, any change in the Default Rate shall be effective as of the date of any change in the Base Rate.

1.2.28. "Dilution" - Any changes, adjustments, reductions or modifications, or incomplete payments respecting any Accounts which have been billed and invoiced, after the billing and invoicing of same. Without limiting the generality of the foregoing, "Dilution" shall include reductions by credit memoranda, short pays, charge-offs, payment discounts, rebates, allowances, billing errors, returns, damage claims, offsets or other characteristics included in the determination of Ineligible Accounts.

1.2.29. "Dilution Base Ratio" -- five percent (5.0%).

1.2.30. "Dilution Ratio" -- As of the date of determination, the ratio of (a) the total amount of Dilution with respect to all Accounts to (b) the total of all Accounts.

1.2.31. "Early Termination Fee" - One-tenth of one percent (0.10%) of the Maximum Amount for each month (or portion thereof) from the effective date of termination until the then scheduled Termination Date. The foregoing sum shall be earned and payable upon termination of this credit facility for any reason (whether voluntarily by Borrower before the scheduled Termination Date or by election of Lender following any acceleration, demand or otherwise). Payment of the aforementioned sum shall be a condition precedent to the termination of this Agreement.

1.2.32. "Eligible Inventory Permitted Advances" - the least of the following: (i) Two Hundred Fifty Thousand Dollars (\$250,000) or (ii) forty percent (40%) of the Value of Eligible Inventory, or (iii) forty percent (40%) of the Eligible Accounts, as same exist on the date of such determination.

1.2.33. "Eligible Inventory" - Unless otherwise approved by Lender in writing, all Inventory, excluding all Ineligible Inventory.

1.2.34. "Eligible PO Advance" - forty percent (40%) of the amount of Eligible Purchase Orders, not to exceed (at any time) the Allowable PO Sublimit.

1.2.35. "Eligible Purchase Orders" - Unless otherwise approved by Lender in writing, "Eligible Purchase Orders" shall be purchase orders or other evidences of agreement to purchase that meet all of the following criteria:


Initials

- (a) are in amounts, are on terms and conditions, and are otherwise acceptable to Lender;
- (b) are issued in connection with transaction by Borrower only with Costco (or such other customer as Lender may approve in writing, without any duty or obligation to approve any non-Costco Customer)(each, a "Customer"), where such Customers are credit worthy;
- (c) are evidenced by documents, contracts, and commitments to purchase with Customers that are in a form and content acceptable to Lender;
- (d) are not subject to any dispute, right of offset, counterclaim, or right of cancellation or return by the Customer;
- (e) are not purchase orders with respect to which goods (when ultimately delivered) will be placed on consignment, guaranteed sale, or other terms by which the payment by the Obligated Party on any Account owing by such Obligated Party may be conditional;
- (f) are not purchase orders with respect to which the Customer is (directly or indirectly) an officer, employee, partner, joint venturer or agent of Borrower; and
- (g) are not purchase orders with respect to transactions with respect to which any Account resulting from the sale of the product to a Customer would be an Ineligible Account.

If any Eligible Purchase Order is not duly performed and delivered within the time period specified in the Eligible Purchase Order, or if performance by Borrower under such Eligible Purchase Order is not in strict compliance with such purchase order and/or any contracts or agreements respecting same, or if an Eligible Account with respect to such fully performed Eligible Purchase Order is not generated within one (1) business day after the date the Eligible Purchase Order is fully performed, or if any Account from the Customer under such Eligible Purchase Order would otherwise be or become ineligible, then such Eligible Purchase Order shall thereafter cease to be an Eligible Purchase Order.

1.2.36. "Equipment" - all of Borrower's present and hereafter acquired machinery, machine tools, motors, equipment, furniture, furnishings, fixtures, vehicles (including motor vehicles and trailers), tools, parts, dies, jigs, and other similar items, wherever located, and any interest of Borrower in any of the foregoing, and all attachments, accessories, accessions, replacements, substitutions, additions, and improvements to any of the foregoing, wherever located.

1.2.37. "Event of Default" - see Section 9 hereof.

1.2.38. "Evidence of Special Credit Accommodation" - see Section 2.2 hereof.

1.2.39. "GAAP" - means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and pronouncements of the Financial Accounting Standards Board (or any successor authority) that are applicable as of the date of determination.

1.2.40. "Guarantor(s)" - all entities now or hereafter guaranteeing the Obligations.

1.2.41. "Guaranty" - a continuing guaranty in form and substance acceptable to Lender by which a Guarantor guarantees the Obligations.

1.2.42. "Ineligible Accounts" - At Lender's sole option, Accounts that meet any of the following criteria:

- (a) are unacceptable to Lender;
- (b) are un-creditworthy;


Initials

(c) are not evidenced by an invoice, copies of which have been provided to Lender on demand or in accordance with the Agreement;

(d) are not and have not been validly assigned as collateral to Lender, giving Lender a first priority security interest therein and in all proceeds thereof;

(e) as of the date of determining whether an Account is "Ineligible" or not, are older than ninety (90) days after the date of invoice;

(f) are credit memoranda which are older than ninety (90) days after the date of credit memoranda or which are subject to such other obligations as Lender may from time to time designate;

(g) are accounts which are subject to prepayments, deposits or other sums respecting obligations owing by Borrower to any particular Account debtor, Guarantor, or other Obligated Party;

(h) are not in strict compliance with all Borrower's warranties and representations to Lender;

(i) are not and have not been created by absolute sales of Borrower's merchandise or services;

(j) are not genuine, bona fide and collectible;

(k) are Accounts with respect to which Borrower does not have good, unencumbered, and absolute title, free of all third party claims;

(l) are Accounts with any residue or balance owing on which partial payments or payments of less than full value have been made;

(m) are Accounts older than the most current Account paid by any particular Account debtor of other Obligated Party;

(n) are subject to any dispute, right of offset, counterclaim, or right of cancellation or return;

(o) arise from transactions wherein all property giving rise to such Accounts and/or all services giving rise to such Account have not been delivered and/or rendered to, and unconditionally accepted by, each Obligated Party;

(p) are Accounts with respect to which Borrower has not performed all things required of Borrower by the terms of all agreements or purchase orders giving rise to such Accounts;

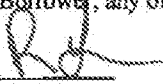
(q) are due and unconditionally payable on terms of more than thirty (30) days after the date of invoice, or are on such other terms as may be unacceptable to Lender;

(r) if Lender requires any such Accounts to be supported by letters of credit, credit guarantees, or other credit enhancements, such letters of credit, credit guarantees, or other credit enhancements are not in a form and content and/or issued not issued by lenders or issuers approved by Lender in Lender's sole and absolute discretion;

(s) are Accounts with respect to which goods are placed on consignment, guaranteed sale, or other terms by which the payment by the Obligated Party may be conditional;

(t) are Accounts with respect to which goods are placed on "bill and hold" or other similar arrangements, unless Lender consents in writing;

(u) are Accounts with respect to which the Obligated Party is an officer, manager, director, employee, partner, shareholder, member, joint venturer, relative (either by blood or marriage), affiliate or agent of Borrower, any of Borrower's officers, managers, directors, employees, partners, shareholders, or members or other person


Initials

holding any equity interest in Borrower;

(v) are Accounts with respect to which the Obligated Party is a resident of a country other than the United States of America;

(w) are Accounts with respect to which the Obligated Party is the United States of America or any department, agency or instrumentality of the United States of America;

(x) are Accounts with respect to which the Obligated Party disputes liability or makes any claim, or has any defense, cross claim, counterclaim or offset;

(y) are Accounts with respect to which any bankruptcy or similar insolvency proceeding is filed by or against the Obligated Party or if an Obligated Party becomes insolvent, fails or goes out of business;

(z) are Accounts with respect to which Borrower is or may become liable to the Obligated Party for goods sold or services rendered by the Obligated Party to Borrower;

(aa) with respect to Accounts which are owing from any Obligated Party whose aggregate Accounts exceeds percent (25%) of total Accounts owing to Borrower from all Account debtors at the time of such determination (or such other amount as Lender may from time to time determine, establish and revise in good faith), and with respect to Accounts which are owing from Costco and whose aggregate Accounts exceeds eight percent (8%) of total Accounts owing to Borrower from all Account debtors at the time of such determination (or such other amount as Lender may from time to time determine, establish and revise in good faith), then that portion of such Accounts owing from such non-Costco Obligated Party that exceed twenty-five percent (25%) of total Accounts owing to Borrower and that portion of such Accounts owing from Costco that exceeds eighty percent (80%) of total Accounts owing to Borrower (or such other amount as Lender may from time to time determine, establish and revise in good faith). Such Ineligible Accounts under this subsection may also be referred to as a "Concentration Limit";

(bb) are in a sum which, when added to the outstanding Accounts owing by such Obligated Party, exceed such levels, dollar amounts or percentages as Lender may from time to time establish and prescribe;

(cc) are Accounts from any one Obligated Party of which twenty percent (20%) of all Accounts owing by such Obligated Party ninety (90) days old or older. Such Ineligible Accounts may also be referred to as a "Cross Aging";

(dd) are Accounts reflecting or arising from sales or services rendered to an individual consumer for personal, family or household use;

(ee) are Accounts arising from jobs or contracts with respect to which Borrower's payment or performance is the subject of a bond or other suretyship contract;

(ff) are Accounts arising from jobs or contracts with respect to which Borrower is involved in the construction of a work of improvement or with respect to which mechanics' or materialmen's liens may exist or have granted under applicable law; and

(gg) are Accounts arising from jobs or contracts with respect to which Borrower's entitlement to payment on such Account is subject to any retention, holdback or other withholding, whether related to any mechanics' or materialmen's liens or otherwise.

1.2.43. "Ineligible Inventory" – any Inventory that meets any of the following criteria:

(a) Inventory consisting of products not used in the ordinary course of Borrower's business;

(b) Inventory that is not located at a location acceptable to Lender (unless same is covered by a written bailment agreement, waiver or other agreement in a form and content acceptable to Lender acknowledging Lender's rights in and to the Inventory and containing such other acknowledgments, warranties and covenants as Lender


Initials

may require in Lender's sole and absolute discretion);

- (c) Inventory on goods which is "in transit" or otherwise not in Borrower's possession;
- (d) Inventory which is unacceptable to Lender in any respects and/or fails to strictly comply with all of Borrower's representations and warranties to Lender (including, without limitation, any representations and warranties contained in this Agreement as same relate to the Inventory);
- (e) Inventory which consists of supplies used or consumed in Borrower's business;
- (f) Inventory which is subject to a security interest or lien in favor of any third person or entity;
- (g) Inventory which has been "billed and held";
- (h) Inventory that is subject to any lien or encumbrance that is senior to that held by Lender;
- (i) Inventory which consists of finished goods and which is more than one (1) year old or are otherwise determined by Lender to be aged, un-saleable and/or obsolete;
- (j) Inventory which consists of, work in process, packing and shipping materials, and/or returned or defective goods;
- (k) Inventory which is acquired on consignment;
- (l) Inventory which is not of good and merchantable quality and condition;
- (m) Inventory which is not in a form, content and quality acceptable to Lender; and/or
- (n) Inventory that has a number of days of turn (determined in accordance with GAAP) with respect to each stock keeping unit (or other class or category of Inventory as may be acceptable to Lender) exceeding those levels from time to time prescribed by Lender.

At Lender's option, Ineligible Inventory may also include other items as Lender may from time to time establish and revise in good faith reducing the Value of the Eligible Inventory to reflect events, conditions, contingencies or risks which, as determined by Lender in good faith, (1) do or may affect (i) the Value of the Eligible Inventory, (ii) the assets, business or prospects of Borrower or any Obligor, and/or (iii) the security interest and other rights of Lender in the Inventory (including the enforceability, perfection and priority thereof); (2) to reflect Lender's good faith belief that any Eligible Inventory report is or may have been incomplete, inaccurate or misleading in any material respect; or (iv) in respect of any state of facts that Lender determines in good faith constitutes an Event of Default or may, with notice or passage of time or both, constitute an Event of Default.

1.2.44. "Interest Rate" -- The Interest Rate on loans and advances under Section 2 of this Agreement (the "A/R Advance Interest Rate") shall be Two percent (2.0%) per annum in excess of the Base Rate; provided, however, that in no event shall the Interest Rate be less than Five and one-half percent (5.5%) per annum. The "Interest Rate" on Eligible Inventory Permitted Advances shall be Two percent (2.0%) per annum in excess of the Base Rate (the "Inventory Advance Interest Rate"); provided, however, that in no event shall the "Interest Rate" on Eligible Inventory Permitted Advances be less than five and one-half percent (5.50%) per annum. The "Interest Rate" on Eligible PO Advances shall be Nine and one-quarter percent (9.25%) per annum in excess of the Base Rate (the "PO Advance Interest Rate"); provided, however, that in no event shall the "Interest Rate" on Eligible PO Advances be less than twelve and three quarters percent (12.75%) per annum. To the extent the Interest Rate is calculated with reference to the Base Rate, any change in the Interest Rate shall be effective as of the date of any change in the Base Rate. To the extent any particular loan or advance make reference to the words "Interest Rate", such Interest Rate shall be deemed to be the A/R Advance Interest Rate with respect to loans and advances under Section 2 of this Agreement, the Inventory Advance Interest Rate with respect to Eligible Inventory Permitted Advances, and the PO Advance Interest Rate with respect to Eligible PO Advances (as the case may be).


Initials

1.2.45. "Inventory" - all present and future inventory in which Borrower has any interest, including goods held for sale or lease or to be furnished under a contract of service and all of Borrower's present and future raw materials, work in process, finished goods, packing and shipping materials, wherever located, and any documents of title representing any of the above.

1.2.46. "Key Employees" - all officers, managers, managing members, general partners, or other persons exercising management and control over Borrower, including (without limitation) the following: Robert Lenney.

1.2.47. "Lender Expenses" - all of the following:

(a) costs or expenses (including Borrower's taxes, photocopying, notarization, telecommunication, insurance premiums, and postage) paid by Lender or otherwise arising in connection with the Collateral, the administering the loans and credit accommodations from time to time extended by Lender to or for the benefit of Borrower, and/or Lender's relationship with Borrower or any Obligor;

(b) costs and expenses required to be paid by Borrower under any of the Loan Documents that are paid or advanced by Lender;

(c) documentation, filing, recording, publication, appraisal (including periodic Collateral appraisal(s) and search fees), title insurance, and related third party fees and costs associated with this Agreement (including, without limitation, the Audit Fee) or creating, continuing or perfecting any security interest in the Collateral and/or any Real Property assessed, paid, or incurred by Lender in connection with Lender's transaction with Borrower;

(d) costs and expenses incurred by Lender in the disbursement of funds to Borrower (by wire transfer or otherwise) or in administering Borrower's account and lending relationship with Lender (including, without limitation, Thirty-Five Dollars (\$35.00) for each cashier's check and wire transfer made by Lender to parties other than Borrower; Thirty-Five Dollars (\$35.00) for each overnight delivery made by Lender to Borrower or anyone designated by Borrower; Seventy-Five Dollars (\$75.00) per hour for photocopy charges, for reports and items previously prepared and delivered by Lender and/or for reports and items not regularly prepared and provided by Lender to Borrower, with a two hour minimum; a monthly access fee of One Hundred Twenty-Five Dollars (\$125.00) per month [or any portion of such month] for access to Lender's internet portal through Lender's service provider [or such other sum as such internet service provider may from time to time charge and assess]; a fee of Two Hundred Dollars (\$200.00) for each submission of information outside the internet portal from time to time specified by Lender for the electronic submission of data required or requested by Lender to be provided by Borrower; a fee of Fifty Dollars (\$50.00) per month [or any portion of such month] for public records, tax, and similar lien and status monitoring services; and Fifty Dollars (\$50.00) for each returned check received by Lender from either Borrower or from any Obligated Party; provided, however, that Lender reserves the right to change the amount charged for the foregoing services on written notice to Borrower and, from and after the date of such notice, the costs for such services shall be in accordance with the charges set forth in such notice;

(e) charges paid or incurred by Lender resulting from the dishonor of checks; costs and expenses paid or incurred by Lender to correct any default or enforce any provision of the Loan Documents, or in gaining possession of, maintaining, handling, preserving, storing, shipping, selling, preparing for sale, or advertising to sell the Collateral or any portion thereof, irrespective of whether a sales is consummated;

(f) Borrower shall pay a Lock Box Fee of Two Hundred Fifty Dollars (\$250.00) per month or portion thereof;

(g) costs and expenses paid or incurred by Lender in examining Borrower's Books, in traveling to and from meetings with Borrower or its agents (including, without limitation, mileage and related automobile expenses, air fares, car and room rentals, meals, and other expenses); and

(h) costs and expenses (including, without limitation, attorneys' fees and costs) of Lender in enforcing, defending, drafting, reviewing, administering, amending, or terminating the Loan Documents and/or in advising Lender in connection with same (including attorneys' fees and expenses incurred in connection with a "workout", a "restructuring", a bankruptcy or any similar insolvency proceeding concerning Borrower, any Obligated Party or any Guarantor), irrespective of whether suit is brought and irrespective if same are incurred before or after the date of this


Initials

Agreement.

Lender shall have the right to mark up any third party costs or bills received by Lender that constitute Lender Expenses by ten percent and to include such ten percent additional amount in Lender Expenses.

1.2.48. "Lending Office" – Subject to Lender's right to change the address for Lender's office described in the Section below entitled "Notices", the address set forth below the parties' signatures to this Agreement.

1.2.49. "Loan Documents" - this Agreement, together with any documents, instruments and agreements, executed and/or delivered in connection herewith, or evidencing any other Obligations, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated, or replaced.

1.2.50. "Loan Fee" – Subject to the automatic renewal provisions of this Agreement, One percent (1%) of the Maximum Amount on closing and on each anniversary of the date of this Agreement. Such fee may also be referred to as a "Renewal Fee."

1.2.51. "Loan Level Availability" - the difference, as of the date of determination, between the Allowable Amount and the amount of the Outstanding Obligations then owing.

1.2.52. "Maximum Amount" – One Million Dollars (\$1,000,000).

1.2.53. "Minimum Monthly Amount" – Twenty-five percent (25%) of that portion of the Maximum Amount attributable to Advances available under Section 2 of this Agreement (as same may from time to time be modified, changed or amended) per calendar month.

1.2.54. "Minimum Monthly Fee" – the monthly fee that would result by multiplying the Minimum Monthly Amount by the Interest Rate during such calendar month (as such Interest Rate may change from time to time during any calendar month).

1.2.55. "Misdirected Payments" – either (i) any payment on any Account inadvertently collected or received by Borrower through no fault or interference by Borrower that is not delivered in kind by Borrower to Lender within one (1) business day of receipt thereof, or (ii) any Account with respect to which the payment has been interfered with or hindered by Borrower, or (iii) any payment on any Account that has been collected or received by Borrower as a result of Borrower's intentional interference and efforts (including, without limitation, payment delivered or personally collected by Borrower (or its agent) from the Obligated Party, payments resulting from Borrower's false assertion that Lender no longer has any security or other interest in Borrower's assets, or payments received or collected by Borrower as a result of any alleged authority, right, power or agreement with Lender) regardless of whether such Misdirected Payment is ever turned over to Lender or not. All such Misdirected Payments that are in Borrower's possession, custody and control shall be held in trust for Lender.

1.2.56. "Misdirected Payment Fee" – an amount equal to the greater of (1) ten percent (10%) of the amount of each such Misdirected Payment or (2) \$500.00 for each such Misdirected Payment.

1.2.57. "Monetary Collateral" - any and all cash; checks; the proceeds of electronic scans of checks; wire payments; credit card payments and processing proceeds; electronic funds transfers; automatic funds transfers; proceeds and payments from other intangible funds transfer mechanisms; any other proceeds or forms or payment for goods and services; proceeds or forms or payment from the sale, lease or other dispositions of Collateral; any so-called cryptocurrency, peer-to-peer, digital currency, or other electronic cash system (whether based on an open-source cryptographic protocol that is independent of any central authority or otherwise); and/or any other proceeds of Collateral.

1.2.58. "Negotiable Collateral" - all of Borrower's present and future letters of credit, notes, drafts, instruments, certificated and uncertificated securities (including the shares of stock of subsidiaries of Borrower), documents, personal property leases (wherein Borrower is the lessor), chattel paper, and Borrower's Books relating to any of the foregoing.


Initials

10 of 37

1.2.59. "Net Collateral" – A sum equal to (a) the amount of all Accounts, less and excluding (b) the amount of all Ineligible Accounts, less and excluding (c) the amount of such other sums and obligations as Lender may from time to time designate.

1.2.60. "Obligated Party" - any entity obligated with respect to any Monetary Collateral.

1.2.61. "Obligations" - all present and future obligations owing by Borrower to Lender, whether or not for the payment of money, whether or not evidenced by any note or other instrument, whether direct or indirect, absolute or contingent, due or to become due, joint or several, primary or secondary, liquidated or unliquidated, secured or unsecured, original or renewed or extended, whether arising before, during or after the commencement of any bankruptcy case or similar insolvency proceeding in which Borrower is a debtor, including but not limited to any obligations arising under this Agreement, under any of the other Loan Documents, or any other agreement between Borrower and Lender, pursuant to letters of credit or acceptance transactions or any other financial accommodations; and all principal, interest, fees, charges, expenses, attorneys' fees and accountants' fees chargeable to Borrower or incurred by Lender in connection with this Agreement and/or the transaction(s) related thereto. While Lender may treat the loans and Advances under Section 2, Inventory Advances, and/or Purchase Order advances as separate loans and advances for administrative purposes and may even assign separate loan numbers to facilitate Lender's administration of such credit facilities, all such loan and advances shall constitute Obligations under this Agreement.

1.2.62. "Obligors" - Borrower and all Guarantors.

1.2.63. "Over Advance" – Any instance when, at any time and for any reason, the outstanding amount of loans and Advances for revolving loans under Section 2 of this Agreement exceeds the Allowable Amount.

1.2.64. "Over Formula" - Any instance when, at any time and for any reason, and Over Advance and/or an Over Line exists.

1.2.65. "Over Line" – Any instance when, at any time and for any reason, the outstanding amount of loans and Advances for revolving loans under Section 2 of this Agreement exceeds the Maximum Amount.

1.2.66. "Permitted Liens" – any of the following:

- (a) liens and security interests held by Lender or agreed to in the Loan Documents;
- (b) liens for unpaid taxes of Borrower which are not yet due and payable;
- (c) any other liens to which Lender consents in writing.

1.2.67. "Purchase Order Collateral Monitoring Fee" – In addition, Borrower shall pay Lender a fee equal to the Purchase Order Collateral Monitoring Fee on each Eligible PO Advance, which Purchase Order Collateral Monitoring Fee Lender is authorized (without obligation to do so) to debit Borrower's checking account, to pay itself from the proceeds of Borrower's Monetary Collateral collected by Lender, to make Advances and pay itself under Borrower's revolving credit facility under this Agreement, or to pay itself from the Eligible PO Advance. For purposes hereof, the "Purchase Order Account Monitoring Fee" shall be in the amount of three percent (3.0%) each purchase order advance. Such fee may also be referred to as a "Purchase Order Account Monitoring Fee."

1.2.68. "Reserves" - as of any date of determination, such amounts, advance limitations, and credit limits and other restrictions on one or more Accounts and/or Account debtors as Lender may from time to time establish and revise in good faith reducing the amount of Advances which would otherwise be available to Borrower hereunder to reflect events, conditions, contingencies or risks which, as determined by Lender in good faith, do or may affect any or all of the following: (i) the Collateral or any other property which is security for the Obligations or its value, (ii) the assets, business or prospects of Borrower or any Obligor, (iii) the security interest and other rights of Lender in the Collateral (including the enforceability, perfection and priority thereof), (iv) the completeness, accuracy, or veracity of any collateral report or financial information furnished by or on behalf of Borrower or any Obligor to Lender is or may have been incomplete, inaccurate or misleading in any material respect, or (v) the occurrence and/or continuation of any state of


Initials

facts, events or conditions that Lender determines in good faith constitutes an Event of Default or may, with notice or passage of time or both, constitute an Event of Default.

1.2.69. "Special Credit Accommodation" - see Section 2.2 hereof.

1.2.70. "Special Credit Accommodation Fee" - with respect to any Special Credit Accommodation and as consideration for the making of the Special Accommodation, an initiation fee in the amount of the greater of (a) five percent (5%) of the principal amount of any Special Credit Accommodation or (b) \$500 and the amount of such Special Accommodation shall thereafter accrue interest at the rate of Eighteen percent (18%) per annum in excess of the Interest Rate on the amount of any Special Credit Accommodation.

1.2.71. "Sub Line Over Advance" - Any instance when, at any time and for any reason, the outstanding amount of loans and Advances for revolving loans under Section 2 of this Agreement with respect to limits established for any type or class of Collateral (including, without limitation, Inventory, Equipment, or other class or type of Collateral) exceeds any limit on the amount of loans or advances permitted with respect to such type or class of Collateral.

1.2.72. "Subordinating Creditor" - Robert Lenney and any other person or entity holding a lien or encumbrance on the Collateral.

1.2.73. "Subordination Agreement" - a subordination agreement in form and substance acceptable to Lender whereby Subordinating Creditor (if any) subordinates in favor of Lender obligations owed to it by Borrower.

1.2.74. "Termination Date" - Subject to the provisions of this Section, the earlier of (i) the date of demand by Lender or (ii) one year(s) from the date hereof (the date that is one year(s) from the date hereof, as from time to time extended and renewed, being referred to as the Scheduled Termination Date). Unless Borrower gives Lender written notice not less than sixty (60) days prior to the then-current Scheduled Termination Date, and subject to the other limitations and provisions of this Agreement, the Scheduled Termination Date shall be automatically extended and renewed for consecutive one year(s) periods following such then-current Scheduled Termination Date. Upon the Scheduled Termination Date, and unless Lender has made earlier demand under this Agreement, the unpaid balance of the Obligations shall be due and payable without demand or notice.

1.2.75. "UCC" - the Uniform Commercial Code as in effect on the date hereof in the State of California, as amended from time to time, and any successor statute; provided that if by reason of mandatory provisions of law, the perfection or the effect of perfection or non-perfection of the security interest in any Collateral or the availability of any remedy hereunder is governed by the Uniform Commercial Code as in effect on or after the date hereof in any other jurisdiction within the United States, "UCC" means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or availability of such remedy.

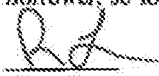
1.2.76. "Unused Line Fee" - N/A.

1.2.77. "Value of Eligible Inventory" - shall be the lower of (a) the cost of the Eligible Inventory, computed (at Lender's election) on a first-in-first-out basis or a last-in/first-out basis, either of which shall be determined in accordance with GAAP, or (b) the market value of the Eligible Inventory.

2. Credit Facilities.

2.1. Advances. Subject to the terms and conditions of this Agreement, so long as no Event of Default has occurred, and from and after the Closing Date until the Termination Date:

2.1.1. Lender, shall, from time to time, at the request of Borrower, make advances ("Advances") to Borrower, so long as, before and after such Advance, the Obligations under this Section 2 do not exceed the Allowable Amount. Lender, shall, from time to time, at the request of Borrower, make advances ("PO Advances") to Borrower, so long as, before and after such PO Advance, the total outstanding Obligations with respect to PO Advances


Initials

do not exceed the Allowable PO Sublimit. Lender, shall, from time to time, at the request of Borrower, make advances ("Inventory Advances") to Borrower, so long as, before and after such Inventory Advance, the total outstanding Obligations with respect to Inventory Advances do not exceed the maximum Eligible Inventory Permitted Advances permitted under this Agreement.

2.1.2. Subject to the other limitations and restrictions in this Agreement, Borrower shall not be entitled to any PO Advances if (at the time of such PO Advance or at any time thereafter while any PO Advances are outstanding) there is any outstanding loan balance existing under the Inventory Sub-Facility. Subject to the other limitations and restrictions in this Agreement, Borrower shall not be entitled to any Inventory Advances if (at the time of such Inventory Advance or at any time thereafter while any Inventory Advances are outstanding) there is any outstanding loan balance existing under the Purchase Order sub facility.

2.1.3. Without limiting Lender's rights to impose Reserves, Lender may, in its discretion, and from time to time, reduce the Borrowing Base to the extent that Lender determines in good faith that:

2.1.3.1. The dilution with respect to the Accounts for any period (based on the ratio of (a) the aggregate amount of reductions in Accounts other than as a result of payments in cash to (b) the aggregate amount of total sales) has increased in any material respect or may be reasonably anticipated to increase in any material respect above historical levels;

2.1.3.2. The general creditworthiness of Obligated Parties has declined; or

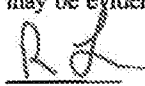
2.1.3.3. The number of days of the turnover of the Inventory for any period has changed in any material respect, and/or the liquidation value of the Inventory, or any category thereof, has decreased, and/or the nature and quality of the Inventory has deteriorated.

In determining whether to reduce the Borrowing Base, Lender may consider events, conditions, contingencies or risks which are also considered in determining Net Collateral, Inventory or in establishing Reserves.

2.2. Restrictions on Use of PO Advances. Each request for a PO Advance shall be in a written or electronic form and content acceptable to Lender, shall relate and be restricted to only to Eligible Purchase Orders, shall include a full, true and correct photocopy of the purchase order, any related contracts or agreements, and/or any other commitment to purchase against which a PO Advance is requested (unless previously provided, in which case the written request shall incorporate a reference to such previously provided purchase order) with the Customer and shall be accompanied by such information as Lender may request.

At Lender's option, and if any PO Advance is approved by Lender, Lender shall have the right (but not the obligation) to make a PO Advance either to Borrower, jointly to Borrower and the supplier to be paid by such PO Advance (the "Supplier"), or directly to the Supplier to be paid by such PO Advance. In the event that Lender opts to disburse the proceeds of any such PO Advance directly to the Supplier to be paid by such PO Advance, and if the amount of the Advance to be made by Lender does not equal the amount of the invoice of such Supplier to be paid by such PO Advance, Borrower shall deliver to Lender (or Lender shall be authorized to make Advances based upon the value of Eligible Accounts or to withdraw from Borrower's checking and other accounts maintained by Borrower with Lender) an amount equal to the difference between the amount of such Supplier's invoice and the amount of such PO Advance, which difference shall be remitted to said Supplier with Lender's PO Advance.

2.3. Special Credit Accommodations. Any Over Advance, any Sub-Line Over Advance, any Over Formula, any Over Line, and/or any other instance when Lender elects, in its sole and absolute discretion, from time to time, to extend Credit Accommodations to Borrower that involve Advances in excess of the Allowable Amount, that involve situations where the amount of the outstanding Advances exceeds (at any time and for any reason) the Allowable Amount (whether consented to by Lender or not), that involve acts or procedures by Lender that are different in form, content or scope than Lender's standard acts and procedures, that involve making loans and Advances to Borrower after the then effective Termination Date, or that involve some other variance in the parties' custom and practice, each such instance shall constitute a "Special Credit Accommodation". At Lender's option, each Special Credit Accommodation may be evidenced by a writing, in form and substance satisfactory to Lender in its sole discretion (any such writing, an



Initials

"Evidence of Special Credit Accommodation"), but the failure to prepare such a written Evidence of Special Credit Accommodation shall not affect the existence of such a Special Credit Accommodation. Each Special Credit Accommodation along with the Special Credit Accommodation Fee shall be payable on demand.

2.4. General Provisions.

2.4.1. Borrowing Base Information/Posting. Each request from Borrower for a Credit Accommodation shall be accompanied by a Borrowing Base Certificate (whether on paper or electronically), completed, and either signed by Borrower or electronically submitted to Lender over the internet. Lender may, make loans, advances and other credit accommodations to Borrower based upon telephonic, electronic, internet or other instructions received from anyone purporting to be an authorized representative of Borrower, at the discretion of Lender, and Lender shall not have any duty or obligation to make inquiry or verify (a) the authority of any such party or (b) the intended or actual use of such loans, advances and other credit accommodations. Borrower will not permit, the total Advances at any time outstanding to exceed the Allowable Amount. Each request for a Credit Accommodation, each submission respecting the Accounts (whether based upon individual Accounts or an Account aging), and each submission of financial or other information respecting Borrower, its operations, or the Collateral (whether on paper or electronically) shall automatically constitute (i) an acknowledgement that (1) each such Account reflected in such information is genuine, bona fide and collectible and arises from transactions wherein all property giving rise to such Accounts and/or all services giving rise to such Account have been delivered and/or rendered to, and unconditionally accepted by, each Obligated Party and (2) Borrower understands each of the ineligible categories recited in any Borrowing Base Certificate, their definitions, and how they are computed, (ii) a reaffirmation of each covenant, warranty and representation contained in this Agreement as of the date of such Credit Accommodation and/or submission of such information, and (iii) a warranty and representation that: (I) there has not been any adverse change in Borrower's financial condition, (II) there is no litigation or proceeding which may cause and adverse change in the financial condition or operations of the undersigned since the date of the last financial statement or certification furnished to Lender, and (III) that there is not any default or event of default under this Agreement or under any agreement between Borrower and Lender (nor have any events or conditions occurred and be continuing that, with the passage of time, the giving of notice, or both, would constitute such defaults or event of default). Lender shall be deemed to have reasonably relied and actually relied on the automatic remaking and reaffirmation of each of the foregoing covenants, representations and warranties upon each request by Borrower for a Credit Accommodation and each submission of such information.

2.4.2. Crediting Borrower's Account. All Credit Accommodations by Lender may be made by deposits or transfers to any demand deposit account of Borrower that is approved by Lender.

2.4.3. Authorization for Credit Accommodations. Subject to the terms and conditions of this Agreement, Lender is authorized to make Credit Accommodations:

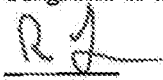
2.4.3.1. Upon telephonic, facsimile or other instructions received from anyone purporting to be an officer, employee or representative of Borrower; or

2.4.3.2. At the sole discretion of Lender, and notwithstanding any other provision in this Agreement, if necessary to meet any Obligations, including but not limited to any interest not paid when due.

2.5. Conditions of Lender's Obligations. All conditions of Lender's obligation to make Advances are imposed solely and exclusively for the benefit of Lender and may be freely waived or modified in whole or in part by Lender at any time.

2.6. Limitations on Credit Accommodations. Notwithstanding anything to the contrary contained herein, Lender shall not be obligated to make a Credit Accommodation if, before or as a result thereof, the Obligations shall exceed either the Borrowing Base or the Maximum Amount or Borrower shall be in default under this Agreement.

2.7. Additional Right to Make Advances and Payments. Lender is authorized (without obligation to do so) to debit Borrower's checking account, to pay itself from the proceeds of Borrower's Monetary Collateral collected by Lender, to make Advances and pay itself under Borrower's revolving credit facility under this Agreement, for any Obligations or other sums from time to time due from Borrower to Lender (whether accrued under this Agreement, under


Initials

any other agreement now or hereafter owing by Borrower to Lender) and/or to preserve, protect, ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral, and/or for any other purpose authorized or permitted by this Agreement or applicable law.

2.8. Repayment of PO Advances. Without limiting or prejudicing Lender's other rights under this Agreement, Lender shall have the right (but not the obligation) to advance and pay itself directly from any A/R Advances under Section 2 of this Agreement (each, an "A/R Advance") with respect to any Eligible Accounts created as a result of any PO Advances (each, an "A/R Advance") for the total amount of any such PO Advance and to apply such A/R Advance to the amount of aggregate PO Advances then-outstanding and to any fees, interest, costs and other charges associated with same.

3. Payments by Borrower.

3.1. In General.

3.1.1. Place of Payments. All payments hereunder shall be made by Borrower to Lender at the Lending Office, or at such other place as Lender may designate in writing.

3.1.2. Crediting of Payments.

3.1.2.1. Generally. No payments received by Lender purportedly in satisfaction of any of the Obligations shall constitute payment thereof unless and until final payment thereof. If any check or other evidence of payment is dishonored after it is received or otherwise required to be returned to the Obligated Party under any applicable law, such payment shall be treated as though it were never received and interest shall continue to accrue on the Obligations from the date such payment was initially applied.

3.1.2.2. Prepayments; Application of Payments. Borrower shall have the right to make payments at any time in reduction of the Obligations, in whole or in part; provided, however, that Lender may apply any payments received to the Obligations, or portion thereof, in any manner and in any order as Lender may determine in its sole discretion, notwithstanding contrary instructions received.


3.1.2.3. ACH Debits. In order to satisfy any of the Obligations, Lender is hereby irrevocably authorized by Borrower to initiate electronic debit or credit entries through the ACH (or other electronic payment) system to any deposit account maintained by Borrower. At the Lender's request, Borrower shall execute and deliver to Lender an authorization agreement for ACH debits and credits.

3.2. Interest and Fees.

3.2.1. Interest.

3.2.1.1. Basic Interest. Subject to the provisions of this Agreement related to the imposition of the Alternative Interest Rate, Special Credit Accommodation Fees, the Default Interest Rate, and/or other fees and charges imposed under this Agreement, interest on the Balance Subject to Interest of Advances under Section 2 shall be payable monthly, in arrears, shall be computed at the Interest Rate, and shall be due on the first (1st) day of each month following the accrual thereof; provided, however, that in no event shall the interest on the Balance Subject to Interest of Advances under Section 2 be less than the Minimum Monthly Fee. Lender is authorized (without obligation to do so) to debit Borrower's loan account on the first business day of each month for interest accrued hereunder on the Balance Subject to Interest during the preceding month at the Interest Rate;

3.2.1.2. Alternative Interest Rate. Without prejudicing or waiving Lender's right to assess and impose Special Credit Accommodation Fees, interest at the Default Rate, and/or other fees and charges imposed under this Agreement, and without waiving Lender's ability to declare a default or Event of Default, if Borrower fails to timely perform any covenant, term or provision of this Agreement (including, without limitation, the timely delivery of any financial statements, reports, documents, or certificates required by this Agreement), then (at Lender's discretion and with respect to any such event) interest on the Balance Subject to Interest shall accrue and be payable at the Alternative Interest



Initials

Rate, unless waived in writing by Lender.

Interest on the Balance Subject to Interest shall commence to accrue and be payable at the Alternative Interest Rate upon the date Borrower's failure to comply with any covenant, term or provision of this Agreement (including, without limitation, the timely delivery of any financial statements, reports, documents, or certificates required by this Agreement), without prior notice or demand and shall continue to accrue at the Alternative Interest Rate until all covenants, terms or provisions of this Agreement (including, without limitation, the timely delivery of any financial statements, reports, documents, or certificates required by this Agreement) have been performed, cured and provided.

3.2.1.3. Default Interest. Immediately upon the occurrence of an Event of Default, unless waived in writing by Lender, at Lender's discretion, and continuing until all Obligations are satisfied, interest on the Balance Subject to Interest shall accrue and be payable at the Default Rate.

3.2.1.4. Lender's failure to assess interest at the appropriate rate authorized under this Agreement shall not be deemed a waiver by Lender to charge same. Lender reserves the right and Borrower hereby acknowledges that Lender may recalculate interest at the rate authorized by this Agreement and may charge and assess same (with respect to any past due interest at the Alternative Interest Rate and/or the Default Rate) on a date after Lender discovers that same has not been charged, even if the event, act or omission resulting in such Alternative Interest Rate and/or the Default Rate was cured prior to Lender's discovery of such event, act or omission and, if same has not been cured by the time Lender discovers such event, act or omission, then interest at the Alternative Interest Rate or the Default Rate shall continue to apply thereafter.

3.2.1.5. Calculation of Interest. All interest charged hereunder shall be computed on the basis of a three hundred sixty (360) day year for the actual number of days elapsed. Notwithstanding anything to the contrary contained herein, any interest rate calculated hereunder shall be rounded up to the closest one-quarter of one percent (1/4 of 1%), with no adjustments made for rate changes of less than one-quarter of one percent (1/4 of 1%).

3.2.1.6. Application of Collections/Clearance Day Payments. With respect to all Clearance Day Payments, Lender shall assess and collect interest at the Interest Rate for the amount of Clearance Days on the amount of any Clearance Day Payments. Borrower acknowledges that the inclusion and imposition of interest for the amount of Clearance Days on any Clearance Day Payments constitutes an integral aspect of the pricing of Lender's facility to Borrower. Should any check or item of payment not be honored when presented for payment, then Borrower shall be deemed not to have made such payment, and interest shall be recalculated accordingly. Notwithstanding the foregoing, however, at Lender's option, and for purposes of determining the amount of Borrower's Borrowing Base only, Lender may credit the outstanding amount of such Clearance Day Payments to Borrower's obligations on the business day that such payments were actually received.

3.2.2. Fees. Subject to Lender's right to pay itself the following fees and to charge the amounts thereof directly to Borrower's account, Borrower shall also pay the additional fees to Lender:

3.2.2.1. Loan Fee. Borrower shall pay the Loan Fee to Lender immediately upon the execution of this Agreement, on each annual anniversary of the date of this Agreement, and upon each renewal or extension of this Agreement by Lender whether such renewal or extension is for one (1) year or for less than one year; provided, however, that in no event shall the Loan Fee be less than the product of the percentage specified for the Loan Fee in the definitions section of this Agreement and the original Maximum Amount specified in the definitions section of this Agreement. The Loan Fee shall be fully earned on the date of this Agreement and constitutes (in part) Lender's consideration for entry into this Agreement. If the Maximum Amount is increased at any time during the term of this Agreement, then concurrently with the increase in the Maximum Amount and without the need for any further documentation Borrower shall also pay to Lender a sum equal to the percentage specified for the Loan Fee in the definitions section of this Agreement on the amount of such increase in the Maximum Amount. Any portion not paid when due shall accrue interest at the applicable Interest Rate set forth herein.

At Lender's election, the Loan Fee shall be amortized on a monthly basis over the term to be covered by such Loan Fee and Lender shall be authorized (without obligation to do so) to pay itself from collections of Monetary Collateral, to debit Borrower's checking account, to make Advances and pay itself under Borrower's revolving


Initials

credit facility under the Loan Agreement (as amended hereby), and/or to invoice Borrower for the monthly amortized portion off such Loan Fee. Borrower and Lender agree that the entire remaining unamortized portion of any Loan Fee or other amortized Obligations owing by Borrower to Lender under this Agreement shall be immediately due and payable, if the Loan Agreement is terminated for any reason prior to full payment of any amortized loan fees or other sums due and payable to Lender (including, without limitation, any termination as a result of a default or Event of Default by Borrower and/or any termination as a result of an election by Lender not to renew and extend the Termination Date).

3.2.2.2. Collateral Monitoring Fee. Borrower shall pay the Collateral Monitoring Fee to Lender monthly, in arrears, on the first (1st) day of each month following the accrual thereof.

3.2.2.3. Unused Line Fee. Borrower shall pay the Unused Line Fee to Lender monthly, in arrears, on the first (1st) day of each month following the accrual thereof.

3.2.2.4. Special Credit Accommodation Fee. Borrower shall pay a Special Credit Accommodation Fee to Lender simultaneously with the making by Lender of a Special Credit Accommodation.

3.2.2.5. Misdirected Payment Fee. Borrower shall pay the Misdirected Payment Fee to Lender immediately upon its accrual.

3.2.2.6. Early Termination Fee. Borrower shall pay the Early Termination Fee to Lender if Borrower terminates this Agreement, becomes subject to a Bankruptcy proceeding, or prepays the Obligations (whether by acceleration or otherwise), prior to the then-current Scheduled Termination Date set forth herein.

3.2.2.7. Audit Fee. Borrower shall pay an Audit Fee to Lender in connection with each audit Lender performs or causes to be performed hereunder.

3.2.2.8. Minimum Monthly Fee. Borrower shall pay the Minimum Monthly Fee to Lender monthly, in arrears, on the first (1st) day of each month following the accrual thereof. If Borrower terminates this Agreement, becomes subject to a Bankruptcy proceeding, or prepays the Obligations (whether by acceleration or otherwise), prior to the then-current Scheduled Termination Date set forth herein, then Lender shall be entitled to assess and collect the Minimum Monthly Fee for each month (or portion thereof) until then-current Scheduled Termination Date.

3.2.2.9. Lender Expenses and Additional Fees. Borrower shall pay to Lender all Lender Expenses on demand and shall also pay Lender fees for such services as Lender customarily charges.

4. Grant of Security Interest. To secure the payment and performance in full of all of the Obligations, Borrower (and, if Borrower is a general, limited or other partnership, then each general partner of Borrower) hereby grants to Lender a continuing security interest in the Collateral. Lender's security interests in the Collateral shall attach to all Collateral, without further act on the part of the Lender or Borrower. Anything contained in this Agreement or any of the other Loan Documents to contrary notwithstanding, except for the sale of Inventory to buyers in the ordinary course of business, Borrower has no authority, express or implied, to dispose of any item or portion of the Collateral. At any time upon the request of Lender, Borrower (and, if Borrower is a general, limited or other partnership, then each general partner of Borrower) shall execute and deliver to Lender all financing statements, continuation financing statements, fixture filings, security agreements, chattel mortgages, pledges, assignments, endorsements of certifications of title, applications for title, affidavits, report, notices, schedules of Accounts, letters of authority, tax information request forms, and all other documents that Lender may reasonably request, in form satisfactory to Lender, to perfect and continue perfected Lender's security interests in the Collateral, and in order to fully consummate all of the transactions contemplated hereby and under the other Loan Documents.

In addition, Borrower (and, if Borrower is a general, limited or other partnership, then each general partner of Borrower) hereby authorizes and empowers Lender to file, record and (if required) execute as Borrower's lawful attorney in fact (which power is coupled with an interest and cannot be revoked or rescinded) any and all financing statements, continuation financing statements, fixture filings, security agreements, chattel mortgages, pledges, assignments, endorsements of certifications of title, applications for title, affidavits, report, notices, schedules of Accounts, letters of authority, and all other documents that Lender may reasonably request, in form satisfactory to Lender, to perfect and


Initials

continue Lender's security interest in the Collateral, and in order to fully consummate all of the transactions contemplated hereby and under the other Loan Documents. To the extent any of the foregoing have been filed, recorded and/or executed by Lender prior to the date of Borrower's execution of this Agreement, Borrower (and, if Borrower is a general, limited or other partnership, then each general partner of Borrower) hereby ratifies and approves such filing, recordation and/or execution and agrees that such filing, recordation and/or execution is and shall be effective from the date of such filing, recordation, and/or execution.

5. Collection and Administration of Accounts.

5.1. Collection of Monetary Collateral. Unless Lender specifically consents in writing that Borrower may collect Monetary Collateral, Borrower hereby irrevocably authorizes and empowers Lender (at Lender's option) to collect the Monetary Collateral and apply the Monetary Collateral actually collected by Lender to the payment and reduction of the Obligations, which authority is coupled with an interest and is irrevocable.

To the extent Borrower comes into possession of any Misdirected Payments or other Monetary Collateral through no fault or interference by Borrower, Borrower shall, at Borrower's expense and in the manner requested by Lender from time to time, direct that Monetary Collateral be (or, if received by Borrower, shall cause same to be):

5.1.1. Within one (1) business day after receipt by or for the benefit of Borrower, send same to Lender (in the same form as received by Borrower) to Lender or a post office box designated by or in the name of Lender, or in the name of Borrower, but as to which access is limited solely to Lender, at such address as Lender may from time to time designate; or

5.1.2. Within one (1) business day after receipt by or for the benefit of Borrower, deposited into a bank account maintained in the name of Lender or a blocked bank account under arrangements with the depository bank under which all funds deposited to such blocked bank account are required to be transferred to Lender.

Borrower comes into possession of any Misdirected Payments or other Monetary Collateral (a) through interference or hindrance Borrower, or (b) through any collection or receipt by Borrower as a result of Borrower's intentional interference and efforts (including, without limitation, payment delivered or personally collected by Borrower [or its agent] from the Obligated Party, payments resulting from Borrower's false assertion that Lender no longer has any security or other interest in Borrower's assets, or payments received or collected by Borrower as a result of any alleged authority, right, power or agreement with Lender), then such collection and/or receipt of Misdirected Payments or other Monetary Collateral shall (at Lender's option) constitute a default or event of default under this Agreement, regardless of whether such Misdirected Payment or other Monetary Collateral is ever turned over to Lender or not.

Notwithstanding the foregoing, Borrower shall (at Lender's election and instruction) take all such steps as Lender deems necessary and appropriate to cause all Monetary Collateral to be paid directly to Lender at such locations, in such manner, and in accordance with such instructions as Lender may from time to time designate. Lender's collection and liquidation of the Monetary Collateral may include (without limitation) directing Obligated Parties to pay the proceeds of Accounts in the name of Lender, in the name of Lender f/b/o Borrower, or in the name of Borrower; may require that such Obligated Parties deliver and tender their payments directly to Lender, to a post office box or lock box designated by or in the name of Lender or in the name of Borrower (but as to which access is limited solely to Lender), and/or to a bank account maintained in the name of and controlled solely by Lender or a blocked bank account under arrangements with the depository bank under which all funds deposited to such blocked bank account are required to be transferred to Lender. In connection therewith, Borrower shall execute such post office box and/or blocked bank account agreements as Lender shall specify. Borrower acknowledges and agrees that all such bank accounts, lock boxes, post office boxes, and other means of securing and assisting in the collection of Monetary Collateral (the "Collection Control Facilities") are owned solely by Lender and are for the sole purpose of collecting and liquidating the Monetary Collateral. Borrower acknowledges that the assets and proceeds from time to time contained in such Collection Control Facilities are not Borrower's assets and are not assets of any bankruptcy estate of Borrower, regardless of the payee name on such payments. Borrower disclaims any right, title or interest in such the assets and proceeds from time to time in such Collection Control Facilities. Without limiting the generality of the foregoing, and so long as any of the Obligations remain outstanding, Borrower hereby pledges, transfers and assigns to Lender, and grants to Lender as additional security for the Obligations a continuing perfected security interest and first priority lien in and to the Collection Control Facilities


Initials

and all of Borrower's right, title and interest in and to all cash, property or rights transferred to or deposited in the Collection Control Facilities from time to time and any and all proceeds of the foregoing. The foregoing authority is subject to the provisions of this Agreement relating to the imposition of Clearance Days to any Clearance Day Payments and is subject further to the provisions of this Agreement concerning the dishonor of any check or other evidence of payment and/or the return of any Monetary Collateral to an Obligated Party under any applicable law and the treatment under this Agreement of such dishonored or returned payment as though it were never received.

5.2. Electronic Proceeds of Collateral. In the event Borrower receives proceeds of Collateral in the form of wire transfer or other intangible funds transfer mechanism, Borrower shall pay such proceeds to Lender within one (1) business day after receipt by or for the benefit of Borrower.

5.3. Notifications to Obligated Parties. Lender may, at any time, irrespective of whether an Event of Default has occurred, without notice to or the assent of Borrower notify any Obligated Party that the underlying Monetary Collateral has been assigned and pledged to Lender by Borrower and that payment thereof is to be made to the order of and directly and solely to Lender.

5.4. Lender's Powers. Borrower hereby authorizes Lender and any designee of Lender, at Borrower's sole expense, to exercise at any time in Lender's or such designee's discretion all or any of the following powers, which powers are irrevocable until all of the Obligations have been paid in full:

5.4.1. Receive, take, endorse, assign, deliver, accept and deposit, in the name of Lender or Borrower, any and all cash, checks, commercial paper, drafts, remittances and other instruments and documents relating to the Collateral or the proceeds thereof;

5.4.2. To initiate electronic debit or credit entries through the ACH system to Borrower's Account or any other deposit account maintained by Borrower wherever located;

5.4.3. make such inspections, investigations and inquiries concerning the Collateral and/or the Monetary Collateral (including, without limitation, the authority to contact any Obligated Party to confirm the validity, accuracy and status of any obligations evidenced by Monetary Collateral and the status of payment of same) and/or do such other actions as Lender may deem necessary or appropriate with respect to the Collateral;

5.4.4. Take or bring, in the name of Lender or Borrower, all steps, actions, suits or proceedings deemed by Lender necessary or desirable to effect collection of or other realization upon any Collateral;


5.4.5. Change the address for delivery of mail to Borrower and to receive and open mail addressed to Borrower;

5.4.6. Upon any terms and conditions acceptable to Lender, to issue invoices, credit memoranda, and other documents required to evidence or modify any Accounts; to collect, settle, compromise or otherwise realize upon any Monetary Collateral and or to sell, convey and/or transfer any of the Collateral, each without affecting any of the Obligations;

5.4.7. Upon any terms and conditions acceptable to Lender, extend the time of payment of, compromise, or settle for cash, credit, return of merchandise, any and all Monetary Collateral and discharge or release any Obligated Party, each without affecting any of the Obligations;

5.4.8. Execute in the name of Borrower and file against Borrower in favor of Lender financing statements or amendments with respect to any or all of the Collateral;

5.4.9. Execute in the name of Borrower and file on behalf of Borrower with such governmental authorities as are appropriate such documents (including, without limitation, applications, certificates, and tax returns) as may be required for purposes of having Borrower qualified to transact business in a particular state or geographic location;


Initials

5.4.10. Execute, file and serve, in its own name or in the name of Borrower, mechanic's liens or similar notices, or claims under any payment or performance bond for the benefit of Borrower; and

5.4.11. Pay any sums necessary to discharge any lien or encumbrance, which is or (with the passage of time, the giving of notice, or both) would become senior to Lender's security interest in the Collateral, which sums shall be included as Obligations hereunder, and which sums shall accrue interest at the Default Rate until paid in full.

5.5. **Release.** Borrower hereby releases, exculpates, and forever discharges Lender, its officers, employees, agents, affiliates, subsidiaries, holding companies, designees, attorneys, and accountants (the "Lender Parties") of and from any and all claims, demands, damages, debts, liabilities, accounts, actions and causes of action, of every kind and nature whatsoever (each a "Claim") (including, without limitation, any arising from any acts under this Agreement, in furtherance hereof, and/or based upon the administration of the credit facilities), whether of omission or commission, whether based upon any error of judgment or mistake of law or fact, whether now known or unknown, suspected or unsuspected, which Borrower ever had or now has directly or indirectly against any of the Lender Parties on any contract (express or implied in fact or implied in law), tort, or on any supposed liability, thing or act, undertaken, done or omitted to be done, at any time prior to the date hereof. In no event shall Lender have any liability to Borrower for any punitive damages or any lost profits or other special or consequential damages.

Borrower acknowledges that it has been informed and is aware of the provisions of Section 1542 of the Civil Code of the State of California, and does expressly waive and relinquish all rights and benefits which it has or may have had under said section, which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Borrower acknowledges that it is aware that it may hereafter discover facts different from or in addition to those they now know or believe to be true with respect to the matters herein released and they agree that this release shall be and remain in effect in all respects as a complete and general release as to the matters released, notwithstanding any such different or additional facts.

5.6. **No Amendments.** After written notice by Lender to Borrower, and automatically, without notice, after an Event of Default, Borrower shall not, without the prior written consent of Lender in each instance:

5.6.1. Grant any extension of time for payment of any Accounts;

5.6.2. Compromise or settle any Accounts for less than the full amount thereof;

5.6.3. Release in whole or in part any Obligated Party; or

5.6.4. Grant any credits, discounts, allowances, deductions, return authorizations or the like with respect to any Accounts.

5.7. **Delivery of Information and Instruments Regarding Collateral.** At such times as Lender may request and in the manner specified by Lender, Borrower shall deliver to Lender or Lender's representative original invoices, agreements, proof of rendition of services and delivery of goods and other documents evidencing or relating to the transactions which gave rise to any of the Collateral, together with customer statements, schedules describing the Accounts or statements of account and confirmatory assignments to Lender of the Accounts in form and substance satisfactory to Lender and duly executed by Borrower. If requested by Lender, Borrower will provide any of the foregoing information in an electronic format approved by Lender. Without limiting the provisions of any other section of this Agreement, Borrower will promptly notify Lender, in writing, of Borrower's granting of credits, discounts, allowances, deductions, return authorizations or the like with respect to any Accounts. In no event shall any such schedule or confirmatory assignment (or the absence thereof or omission of any Accounts therefrom) limit or in any way be construed as a waiver, limitation, or modification of the Liens or rights of Lender or the warranties, representations, and covenants of Borrower under this Agreement. In addition, in the event that any Collateral, including proceeds, is evidenced by or


Initials

consists of Negotiable Collateral, Borrower shall, immediately upon written request therefor from Lender, endorse and assign such Negotiable Collateral over to Lender and deliver actual physical possession of the Negotiable Collateral to Lender.

5.8. Conditions to First Advance by Lender. On or before the Closing Date, Borrower shall obtain and deliver to Lender and Lender's obligation to make any Credit Accommodations available to Borrower shall be subject to the satisfaction or written waiver by Lender of the following additional conditions precedent:

5.8.1. Execution of Agreement and Related Loan Documents. The execution and delivery of this Agreement, the filing of any UCC-1 Financing Statement or similar instruments required to create and perfect Lender's security interest in the Collateral, and the execution and delivery of any other Loan Documents to which Borrower is a party and of all Guaranties, Subordination Agreements and other agreements, certificates and/or instruments from any parties that Lender may require hereunder.

5.8.2. Borrowing Resolution/Action by Unanimous Consent. Lender shall have received a certificate from the Secretary of Borrower (if any), by the partners of any partnership that is the Borrower (or any equity holders of Borrower) or such other form of acknowledgment from those parties designated by Lender attesting to the adoption of a resolution (either by unanimous written consent or at a duly called and conducted meeting) or other form of approval authorizing the execution and delivery of this Agreement and the other Loan Documents to which Borrower is a party, authorizing specific officers of Borrower to execute same, and authorizing and approving of this transaction, which resolution, consent or other form of approval shall be in such form as Lender may prescribe.

5.8.3. By-laws, and Other Organizational Documents. Lender shall have received, reviewed and approved copies of Borrower's By-laws, Certificate or Articles of Incorporation, Articles of Organization, Partnership Agreement, Trust Agreement, or Operating Agreement (as the case may be), all duly certified as appropriate, as amended, modified, or supplemented to the Closing Date.

5.8.4. Certificate from State of Formation. Lender shall have received a certificate of corporate status with respect to Borrower, dated as of a date acceptable to Lender, by the Secretary of State of California and (if different) the secretary of state and other appropriate officer of the state of Borrower's formation, which certificate(s) shall indicate that Borrower is in good standing in such state.


5.8.5. Certificates from States Other Than California. Lender shall have received certificates of corporate status with respect to Borrower, such certificates to be issued by the Secretary of State of the states in which its failure to be duly qualified or licensed would have a material adverse effect on the financial condition or properties and assets of Borrower, which certificates shall indicate that Borrower is in good standing.

5.8.6. Perfection of Lien. Lender's security interest in the Collateral shall be a fully perfected and enforceable first priority lien against Borrower and third parties, with all other junior liens and interests released or subordinated to Lender, as Lender may elect.

5.8.7. Insurance Policies and Endorsements. Lender shall have received the certified copies of the policies of insurance, together with the endorsements thereto, as are required hereby, confirming the existence of the coverages and endorsements required by this Agreement, which certificate(s) shall be in form and substance of which shall be satisfactory to Lender and its counsel.

5.8.8. Certificates of Title. Lender shall have received duly executed certificates of title with respect to that portion of the Collateral that is subject to certificates of title, if any.

5.8.9. Evidence of Payment of Taxes. Lender shall have received satisfactory evidence that all tax returns required to be filed by Borrower have been timely filed and all taxes upon Borrower or its properties, assets, income and franchise (including real property taxes and payroll taxes) have been paid prior to delinquency, except such taxes that are the subject of a duly filed protest (each a "Permitted Protest"); provided, however, that if payment of any such taxes is a condition to the filing and/or prosecution of any such protest or Lender otherwise requests, Borrower shall pay the amount of such tax and shall seek the refund of same in its Permitted Protest.


Initials

5.8.10. Payment of All Fees. All fees required by Borrower to be paid in connection with this Agreement shall have been paid or, at Lender's option, Lender may pay itself any fees owing to Lender from any Advances issued by Lender.

5.8.11. No Injunctions, Etc. No injunction, writ, restraining order, or other order of any nature prohibiting, directly or indirectly, the making of such Advance shall have been issued and remain in force by any governmental authority against Borrower or Lender.

5.8.12. Pre-Funding Audit. Lender shall have performed a pre-funding audit of Borrower's Accounts and Inventory, with results satisfactory to Lender.

5.8.13. Other Documents and Legal Matters. Lender shall have received, approved, filed and/or recorded all other documents and legal matters in connection with the transactions, each of which shall be in form and substance satisfactory to Lender and its counsel.

5.9. Conditions Precedent to All Advances. Subject to the other terms and conditions contained herein, Lender's obligation to make any Credit Accommodation available to Borrower is subject to the satisfaction of, or waiver of, immediately prior to or concurrently with the making of such Credit Accommodation, the following conditions precedent:

5.9.1. Representations and Warranties. The representations and warranties contained in the Loan Documents shall be true and correct in all respects on and as of the date of such Advance.

5.9.2. No Event of Default. No Event of Default or event that, with the giving of notice or passage of time or both would constitute an Event of Default, shall have occurred and be continuing on the date of such Advance.

5.9.3. Payment of All Fees. Borrower shall have paid to Lender all accrued and unpaid fees and other amounts due and payable hereunder and pursuant to the terms hereof or, at Lender's option, Lender may pay itself any fees owing to Lender from any Advances and issued by Lender.

5.9.4. No Injunctions, Etc. No injunction, writ, restraining order, or other order of any nature prohibiting, directly or indirectly, the making of such Advance shall have been issued and remain in force by any governmental authority against Borrower or Lender.

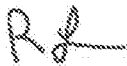
5.9.5. No Material Change in Financial Condition. No material and adverse change has occurred in (a) the financial condition of Borrower and/or any Guarantor, (b) the value, quality or quantity of Borrower's Accounts, (c) in the size and amount of Borrower's accounts payable, (d) in the value, quality or quantity of the Collateral, and/or (e) in the value of any collateral securing the obligations under any Guaranty.

5.9.6. Timely Filing of Tax Returns and Payments. All tax returns required to be filed by Borrower have been timely filed and all taxes upon Borrower or its properties, assets, income and franchise (including real property taxes and payroll taxes) have been paid prior to delinquency, except such taxes that are the subject of a duly filed Permitted Protest.

5.9.7. Continued Perfection. Lender's security interest in the Collateral shall continue in full force and effect and shall be fully perfected and enforceable first priority lien against Borrower and third parties, with all other junior liens and interests released and removed or subordinated to Lender, as Lender may elect.

6. Representations and Warranties. Borrower represents and warrants to Lender as follows, the truth and accuracy of which, and compliance with which, shall be continuing conditions of the making of any Credit Accommodations, shall be deemed to have been actually relied on by Lender in making such Credit Accommodation, and such reliance shall be deemed to have been reasonable at the time of such Credit Accommodation:

6.1. Priority Interest. Borrower has good and indefeasible title to the Collateral, free and clear of liens,



Initials

claims, security interests, or encumbrances, except for Permitted Liens.

6.2. Formation. Borrower is duly formed, qualified to do business in each jurisdiction in which it does business, and is in good standing in its state of formation and in all jurisdictions in which it does business. This Agreement has been duly acknowledged and delivered by Borrower and Borrower is duly authorized and empowered to do and perform each of its duties and Obligations hereunder. Borrower has the full right, power and authority to conduct and operate its business under the trade and other names under which it operates.

6.3. Accounts. All Accounts are and will remain bona fide existing obligations created by the sale and delivery of Inventory or the rendition of services to Obligated Parties in the ordinary course of Borrower's business, unconditionally owed to Borrower without defenses, disputes, offsets, counterclaims, or rights of return or cancellation. At the time of the creation of an Account, Borrower has not received notice of actual or imminent bankruptcy, insolvency, or material impairment of the financial condition of any applicable Obligated Party regarding such Eligible Account.

6.4. Location of Collateral and Identity of Permitted Lienholders. The Inventory and Equipment are not stored with a bailee, warehouseman, or similar party (without Lender's prior written consent), are located only at the locations, and are subject to such Permitted Liens and the security holders/equipment lessors associated as Borrower may identify in a form acceptable to Lender.

6.5. Accurate Records. Borrower now keeps, and hereafter at all times shall keep, correct and accurate records itemizing and describing the kind, type, quality, and quantity of the Inventory, Borrower's Accounts, Borrower's accounts payable, and Borrower's cost of its inventory, and other aspects of Borrower's business, which records shall be kept and maintained in accordance with GAAP.

6.6. Chief Executive Office. The chief executive office of Borrower is located at the address indicated below the parties' signatures to this Agreement.

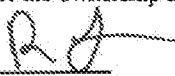
6.7. Borrower's Federal Employer Identification Number. Borrower's Federal Employer Identification Number is as set forth herein.

6.8. No Actions, etc. There are no actions or proceedings pending by or against Borrower before any court or administrative agency and Borrower does not have knowledge or belief of any pending, threatened, or imminent litigation, governmental investigations, or claims, complaints, actions, or prosecutions involving any Obligor or any Obligated Party, except for ongoing collection matters in which Borrower is the plaintiff.

6.9. Financial Statements. All statements, representations, and warranties contained in any application, financial statements, or other statements, documents or instruments relating to any Obligor that have been delivered to Lender are and remain full, true, complete and correct, have been prepared in accordance with GAAP and fairly present such Obligor's financial condition as of the date thereof and its results of operations for the period then ended (with respect to any financial statements), and do not omit any material facts that would make the content of such application, financial statement, or other statement, document or instrument materially false or misleading. There has not been a material adverse change in any statements, representations, and warranties contained in any application and/or in any the financial condition of any such Obligor since the date such application, financial statement, or other statement, document or instrument was submitted to Lender, except as expressly disclosed to Lender in writing on or before the Closing Date.

6.10. Small Business Jobs Act Certification. As required by Section 4107(d)(2) of the Small Business Jobs Act of 2010, Borrower hereby certifies to Lender that the principals* of Borrower and its affiliates have not been convicted of, or pleaded nolo contendere to, a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)).

*The term "principals" is defined as follows: if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds a 20% or more ownership interest in the partnership; and if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of 20% or more of the ownership stock or stock equivalent of the entity.


Initials

7. **Affirmative Covenants.** Until full payment of the Obligations and termination of this Agreement, Borrower shall:

7.1. **Financial Statements, Reports, and Certifications.** Furnish to Lender, in form and substance satisfactory to Lender:

7.1.1. **Annual Financial Statements.** As soon as possible after the end of each fiscal year of Borrower and each Guarantor (if any) (and in any event within One Hundred Twenty (120) days thereafter) shall deliver to Lender a complete copy of the financial statement for Borrower and each Guarantor (if any), including but not limited to (a) the balance sheet as of the close of the fiscal year, and (b) the income statement for such year, together with a statement of cash flows. Borrower's Annual Financial Statement shall be compiled by a firm of independent certified public accountants of recognized standing and acceptable to Lender or (if permitted by Lender) prepared by Borrower. Guarantor's Annual Financial Statement shall be prepared by Guarantor.

7.1.2. **Other Financial Statements.** No later than thirty (30) days after the close of each calendar month (an "Accounting Period") and within ten (10) Business Days after any request by Lender, Borrower's balance sheet as of the close of such Accounting Period, from the date of Borrower's last statement to Lender, or covering such other period as Lender may request and its income statement for that portion of the then current fiscal year through the end of such Accounting Period, from the date of Borrower's last statement to Lender, or covering such other period as Lender may request, which statements shall be complete, correct, and fairly representing its financial condition and results of operations.

7.1.3. **Tax Returns.** Copies of the Federal income tax returns and any amendments thereto, for Borrower and each Guarantor (if any) within thirty (30) days of the filing thereof with the Internal Revenue Service.

7.1.4. **Inventory, Accounts Receivable, Accounts Payable and Other Reports.** At the times set forth below and at such times as Lender may request, (1) a report of the outstanding Accounts receivable by Borrower, aged to show the invoice date for each such Account receivable and the account debtor respecting each such Account (2) a report of the outstanding accounts payable by Borrower, aged to show the invoice date for each such account payable and the vendor respecting each such account payable, (3) a detailed list of Borrower's all account debtors (customer list) with which Borrower has done business over the preceding twelve (12) months, which list shall contain the name, address, telephone and fax numbers, any e-mail contact addresses, and such other information as Lender may request, (4) a detailed report of Inventory in Borrower's possession as of the end of the preceding calendar month, reflecting raw materials, work in process, and finished goods, (5) a list of all items of Equipment in Borrower's possession that is owned by Borrower at the end of the immediately preceding calendar month, and (6) such other reports regarding Borrower's assets and liabilities as Lender may request (including, without limitation, information and reports regarding Borrower's payment and withholding of any employment, withholding or other taxes and the submission of any governmentally mandated reports regarding same), which lists and reports shall be in a form and content approved by Lender. If Borrower does not have any outstanding Obligations owing to Lender, then the reports and summaries described in this Section shall be provided by Borrower to Lender within ten (10) days after the end of each calendar month. If Borrower has any outstanding Obligations owing to Lender, then the reports and summaries described in (4) of this Section shall be provided by Borrower to Lender not later than noon on the first Business Day of each calendar week. Borrower agrees to secure and maintain a perpetual and real time inventory reporting system in a form, content and capability satisfactory to Lender and, if requested by Lender, shall provide Lender with such electronic and internet access codes or capability as will allow Lender to monitor and access such perpetual and real time inventory reporting system.

7.2. Inspections.

7.2.1. Permit Lender or any representatives thereof, during usual business hours, without notice to Borrower, and at Borrower's expense to periodically do the following:

7.2.1.1. have access to all premises where any of the Collateral is located for the purposes of inspecting, examining, appraising and removing, if after the occurrence of an Event of Default, any of the Collateral, including Borrower's books and records; and



Initials

7.2.1.2. permit Lender or its designees to inspect, audit, make copies of, and make extracts from Borrower's Books as Lender may request.

7.2.2. Without expense to Lender, Lender may use any of Borrower's personnel, equipment, including computer equipment, programs, printed output and computer readable media, supplies and premises for the collection of accounts and realization on other Collateral as Lender, in its sole discretion, deems appropriate.

7.2.3. Borrower hereby irrevocably authorizes all of Borrower's Vendors to disclose and deliver to Lender at Borrower's expense all financial information, books and records, work papers, management reports and other information in their possession relating to Borrower, Borrower's business, Borrower's assets, and/or Borrower's Account debtors, their payment histories, their business relationship with Borrower, and the nature, status, and balances associated with Borrower (such information, "Borrower's Business Information"). In addition to the foregoing, Borrower hereby permits Lender at any time to (i) access electronically stored, maintained, and accessible information concerning any accounts maintained by Borrower with any of Borrower's Vendors, so long as such access is in furtherance of, or to monitor compliance with, the terms of this Agreement and/or (ii) disclose all documents and information so received and any of Borrower's Business Information which Lender now and hereafter may receive. From time to time and upon request by Lender, Borrower agrees to provide all access codes and passwords needed to access such electronically stored, maintained, and accessible information. Borrower agrees not to modify, amend, change or terminate such access codes and passwords, without Lender's prior written consent. Borrower hereby irrevocably authorizes all of Borrower's Vendors to discuss, disclose and share with Lender at Borrower's expense all Borrower's Business Information and any and all books and records and other information in their possession relating to Borrower's Business Information. Borrower hereby waives any rights Borrower may have with respect to such matters and any and all claims, demands, damages, debts, liabilities, accounts, actions and causes of action, of every kind and nature whatsoever related to Lender's use of such access codes and passwords, the access of any such electronically stored, maintained, and accessible information, and/or any provision, receipt, use or disclosure of Borrower's Business Information. From time to time on request by Lender, Borrower shall execute and deliver to Lender and Borrower's Vendors a written letter confirming this authorization in such form as may be acceptable to Lender and on Borrower's own letterhead.

7.3. Expenses.

7.3.1. Generally, Pay all reasonable out-of-pocket expenses of Lender (including, but not limited to, Lender Expenses, Additional Expenses, and other fees and disbursements of Lender's counsel incident to [whether by judicial proceedings or otherwise, and whether any resulting dispute resolution procedure involving tort, contract or other claims] the following):

7.3.1.1. the preparation, negotiation, execution, administration and enforcement of the Loan Documents, any amendments, extensions and renewals thereof, and any other documents prepared in connection with any transactions between Borrower and Lender, whether or not executed;

7.3.1.2. any expenses (including, without limitation, Lender Expenses) incurred by Lender (whether or not for the benefit of Borrower) under this Agreement, including, without limitation, all expenses for postage relating to the mailing of statements, invoices, and verifications, and all expenses relating to any audits of all or any portion of the Collateral;

7.3.1.3. the protection of Lender's rights under the Loan Documents;

7.3.1.4. defending against any and all claims against Lender relating to any of its acts of commission or omission directly or indirectly relating to the Loan Documents; or

7.3.1.5. in any way arising out of a bankruptcy proceeding commenced by or against Borrower, including but not limited to expenses incurred in enforcing or defending Lender's claims against Borrower or the Collateral, defending any avoidance actions, and expenses related to the administration of said proceeding.

7.3.2. Indemnification. Except with respect to any liability arising out of the gross negligence or intentional wrongdoing on the part of the Lender or any of its officers, employees and agents, indemnify, defend (with


Initials

attorneys selected by Lender) and hold Lender and its agents, contractors, employees, and officers harmless from any and all liability with respect to (i) any stamp or other taxes (other than income taxes) which may be determined to be payable in connection with the execution of the Loan Documents or any action of Lender with respect to the Collateral, including, without limitation, the transfer of the Collateral to Lender's name or that of Lender's nominee or any purchaser at a foreclosure sale and (ii) obligations, demands, claims, and liabilities arising out of or relating to (1) the transactions contemplated by this Agreement or any of the other Loan Documents, (2) any actions filed by any customers against Lender or its officers, agents or employees in connection with any Accounts, (3) any breach of this Agreement by Borrower or any default or event of default hereunder, (4) any claims by customers or any Obligated Party arising from Lender's efforts to collect or attempt to collect any Monetary Collateral, and/or (5) any willful or negligent acts or omissions by Borrower or its agents or employees. This provision shall survive the termination of this Agreement.

7.4. Enforcement of Judgments. Reimburse Lender for all costs and expenses, including attorneys' fees, which Lender incurs in enforcing any judgment rendered in connection with this Agreement. This provision is severable from all other provisions hereof and shall survive, and not be deemed merged into, such judgment.

7.5. Taxes and Expenses Regarding Borrower's Assets.

7.5.1. Make timely payment or deposit of all taxes, assessments, or contributions required of Borrower. If Borrower fails to make any such payment or deposit or furnish proof of such payment immediately upon Lender's request, Lender may, in its sole discretion and without notice to Borrower:

7.5.1.1. make payment of the same or any part thereof;

7.5.1.2. set up such reserves against the Obligations as Lender deems necessary to satisfy the liability therefore;

7.5.1.3. declare a default or event of default under this Agreement and/or exercise any other rights or remedies available to Lender under this Agreement.

7.5.2. Lender may conclusively rely on statements of the amount owing or other official statements issued by the appropriate governmental agency. Any payment made by Lender shall constitute neither an agreement by Lender to make similar payments in the future nor a waiver by Lender of any default under the Loan Documents. Lender need not inquire into, nor contest the validity of, any expense, tax, security interest, encumbrance or lien, and the receipt of the usual official notice requiring the payment thereof shall be conclusive evidence that the same was validly due and owing.

7.6. Location of Collateral and New Permitted Liens. Give Lender written notice not later than thirty (30) days before changing the location of Borrower's chief place of business or the location of any of the Collateral and give Lender information respecting the identify of any Collateral and the name and contract information for any lienholders or equipment lessor respecting any Permitted Liens created after the date of this Agreement.

7.7. Change in Name. Give Lender written notice immediately not later than ten (10) days prior to any change in the name or form of business organization of Borrower or any Guarantor.

7.8. Insurance. At all times, Borrower shall maintain, with financially sound and reputable insurers, casualty insurance/fire/legal policy with respect to the Collateral and other assets, liability insurance with respect to Borrower's operations, and workers' compensation insurance (in the minimum amounts and coverages prescribed by applicable law). All such insurance policies shall be in such form, substance, amounts and coverage as may be satisfactory to Lender and shall provide for thirty (30) day's prior written notice to Lender of cancellation or reduction of coverage or any election not to renew coverage. If the Collateral includes any real property or improvements to real property, then such casualty/fire/legal policy or policies shall contain mortgagee endorsements 438 BFU (NS) and CF 12 45. Borrower hereby irrevocably authorizes Lender and any designee of Lender to obtain such insurance at Borrower's expense, and, after an Event of Default, to adjust or settle any claim or other matter under or arising pursuant to such insurance or to amend or cancel such insurance. Borrower shall deliver to Lender evidence of such insurance and a Lender's loss payable endorsement naming Lender as loss payee as to all existing and future insurance policies relating to


Initials


the Collateral and shall name Lender as an additional insured on Borrower's liability and products liability insurance. Borrower shall deliver to Lender, in kind, all instruments representing proceeds of insurance received by Borrower. Lender may apply any and all insurance proceeds received at any time to the cost of repairs to or replacement of any portion of the Collateral or, at Lender's option, to the payment of or as security for any of the Obligations, whether or not due, in any order or manner as Lender determines.

7.9. Compliance with Laws. At all times, Borrower shall, and shall cause any Guarantor and any of Borrower's subsidiaries, parent companies or affiliates to, (i) comply in all material respects with federal, state and other applicable securities laws, and (ii) comply in all material respects with the requirements of all other applicable laws, rules, regulations and orders of any federal, state or local, and any agency, authority, commission, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government. Without limiting the generality of the foregoing, the duties under this Agreement shall extend to and include compliance with all applicable federal, state, local or foreign laws relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata), including, without limitation, laws relating to the storage, release, emission, discharge, transportation, or disposal (or any threatened storage, release, emission, discharge, transportation, or disposal) of chemicals, pollutants, contaminants, toxic, hazardous, infectious, or radioactive substances or wastes, or other matters, materials or substances the use, transportation, storage, or disposal of which is regulated by any federal, state, or local ordinance, statute, or regulation (including, without limitation, any petroleum [including crude oil or any fraction thereof], gasoline, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof, or any asbestos including those subject to the following: the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.); the Clean Water Act (33 U.S.C. 1251 et seq.); the Clean Air Act (42 U.S.C. 7401 et seq.); the CERCLA Federal Water Pollution Act (33 U.S.C. 1521 et seq.); the Safe Drinking Water Act (42 U.S.C. 3000 et seq.); the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 et seq.); and/or the Toxic Substances Control Act (15 U.S.C. 2601 et seq.)(collectively, "Hazardous Materials"). The foregoing shall likewise extend to and include (without limitation) compliance with all laws related to the storage, release, emission, discharge, transportation, or disposal (or any threatened storage, release, emission, discharge, transportation, or disposal) of Hazardous Materials into the environment, the exposure of humans thereto, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all regulatory authorizations, codes, decrees, demands or demand letters, injunctions, judgments, licenses, notices of violation or similar notice letters, orders, permits, plans or regulations issued, entered, promulgated or approved thereunder.

7.10. Financial Ratios and Covenants. Following Lender's receipt at the end of each Accounting Period of the Financial Statements, Reports and Certifications required under this Agreement (including, without limitation, those under Section 7.1 of this Agreement), Lender shall compute and determine the following ratios and figures as of the end of each Accounting Period, each of which shall be determined in accordance with GAAP, consistently applied:

7.10.1. Annual Minimum Income Requirements. At the end of each of Borrower's fiscal years, Lender shall determine Borrower's Net Profit Before Taxes and shall determine if Net Profit Before Taxes for such Accounting Period was at least One Hundred Thousand Dollars (\$100,000.00) (the "Minimum Income Threshold"). For purposes of this computation, "Net Profit Before Taxes" means net before tax profit from operations, as determined in accordance with generally accepted accounting principles consistently applied, increased by extraordinary losses and capital losses from the sale of assets outside the ordinary course of business, and decreased by (a) interest income, extraordinary gains, capital gains from the sale of assets outside the ordinary course of business and (b) investment income earned outside the ordinary course of business.

7.11. Additional Documents, Reports, Information, Authorizations and Assurances. Promptly upon request from Lender, Borrower agrees to execute and deliver (or cause to be executed and delivered) all such instruments, documents, certificates, and agreements and to take (or cause to be taken) all such further or other actions as may be reasonably necessary or desirable by Lender in order to implement the provisions hereof and otherwise to effect the intent and purposes hereof. Without limiting the generality of the foregoing, Borrower agrees to promptly provide to Lender all reports, certifications and authorizations as Lender may request regarding (1) Borrower's assets and liabilities, (2) Borrower's federal, state, local, sales, uses, income or other taxes (including, without limitation, IRS form 8821 and/or such documents as may be required to allow Lender to obtain such information directly from the applicable taxing


Initials

authorities); and/or (3) Borrower's compliance or status regarding any environmental or similar laws respecting the use, storage transportation, release, remediation of any hazardous, toxic or governmentally regulated materials (including, without limitation, such documents as may be required to allow Lender to obtain such information directly from the applicable regulatory authorities).

8. **Negative Covenants.** Until full payment of the Obligations and termination of this Agreement, without thirty (30) day's prior written notice to Lender, and without Lender's prior written consent, Borrower will not:

8.1. **Liens and Encumbrances.** Create, incur, assume, or permit to exist, directly or indirectly, any lien on or with respect to any of its property or assets, of any kind, whether now owned or hereafter acquired, or any income or profits therefrom, except for Permitted Liens.

8.2. **Mergers, etc.** Enter into any of the following, without Lender's prior written consent: (a) acquire, merge, consolidate, reorganize, or recapitalize; (b) reclassify Borrower's capital stock, partnership interests, membership interests, or other equity or ownership interests in Borrower; (c) liquidate, wind up, or dissolve itself (or suffer any liquidation or dissolution); (d) convey, sell, assign, lease, transfer, or otherwise dispose of, in one transaction or a series of transactions, all or any substantial part of its business, property, or assets, whether now owned or hereafter acquired; (e) acquire by purchase or otherwise all or substantially all of the properties, assets, stock, or other evidence of beneficial ownership of any entity; (f) make any change in the officers, managers, managing members, general partners, or other persons exercising management and control over Borrower; and/or (g) in cumulative transactions since the date of this Agreement, sell, transfer, convey, hypothecate or otherwise dispose of twenty percent (20%) or more of the beneficial interest in any capital stock, partnership interests, membership interests, or other equity or ownership interests in Borrower (or any classes of any of the foregoing).

8.3. **Transfer of Assets.** Enter into any transaction not in the ordinary and usual course of Borrower's business, including the sale, lease, or other disposition of, moving, relocation, or transfer, whether by sale or otherwise, of any of Borrower's properties, assets (other than sales of Inventory to buyers in the ordinary course of Borrower's business as currently conducted).

8.4. **Change of Name or State of Formation.** Change Borrower's name, Federal Employer Identification Number, state of formation, business structure, or identity, or add any new fictitious name. Following such notification to Lender and Lender's consent, Lender shall be authorized and empowered to file and/or record any financing statements or fixture filings necessary to perfect and continue perfection of Lender's security interests.

8.5. **Suspension of Business.** Suspend or go out of a substantial portion of its business.

8.6. **Chief Executive Office and Location of Equipment and Inventory.** Relocate its chief executive office or any warehouse where any Equipment or Inventory is located, without providing to Lender a landlord's waiver in form and substance satisfactory to Lender. The Inventory and Equipment shall not at any time now or hereafter be stored with a bailee, warehouseman, or similar party.

8.7. **Additional Debts.** Incur any further debt, except for trade payables occurred in the ordinary course of business.

8.8. **Extension of Loans.** Make any advances or loans to any related or affiliated parties.

8.9. **Distributions and Bonuses.** Make any distributions/bonuses to shareholders, directors or officers, other than and so long as no event of default has occurred and is continuing (or will occur as a result of such payment), annual bonuses to officers in the ordinary course of business not to exceed Five Hundred Thousand Dollars (\$500,000) exclusive of payment for taxes.

8.10. **ERISA/Covenant.** Withdraw from participation in, permit the termination or partial termination of, or permit the occurrence of any other event with respect to any deferred compensation, pension, or other plan (each an "ERISA Plan") maintained for the benefit of Borrower's employees under the supervision and/or regulation of the Pension Benefit Guaranty Corporation (the "PBGC") under circumstance that could result in liability to the PBGC, or any of its


Initials

successors or assigns, or to any entity which provides funds for such ERISA Plan, or withdraw from any multi-employer plan described in Section 4001(a)(3) of the Employee Retirement Income Security Act ("ERISA") of 1974, as amended, which may cover Borrower's employees. On demand, Borrower shall provide or cause to be provided to Lender true and complete copies of all Summary Plan Descriptions, Summary of Material Modifications, copies of form 5500s (and related schedules, including, without limitation, any Schedules SB or MB), copies of all Actuarial Valuation Reports, copies of any Reportable Event Forms 10, copies of any Reportable Event forms 200, and copies of the Annual Plan Funding Notices, and copies of any other forms, filings, notices, applications or other materials that Lender may request related to any such ERISA Plan.

9. Events of Default. At Lender's sole option and discretion, each of the following events or conditions shall constitute an "Event of Default":

9.1. Borrower defaults in the payment of any Obligations when due, whether at maturity, upon acceleration, or otherwise;

9.2. Borrower fails to perform or observe any other covenant, duty or obligation contained in this Agreement or Borrower is in default with respect to any of the other Loan Documents or any other agreement between Borrower and Lender;

9.3. The Obligations at any time exceed the Allowable Amount;

9.4. Any Obligor fails to pay any Obligations when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) or fails to perform or observe any term, covenant, or condition of any agreement relating to any such Obligations;


9.5. An order for relief is entered against Borrower or any Obligor by any United States Bankruptcy Court or Borrower or any Obligor (i) fails to generally pay its debts as they become due (within the meaning of 11 U.S.C. 303(h) as at any time amended, or any successor statute thereto); (ii) makes an assignment for the benefit of creditors; applies for or consents to the appointment of a custodian, receiver, trustee, or similar officer for it or for all or any substantial part of its assets, or such custodian, receiver, trustee, or similar officer is appointed without the application or consent of Borrower or such any Obligor; or Borrower or any Obligor institutes (by petition, application, answer, consent, or otherwise) any bankruptcy, insolvency, reorganization, moratorium, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction; or any such proceeding shall be instituted (by petition, application, or otherwise) against same; or any judgment, writ, warrant of attachment, execution, or similar process shall be issued or levied against a substantial portion of the property of Borrower or any Obligor;

9.6. A material adverse change occurs which results in a material impairment of the prospect of repayment of the Obligations with respect to any of the following: (a) the financial condition or operations of Borrower, any Obligor or any Guarantor; (b) the value, quality or quantity of Borrower's Accounts; (c) in the size and amount of Borrower's accounts payable; (d) in the value, quality or quantity of the Collateral; and/or (e) in the value of any collateral securing the obligations under any Guaranty.

9.7. Borrower, any Obligor or any Guarantor sells, transfers or otherwise disposes of all or any substantial portion of its assets;

9.8. From and after the date of this Agreement, (a) the sale, transfer, conveyance, hypothecation or other disposition of all or substantially all of the beneficial interest in any capital stock, partnership interests, membership interests, or other equity or ownership interests in Borrower or any Guarantor (or any classes of any of the foregoing) and/or (b) the cumulative sale, transfer or conveyance, hypothecation or other disposition is made of twenty percent (20%) or more of the beneficial interest in any capital stock, partnership interests, membership interests, or other equity or ownership interests in Borrower or any Guarantor (or any classes of any of the foregoing);

9.9. Any Guarantor fails to perform or observe any of such Guarantor's obligations under any Guaranty, or notifies Lender of its intention to rescind, modify, terminate or revoke the Guaranty with respect to future transactions, the Guaranty shall cease to be in full force and effect for any reason whatever, (if any Guarantor is an individual) any


Initials

Guarantor dies or becomes incapacitated), and/or (if any Guarantor is a business entity) any Guarantor dissolves or otherwise discontinues the active conduct of business;

9.10. Either (i) Borrower or any Subordinating Creditor (1) fails to perform or observe any of such Subordinating Creditor's obligations under any Subordination Agreement or (2) notifies Lender of (a) Subordinating Creditor's intention to rescind, modify, terminate or revoke any Subordination Agreement with respect to future transactions or (b) of the occurrence of a default or event of default under any subordinated indebtedness (whether Lender has consented to or approved of same or not), or (ii) any Subordination Agreement ceases to be in full force and effect for any reason whatsoever;

9.11. Any of the Key Employees dies, becomes incapacitated, fails to devote one hundred percent (100%) of their efforts in furtherance of the business affairs of Borrower for any one month, or ceases to be employed by Borrower;

9.12. Lender reasonably deems itself insecure;

9.13. Any provision of this Agreement or any of the Loan Documents ceases, for any reason, to be valid and binding on Borrower; or

9.14. Any provision of any Guaranty ceases, for any reason, to be valid and binding on any Guarantor.

10. Remedies.

10.1. Upon the occurrence of any Event of Default at Lender's option:

10.1.1. Lender may declare this Agreement and all of Lender's obligations hereunder terminated;

10.1.2. Lender may declare all Obligations to be immediately due and payable, without presentment, demand, protest, or notice of any kind, all of which are hereby expressly waived by Borrower;

10.1.3. all Obligations shall accrue interest at the Default Rate;

10.1.4. without notice to Borrower (such notice being expressly waived), and without constituting a retention of any Collateral in satisfaction of an Obligation (within the meaning of the UCC [including, without limitation, Sections 9620, 9621 and 9624 thereof]), Lender may setoff and apply to the Obligations any and all (i) balances and deposits of Borrower held by Lender (including any amounts received in any deposit or other account maintained by Borrower with Lender) and/or (ii) the obligations at any time owing to or for the benefit or the account of Borrower that are from time to time held by Lender;

10.1.5. Lender may ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell (in the manner provided for herein) the Collateral. Lender is hereby granted a license or other right to use, without charge, Borrower's labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and Borrower's rights under all licenses and all franchise agreements shall inure to Lender's benefit;

10.1.6. Lender may sell the Collateral at either a public or private sale, or both, by way of one or more contracts or transaction, for cash or on terms, in such manner and at such places (including Borrower's Premises) as Lender determines is commercially reasonable. It is not necessary that the Collateral be present at any such sale. In connection with any sale of the Collateral, Lender may credit bid and purchase at any public sale. Following any sale of the Collateral, Lender may receive and recover any deficiency that exists;

10.1.7. Lender may, immediately and without expiration of any period of grace, enforce payment of all Obligations and exercise any and all other remedies granted to it under the Loan Documents, at law, in equity, or otherwise,



Initials

30 of 37

10.1.8. At Lender's option but without any obligation, Lender may make such Advances and may undertake such actions as Lender deems necessary or appropriate to preserve, protect, ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral, each of which shall be at Borrower's cost and expense, and


10.1.9. Lender may apply for and obtain the appointment of a receiver, trustee, custodian, keeper or liquidator (each, a "Receiver") to take possession and control of all or substantially all of Borrower's assets and a preliminary injunction prohibiting the interference with the actions of such Receiver by Borrower or anyone acting under the direction or control of Borrower. Borrower hereby consents to the appointment of a Receiver to take possession and control of all or substantially all of Borrower's assets and to the issuance of a preliminary injunction prohibiting the interference with the actions of such Receiver by Borrower or anyone acting under the direction or control of Borrower. Borrower acknowledges and agrees that such Receiver is necessary to protect and preserve the Collateral and Lender's security interest in the Collateral, that same may be granted on an *ex parte* basis, that the failure to appoint such a Receiver will result in irreparable harm to Lender, and that such Receiver may be appointed without bond (or, if a bond is required, that same may be in the minimum amount required by law).

10.2. Lender's rights and remedies under this Agreement, the Loan Documents and all other agreements between Lender and Borrower shall be cumulative. Lender shall have all other rights and remedies not inconsistent herewith as provided under the UCC, by law, or in equity. No exercise by Lender of one right or remedy shall be deemed an election, and no waiver by Lender of any Event of Default shall be deemed a continuing waiver. No delay by Lender shall constitute a waiver, election, or acquiescence by it.

10.3. To the extent permitted by applicable law, Borrower hereby waives any and all notices or any requirement that Lender inform Borrower by affirmative act or otherwise of any acceleration of Borrower's obligations hereunder. Further, Lender's failure to charge or accrue interest or fees at any "default" or "past due" rate shall not be deemed a waiver by Lender of its claim thereto. To the extent permitted by law, Borrower will not at any time (i) insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension or moratorium law, any exemption from execution or sale of the collateral or any part thereof, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Agreement; (ii) claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the marshaling of the collateral or on the valuation or appraisal of the collateral, or any part thereof, prior or subsequent to any sale or sales thereof which may be made pursuant to any provision herein, or pursuant to the decree, judgment or order of any court of competent jurisdiction; and/or (iii) claim or exercise any right (under any statute or otherwise) after any final sale or sales of the collateral (or any portions thereof) to redeem the portion of the collateral so sold. Borrower hereby expressly waives all benefit or advantage of any such law or laws, and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to Lender, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. Borrower hereby waives the right to require any sale to be made in parcels, the right to select parcels to be so sold, and the right to require any marshaling of assets. Borrower hereby further waives any rights Borrower may have under applicable law relating to the prohibition of the obtaining of a deficiency judgment by Lender against Borrower.

11. Revocation of Borrower's Right to Sell Inventory Free and Clear of Lender's Security Interest. Lender may, upon the occurrence of an Event of Default, revoke Borrower's right to sell inventory in the ordinary course of business free and clear of Lender's security interest therein.

12. No Lien Termination without Release. In recognition of Lender's right to have all its attorneys' fees and other expenses incurred in connection with this Agreement secured by the Collateral, notwithstanding payment in full of all Obligations by Borrower, Lender shall not be required to record any terminations or satisfactions of any of its liens on the Collateral or to turnover any excess proceeds of Collateral held by Lender, unless and until Lender has received an original counterpart of a general release, in a form prepared by Lender and/or in such other form as may be reasonably acceptable to Lender (each a "Release"), fully executed and (if requested) acknowledged by each of the following (the "Releasing Parties"): (i) Borrower (and each of them, if there is more than one); (ii) if Borrower is a corporation, partnership, limited liability company, or other legal entity, then by such officers, directors, shareholders, partners, members, or other owners of Borrower as Lender may designate or require; (iii) each Obligor; (iv) any Subordinating Creditors; (v) any Guarantors of the Obligations; and (vi) such other persons or entities that Lender may designate,



Initials

wherein (among other things) the Releasing Parties (and each of them) release Lender and its designated affiliates (the "Released Parties") of and from any and all claims, demands, damages, debts, liabilities, accounts, actions and causes of action, of every kind and nature whatsoever, whether now known or unknown, suspected or unsuspected which any of the Releasing Parties has and wherein such Releasing Parties waive their rights under Civil Code Section 1542. Borrower understands that this provision constitutes a waiver of its rights under the UCC (including, without limitation, the provisions of Section 9-313 of the UCC).

If the Releasing Parties fail to either file an action against Lender or execute and deliver a Release to Lender within six (6) months after the earlier of the expiration or termination of this Agreement, any funds then held in Lender's possession or thereafter received by Lender that would otherwise be payable to Releasing Parties had the Releasing Parties executed and delivered the Release will be deemed additional interest, Lender is authorized to retain same and Releasing Parties will be deemed to have waived and released any right, title, interest or claim in and to such funds.

13. **Account Stated.** Lender shall render to Borrower a statement setting forth the transactions arising hereunder. Each statement shall be considered correct and binding upon Borrower, absent manifest error, as an account stated, except to the extent that Lender receives, within thirty (30) days after the mailing of such statement, written notice from Borrower of any specific exceptions by Borrower to that statement.

14. **Retention of Records.** Lender shall retain any documents, schedules, invoices or other papers delivered by Borrower only for such period as Lender, at its sole discretion, may determine necessary, after which time Lender may destroy such records without notice to or consent from Borrower.

15. **Notices to Third Parties.** Lender shall have the right at any time to give any Obligor, Guarantor or Subordinating Creditor notice of any fact or event relating to this Agreement, as Lender may deem necessary or desirable in Lender's sole discretion, including, without limitation, Borrower's financial condition. Borrower shall provide to each Guarantor and Subordinating Creditor a copy of each notice, statement or report required to be given to Lender under any of the paragraphs of this section.

16. **Successors, Assigns and Participations.** This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, however, that Borrower may not assign this Agreement or any rights or duties hereunder without Lender's prior written consent and any prohibited assignment shall be absolutely void. No consent to an assignment by Lender shall release Borrower from its Obligations. Lender may assign this Agreement and its rights and duties hereunder and no consent or approval by Borrower is required in connection with any such assignment. Lender reserves the right to sell, assign and/or transfer Borrower's Obligations and/or Lender's rights under this Agreement. Lender further reserves the right to negotiate and/or grant participations in all or any part of the loans and advances of credit to Borrower and/or any interest Lender's rights and benefits hereunder (either an outright sale, assignment or transfer of the Obligations and/or Lender's entire right, title and interest under this Agreement [as amended] or any sale or grant of a participation in the Obligations or Borrower's Obligations a "Sale" and the purchaser, assignee, transferee, participation under each such Sale shall be a "Purchaser"). In connection with any actual or potential Sale, Lender may disclose all documents and information which Lender now and hereafter may have relating to Borrower or Borrower's business and Borrower hereby waives any rights to privacy Borrower may have with respect to such matters. To the extent that Lender assigns its rights and obligations hereunder to a third person, Lender thereafter shall be released from such assigned obligations to Borrower and such assignment shall affect a novation between Borrower and Lender. Borrower additionally waives any and all notices of such Sale, as well as all notices of any repurchase of the interest that was the subject of such Sale. Borrower also agrees that the Purchasers of any such Sale will be considered as the absolute owners of the interests sold and will have all the rights granted under the sale, assignment, transfer participation or other agreement or agreements governing the Sale. Borrower further waives all rights of offset or counterclaim that it may have now or later against Lender or against any Purchaser and unconditionally agrees that either Lender or such Purchaser of any interest that is the subject of a Sale may enforce Borrower's Obligations, irrespective of the failure or insolvency of any holder of any interest in such Obligations. Borrower further agrees that the Purchaser under any such Sale may enforce its interests irrespective of any personal claims or defenses that Borrower may have against Lender.

17. **Entire Agreement.** This Agreement supersedes all other agreements and understandings between the parties hereto, verbal or written, express or implied, relating to the subject matter hereof. No promises of any kind have been made by Lender or any third party to induce Borrower to execute this Agreement. No course of dealing, course of


Initials

performance or trade usage, and no parole evidence of any nature, shall be used to supplement or modify any terms of this Agreement.

18. Revival and Reinstatement of Obligations. If the incurrence or payment of the Obligations by Borrower or any Guarantor of the Obligations or the transfer by either or both of such parties to Lender of any property of either or both such parties should for any reason subsequently be declared to be void or voidable under any state or federal law relating to creditor's rights, including provisions of the United States Bankruptcy Code (11 U.S.C. §101 *et seq.*), as amended, and any successor statute (the "Bankruptcy Code") relating to fraudulent conveyances, preferences, and other voidable or recoverable payments or money or transfers or property (collectively, a "Voidable Transfer"), and if Lender is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the reasonable advice of its counsel, then, as to any such Voidable Transfer or the amount thereof that Lender is required or elects to repay or restore, and as to all reasonable costs, expenses, and attorneys' fees of Lender related thereto, the liability of Borrower or such Guarantor automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made.

19. Miscellaneous.

19.1. Notices. All notices required to be given to either party hereunder shall be deemed given upon the first to occur of: (a) deposit thereof in a receptacle under the control of the United States Postal Service; (b) transmittal by electronic means to a receiver under the control of the party to whom notice is being given; or (c) actual receipt by the party to whom notice is being given, or an employee or agent of thereof. For purposes hereof, the addresses of the parties are as set forth below the parties' signatures to this Agreement; provided, however, that either party may change its address for notice by serving notice on the other party of such new address in the manner prescribed by this Section.


19.2. Survival. All representations, warranties, and agreements herein contained shall be effective so long as any portion of this Agreement remains executory.

19.3. Amendment and Waiver. Neither this Agreement nor any provisions hereof may be changed, waived, discharged, or terminated, nor may any consent to the departure from the terms hereof be given, orally (even if supported by new consideration), but only by an instrument in writing signed by all parties to this Agreement. Any waiver or consent so given shall be effective only in the specific instance and for the specific purpose for which given. No failure to exercise and no delay in exercising any right, power, or remedy hereunder shall impair any right, power, or remedy which Lender may have, nor shall any such delay be construed to be a waiver of any of such rights, powers, or remedies, or any acquiescence in any breach or default hereunder; nor shall any waiver by Lender of any breach or default by Borrower hereunder be deemed a waiver of any default or breach subsequently occurring. All rights and remedies granted to Lender hereunder shall remain in full force and effect notwithstanding any single or partial exercise of, or any discontinuance of action begun to enforce, any such right or remedy.

19.4. Choice of Law. This Agreement is entered into and will be performed in the State of California. This Agreement and all transactions contemplated hereunder and/or evidenced hereby shall be governed by, construed under, and enforced in accordance with the internal laws (as opposed to the conflict of laws) and jurisdiction of the State of California as the same may from time to time be amended.

19.5. Waiver of Statute of Limitations. To the maximum extent permitted by law, Borrower waives the pleading of any statute of limitations with respect to any and all actions in connection herewith. To the extent that Borrower may now or in the future have any claim against Lender, arising out of this agreement or the transaction contemplated herein whether in contract or tort or otherwise, Borrower must assert such claim within one year of it accruing. Failure to assert such claim by Borrower within one year shall constitute of waiver thereof. Borrower agrees that such period is reasonable and sufficient for it to investigate and act upon the claim. This Section shall survive any termination of this agreement. A copy of this Agreement may be filed as a written consent in any judicial proceeding.

19.6. Venue. This Agreement has been entered into and is to be performed in Santa Clara County. The parties agree that any suit, action or proceeding instituted by Borrower against Lender and arising out of the subject matter hereof, or the interpretation, performance or breach of this Agreement, shall be instituted solely and exclusively in either the United States District Court for the Northern District of California or any court of said state located in Santa Clara


Initials

County, California and (ii) any suit, action or proceeding instituted by Lender and arising out of the subject matter hereof, or the interpretation, performance or breach of this Agreement, may be instituted (at Lender's option) in either (a) the United States District Court for the Northern District of California, (b) the United States District Court for district containing Borrower's principal place of business or any Collateral, (c) any court in the state of California located in Santa Clara County, California, or (d) any court in the State containing Borrower's principal place of business or any Collateral (the "Acceptable Forums"). Each party agrees that the Acceptable Forums are convenient to it, and each party irrevocably submits to the jurisdiction of the Acceptable Forums, irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement, and waives any and all objections to jurisdiction or venue that it may have under the laws of the State of California or otherwise in those courts in any such suit, action or proceeding. Should such proceeding be initiated in any other forum, Borrower waives any right to oppose any motion or application made by Lender as a consequence of such proceeding having been commenced in a forum other than an Acceptable Forum.

19.7. Independent Legal Advice. In executing this Agreement, Borrower warrants, represents and agrees that (i) Borrower executes and delivers this Agreement (and any other documents executed and delivered in connection herewith) with full knowledge of the rights which Borrower may have in respect to the Lender, (ii) Lender has advised Borrower that (a) Borrower and each Guarantor may have conflicts of interest among themselves, (b) Borrower and each Guarantor may have interests adverse to that of Lender, and (c) Borrower and each Guarantor each have a right to be represented by independent counsel of their own choosing, and (iii) Borrower and each Guarantor has received (or has been given the opportunity to seek and obtain and has knowingly failed to do so) independent legal advice with respect to this Agreement and any documents to be executed and delivered in connection with this Agreement, with respect to each such party's rights and asserted rights arising out of said matters, and with respect to any waivers and releases contained in this Agreement and any documents to be executed and delivered in connection with this Agreement.

19.8. Waiver of Trial by Jury.

(1) JURY TRIAL WAIVER. THE UNDERSIGNED ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED UNDER CERTAIN CIRCUMSTANCES. TO THE EXTENT PERMITTED BY LAW, LENDER AND THE UNDERSIGNED, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS, HIS OR HER CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THE MUTUAL BENEFIT OF ALL PARTIES, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY OTHER DOCUMENT (INCLUDING THE RELATED DOCUMENTS), INSTRUMENT OR AGREEMENT BETWEEN THE UNDERSIGNED AND LENDER CLAIMS.

(2) CLAIMS SUBJECT TO JUDICIAL REFERENCE; SELECTION OF REFEREE. In the event that the Jury Trial Waiver set forth above is not enforceable, and provided that this Agreement is not secured by a mortgage, deed of trust, or other security instrument encumbering real property which is required to be foreclosed by judicial action as a condition to receiving a deficiency judgment, the Parties elect to proceed as follows: All Claims, including any and all questions of law or fact relating thereto, shall, at the written request of any Party, be determined by Reference pursuant to Section 638 et. seq. of the California Code of Civil Procedure, as the same may be amended from time to time.

(3) REFEREE. The Parties, by mutual written agreement, shall select a single neutral referee, who shall be a retired state or federal court judge or justice with at least five (5) years of judicial trial experience in civil matters. In the event that the Parties cannot agree upon a referee within ten (10) days of a written request to do so by any party, the referee shall be appointed by the Presiding Judge, or a judge designated by the Presiding Judge, of a court of competent jurisdiction located in the County of Santa Clara, California. A request for appointment of a referee may be heard on an ex parte or expedited basis, and the Parties agree that irreparable harm would result if ex parte relief is not granted. The Parties shall equally bear the fees and expenses of the referee unless the referee otherwise provides in the statement of decision.

(4) TIME IS OF THE ESSENCE. The Parties agree that time is of the essence in conducting the Reference proceedings. Accordingly, the referee shall be requested, subject to change in the time periods specified herein for good cause shown, to (a) set the matter for a status and trial-setting conference within fifteen (15) days



Initials

after the date of selection of the referee, (b) if practicable, try all issues of law of fact within one hundred twenty (120) days after the date of said conference, and (c) report a statement of decision within twenty (20) days after the matter has been submitted for decision.

(5) CONDUCT OF REFERENCE. Except as provided in this Agreement, the Reference shall be conducted pursuant to Applicable State Law. The referee shall determine all issues relating to the applicability, interpretation, legality and enforceability of this Agreement and the existence of any claim and the amount of damages associated with the claim. Except as expressly set forth in this Agreement, the referee shall determine the manner in which the reference proceeding is conducted including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the reference proceeding. All proceedings and hearings conducted before the referee, except for trial, shall be conducted without a court reporter, except that when any party so requests, a court reporter will be used at any hearing conducted before the referee, and the referee will be provided a courtesy copy of the transcript. The Party making such a request shall have the obligation to arrange for and pay the court reporter. Subject to the referee's power to award costs to the prevailing party, the Parties will equally share the cost of the referee and the court reporter at trial. The referee shall be empowered to enter equitable as well as legal relief, enter equitable orders that will be binding on the parties and rule on any motion which would be authorized in a court proceeding, including without limitation motions for summary judgment or summary adjudication. The referee shall issue a decision and, pursuant to Section 644 of the California Code of Civil Procedure, as the same may be amended from time to time. The referee's decision shall be entered by the Court as a judgment or an order in the same manner as if the action had been tried by the Court. The final judgment or order or from any appealable decision or order entered by the referee shall be fully appealable as provided by law. The parties reserve the right to findings of fact, conclusions of law, a written statement of decision, and the right to move for a new trial or a different judgment, which new trial, if granted, is also to be a Reference proceeding under this provision.

(6) PROVISIONAL REMEDIES, SELF-HELP AND FORECLOSURE. No provision of this Agreement shall limit the right of any Party to (a) exercise self-help remedies including, without limitation, set off, (b) foreclose nonjudicially against or sell any collateral, by power of sale or otherwise or (c) obtain or oppose temporary, provisional or ancillary remedies from a court of competent jurisdiction before, after or during the pendency of the Reference. The exercise of, or opposition to, any such remedy does not waive the right of any Party to Reference pursuant to this Agreement.

(7) LIMITATION ON DAMAGES. In the event that punitive damages are permitted under Applicable State Law, the amount thereof shall not exceed a sum equal to the amount of actual damages as determined by the referee.

(8) SEVERABILITY. In the event that any provision of this Agreement is found to be illegal or unenforceable, the remainder of this Agreement shall remain in full force and effect. In the event that the enabling legislation which provides for the appointment of a referee is repealed and no successor statute is enacted, any dispute between the Parties that otherwise would be determined by Reference shall be resolved and determined by binding arbitration in accordance with the California Arbitration Act, Sections 1280 through 1294.2 of the California Code of Civil Procedure, as the same may be amended from time to time, in accordance with the rules (but not the jurisdiction) of the American Arbitration Association applicable to the type of claim. The provisions of this Agreement with respect to a Reference proceeding shall apply to any such arbitrator, who shall have the same qualifications as the referee and who shall be selected in the same manner as the referee stated herein.

(9) MISCELLANEOUS. In the event that multiple Claims are asserted, some of which are found not subject to this Agreement, the Parties agree to stay the proceedings of the Claims not subject to this Agreement until all other Claims are resolved in accordance with this Agreement. In the event that Claims are asserted against multiple parties, some of whom are not subject to this Agreement, the Parties agree to sever the Claims subject to this Agreement and resolve them in accordance with this Agreement.

"Applicable State Law" shall mean the law of the State of California; provided, however, that if any Party seeks to (i) exercise self-help remedies, including without limitation, set off, (ii) foreclose against or sell any collateral, by power of sale or otherwise or (iii) obtain or oppose provisional or ancillary


Initials

remedies from a court of competent jurisdiction before, after or during the pendency of the Reference, the law of the state where such collateral is located shall govern the exercise of or opposition to such rights and remedies.

"Claim" shall mean any claim, cause of action, action, dispute or controversy between or among the Parties, whether sounding in contract, tort or otherwise, which arises out of or relates to: (i) any of the Loan Documents, (ii) any negotiations or communications relating to any of the Loan Documents, whether or not incorporated into the Loan Documents or any indebtedness evidenced thereby; (iii) the administration of the credit facilities under such Loan Documents, or (iv) any alleged agreements, promises, representations or transactions in connection therewith.

"Parties" shall mean Borrower, Guarantor, Lender and Lender's agents, contractors and employees (each, a "Party").

19.9. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if all signatures were upon the same instrument. Delivery of an executed counterpart of the signature page to this Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Agreement, and any party delivering such an executed counterpart of the signature page to this Agreement by facsimile to any other party shall thereafter also promptly deliver a manually executed counterpart of this Agreement to such other party, provided that the failure to deliver such manually executed counterpart shall not affect the validity, enforceability, or binding effect of this Agreement.

19.10. Definition of Borrower. If more than one party shall execute this Agreement as "Borrower", then the obligations of each such party shall be joint and several and same shall be referred to in this Agreement individually, collectively and interchangeably as "Borrower." Unless specifically stated to the contrary, the word "Borrower" as used in this Agreement, including without limitation all representations, warranties and covenants, shall include all Borrowers. If more than one party is executing this Agreement as joint borrowers, then each of the parties comprising Borrower agrees that Lender may make loans, advances and other credit accommodations to any of the parties comprising Borrower based upon telephonic or other instructions received from anyone purporting to be an authorized representative of any of the parties comprising Borrower, at the discretion of Lender and Lender shall not have any duty or obligation to make inquiry or verify (i) the authority of any such party or (ii) the use to which such loans, advances and other credit accommodations will be put. Each party comprising Borrower waives, releases and agrees to indemnify, defend and hold Lender harmless from any damages, claims, or liability by reason of Lender's honor of, or failure to honor, any such instructions and/or in making any such loans, advances and other credit accommodations. If more than one party is executing this Agreement as joint borrowers, then Lender shall be entitled to make loans, advances and other credit facilities available to any of the parties comprising Borrower based upon the Collateral and value of the Collateral owned by any of the other parties comprising Borrower and shall be entitled to make loans and advances to any of the parties comprising Borrower without the consent or approval of any of the other parties comprising Borrower. Borrower understands and agrees that, with or without notice to any one Borrower, Lender may (A) make one or more additional secured or unsecured loans or otherwise extend additional credit with respect to any other Borrower; (B) with respect to any other Borrower alter, compromise, renew, extend, accelerate, or otherwise change one or more times the time for payment or other terms of any indebtedness, including increases and decreases of the rate of interest on the indebtedness; (C) exchange, enforce, waive, subordinate, fail or decide not to perfect, and release any security, with or without the substitution of new collateral; (D) release, substitute, agree not to sue, or deal with any one or more of Borrower's or any other Borrower's sureties, endorsers, or other guarantors on any terms or in any manner Lender may choose; (E) determine how, when and what application of payments and credits shall be made on any indebtedness; (F) apply such security and direct the order or manner of sale of any Collateral, including without limitation, any non-judicial sale permitted by the terms of the controlling security agreement or deed of trust, as Lender in its discretion may determine; (G) sell, transfer, assign or grant participations in all or any part of the Loan; (H) exercise or refrain from exercising any rights against Borrower or others, or otherwise act or refrain from acting; (I) settle or compromise any indebtedness; and (J) subordinate the payment of all or any part of any of Borrower's indebtedness to Lender to the payment of any liabilities which may be due Lender or others.



Initials

IN WITNESS WHEREOF, Borrower has caused this Agreement to be duly executed and delivered as of the date first above written at San Jose, California.

BORROWER:

GUTTERGLOVE, INC.
a California corporation, d/b/a COMMERCIAL GUTTER

By: Robert C. Lenney
Robert C. Lenney, Chief Executive Officer/Secretary

Address For Borrower:

Street Address:

4021 Alvis Ct. #5
Rocklin, CA 95677
.....

IN WITNESS WHEREOF, Lender hereby accepts this Agreement to be effective as of the date set forth below in San Jose, California.

Date: 2-21-16

"LENDER"

CALIFORNIA BANK OF COMMERCE

By: James A. Christiansen
James A. Christiansen, Executive Vice President

Address for Lender:

Street Address:

160 West Santa Clara Street, Suite 650
San Jose, CA 95113

Mailing Address:

PO Box 970
San Jose, CA 95108

Initials