

## SECURITY AGREEMENT

This Security Agreement is made as of \_\_\_\_\_ by and among \_\_\_\_\_, a \_\_\_\_\_ (“Secured Party”), \_\_\_\_\_, an Individual (“Joe”), \_\_\_\_\_, an individual (“Jane”), and each party listed on Exhibit A attached hereto (each an “Eligible Subsidiary” and collectively, the “Eligible Subsidiaries”). Joe and Jane are collectively referred to herein as the “Parents” and together with each Eligible Subsidiary, each a “Debtor” and collectively, the “Debtors”).

### **BACKGROUND**

Debtors have executed a secured promissory note (as amended, modified or otherwise supplemented from time to time, the “Note”) in an aggregate principal amount of \_\_\_\_\_ in favor of Secured Party.

In order to induce Secured Party to extend the credit evidenced by the Note, Debtors have agreed to enter into this Agreement and to grant to Secured Party, the security interest in the Collateral described below on the terms and conditions set forth in this Agreement.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and undertakings and the terms and conditions contained herein, the parties hereto agree as follows:

1. General Definitions and Terms; Rules of Construction.

(a) General Definitions. Capitalized terms used in this Agreement shall have the meanings assigned to them in Annex A.

(b) Other Terms. All other terms used in this Agreement and defined in the UCC, shall have the meaning given therein unless otherwise defined herein.

(c) Rules of Construction. All Schedules, Addenda, Annexes and Exhibits hereto or expressly identified to this Agreement are incorporated herein by reference and taken together with this Agreement constitute but a single agreement. The words “herein”, “hereof” and “hereunder” or other words of similar import refer to this Agreement as a whole, including the Exhibits, Addenda, Annexes and Schedules thereto, as the same may be from time to time amended, modified, restated or supplemented, and not to any particular section, subsection or clause contained in this Agreement. Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, the feminine and the neuter. The term “or” is not exclusive. The term “including” (or any form thereof) shall not be limiting or exclusive. All references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations. All references in this Agreement or in the Schedules, Addenda, Annexes and Exhibits to this Agreement to sections, schedules, disclosure schedules, exhibits, and attachments shall refer to the corresponding

sections, schedules, disclosure schedules, exhibits, and attachments of or to this Agreement. All references to any instruments or agreements, including references to any of this Agreement or the Ancillary Agreements shall include any and all modifications or amendments thereto and any and all extensions or renewals thereof.

2. The Loan.

(a) Subject to the terms and conditions set forth herein and in the Ancillary Agreements, Secured Party has made the loan (the "Loan") to Debtors in the amount of the Note (the "Loan Amount"). The Debtors shall, jointly and severally, execute and deliver to Secured Party on the Closing Date the Note.

(b) If any interest, fees, costs or charges payable to Secured Party hereunder are not paid when due, each of the Debtors shall thereby be deemed to have requested, and Secured Party is hereby authorized at its discretion to make and charge to the Debtors' account, a Loan as of such date in an amount equal to such unpaid interest, fees, costs or charges.

(c) If any Debtor at any time fails to perform or observe any of the covenants contained in this Agreement or any Ancillary Agreement, Secured Party may, but need not, perform or observe such covenant on behalf and in the name, place and stead of such Debtor (or, at Secured Party' option, in Secured Party' name) and may, but need not, take any and all other actions which Secured Party may deem necessary to cure or correct such failure (including the payment of taxes, the satisfaction of Liens, the performance of obligations owed to Account Debtors, lessors or other obligors, the procurement and maintenance of insurance, the execution of assignments, security agreements and financing statements, and the endorsement of instruments). The amount of all monies expended and all costs and expenses (including attorneys' fees and legal expenses) incurred by Secured Party in connection with or as a result of the performance or observance of such agreements or the taking of such action by Secured Party shall be charged to the Debtors' account as a Loan and added to the Obligations. To facilitate Secured Party' performance or observance of such covenants by each Debtor, each Debtor hereby irrevocably appoints Secured Party, or Secured Party' delegate, acting alone, as such Debtor's attorney in fact (which appointment is coupled with an interest) with the right (but not the duty) from time to time to create, prepare, complete, execute, deliver, endorse or file in the name and on behalf of such Debtor any and all instruments, documents, assignments, security agreements, financing statements, applications for insurance and other agreements and writings required to be obtained, executed, delivered or endorsed by such Debtor.

3. Repayment of the Loan. The Debtors (a) may prepay the Obligations from time to time in accordance with the terms and provisions of the Note and (b) shall repay on the Maturity Date (i) the then aggregate outstanding principal balance of the Loan together with accrued and unpaid interest, fees and charges and; (ii) all other amounts owed Secured Party under this Agreement and the Ancillary Agreements.

4. Interest and Payments.

(a) Interest.

(i) Except as modified by Section 4(a)(iii) below, the Debtors shall jointly and severally pay interest at the Interest Rate on the unpaid principal balance of the Loan until such time as such Loan is collected in full in good funds in dollars of the United States of America.

(ii) Interest and payments shall be computed on the basis of actual days elapsed in a year of 360 days.

(iii) Effective upon the occurrence of any Event of Default and for so long as any Event of Default shall be continuing, the Interest Rate shall automatically be increased as set forth in the Note (such increased rate, the “Default Rate”), and all outstanding Obligations, including unpaid interest, shall continue to accrue interest from the date of such Event of Default at the Default Rate applicable to such Obligations.

(iv) In no event shall the aggregate interest payable hereunder or under the Note exceed the maximum rate permitted under any applicable law or regulation, as in effect from time to time (the “Maximum Legal Rate”), and if any provision of this Agreement or any Ancillary Agreement is in contravention of any such law or regulation, interest payable under this Agreement and each Ancillary Agreement shall be computed on the basis of the Maximum Legal Rate (so that such interest will not exceed the Maximum Legal Rate).

(v) The Debtors shall jointly and severally pay principal, interest and all other amounts payable hereunder, or under any Ancillary Agreement, without any deduction whatsoever, including any deduction for any set-off or counterclaim.

(b) Payments.

(i) The Debtors shall jointly and severally be responsible for making all payments (including all Periodic Installment payments and the Final Installment payment) set forth in the Note.

5. Security Interest.

(a) To secure the prompt payment to Secured Party of the Obligations, each Debtor hereby assigns, pledges and grants to Secured Party a continuing security interest in and Lien upon all of the Collateral. All of each Debtor’s Books and Records relating to the Collateral shall be kept by such Debtor in trust for Secured Party until all Obligations have been paid in full. Each confirmatory assignment schedule or other form of assignment hereafter executed by each Debtor shall be deemed to include the foregoing grant, whether or not the same appears therein.

(b) Each Debtor hereby (i) authorizes Secured Party to file any financing statements, continuation statements or amendments thereto that (x) indicate the Collateral (1) as all assets and personal property of such Debtor or words of similar effect, regardless of whether

any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC of such jurisdiction, or (2) as being of an equal or lesser scope or with greater detail, and (y) contain any other information required by Part 5 of Article 9 of the UCC for the sufficiency or filing office acceptance of any financing statement, continuation statement or amendment and (ii) ratifies its authorization for Secured Party to have filed any initial financial statements, or amendments thereto if filed prior to the date hereof. Each Debtor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Secured Party and agrees that it will not do so without the prior written consent of Secured Party, subject to such Debtor's rights under Section 9-509(d)(2) of the UCC.

(c) Each Debtor hereby grants to Secured Party an irrevocable, non-exclusive license (exercisable upon the termination of this Agreement due to an occurrence and during the continuance of an Event of Default without payment of royalty or other compensation to such Debtor) to use, transfer, license or sublicense any Intellectual Property now owned, licensed to, or hereafter acquired by such Debtor, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer and automatic machinery software and programs used for the compilation or printout thereof, and represents, promises and agrees that any such license or sublicense is not and will not be in conflict with the contractual or commercial rights of any third Person; provided, that such license will terminate on the termination of this Agreement and the payment in full of all Obligations.

6. Representations, Warranties and Covenants Concerning the Collateral. Each Debtor represents, warrants (each of which such representations and warranties shall be deemed repeated upon the making of each request for a Loan and made as of the time of each and every Loan hereunder) and covenants as follows:

(a) all of the Collateral (i) is owned by it free and clear of all Liens (including any claims of infringement) except those in Secured Party's favor and Permitted Liens and (ii) is not subject to any agreement prohibiting the granting of a Lien or requiring notice of or consent to the granting of a Lien.

(b) it shall not encumber, mortgage, pledge, assign or grant any Lien in any Collateral or any other assets to anyone other than Secured Party and except for Permitted Liens.

(c) the Liens granted pursuant to this Agreement, upon completion of any filings and other actions (which, in the case of all filings and other documents have been delivered to Secured Party in duly executed form) constitute valid perfected security interests in all of the Collateral in favor of Secured Party as security for the prompt and complete payment and performance of the Obligations, enforceable in accordance with the terms hereof against any and all of its creditors and purchasers and such security interest is prior to all other Liens in existence on the date hereof.

(d) no effective security agreement, mortgage, deed of trust, financing statement, equivalent security or Lien instrument or continuation statement covering all or any

part of the Collateral is or will be on file or of record in any public office, except those relating to Permitted Liens.

(e) it shall not dispose of any of the Collateral whether by sale, lease or otherwise except for (x) the sale of Inventory in the ordinary course of business, (y) the disposition or transfer in the ordinary course of business during any fiscal year of obsolete and worn-out Equipment having an aggregate fair market value of not more than \$\_\_\_\_\_ and as to dispositions or transfers of such Equipment in excess of \$\_\_\_\_\_, only to the extent that (i) the proceeds of any such disposition are used to acquire replacement Equipment which is subject to Secured Party' first priority security interest or are used to repay the Loan or to pay general corporate expenses, or (ii) following the occurrence of an Event of Default which continues to exist the proceeds of which are remitted to Secured Party to be held as cash collateral for the Obligations, and (z) the sale of assets related to any discontinued product lines where the Debtor has given advance notice of such sale to Secured Party and an opportunity to perfect its Lien in the proceeds of such sale and, to the extent that an Event of Default has occurred and continues to exist, the proceeds of which are remitted to Secured Party to be held as cash collateral for the Obligations.

(f) it shall defend the right, title and interest of Secured Party in and to the Collateral against the claims and demands of all Persons whomsoever, and take such actions, including (i) all actions necessary to grant Secured Party "control" of any Investment Property, Deposit Accounts, Letter-of-Credit Rights or electronic Chattel Paper owned by it, with any agreements establishing control to be in form and substance satisfactory to Secured Party, (ii) the prompt (but in no event later than \_\_\_\_\_ (\_\_) Business Days following Secured Party' request therefor) delivery to Secured Party of all original Instruments, Chattel Paper, negotiable Documents and certificated Stock owned by it (in each case, accompanied by stock powers, allonges or other instruments of transfer executed in blank), (iii) notification of Secured Party' interest in Collateral at Secured Party' request, and (iv) the institution of litigation against third parties as shall be prudent in order to protect and preserve its and/or Secured Party' respective and several interests in the Collateral.

(g) it shall promptly, and in any event within \_\_\_\_\_ (\_\_) Business Days after the same is acquired by it, notify Secured Party of any commercial tort claim (as defined in the UCC) acquired by it and unless otherwise consented by Secured Party, it shall enter into a supplement to this Agreement granting to Secured Party a Lien in such commercial tort claim.

(h) it shall place notations upon its Books and Records and any of its financial statements to disclose Secured Party' Lien in the Collateral.

(i) if it retains possession of any Chattel Paper or Instrument with Secured Party' consent, upon Secured Party' request such Chattel Paper and Instruments shall be marked with the following legend: "This writing and obligations evidenced or secured hereby are subject to the security interest of Secured Party Master Fund, Ltd." Notwithstanding the foregoing, upon the reasonable request of Secured Party, such Chattel Paper and Instruments shall be delivered to Secured Party.

(j) it shall perform in a reasonable time all other steps requested by Secured Party to create and maintain in Secured Party' favor a valid perfected first Lien in all Collateral subject only to Permitted Liens.

(k) it shall notify Secured Party promptly and in any event within \_\_\_\_\_ (\_\_\_\_) Business Days after obtaining knowledge thereof (i) of any event or circumstance that, to its knowledge, would cause Secured Party to consider any then existing Account and/or Inventory as no longer constituting an Eligible Account or Eligible Inventory, as the case may be; (ii) of any material delay in its performance of any of its obligations to any Account Debtor; (iii) of any assertion by any Account Debtor of any material claims, offsets or counterclaims; (iv) of any material allowances, credits and/or monies granted by it to any Account Debtor; (v) of all material adverse information relating to the financial condition of an Account Debtor; (vi) of any material return of goods; and (vii) of any material loss, damage or destruction of any of the Collateral.

(l) all Eligible Accounts (i) represent complete bona fide transactions which require no further act under any circumstances on its part to make such Accounts payable by the Account Debtors, (ii) are not subject to any present, future contingent offsets or counterclaims, and (iii) do not represent bill and hold sales, consignment sales, guaranteed sales, sale or return or other similar understandings or obligations of any Affiliate or Subsidiary of such Debtor. It has not made, nor will it make, any agreement with any Account Debtor for any extension of time for the payment of any Account which would cause the Account to no longer be an Eligible Account, any compromise or settlement for less than the full amount thereof, any release of any Account Debtor from liability therefor, or any deduction therefrom except a discount or allowance for prompt or early payment allowed by it in the ordinary course of its business consistent with historical practice and as previously disclosed to Secured Party in writing.

(m) it shall keep and maintain its Equipment in good operating condition, except for ordinary wear and tear, and shall make all necessary repairs and replacements thereof so that the value and operating efficiency shall at all times be maintained and preserved. It shall not permit any such items to become a Fixture to real estate or accessions to other personal property.

(n) it shall maintain and keep all of its Books and Records concerning the Collateral at its executive offices listed in Exhibit A.

(o) it shall maintain and keep the tangible Collateral at the addresses listed on Exhibit A, provided, that it may change such locations or open a new location, provided that it provides Secured Party at least \_\_\_\_\_ (\_\_\_\_) days prior written notice of such changes or new location and (ii) prior to such change or opening of a new location where Collateral having a value of more than \$\_\_\_\_\_ will be located, it executes and delivers to Secured Party such agreements deemed reasonably necessary or prudent by Secured Party, including landlord agreements, mortgagee agreements and warehouse agreements, each in form and substance satisfactory to Secured Party, to adequately protect and maintain Secured Party' security interest in such Collateral.

(p) All Inventory manufactured by it in the United States of America shall be produced in accordance with the requirements of the Federal Fair Labor Standards Act of 1938, as amended and all rules, regulations and orders related thereto or promulgated thereunder.

7. Inspections and Appraisals. At all times during normal business hours, Secured Party, and/or any agent of Secured Party shall have the right to (a) have access to, visit, inspect, review, evaluate and make physical verification and appraisals of each Debtor's properties and the Collateral, (b) inspect, audit and copy (or take originals if necessary) and make extracts from each Debtor's Books and Records, including management letters prepared by the Accountants, and (c) discuss with each Debtor's directors, principal officers, and independent accountants, each Debtor's business, assets, liabilities, financial condition, results of operations and business prospects. Each Debtor will deliver to Secured Party any instrument necessary for Secured Party to obtain records from any service bureau maintaining records for such Debtor. If any internally prepared financial information, including that required under this Section is unsatisfactory in any manner to Secured Party, Secured Party may request that the Accountants review the same.

8. Additional Representations and Warranties. Each Debtor hereby represents and warrants to Secured Party as follows:

(a) Organization, Good Standing and Qualification. It and each of its Subsidiaries is a corporation, partnership or limited liability company, as the case may be, duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. It and each of its Subsidiaries has the corporate, limited liability company or partnership, as the case may be, power and authority to own and operate its properties and assets and, insofar as it is or shall be a party thereto, to (i) execute and deliver this Agreement and the Ancillary Agreements, (ii) to issue the Note and (iii) to carry out the provisions of this Agreement and the Ancillary Agreements and to carry on its business as presently conducted. It and each of its Subsidiaries is duly qualified and is authorized to do business and is in good standing as a foreign corporation, partnership or limited liability company, as the case may be, in all jurisdictions in which the nature or location of its activities and of its properties (both owned and leased) makes such qualification necessary, except for those jurisdictions in which failure to do so has not had, or could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) Subsidiaries. Each of its direct and indirect Subsidiaries, the direct owner of each such Subsidiary and its percentage ownership thereof, is set forth on Exhibit A.

(c) Authorization; Binding Obligations. All corporate, partnership or limited liability company, as the case may be, action on its and its Subsidiaries' part (including their respective officers and directors) necessary for the authorization of this Agreement and the Ancillary Agreements, the performance of all of its and its Subsidiaries' obligations hereunder and under the Ancillary Agreements on the Closing Date and, the authorization, issuance and delivery of the Note has been taken or will be taken prior to the Closing Date. This Agreement and the Ancillary Agreements, when executed and delivered and to the extent it is a party thereto, will be its and its Subsidiaries' valid and binding obligations enforceable against each such Person in accordance with their terms, except:

(i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights; and

(ii) general principles of equity that restrict the availability of equitable or legal remedies.

The issuance of the Note is not and will not be subject to any preemptive rights or rights of first refusal that have not been properly waived or complied with.

(d) Liabilities. Neither it nor any of its Subsidiaries has any liabilities, except current liabilities incurred in the ordinary course of business.

(e) Agreements; Action.

(i) There are no agreements, understandings, instruments, contracts, proposed transactions, judgments, orders, writs or decrees to which it or any of its Subsidiaries is a party or to its knowledge by which it is bound which may involve: (i) obligations (contingent or otherwise) of, or payments to, it or any of its Subsidiaries in excess of \$\_\_\_\_\_ (other than obligations of, or payments to, it or any of its Subsidiaries arising from purchase or sale agreements entered into in the ordinary course of business); or (ii) the transfer or license of any patent, copyright, trade secret or other proprietary right to or from it (other than licenses arising from the purchase of "off the shelf" or other standard products); or (iii) provisions restricting the development, manufacture or distribution of its or any of its Subsidiaries' products or services; or (iv) indemnification by it or any of its Subsidiaries with respect to infringements of proprietary rights.

(ii) The Parent makes and keeps books, records, and accounts, that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of its assets. It maintains internal control over financial reporting ("Financial Reporting Controls") designed by, or under the supervision of, its principal executive and principal financial officers, and effected by its board of directors, management, and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, including that:

(1) transactions are executed in accordance with management's general or specific authorization;

(2) unauthorized acquisition, use, or disposition of the Parent's assets that could have a material effect on the financial statements are prevented or timely detected;

(3) transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that its receipts and expenditures are being made only in accordance with authorizations of the Parent's management and board of directors;

(4) transactions are recorded as necessary to maintain accountability for assets; and



(5) the recorded accountability for assets is compared with the existing assets at reasonable intervals, and appropriate action is taken with respect to any differences.

(f) Obligations to Related Parties. Neither it nor any of its Subsidiaries has any obligations to their respective officers, directors, stockholders or employees other than:

(i) for payment of salary for services rendered and for bonus payments;

(ii) reimbursement for reasonable expenses incurred on its or its Subsidiaries' behalf;

(iii) for other standard employee benefits made generally available to all employees (including stock option agreements outstanding under any stock option plan approved by its and its Subsidiaries' Board of Directors, as applicable); and

(iv) obligations listed in its and each of its Subsidiary's financial statements.

None of its officers, directors or, to the best of its knowledge, key employees or stockholders, any of its Subsidiaries or any members of their immediate families, are indebted to it or any of its Subsidiaries, individually or in the aggregate, in excess of \$\_\_\_\_\_ or have any direct or indirect ownership interest in any Person with which it or any of its Subsidiaries is affiliated or with which it or any of its Subsidiaries has a business relationship, or any Person which competes with it or any of its Subsidiaries, other than passive investments in publicly traded companies (representing less than one percent (1%) of such company) which may compete with it or any of its Subsidiaries. Except as described above, none of its officers, directors or stockholders, or any member of their immediate families, is, directly or indirectly, interested in any material contract with it or any of its Subsidiaries and no agreements, understandings or proposed transactions are contemplated between it or any of its Subsidiaries and any such Person. Except as disclosed to Secured Party in writing, neither it nor any of its Subsidiaries is a guarantor or indemnitor of any indebtedness of any other Person.

(g) Title to Properties and Assets; Liens, Etc. It and each of its Subsidiaries has good and marketable title to their respective properties and assets, and good title to its leasehold interests, in each case subject to no Lien, other than Permitted Liens.

All facilities, Equipment, Fixtures, vehicles and other properties owned, leased or used by it or any of its Subsidiaries are in good operating condition and repair and are reasonably fit and usable for the purposes for which they are being used. It and each of its Subsidiaries is in compliance with all material terms of each lease to which it is a party or is otherwise bound.

(h) Intellectual Property.

(i) It and each of its Subsidiaries owns or possesses sufficient legal rights to all Intellectual Property necessary for their respective businesses as now conducted and, to its knowledge as presently proposed to be conducted, without any known infringement of the

rights of others. There are no outstanding options, licenses or agreements of any kind relating to its or any of its Subsidiary's Intellectual Property, nor is it or any of its Subsidiaries bound by or a party to any options, licenses or agreements of any kind with respect to the Intellectual Property of any other Person other than such licenses or agreements arising from the purchase of "off the shelf" or standard products.

(ii) Neither it nor any of its Subsidiaries has received any communications alleging that it or any of its Subsidiaries has violated any of the Intellectual Property or other proprietary rights of any other Person, nor is it or any of its Subsidiaries aware of any basis therefor.

(iii) Neither it nor any of its Subsidiaries believes it is or will be necessary to utilize any inventions, trade secrets or proprietary information of any of its employees made prior to their employment by it or any of its Subsidiaries, except for inventions, trade secrets or proprietary information that have been rightfully assigned to it or any of its Subsidiaries.

(i) Compliance with Other Instruments. Neither it nor any of its Subsidiaries is in violation or default of (x) any term of its Charter or Bylaws, or (y) any provision of any indebtedness, mortgage, indenture, contract, agreement or instrument to which it is party or by which it is bound or of any judgment, decree, order or writ, which violation or default, in the case of this clause (y), has had, or could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. The execution, delivery and performance of and compliance with this Agreement and the Ancillary Agreements to which it is a party, and the issuance of the Note and the other Securities each pursuant hereto and thereto, will not, with or without the passage of time or giving of notice, result in any such material violation, or be in conflict with or constitute a default under any such term or provision, or result in the creation of any Lien upon any of its or any of its Subsidiary's properties or assets or the suspension, revocation, impairment, forfeiture or nonrenewal of any permit, license, authorization or approval applicable to it or any of its Subsidiaries, their businesses or operations or any of their assets or properties.

(j) Litigation. There is no action, suit, proceeding or investigation pending or, to its knowledge, currently threatened against it or any of its Subsidiaries that prevents it or any of its Subsidiaries from entering into this Agreement or the Ancillary Agreements, or from consummating the transactions contemplated hereby or thereby, or which has had, or could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect, or could result in any change in its or any of its Subsidiaries' current equity ownership, nor is it aware that there is any basis to assert any of the foregoing. Neither it nor any of its Subsidiaries is a party to or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality. There is no action, suit, proceeding or investigation by it or any of its Subsidiaries currently pending or which it or any of its Subsidiaries intends to initiate.

(k) Tax Returns and Payments. It and each of its Subsidiaries has timely filed all tax returns (federal, state and local) required to be filed by it. All taxes shown to be due and payable on such returns, any assessments imposed, and all other taxes due and payable by it and

each of its Subsidiaries have been paid or will be paid prior to the time they become delinquent. Neither it nor any of its Subsidiaries has any knowledge of any liability of any tax to be imposed upon its properties or assets as of the date of this Agreement that is not adequately provided for.

(l) Employees. Neither it nor any of its Subsidiaries has any employees.

(m) Registration Rights and Voting Rights. Neither it nor any of its Subsidiaries is presently under any obligation, and neither it nor any of its Subsidiaries has granted any rights, to register any of its or any of its Subsidiaries' presently outstanding securities or any of its securities that may hereafter be issued. To its knowledge, none of its or any of its Subsidiaries' stockholders has entered into any agreement with respect to its or any of its Subsidiaries' voting of equity securities.

(n) Compliance with Laws; Permits. Neither it nor any of its Subsidiaries is in violation of the Sarbanes-Oxley Act of 2002 or any Securities and Exchange Commission related regulation or rule or any rule of the Principal Market promulgated thereunder or any other applicable statute, rule, regulation, order or restriction of any domestic or foreign government or any instrumentality or agency thereof in respect of the conduct of its business or the ownership of its properties which has had, or could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. No governmental orders, permissions, consents, approvals or authorizations are required to be obtained and no registrations or declarations are required to be filed in connection with the execution and delivery of this Agreement or any Ancillary Agreement and the issuance of any of the Securities, except such as have been duly and validly obtained or filed, or with respect to any filings that must be made after the Closing Date, as will be filed in a timely manner. It and each of its Subsidiaries has all material franchises, permits, licenses and any similar authority necessary for the conduct of its business as now being conducted by it, the lack of which could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(o) Environmental and Safety Laws. Neither it nor any of its Subsidiaries is in violation of any applicable statute, law or regulation relating to the environment or occupational health and safety, and to its knowledge, no material expenditures are or will be required in order to comply with any such existing statute, law or regulation. No Hazardous Materials (as defined below) are used or have been used, stored, or disposed of by it or any of its Subsidiaries or, to its knowledge, by any other Person on any property owned, leased or used by it or any of its Subsidiaries. For the purposes of the preceding sentence, "Hazardous Materials" shall mean:

(i) materials which are listed or otherwise defined as "hazardous" or "toxic" under any applicable local, state, federal and/or foreign laws and regulations that govern the existence and/or remedy of contamination on property, the protection of the environment from contamination, the control of hazardous wastes, or other activities involving hazardous substances, including building materials; and

(ii) any petroleum products or nuclear materials.

(p) Valid Offering. Assuming the accuracy of the representations and warranties of Secured Party contained in this Agreement, the offer and issuance of the Securities will be exempt from the registration requirements of the Securities Act of 1933, as amended (the “Securities Act”), and will have been registered or qualified (or are exempt from registration and qualification) under the registration, permit or qualification requirements of all applicable state securities laws.

(q) Full Disclosure. It and each of its Subsidiaries has provided Secured Party with all information requested by Secured Party in connection with Secured Party’s decision to enter into this Agreement, including all information each Debtor and its Subsidiaries believe is reasonably necessary to make such investment decision. Neither this Agreement, the Ancillary Agreements nor the exhibits and schedules hereto and thereto nor any other document delivered by it or any of its Subsidiaries to Secured Party or its attorneys or agents in connection herewith or therewith or with the transactions contemplated hereby or thereby, contain any untrue statement of a material fact nor omit to state a material fact necessary in order to make the statements contained herein or therein, in light of the circumstances in which they are made, not misleading. Any financial projections and other estimates provided to Secured Party by it or any of its Subsidiaries were based on its and its Subsidiaries’ experience in the industry and on assumptions of fact and opinion as to future events which it or any of its Subsidiaries, at the date of the issuance of such projections or estimates, believed to be reasonable.

(r) Insurance. It and each of its Subsidiaries has general commercial, product liability, fire and casualty insurance policies with coverages which it believes are customary for companies similarly situated to it and its Subsidiaries in the same or similar business.

(s) Patriot Act. It certifies that, to the best of its knowledge, neither it nor any of its Subsidiaries has been designated, nor is or shall be owned or controlled, by a “suspected terrorist” as defined in Executive Order 13224. It hereby acknowledges that Secured Party seeks to comply with all applicable laws concerning money laundering and related activities. In furtherance of those efforts, it hereby represents, warrants and covenants that: (i) none of the cash or property that it or any of its Subsidiaries will pay or will contribute to Secured Party has been or shall be derived from, or related to, any activity that is deemed criminal under United States law; and (ii) no contribution or payment by it or any of its Subsidiaries to Secured Party, to the extent that they are within its or any such Subsidiary’s control shall cause Secured Party to be in violation of the United States Bank Secrecy Act, the United States International Money Laundering Control Act of 1986 or the United States International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001. It shall promptly notify Secured Party if any of these representations, warranties and covenants ceases to be true and accurate regarding it or any of its Subsidiaries. It shall provide Secured Party with any additional information regarding it and each Subsidiary thereof that Secured Party deems necessary or convenient to ensure compliance with all applicable laws concerning money laundering and similar activities. It understands and agrees that if at any time it is discovered that any of the foregoing representations, warranties and covenants are incorrect, or if otherwise required by applicable law or regulation related to money laundering or similar activities, Secured Party may undertake appropriate actions to ensure compliance with applicable law or regulation, including but not limited to segregation and/or redemption of Secured Party’s investment in it. It further understands that Secured Party may release confidential information about it and its Subsidiaries

and, if applicable, any underlying beneficial owners, to proper authorities if Secured Party, in its sole discretion, determines that it is in the best interests of Secured Party in light of relevant rules and regulations under the laws set forth in subsection (ii) above.

(t) Debtor Name; Locations of Offices, Records and Collateral. Exhibit A sets forth each Debtor's name as it appears in official filings in the state of its organization, the type of entity of each Debtor, the organizational identification number issued by each Debtor's state of organization or a statement that no such number has been issued, each Debtor's state of organization, and the location of each Debtor's chief executive office, corporate offices, warehouses, other locations of Collateral and locations where records with respect to Collateral are kept (including in each case the county of such locations) and such locations have not changed during the preceding twelve months. Each Debtor has only one state of organization.

(u) ERISA. Based upon the Employee Retirement Income Security Act of 1974 ("ERISA"), and the regulations and published interpretations thereunder: (i) neither it nor any of its Subsidiaries has engaged in any Prohibited Transactions (as defined in Section 406 of ERISA and Section 4975 of the Code); (ii) it and each of its Subsidiaries has met all applicable minimum funding requirements under Section 302 of ERISA in respect of its plans; (iii) neither it nor any of its Subsidiaries has any knowledge of any event or occurrence which would cause the Pension Benefit Guaranty Corporation to institute proceedings under Title IV of ERISA to terminate any employee benefit plan(s); (iv) neither it nor any of its Subsidiaries has any fiduciary responsibility for investments with respect to any plan existing for the benefit of persons other than its or such Subsidiary's employees; and (v) neither it nor any of its Subsidiaries has withdrawn, completely or partially, from any multi-employer pension plan so as to incur liability under the Multiemployer Pension Plan Amendments Act of 1980.

9. Covenants. Each Debtor, as applicable, covenants and agrees with Secured Party as follows:

(a) Use of Funds. It shall use the proceeds of the Loan for general working capital purposes only.

(b) Access to Facilities. It shall, and shall cause each of its Subsidiaries to, permit any representatives designated by Secured Party (or any successor of Secured Party), upon reasonable notice and during normal business hours, at Debtor's expense and accompanied by a representative of Debtor Agent (provided that no such prior notice shall be required to be given and no such representative shall be required to accompany Secured Party in the event Secured Party believes such access is necessary to preserve or protect the Collateral or following the occurrence and during the continuance of an Event of Default), to:

- (i) visit and inspect any of its or any such Subsidiary's properties;
- (ii) examine its or any such Subsidiary's corporate and financial records (unless such examination is not permitted by federal, state or local law or by contract) and make copies thereof or extracts therefrom; and
- (iii) discuss its or any such Subsidiary's affairs, finances and accounts with its or any such Subsidiary's directors, officers and Accountants.

Notwithstanding the foregoing, neither it nor any of its Subsidiaries shall provide any material, non-public information to Secured Party unless Secured Party signs a confidentiality agreement and otherwise complies with Regulation FD, under the federal securities laws.

(c) Taxes. It shall, and shall cause each of its Subsidiaries to, promptly pay and discharge, or cause to be paid and discharged, when due and payable, all lawful taxes, assessments and governmental charges or levies imposed upon it and its Subsidiaries' income, profits, property or business, as the case may be; provided, however, that any such tax, assessment, charge or levy need not be paid currently if (i) the validity thereof shall currently and diligently be contested in good faith by appropriate proceedings, (ii) such tax, assessment, charge or levy shall have no effect on the Lien priority of Secured Party in the Collateral, and (iii) if it and/or such Subsidiary, as applicable, shall have set aside on its and/or such Subsidiary's books adequate reserves with respect thereto in accordance with GAAP; and provided, further, that it shall, and shall cause each of its Subsidiaries to, pay all such taxes, assessments, charges or levies forthwith upon the commencement of proceedings to foreclose any lien which may have attached as security therefor.

(d) Insurance. It shall bear the full risk of loss from any loss of any nature whatsoever with respect to the Collateral. It and each of its Subsidiaries shall keep its assets which are of an insurable character insured by financially sound and reputable insurers against loss or damage by fire, explosion and other risks customarily insured against by companies in similar business similarly situated as it and its Subsidiaries; and it and its Subsidiaries shall maintain, with financially sound and reputable insurers, insurance against other hazards and risks and liability to persons and property to the extent and in the manner which it and/or such Subsidiary thereof reasonably believes is customary for companies in similar business similarly situated as it and its Subsidiaries and to the extent available on commercially reasonable terms. It and each of its Subsidiaries will jointly and severally bear the full risk of loss from any loss of any nature whatsoever with respect to the assets pledged to Secured Party as security for its obligations hereunder and under the Ancillary Agreements. At its own cost and expense in amounts and with carriers reasonably acceptable to Secured Party, it and each of its Subsidiaries shall (i) keep all their insurable properties and properties in which they have an interest insured against the hazards of fire, flood, sprinkler leakage, those hazards covered by extended coverage insurance and such other hazards, and for such amounts, as is customary in the case of companies engaged in businesses similar to it or the respective Subsidiary's including business interruption insurance; (ii) maintain a bond in such amounts as is customary in the case of companies engaged in businesses similar to it and its Subsidiaries' insuring against larceny, embezzlement or other criminal misappropriation of insured's officers and employees who may either singly or jointly with others at any time have access to its or any of its Subsidiaries assets or funds either directly or through governmental authority to draw upon such funds or to direct generally the disposition of such assets; (iii) maintain public and product liability insurance against claims for personal injury, death or property damage suffered by others; (iv) maintain all such worker's compensation or similar insurance as may be required under the laws of any state or jurisdiction in which it or any of its Subsidiaries is engaged in business; and (v) furnish Secured Party with (x) copies of all policies and evidence of the maintenance of such policies at least \_\_\_\_\_ (\_\_\_\_) days before any expiration date, (y) excepting its and its Subsidiaries' workers' compensation policy, endorsements to such policies naming Secured Party as "co-insured" or "additional insured" and appropriate loss payable endorsements in form and

substance satisfactory to Secured Party, naming Secured Party as lenders loss payee, and (z) evidence that as to Secured Party the insurance coverage shall not be impaired or invalidated by any act or neglect of any Debtor or any of its Subsidiaries and the insurer will provide Secured Party with at least \_\_\_\_\_ (\_\_\_\_) days notice prior to cancellation. It shall instruct the insurance carriers that in the event of any loss thereunder, the carriers shall make payment for such loss to Secured Party and not to any Debtor or any of its Subsidiaries and Secured Party jointly. If any insurance losses are paid by check, draft or other instrument payable to any Debtor and/or any of its Subsidiaries and Secured Party jointly, Secured Party may endorse, as applicable, such Debtor's and/or any of its Subsidiaries' name thereon and do such other things as Secured Party may deem advisable to reduce the same to cash. Secured Party is hereby authorized to adjust and compromise claims. All loss recoveries received by Secured Party upon any such insurance may be applied to the Obligations, in such order as Secured Party in its sole discretion shall determine or shall otherwise be delivered to Debtor Agent for the benefit of the applicable Debtor and/or its Subsidiaries. Any surplus shall be paid by Secured Party to Debtor Agent for the benefit of the applicable Debtor and/or its Subsidiaries, or applied as may be otherwise required by law. Any deficiency thereon shall be paid, as applicable, by Debtors and their Subsidiaries to Secured Party, on demand.

(e) Intellectual Property. It shall, and shall cause each of its Subsidiaries to, maintain in full force and effect its corporate existence, rights and franchises and all licenses and other rights to use Intellectual Property owned or possessed by it and reasonably deemed to be necessary to the conduct of its business.

(f) Properties. It shall, and shall cause each of its Subsidiaries to, keep its properties in good repair, working order and condition, reasonable wear and tear excepted, and from time to time make all needful and proper repairs, renewals, replacements, additions and improvements thereto; and it shall, and shall cause each of its Subsidiaries to, at all times comply with each provision of all leases to which it is a party or under which it occupies property if the breach of such provision could reasonably be expected to have a Material Adverse Effect.

(g) Confidentiality. It shall not, and shall not permit any of its Subsidiaries to, disclose, and will not include in any public announcement, the name of Secured Party, unless expressly agreed to by Secured Party or unless and until such disclosure is required by law or applicable regulation, and then only to the extent of such requirement. Notwithstanding the foregoing, each Debtor and its Subsidiaries may disclose Secured Party's identity and the terms of this Agreement to its current and prospective debt and equity financing sources.

(h) Required Approvals. It shall not, and shall not permit any of its Subsidiaries to, without the prior written consent of Secured Party, (i) create, incur, assume or suffer to exist any indebtedness for borrowed money whether secured or unsecured other than each Debtor's indebtedness to Secured Party and (ii) cancel any debt owing to it in excess of \$\_\_\_\_\_ in the aggregate during any 12 month period; (iii) assume, guarantee, endorse or otherwise become directly or contingently liable in connection with any obligations of any other Person, except the endorsement of negotiable instruments by it or its Subsidiaries for deposit or collection or similar transactions in the ordinary course of business; (iv) except for dividends paid with respect to the Parent's preferred stock issued to Secured Party, directly or indirectly declare, pay or make any dividend or distribution on any class of its Stock or, except with respect

to the redemption obligations under the Parent's preferred stock issued or to be issued to Secured Party, apply any of its funds, property or assets to the purchase, redemption or other retirement of any of its or its Subsidiaries' Stock outstanding on the date hereof, or, except for the Parent's preferred stock to be issued to Secured Party, issue any preferred stock; (v) purchase or hold beneficially any Stock or other securities or evidences of indebtedness of, make or permit to exist any loans or advances to, or make any investment or acquire any interest whatsoever in, any other Person, including any partnership or joint venture, except (x) travel advances, (y) loans to its and its Subsidiaries' officers and employees not exceeding at any one time an aggregate of \$\_\_\_\_\_, and (z) loans to its existing Subsidiaries so long as such Subsidiaries are designated as either a co-borrower hereunder or has entered into such guaranty and security documentation required by Secured Party, including, without limitation, to grant to Secured Party a first priority perfected security interest in substantially all of such Subsidiary's assets to secure the Obligations; (vi) create or permit to exist any Subsidiary, other than any Subsidiary in existence on the date hereof and listed in Exhibit A unless such new Subsidiary is a wholly-owned Subsidiary and is designated by Secured Party as either a co-borrower or guarantor hereunder and such Subsidiary shall have entered into all such documentation required by Secured Party, including, without limitation, to grant to Secured Party a first priority perfected security interest in substantially all of such Subsidiary's assets to secure the Obligations; (vii) directly or indirectly, prepay any indebtedness (other than to Secured Party and in the ordinary course of business), or repurchase, redeem, retire or otherwise acquire any indebtedness (other than to Secured Party and in the ordinary course of business) except to make scheduled payments of principal and interest thereof; (viii) enter into any merger, consolidation or other reorganization with or into any other Person or acquire all or a portion of the assets or Stock of any Person or permit any other Person to consolidate with or merge with it, unless (1) such Debtor is the surviving entity of such merger or consolidation, (2) no Event of Default shall exist immediately prior to and after giving effect to such merger or consolidation, (3) such Debtor shall have provided Secured Party copies of all documentation relating to such merger or consolidation and (4) such Debtor shall have provided Secured Party with at least \_\_\_\_\_ (\_\_\_\_) days' prior written notice of such merger or consolidation; (ix) materially change the nature of the business in which it is presently engaged; (x) become subject to (including, without limitation, by way of amendment to or modification of) any agreement or instrument which by its terms would (under any circumstances) restrict its or any of its Subsidiaries' right to perform the provisions of this Agreement or any of the Ancillary Agreements; (xi) change its fiscal year or make any changes in accounting treatment and reporting practices without prior written notice to Secured Party except as required by GAAP or in the tax reporting treatment or except as required by law; (xii) enter into any transaction with any employee, director or Affiliate, except in the ordinary course on arms-length terms; (xiii) bill Accounts under any name except the present name of such Debtor; or (xiv) sell, lease, transfer or otherwise dispose of any of its properties or assets, or any of the properties or assets of its Subsidiaries, except for (1) sales, leases, transfer or dispositions by any Debtor to any other Debtor, (2) the sale of Inventory in the ordinary course of business and (3) the disposition or transfer in the ordinary course of business during any fiscal year of obsolete and worn-out Equipment and only, with regard to any material amount of such Equipment, to the extent that (x) the proceeds of any such disposition are used to acquire replacement Equipment which is subject to Secured Party's first priority security interest or are used to repay the Loan or to pay general corporate expenses, or (y) following the



occurrence of an Event of Default which continues to exist, the proceeds of which are remitted to Secured Party to be held as cash collateral for the Obligations.

(i) Legal Name, etc. It shall not, without providing Secured Party with \_\_\_\_\_ (\_\_\_\_) days prior written notice, change (i) its name as it appears in the official filings in the state of its organization, (ii) the type of legal entity it is, (iii) its organization identification number, if any, issued by its state of organization, (iv) its state of organization or (v) amend its certificate of incorporation, by-laws or other organizational document.

(j) Compliance with Laws. The operation of each of its and each of its Subsidiaries' business is and shall continue to be in compliance in all material respects with all applicable federal, state and local laws, rules and ordinances, including to all laws, rules, regulations and orders relating to taxes, payment and withholding of payroll taxes, employer and employee contributions and similar items, securities, employee retirement and welfare benefits, employee health and safety and environmental matters.

(k) Notices. It and each of its Subsidiaries shall promptly inform Secured Party in writing of: (i) the commencement of all proceedings and investigations by or before and/or the receipt of any notices from, any governmental or nongovernmental body and all actions and proceedings in any court or before any arbitrator against or in any way concerning any event which could reasonably be expected to have singly or in the aggregate, a Material Adverse Effect; (ii) any change which has had, or could reasonably be expected to have, a Material Adverse Effect; (iii) any Event of Default or Default; and (iv) any default or any event which with the passage of time or giving of notice or both would constitute a default under any agreement for the payment of money to which it or any of its Subsidiaries is a party or by which it or any of its Subsidiaries or any of its or any such Subsidiary's properties may be bound the breach of which would have a Material Adverse Effect.

(l) Offering Restrictions. Neither it nor any of its Subsidiaries shall, prior to (i) the full repayment of all outstanding principal under the Notes (together with all accrued and unpaid interest and fees related thereto) and (ii) the expiration of the Term and/or termination of the Note (whichever occurs first), issue, or enter into any agreement to issue, any securities with a variable/floating conversion and/or pricing feature which are or could be (by conversion or registration) free-trading securities (i.e. common stock subject to a registration statement).

10. Further Assurances. At any time and from time to time, upon the written request of Secured Party and at the sole expense of Debtors, each Debtor shall promptly and duly execute and deliver any and all such further instruments and documents and take such further action as Secured Party may request (a) to obtain the full benefits of this Agreement and the Ancillary Agreements, (b) to protect, preserve and maintain Secured Party' rights in the Collateral and under this Agreement or any Ancillary Agreement, and/or (c) to enable Secured Party to exercise all or any of the rights and powers herein granted or any Ancillary Agreement.

11. Representations, Warranties and Covenants of Secured Party. Secured Party hereby represents, warrants and covenants to each Debtor as follows:

(a) Requisite Power and Authority. Secured Party has all necessary power and authority under all applicable provisions of law to execute and deliver this Agreement and the Ancillary Agreements and to carry out their provisions. All corporate action on Secured Party' part required for the lawful execution and delivery of this Agreement and the Ancillary Agreements have been or will be effectively taken prior to the Closing Date. Upon their execution and delivery, this Agreement and the Ancillary Agreements shall be valid and binding obligations of Secured Party, enforceable in accordance with their terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights, and (b) as limited by general principles of equity that restrict the availability of equitable and legal remedies.

(b) Patriot Act. Secured Party certifies that, to the best of Secured Party' knowledge, Secured Party has not been designated, and is not owned or controlled, by a "suspected terrorist" as defined in Executive Order 13224. Secured Party seeks to comply with all applicable laws concerning money laundering and related activities. In furtherance of those efforts, Secured Party hereby represents, warrants and covenants that: (i) none of the cash or property that Secured Party will use to make the Loan has been or shall be derived from, or related to, any activity that is deemed criminal under United States law; and (ii) no disbursement by Secured Party to any Debtor to the extent within Secured Party' control, shall cause Secured Party to be in violation of the United States Bank Secrecy Act, the United States International Money Laundering Control Act of 1986 or the United States International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001. Secured Party shall promptly notify the Debtor Agent if any of these representations ceases to be true and accurate regarding Secured Party. Secured Party agrees to provide the Debtor any additional information regarding Secured Party that the Debtor deems necessary or convenient to ensure compliance with all applicable laws concerning money laundering and similar activities. Secured Party understands and agrees that if at any time it is discovered that any of the foregoing representations are incorrect, or if otherwise required by applicable law or regulation related to money laundering similar activities, Secured Party may undertake appropriate actions to ensure compliance with applicable law or regulation, including but not limited to segregation and/or redemption of Secured Party' investment in the Parent. Secured Party further understands that the Parent may release information about Secured Party and, if applicable, any underlying beneficial owners, to proper authorities if the Parent, in its sole discretion, determines that it is in the best interests of the Parent in light of relevant rules and regulations under the laws set forth in subsection (ii) above.

12. Power of Attorney. Each Debtor hereby appoints Secured Party, or any other Person whom Secured Party may designate as such Debtor's attorney, with power to: (i) endorse such Debtor's name on any checks, notes, acceptances, money orders, drafts or other forms of payment or security that may come into Secured Party' possession; (ii) sign such Debtor's name on any invoice or bill of lading relating to any Accounts, drafts against Account Debtors, schedules and assignments of Accounts, notices of assignment, financing statements and other public records, verifications of Account and notices to or from Account Debtors; (iii) verify the validity, amount or any other matter relating to any Account by mail, telephone, telegraph or otherwise with Account Debtors; (iv) do all things necessary to carry out this

Agreement, any Ancillary Agreement and all related documents; and (v) on or after the occurrence and during the continuation of an Event of Default, notify the post office authorities to change the address for delivery of such Debtor's mail to an address designated by Secured Party, and to receive, open and dispose of all mail addressed to such Debtor. Each Debtor hereby ratifies and approves all acts of the attorney. Neither Secured Party, nor the attorney will be liable for any acts or omissions or for any error of judgment or mistake of fact or law, except for gross negligence or willful misconduct. This power, being coupled with an interest, is irrevocable so long as Secured Party has a security interest and until the Obligations have been fully satisfied.

13. Term of Agreement. Secured Party's agreement to make the Loan and extend financial accommodations under and in accordance with the terms of this Agreement or any Ancillary Agreement shall continue in full force and effect until the expiration of the Term. At Secured Party's election following the occurrence of an Event of Default, Secured Party may terminate this Agreement. The termination of the Agreement shall not affect any of Secured Party's rights hereunder or any Ancillary Agreement and the provisions hereof and thereof shall continue to be fully operative until all transactions entered into, rights or interests created and the Obligations have been irrevocably disposed of, concluded or liquidated. Notwithstanding the foregoing, Secured Party shall release its security interests at any time after \_\_\_\_\_ (\_\_\_\_) days notice upon irrevocable payment to it of all Obligations if each Debtor shall have (i) provided Secured Party with an executed release of any and all claims which such Debtor may have or thereafter have under this Agreement and all Ancillary Agreements and (ii) paid to Secured Party an early payment fee in an amount equal to \_\_\_\_\_ percent (\_\_\_\_%) of the Capital Availability Amount if such termination occurs during the Term; such fee being intended to compensate Secured Party for its costs and expenses incurred in initially approving this Agreement. Such early payment fee shall be due and payable jointly and severally by the Debtors to Secured Party upon termination by acceleration of this Agreement by Secured Party due to the occurrence and continuance of an Event of Default.

14. Termination of Lien. The Liens and rights granted to Secured Party hereunder and any Ancillary Agreements and the financing statements filed in connection herewith or therewith shall continue in full force and effect, notwithstanding the termination of this Agreement or the fact that any Debtor's account may from time to time be temporarily in a zero or credit position, until all of the Obligations have been indefeasibly paid or performed in full after the termination of this Agreement. Secured Party shall not be required to send termination statements to any Debtor, or to file them with any filing office, unless and until this Agreement and the Ancillary Agreements shall have been terminated in accordance with their terms and all Obligations indefeasibly paid in full in immediately available funds.

15. Events of Default. The occurrence of any of the following shall constitute an "Event of Default":

(a) failure to make payment of any of the Obligations when required hereunder, and, in any such case, such failure shall continue for a period of \_\_\_\_\_ (\_\_\_\_) days following the date upon which such payment was due;

(b) failure by any Debtor or any of its Subsidiaries to pay any material taxes when due unless such taxes are being contested in good faith by appropriate proceedings and with respect to which adequate reserves have been provided on such Debtor's and/or such Subsidiary's books;

(c) failure to perform under, and/or committing any breach of, in any material respect, this Agreement or any covenant contained herein, which failure or breach shall continue without remedy for a period of \_\_\_\_\_ (\_\_\_) days after the occurrence thereof;

(d) any representation, warranty or statement made by any Debtor or any of its Subsidiaries hereunder, in any Ancillary Agreement, any certificate, statement or document delivered pursuant to the terms hereof, or in connection with the transactions contemplated by this Agreement should prove to be false or misleading in any material respect on the date as of which made or deemed made;

(e) the occurrence of any default (or similar term) in the observance or performance of any other agreement or condition relating to any indebtedness or contingent obligation of any Debtor or any of its Subsidiaries in excess of \$\_\_\_\_\_ beyond the period of grace (if any), the effect of which default is to cause, or permit the holder or holders of such indebtedness or beneficiary or beneficiaries of such contingent obligation to cause, such indebtedness to become due prior to its stated maturity or such contingent obligation to become payable;

(f) attachments or levies in excess of \$\_\_\_\_\_ in the aggregate are made upon any Debtor's assets or a judgment is rendered against any Debtor's property involving a liability of more than \$\_\_\_\_\_ which shall not have been vacated, discharged, stayed or bonded within \_\_\_\_\_ (\_\_\_) days from the entry thereof;

(g) any change in any Debtor's or any of its Subsidiary's condition or affairs (financial or otherwise) which in Secured Party's reasonable, good faith opinion, could reasonably be expected to have a Material Adverse Effect;

(h) any Lien created hereunder or under any Ancillary Agreement for any reason ceases to be or is not a valid and perfected Lien having a first priority interest;

(i) any Debtor or any of its Subsidiaries shall (i) apply for, consent to or suffer to exist the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property, (ii) make a general assignment for the benefit of creditors, (iii) commence a voluntary case under the federal bankruptcy laws (as now or hereafter in effect), (iv) be adjudicated a bankrupt or insolvent, (v) file a petition seeking to take advantage of any other law providing for the relief of debtors, (vi) acquiesce to without challenge within \_\_\_\_\_ (\_\_\_) days of the filing thereof, or failure to have dismissed within thirty (30) days, any petition filed against it in any involuntary case under such bankruptcy laws, or (vii) take any action for the purpose of effecting any of the foregoing;

(j) any Debtor or any of its Subsidiaries shall admit in writing its inability, or be generally unable, to pay its debts as they become due or cease operations of its present business;

(k) any Debtor or any of its Subsidiaries directly or indirectly sells, assigns, transfers, conveys, or suffers or permits to occur any sale, assignment, transfer or conveyance of assets of such Debtor or any interest therein, except as permitted herein;

(l) the indictment or threatened indictment of any Debtor or any of its Subsidiaries or any executive officer of any Debtor or any of its Subsidiaries under any criminal statute, or commencement or threatened commencement of criminal or civil proceeding against any Debtor or any of its Subsidiaries or any executive officer of any Debtor or any of its Subsidiaries pursuant to which statute or proceeding penalties or remedies sought or available include forfeiture of any of the property of any Debtor or any of its Subsidiaries;

(m) an Event of Default shall occur under and as defined in the Note or in any other Ancillary Agreement;

(n) any Debtor or any of its Subsidiaries shall breach any term or provision of any Ancillary Agreement to which it is a party in any material respect which breach is not cured within any applicable cure or grace period provided in respect thereof (if any); or

(o) any Debtor or any of its Subsidiaries attempts to terminate, challenges the validity of, or its liability under this Agreement or any Ancillary Agreement, or any proceeding shall be brought to challenge the validity, binding effect of any Ancillary Agreement or any Ancillary Agreement ceases to be a valid, binding and enforceable obligation of such Debtor or any of its Subsidiaries (to the extent such Persons are a party thereto).

16. Remedies. Following the occurrence of an Event of Default, Secured Party shall have the right to demand repayment in full of all Obligations, whether or not otherwise due. Until all Obligations have been fully and indefeasibly satisfied, Secured Party shall retain its Lien in all Collateral. Secured Party shall have, in addition to all other rights provided herein and in each Ancillary Agreement, the rights and remedies of a secured party under the UCC, and under other applicable law, all other legal and equitable rights to which Secured Party may be entitled, including the right to take immediate possession of the Collateral, to require each Debtor to assemble the Collateral, at Debtors' joint and several expense, and to make it available to Secured Party at a place designated by Secured Party which is reasonably convenient to both parties and to enter any of the premises of any Debtor or wherever the Collateral shall be located, with or without force or process of law, and to keep and store the same on said premises until sold (and if said premises be the property of any Debtor, such Debtor agrees not to charge Secured Party for storage thereof), and the right to apply for the appointment of a receiver for such Debtor's property. Further, Secured Party may, at any time or times after the occurrence of an Event of Default, sell and deliver all Collateral held by or for Secured Party at public or private sale for cash, upon credit or otherwise, at such prices and upon such terms as Secured Party, in Secured Party's sole discretion, deems advisable or Secured Party may otherwise recover upon the Collateral in any commercially reasonable manner as Secured Party, in its sole discretion, deems advisable. The requirement of reasonable notice shall be met if such notice is mailed postage prepaid to Debtor Agent at Debtor Agent's address as shown in Secured Party's records, at least \_\_\_\_\_ (\_\_\_\_) days before the time of the event of which notice is being given. Secured Party may be the purchaser at any sale, if it is public. In connection with the exercise of the foregoing remedies, Secured Party is granted permission to use all of

each Debtor's Intellectual Property. The proceeds of sale shall be applied first to all costs and expenses of sale, including attorneys' fees, and second to the payment (in whatever order Secured Party elects) of all Obligations. After the indefeasible payment and satisfaction in full of all of the Obligations, and after the payment by Secured Party of any other amount required by any provision of law, including Section 9-608(a)(1) of the UCC (but only after Secured Party has received what Secured Party considers reasonable proof of a subordinate party's security interest), the surplus, if any, shall be paid to Debtor Agent (for the benefit of the applicable Debtors) or its representatives or to whosoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct. The Debtors shall remain jointly and severally liable to Secured Party for any deficiency.

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

18. Expenses. The Debtors shall jointly and severally pay all of Secured Party' out-of-pocket costs and expenses, including reasonable fees and disbursements of in-house or outside counsel and appraisers, in connection with the preparation, execution and delivery of this Agreement and the Ancillary Agreements and in connection with the prosecution or defense of any action, contest, dispute, suit or proceeding concerning any matter in any way arising out of, related to or connected with this Agreement or any Ancillary Agreement. The Debtors shall also jointly and severally pay all of Secured Party' reasonable fees, charges, out-of-pocket costs and expenses, including fees and disbursements of counsel and appraisers, in connection with (a) the preparation, execution and delivery of any waiver, any amendment thereto or consent proposed or executed in connection with the transactions contemplated by this Agreement or the Ancillary Agreements, (b) Secured Party' obtaining performance of the Obligations under this Agreement and any Ancillary Agreements, including, but not limited to, the enforcement or defense of Secured Party' security interests, assignments of rights and Liens hereunder as valid perfected security interests, (c) any attempt to inspect, verify, protect, collect, sell, liquidate or otherwise dispose of any Collateral, (d) any appraisals or re-appraisals of any property (real or personal) pledged to Secured Party by any Debtor or any of its Subsidiaries as Collateral for, or any other Person as security for, the Obligations hereunder and (e) any consultations in connection with any of the foregoing. The Debtors shall also jointly and severally pay Secured Party' customary bank charges for all bank services (including wire transfers) performed or caused to be performed by Secured Party for any Debtor or any of its Subsidiaries at any Debtor's or such Subsidiary's request or in connection with any Debtor's loan account with Secured Party. All such costs and expenses together with all filing, recording

and search fees, taxes and interest payable by the Debtors to Secured Party shall be payable on demand and shall be secured by the Collateral. If any tax by any Governmental Authority is or may be imposed on or as a result of any transaction between any Debtor and/or any Subsidiary thereof, on the one hand, and Secured Party on the other hand, which Secured Party is or may be required to withhold or pay, the Debtors hereby jointly and severally indemnifies and holds Secured Party harmless in respect of such taxes, and the Debtors will repay to Secured Party the amount of any such taxes which shall be charged to the Debtors' account; and until the Debtors shall furnish Secured Party with indemnity therefor (or supply Secured Party with evidence satisfactory to it that due provision for the payment thereof has been made), Secured Party may hold without interest any balance standing to each Debtor's credit and Secured Party shall retain its Liens in any and all Collateral.

19. Assignment By Secured Party. Secured Party may assign any or all of the Obligations together with any or all of the security therefor to any Person and any such assignee shall succeed to all of Secured Party' rights with respect thereto; provided that Secured Party shall not be permitted to effect any such assignment to a competitor of any Debtor unless an Event of Default has occurred and is continuing. Upon such assignment, Secured Party shall be released from all responsibility for the Collateral to the extent same is assigned to any transferee. Secured Party may from time to time sell or otherwise grant participations in any of the Obligations and the holder of any such participation shall, subject to the terms of any agreement between Secured Party and such holder, be entitled to the same benefits as Secured Party with respect to any security for the Obligations in which such holder is a participant. Each Debtor agrees that each such holder may exercise any and all rights of banker's lien, set-off and counterclaim with respect to its participation in the Obligations as fully as though such Debtor were directly indebted to such holder in the amount of such participation.

20. No Waiver; Cumulative Remedies. Failure by Secured Party to exercise any right, remedy or option under this Agreement, any Ancillary Agreement or any supplement hereto or thereto or any other agreement between or among any Debtor and Secured Party or delay by Secured Party in exercising the same, will not operate as a waiver; no waiver by Secured Party will be effective unless it is in writing and then only to the extent specifically stated. Secured Party' rights and remedies under this Agreement and the Ancillary Agreements will be cumulative and not exclusive of any other right or remedy which Secured Party may have.

21. Application of Payments. Each Debtor irrevocably waives the right to direct the application of any and all payments at any time or times hereafter received by Secured Party from or on such Debtor's behalf and each Debtor hereby irrevocably agrees that Secured Party shall have the continuing exclusive right to apply and reapply any and all payments received at any time or times hereafter against the Obligations hereunder in such manner as Secured Party may deem advisable notwithstanding any entry by Secured Party upon any of Secured Party' books and records.

22. Indemnity. Each Debtor hereby jointly and severally indemnifies and holds Secured Party, and its respective affiliates, employees, attorneys and agents (each, an "Indemnified Person"), harmless from and against any and all suits, actions, proceedings, claims, damages, losses, liabilities and expenses of any kind or nature whatsoever (including attorneys'

fees and disbursements and other costs of investigation or defense, including those incurred upon any appeal) which may be instituted or asserted against or incurred by any such Indemnified Person as the result of credit having been extended, suspended or terminated under this Agreement or any of the Ancillary Agreements or with respect to the execution, delivery, enforcement, performance and administration of, or in any other way arising out of or relating to, this Agreement, the Ancillary Agreements or any other documents or transactions contemplated by or referred to herein or therein and any actions or failures to act with respect to any of the foregoing, except to the extent that any such indemnified liability is finally determined by a court of competent jurisdiction to have resulted solely from such Indemnified Person's gross negligence or willful misconduct. NO INDEMNIFIED PERSON SHALL BE RESPONSIBLE OR LIABLE TO ANY DEBTOR OR TO ANY OTHER PARTY OR TO ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY BE ALLEGED AS A RESULT OF CREDIT HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER THIS AGREEMENT OR ANY ANCILLARY AGREEMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER.

23. Revival. The Debtors further agree that to the extent any Debtor makes a payment or payments to Secured Party, which payment or payments or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy act, state or federal law, common law or equitable cause, then, to the extent of such payment or repayment, the obligation or part thereof intended to be satisfied shall be revived and continued in full force and effect as if said payment had not been made.

24. Borrowing Agency Provisions.

(a) Each Debtor hereby irrevocably designates Debtor Agent to be its attorney and agent and in such capacity to borrow, sign and endorse notes, and execute and deliver all instruments, documents, writings and further assurances now or hereafter required hereunder, on behalf of such Debtor, and hereby authorizes Secured Party to pay over or credit all loan proceeds hereunder in accordance with the request of Debtor Agent.

(b) The handling of this credit facility as a co-borrowing facility with a borrowing agent in the manner set forth in this Agreement is solely as an accommodation to the Debtors and at their request. Secured Party shall not incur any liability to any Debtor as a result thereof. To induce Secured Party to do so and in consideration thereof, each Debtor hereby indemnifies Secured Party and holds Secured Party harmless from and against any and all liabilities, expenses, losses, damages and claims of damage or injury asserted against Secured Party by any Person arising from or incurred by reason of the handling of the financing arrangements of the Debtors as provided herein, reliance by Secured Party on any request or instruction from Debtor Agent or any other action taken by Secured Party with respect to this Paragraph 24.

(c) All Obligations shall be joint and several, and the Debtors shall make payment upon the maturity of the Obligations by acceleration or otherwise, and such obligation



and liability on the part of the Debtors shall in no way be affected by any extensions, renewals and forbearance granted by Secured Party to any Debtor, failure of Secured Party to give any Debtor notice of borrowing or any other notice, any failure of Secured Party to pursue to preserve its rights against any Debtor, the release by Secured Party of any Collateral now or thereafter acquired from any Debtor, and such agreement by any Debtor to pay upon any notice issued pursuant thereto is unconditional and unaffected by prior recourse by Secured Party to any Debtor or any Collateral for such Debtor's Obligations or the lack thereof.

(d) Each Debtor expressly waives any and all rights of subrogation, reimbursement, indemnity, exoneration, contribution or any other claim which such Debtor may now or hereafter have against the other or other Person directly or contingently liable for the Obligations, or against or with respect to any other's property (including, without limitation, any property which is Collateral for the Obligations), arising from the existence or performance of this Agreement, until all Obligations have been indefeasibly paid in full and this Agreement has been irrevocably terminated.

(e) Each Debtor represents and warrants to Secured Party that (i) Debtors have one or more common shareholders, directors and officers, (ii) the businesses and corporate activities of Debtors are closely related to, and substantially benefit, the business and corporate activities of Debtors, (iii) the financial and other operations of Debtors are performed on a combined basis as if Debtors constituted a consolidated corporate group, (iv) Debtors will receive a substantial economic benefit from entering into this Agreement and will receive a substantial economic benefit from the application of each Loan hereunder, in each case, whether or not such amount is used directly by any Debtor and (v) all requests for the Loan hereunder by the Debtor Agent are for the exclusive and indivisible benefit of the Debtors as though, for purposes of this Agreement, the Debtors constituted a single entity.

25. Notices. Any notice or request hereunder may be given to any Debtor, Debtor Agent or Secured Party at the respective addresses set forth below or as may hereafter be specified in a notice designated as a change of address under this Section. Any notice or request hereunder shall be given by registered or certified mail, return receipt requested, hand delivery, overnight mail or telecopy (confirmed by mail). Notices and requests shall be, in the case of those by hand delivery, deemed to have been given when delivered to any officer of the party to whom it is addressed, in the case of those by mail or overnight mail, deemed to have been given three (3) Business Days after the date when deposited in the mail or with the overnight mail carrier, and, in the case of a telecopy, when confirmed.

Notices shall be provided as follows:

If to any Debtor:

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

If to Secured Party:

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

or such other address as may be designated in writing hereafter in accordance with this Section 25 by such Person.

26. Governing Law, Jurisdiction and Waiver of Jury Trial.

(a) THIS AGREEMENT AND THE ANCILLARY AGREEMENTS SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

(b) EACH DEBTOR HEREBY CONSENTS AND AGREES THAT THE STATE OR FEDERAL COURTS LOCATED IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN ANY DEBTOR, ON THE ONE HAND, AND SECURED PARTY, ON THE OTHER HAND, PERTAINING TO THIS AGREEMENT OR ANY OF THE ANCILLARY AGREEMENTS OR TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY OF THE ANCILLARY AGREEMENTS; PROVIDED, THAT SECURED PARTY AND EACH DEBTOR ACKNOWLEDGE THAT ANY APPEALS FROM THOSE COURTS MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE OF THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA; AND FURTHER PROVIDED, THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE SECURED PARTY FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO COLLECT THE OBLIGATIONS, TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF SECURED PARTY. EACH DEBTOR EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND EACH DEBTOR HEREBY WAIVES ANY OBJECTION THAT IT MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS. EACH DEBTOR HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINT AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT AND AGREES THAT SERVICE OF SUCH SUMMONS, COMPLAINT AND OTHER PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO DEBTOR AGENT AT THE

ADDRESS SET FORTH IN SECTION 25 AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER OF DEBTOR AGENT'S ACTUAL RECEIPT THEREOF OR THREE (3) DAYS AFTER DEPOSIT IN THE U.S. MAILS, PROPER POSTAGE PREPAID.

(c) THE PARTIES DESIRE THAT THEIR DISPUTES BE RESOLVED BY A JUDGE APPLYING SUCH APPLICABLE LAWS. THEREFORE, TO ACHIEVE THE BEST COMBINATION OF THE BENEFITS OF THE JUDICIAL SYSTEM AND OF ARBITRATION, THE PARTIES HERETO WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE, WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE BETWEEN SECURED PARTY, AND/OR ANY DEBTOR ARISING OUT OF, CONNECTED WITH, RELATED OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THIS AGREEMENT, ANY ANCILLARY AGREEMENT OR THE TRANSACTIONS RELATED HERETO OR THERETO.

27. Limitation of Liability. Each Debtor acknowledges and understands that in order to assure repayment of the Obligations hereunder Secured Party may be required to exercise any and all of Secured Party's rights and remedies hereunder and agrees that, except as limited by applicable law, neither Secured Party nor any of Secured Party's agents shall be liable for acts taken or omissions made in connection herewith or therewith except for actual bad faith.

28. Entire Understanding; Maximum Interest. This Agreement and the Ancillary Agreements contain the entire understanding among each Debtor and Secured Party as to the subject matter hereof and thereof and any promises, representations, warranties or guarantees not herein contained shall have no force and effect unless in writing, signed by each Debtor's and Secured Party's respective officers. Neither this Agreement, the Ancillary Agreements, nor any portion or provisions thereof may be changed, modified, amended, waived, supplemented, discharged, cancelled or terminated orally or by any course of dealing, or in any manner other than by an agreement in writing, signed by the party to be charged. Nothing contained in this Agreement, any Ancillary Agreement or in any document referred to herein or delivered in connection herewith shall be deemed to establish or require the payment of a rate of interest or other charges in excess of the maximum rate permitted by applicable law. In the event that the rate of interest or dividends required to be paid or other charges hereunder exceed the maximum rate permitted by such law, any payments in excess of such maximum shall be credited against amounts owed by the Debtors to Secured Party and thus refunded to the Debtors.

29. Severability. Wherever possible each provision of this Agreement or the Ancillary Agreements shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement or the Ancillary Agreements shall be prohibited by or invalid under applicable law such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions thereof.

30. Survival. The representations, warranties, covenants and agreements made herein shall survive any investigation made by Secured Party and the closing of the transactions contemplated hereby to the extent provided therein. All statements as to factual

matters contained in any certificate or other instrument delivered by or on behalf of the Debtors pursuant hereto in connection with the transactions contemplated hereby shall be deemed to be representations and warranties by the Debtors hereunder solely as of the date of such certificate or instrument. All indemnities set forth herein shall survive the execution, delivery and termination of this Agreement and the Ancillary Agreements and the making and repaying of the Obligations.

31. Captions. All captions are and shall be without substantive meaning or content of any kind whatsoever.

32. Counterparts; Telecopier Signatures. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same agreement. Any signature delivered by a party via telecopier transmission shall be deemed to be any original signature hereto.

33. Construction. The parties acknowledge that each party and its counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments, schedules or exhibits thereto.

34. Publicity. Each Debtor hereby authorizes Secured Party to make appropriate announcements of the financial arrangement entered into by and among each Debtor and Secured Party, including, without limitation, announcements which are commonly known as tombstones, in such publications and to such selected parties as Secured Party shall in its sole and absolute discretion deem appropriate, or as required by applicable law.

35. Joinder. It is understood and agreed that any Person that desires to become a Debtor hereunder, or is required to execute a counterpart of this Agreement after the date hereof pursuant to the requirements of this Agreement or any Ancillary Agreement, shall become a Debtor hereunder by (a) executing a Joinder Agreement in form and substance satisfactory to Secured Party, (b) delivering supplements to such exhibits and annexes to this Agreement and the Ancillary Agreements as Secured Party shall reasonably request and (c) taking all actions as specified in this Agreement as would have been taken by such Debtor had it been an original party to this Agreement, in each case with all documents required above to be delivered to Secured Party and with all documents and actions required above to be taken to the reasonable satisfaction of Secured Party.

36. Limitation on Rights and Remedies. Notwithstanding any other provision of this Agreement or any other Ancillary Document to the contrary, all rights, remedies and powers provided in this Agreement and the Ancillary Documents, including with respect to the Collateral, may be exercised only to the extent, and in the manner, that the exercise thereof does not violate any applicable liquor laws and only to the extent that all approvals required for the exercise thereof, including prior approvals, are obtained from the requisite liquor authorities. In addition, all provisions of this Agreement and the other Ancillary Documents, including with respect to the Collateral, are intended to be subject to all applicable mandatory provisions of the applicable liquor laws and to be limited solely to the extent necessary to not render the

provisions of this Agreement and the other Ancillary Documents invalid or unenforceable, in whole or in part.

[Balance of page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Security Agreement as of the date first written above.

**DEBTORS:**

By: \_\_\_\_\_  
Joe, an individual

By: \_\_\_\_\_  
Jane, an individual

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SECURED PARTY:**

\_\_\_\_\_, a  
\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## Annex A - Definitions

“Account Debtor” means any Person who is or may be obligated with respect to, or on account of, an Account.

“Accounts” means all “accounts”, as such term is defined in the UCC, now owned or hereafter acquired by any Person, including: (a) all accounts receivable, other receivables, book debts and other forms of obligations (other than forms of obligations evidenced by Chattel Paper or Instruments) (including any such obligations that may be characterized as an account or contract right under the UCC); (b) all of such Person’s rights in, to and under all purchase orders or receipts for goods or services; (c) all of such Person’s rights to any goods represented by any of the foregoing (including unpaid sellers’ rights of rescission, replevin, reclamation and stoppage in transit and rights to returned, reclaimed or repossessed goods); (d) all rights to payment due to such Person for Goods or other property sold, leased, licensed, assigned or otherwise disposed of, for a policy of insurance issued or to be issued, for a secondary obligation incurred or to be incurred, for energy provided or to be provided, for the use or hire of a vessel under a charter or other contract, arising out of the use of a credit card or charge card, or for services rendered or to be rendered by such Person or in connection with any other transaction (whether or not yet earned by performance on the part of such Person); and (e) all collateral security of any kind given by any Account Debtor or any other Person with respect to any of the foregoing.

“Accounts Availability” means up to ninety percent (90%) of the net face amount of Eligible Accounts.

“Affiliate” means, with respect to any Person, (a) any other Person (other than a Subsidiary) which, directly or indirectly, is in control of, is controlled by, or is under common control with such Person or (b) any other Person who is a director or officer (i) of such Person, (ii) of any Subsidiary of such Person or (iii) of any Person described in clause (a) above. For the purposes of this definition, control of a Person shall mean the power (direct or indirect) to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

“Ancillary Agreements” means the Note, the Deeds of Trust, each Security Document and all other agreements, instruments, documents, mortgages, pledges, powers of attorney, consents, assignments, contracts, notices, security agreements, trust agreements and guarantees whether heretofore, concurrently, or hereafter executed by or on behalf of any Debtor, any of its Subsidiaries or any other Person or delivered to Secured Party, relating to this Agreement or to the transactions contemplated by this Agreement or otherwise relating to the relationship between or among any Debtor and Secured Party, as each of the same may be amended, supplemented, restated or otherwise modified from time to time.

“Books and Records” means all books, records, board minutes, contracts, licenses, insurance policies, environmental audits, business plans, files, computer files, computer discs and other data and software storage and media devices, accounting books and records, financial statements (actual and pro forma), filings with Governmental Authorities and any and



all records and instruments relating to the Collateral or otherwise necessary or helpful in the collection thereof or the realization thereupon.

“Business Day” means a day on which Secured Party is open for business and that is not a Saturday, a Sunday or other day on which banks are required or permitted to be closed in the State of California.

“Chattel Paper” means all “chattel paper,” as such term is defined in the UCC, including electronic chattel paper, now owned or hereafter acquired by any Person.

“Closing Date” means the date on which any Debtor shall first receive proceeds of the initial Loan or the date hereof, if no Loan is made under the facility on the date hereof.

“Collateral” means all of each Debtor’s property and assets, whether real or personal, tangible or intangible, and whether now owned or hereafter acquired, or in which it now has or at any time in the future may acquire any right, title or interests including all of the following property in which it now has or at any time in the future may acquire any right, title or interest:

- (a) all Inventory;
- (b) all Equipment;
- (c) all Fixtures;
- (d) all Goods;
- (e) all General Intangibles;
- (f) all Accounts;
- (g) all Deposit Accounts, other bank accounts and all funds on deposit therein;
- (h) all Investment Property;
- (i) all Stock;
- (j) all Chattel Paper;
- (k) all Letter-of-Credit Rights;
- (l) all Instruments;
- (m) all commercial tort claims;
- (n) all Books and Records;
- (o) all Intellectual Property;

(p) all Supporting Obligations including letters of credit and guarantees issued in support of Accounts, Chattel Paper, General Intangibles and Investment Property;

(q) (i) all money, cash and cash equivalents and (ii) all cash held as cash collateral to the extent not otherwise constituting Collateral, all other cash or property at any time on deposit with or held by Secured Party for the account of any Debtor (whether for safekeeping, custody, pledge, transmission or otherwise); and

(r) all products and Proceeds of all or any of the foregoing, tort claims and all claims and other rights to payment including (i) insurance claims against third parties for loss of, damage to, or destruction of, the foregoing Collateral and (ii) payments due or to become due under leases, rentals and hires of any or all of the foregoing and Proceeds payable under, or unearned premiums with respect to policies of insurance in whatever form.

“Common Stock” means the shares of stock representing the Parent’s common equity interests.

“Debtor Agent” means Joe Garcia.

“Deeds of Trust” means collectively, the Deeds of Trust and the Leasehold Deed of Trust as defined in the Note.

“Default” means any act or event which, with the giving of notice or passage of time or both, would constitute an Event of Default.

“Deposit Accounts” means all “deposit accounts” as such term is defined in the UCC, now or hereafter held in the name of any Person, including, without limitation, the Lockboxes.

“Documents” means all “documents”, as such term is defined in the UCC, now owned or hereafter acquired by any Person, wherever located, including all bills of lading, dock warrants, dock receipts, warehouse receipts, and other documents of title, whether negotiable or non-negotiable.

“Eligible Accounts” means each Account of each Debtor which conforms to the following criteria: (a) shipment of the merchandise or the rendition of services has been completed; (b) no return, rejection or repossession of the merchandise has occurred; (c) merchandise or services shall not have been rejected or disputed by the Account Debtor and there shall not have been asserted any offset, defense or counterclaim; (d) continues to be in full conformity with the representations and warranties made by such Debtor to Secured Party with respect thereto; (e) Secured Party is, and continues to be, satisfied with the credit standing of the Account Debtor in relation to the amount of credit extended; (f) there are no facts existing or threatened which are likely to result in any adverse change in an Account Debtor’s financial condition; (g) is documented by an invoice in a form approved by Secured Party and shall not be unpaid more than ninety (90) days from invoice date; (h) not more than twenty-five percent (25%) of the unpaid amount of invoices due from such Account Debtor remains unpaid more than ninety (90) days from invoice date; (i) is not evidenced by chattel paper or an instrument of any kind with respect to or in payment of the Account unless such instrument is duly endorsed to

and in possession of Secured Party or represents a check in payment of an Account; (j) the Account Debtor is located in the United States; provided, however, Secured Party may, from time to time, in the exercise of its sole discretion and based upon satisfaction of certain conditions to be determined at such time by Secured Party, deem certain Accounts as Eligible Accounts notwithstanding that such Account is due from an Account Debtor located outside of the United States; (k) Secured Party has a first priority perfected Lien in such Account and such Account is not subject to any Lien other than Permitted Liens; (l) does not arise out of transactions with any employee, officer, director, stockholder or Affiliate of any Debtor; (m) is payable to such Debtor; (n) does not arise out of a bill and hold sale prior to shipment and does not arise out of a sale to any Person to which such Debtor is indebted; (o) is net of any returns, discounts, claims, credits and allowances; (p) if the Account arises out of contracts between such Debtor, on the one hand, and the United States, on the other hand, any state, or any department, agency or instrumentality of any of them, such Debtor has so notified Secured Party, in writing, prior to the creation of such Account, and there has been compliance with any governmental notice or approval requirements, including compliance with the Federal Assignment of Claims Act; (q) is a good and valid account representing an undisputed bona fide indebtedness incurred by the Account Debtor therein named, for a fixed sum as set forth in the invoice relating thereto with respect to an unconditional sale and delivery upon the stated terms of goods sold by such Debtor or work, labor and/or services rendered by such Debtor; (r) does not arise out of progress billings prior to completion of the order; (s) such Debtor's right to payment is absolute and not contingent upon the fulfillment of any condition whatsoever; (t) such Debtor is able to bring suit and enforce its remedies against the Account Debtor through judicial process; (u) does not represent interest payments, late or finance charges owing to such Debtor, and (v) is otherwise satisfactory to Secured Party as determined by Secured Party in the exercise of its sole discretion. In the event any Debtor requests that Secured Party include within Eligible Accounts certain Accounts of one or more of such Debtor's acquisition targets, Secured Party shall at the time of such request consider such inclusion, but any such inclusion shall be at the sole option of Secured Party and shall at all times be subject to the execution and delivery to Secured Party of all such documentation (including, without limitation, guaranty and security documentation) as Secured Party may require in its sole discretion.

"Eligible Inventory" means Inventory owned by a Debtor which Secured Party, in its sole and absolute discretion, determines: (a) is subject to a first priority perfected Lien in favor of Secured Party and is subject to no other Liens whatsoever (other than Permitted Liens); (b) is located on premises with respect to which Secured Party has received a landlord or mortgagee waiver acceptable in form and substance to Secured Party; (c) is not in transit; (d) is in good condition and meets all standards imposed by any governmental agency, or department or division thereof having regulatory Governmental Authority over such Inventory, its use or sale including the Federal Fair Labor Standards Act of 1938 as amended, and all rules, regulations and orders thereunder; (e) is currently either usable or salable in the normal course of such Debtor's business; (f) is not placed by such Debtor on consignment or held by such Debtor on consignment from another Person; (g) is in conformity with the representations and warranties made by such Debtor to Secured Party with respect thereto; (h) is not subject to any licensing, patent, royalty, trademark, trade name or copyright agreement with any third parties; (i) does not require the consent of any Person for the completion of manufacture, sale or other disposition of such Inventory and such completion, manufacture or sale does not constitute a breach or default under any contract or agreement to which such Debtor is a party or to which such Inventory is or

may be subject; (j) is not work-in-process; (k) is covered by casualty insurance acceptable to Secured Party and under which Secured Party has been named as a lender's loss payee and additional insured; and (l) not to be ineligible for any other reason.

"Eligible Subsidiary" means each Subsidiary of the Parent set forth on Exhibit A hereto, as the same may be updated from time to time with Secured Party's written consent.

"Equipment" means all "equipment" as such term is defined in the UCC, now owned or hereafter acquired by any Person, wherever located, including any and all machinery, apparatus, equipment, fittings, furniture, Fixtures, motor vehicles and other tangible personal property (other than Inventory) of every kind and description that may be now or hereafter used in such Person's operations or that are owned by such Person or in which such Person may have an interest, and all parts, accessories and accessions thereto and substitutions and replacements therefor.

"Event of Default" means the occurrence of any of the events set forth in Section 16.

"Fixtures" means all "fixtures" as such term is defined in the UCC, now owned or hereafter acquired by any Person.

"GAAP" means generally accepted accounting principles, practices and procedures in effect from time to time in the United States of America.

"General Intangibles" means all "general intangibles" as such term is defined in the UCC, now owned or hereafter acquired by any Person including all right, title and interest that such Person may now or hereafter have in or under any contract, all Payment Intangibles, customer lists, Licenses, Intellectual Property, interests in partnerships, joint ventures and other business associations, permits, proprietary or confidential information, inventions (whether or not patented or patentable), technical information, procedures, designs, knowledge, know-how, Software, data bases, data, skill, expertise, experience, processes, models, drawings, materials, Books and Records, Goodwill (including the Goodwill associated with any Intellectual Property), all rights and claims in or under insurance policies (including insurance for fire, damage, loss, and casualty, whether covering personal property, real property, tangible rights or intangible rights, all liability, life, key-person, and business interruption insurance, and all unearned premiums), uncertificated securities, choses in action, deposit accounts, rights to receive tax refunds and other payments, rights to received dividends, distributions, cash, Instruments and other property in respect of or in exchange for pledged Stock and Investment Property, and rights of indemnification.

"Goods" means all "goods", as such term is defined in the UCC, now owned or hereafter acquired by any Person, wherever located, including embedded software to the extent included in "goods" as defined in the UCC, manufactured homes, fixtures, standing timber that is cut and removed for sale and unborn young of animals.

"Goodwill" means all goodwill, trade secrets, proprietary or confidential information, technical information, procedures, formulae, quality control standards, designs,

operating and training manuals, customer lists, and distribution agreements now owned or hereafter acquired by any Person.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, and any agency, department or other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

“Instruments” means all “instruments”, as such term is defined in the UCC, now owned or hereafter acquired by any Person, wherever located, including all certificated securities and all promissory notes and other evidences of indebtedness, other than instruments that constitute, or are a part of a group of writings that constitute, Chattel Paper.

“Intellectual Property” means any and all patents, trademarks, service marks, trade names, copyrights, trade secrets, Licenses, information and other proprietary rights and processes.

“Inventory” means all “inventory”, as such term is defined in the UCC, now owned or hereafter acquired by any Person, wherever located, including all inventory, merchandise, goods and other personal property that are held by or on behalf of such Person for sale or lease or are furnished or are to be furnished under a contract of service or that constitute raw materials, work in process, finished goods, returned goods, or materials or supplies of any kind, nature or description used or consumed or to be used or consumed in such Person’s business or in the processing, production, packaging, promotion, delivery or shipping of the same, including all supplies and embedded software.

“Inventory Availability” means up to the greater of (a) fifty percent (50%) of the value of Debtors’ Eligible Inventory (calculated on the basis of the lower of cost or market, on a first-in first-out basis) and (b) \$500,000.

“Investment Property” means all “investment property”, as such term is defined in the UCC, now owned or hereafter acquired by any Person, wherever located.

“Letter-of-Credit Rights” means “letter-of-credit rights” as such term is defined in the UCC, now owned or hereafter acquired by any Person, including rights to payment or performance under a letter of credit, whether or not such Person, as beneficiary, has demanded or is entitled to demand payment or performance.

“License” means any rights under any written agreement now or hereafter acquired by any Person to use any trademark, trademark registration, copyright, copyright registration or invention for which a patent is in existence or other license of rights or interests now held or hereafter acquired by any Person.

“Lien” means any mortgage, security deed, deed of trust, pledge, hypothecation, assignment, security interest, lien (whether statutory or otherwise), charge, claim or encumbrance, or preference, priority or other security agreement or preferential arrangement held or asserted in respect of any asset of any kind or nature whatsoever including any conditional sale or other title retention agreement, any lease having substantially the same

economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement under the UCC or comparable law of any jurisdiction.

“Loan” has the meaning given such term in Section 2(a) and shall include all other extensions of credit hereunder and under any Ancillary Agreement.

“Material Adverse Effect” means a material adverse effect on (a) the business, assets, liabilities, condition (financial or otherwise), properties, operations or prospects of any Debtor or any of its Subsidiaries (taken individually and as a whole), (b) any Debtor’s or any of its Subsidiary’s ability to pay or perform the Obligations in accordance with the terms hereof or any Ancillary Agreement, (c) the value of the Collateral, the Liens on the Collateral or the priority of any such Lien or (d) the practical realization of the benefits of Secured Party’s rights and remedies under this Agreement and the Ancillary Agreements.

“Note” means that certain Secured Promissory Note dated as of the Closing Date made by the Debtors in favor of Secured Party in the original face amount of \$\_\_\_\_\_, as same may be amended, supplemented, restated and/or otherwise modified from time to time.

“Obligations” means the Loan, all advances, debts, liabilities, obligations, covenants and duties owing by each Debtor and each of its Subsidiaries to Secured Party (or any corporation that directly or indirectly controls or is controlled by or is under common control with Secured Party) of every kind and description (whether or not evidenced by any note or other instrument and whether or not for the payment of money or the performance or non-performance of any act), direct or indirect, absolute or contingent, due or to become due, contractual or tortious, liquidated or unliquidated, whether existing by operation of law or otherwise now existing or hereafter arising including any debt, liability or obligation owing from any Debtor and/or each of its Subsidiaries to others which Secured Party may have obtained by assignment or otherwise and further including all interest (including interest accruing at the then applicable rate provided in this Agreement after the maturity of the Loan and interest accruing at the then applicable rate provided in this Agreement after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, whether or not a claim for post-filing or post-petition interest is allowed or allowable in such proceeding), charges or any other payments each Debtor and each of its Subsidiaries is required to make by law or otherwise arising under or as a result of this Agreement, the Ancillary Agreements or otherwise, together with all reasonable expenses and reasonable attorneys’ fees chargeable to the Debtors’ or any of their Subsidiaries’ accounts or incurred by Secured Party in connection therewith.

“Payment Intangibles” means all “payment intangibles” as such term is defined in the UCC, now owned or hereafter acquired by any Person, including, a General Intangible under which the Account Debtor’s principal obligation is a monetary obligation.

“Permitted Liens” means (a) Liens of carriers, warehousemen, artisans, bailees, mechanics and materialmen incurred in the ordinary course of business securing sums not overdue; (b) Liens incurred in the ordinary course of business in connection with worker’s compensation, unemployment insurance or other forms of governmental insurance or benefits, relating to employees, securing sums (i) not overdue or (ii) being diligently contested in good faith provided that adequate reserves with respect thereto are maintained on the books of the

Debtors and their Subsidiaries, as applicable, in conformity with GAAP; (c) Liens in favor of Secured Party; (d) Liens for taxes (i) not yet due or (ii) being diligently contested in good faith by appropriate proceedings, provided that adequate reserves with respect thereto are maintained on the books of the Debtors and their Subsidiaries, as applicable, in conformity with GAAP; and which have no effect on the priority of Liens in favor of Secured Party or the value of the assets in which Secured Party has a Lien; and (e) Purchase Money Liens securing Purchase Money Indebtedness to the extent permitted in this Agreement.

“Person” means any individual, sole proprietorship, partnership, limited liability partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, public benefit corporation, entity or government (whether federal, state, county, city, municipal or otherwise, including any instrumentality, division, agency, body or department thereof), and shall include such Person’s successors and assigns.

“Proceeds” means “proceeds”, as such term is defined in the UCC and, in any event, shall include: (a) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to any Debtor or any other Person from time to time with respect to any Collateral; (b) any and all payments (in any form whatsoever) made or due and payable to any Debtor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of any Collateral by any governmental body, governmental authority, bureau or agency (or any person acting under color of governmental authority); (c) any claim of any Debtor against third parties (i) for past, present or future infringement of any Intellectual Property or (ii) for past, present or future infringement or dilution of any trademark or trademark license or for injury to the goodwill associated with any trademark, trademark registration or trademark licensed under any trademark License; (d) any recoveries by any Debtor against third parties with respect to any litigation or dispute concerning any Collateral, including claims arising out of the loss or nonconformity of, interference with the use of, defects in, or infringement of rights in, or damage to, Collateral; (e) all amounts collected on, or distributed on account of, other Collateral, including dividends, interest, distributions and Instruments with respect to Investment Property and pledged Stock; and (f) any and all other amounts, rights to payment or other property acquired upon the sale, lease, license, exchange or other disposition of Collateral and all rights arising out of Collateral.

“Purchase Money Indebtedness” means (a) any indebtedness incurred for the payment of all or any part of the purchase price of any fixed asset, including indebtedness under capitalized leases, (b) any indebtedness incurred for the sole purpose of financing or refinancing all or any part of the purchase price of any fixed asset, and (c) any renewals, extensions or refinancings thereof (but not any increases in the principal amounts thereof outstanding at that time).

“Purchase Money Lien” means any Lien upon any fixed assets that secures the Purchase Money Indebtedness related thereto but only if such Lien shall at all times be confined solely to the asset the purchase price of which was financed or refinanced through the incurrence of the Purchase Money Indebtedness secured by such Lien and only if such Lien secures only such Purchase Money Indebtedness.

“Registration Rights Agreements” means each registration rights agreement by and between the Parent and Secured Party, as each of the same may be amended, modified and supplemented from time to time.

“Security Documents” means all security agreements, mortgages, cash collateral deposit letters, pledges and other agreements which are executed by any Debtor or any of its Subsidiaries in favor of Secured Party.

“Software” means all “software” as such term is defined in the UCC, now owned or hereafter acquired by any Person, including all computer programs and all supporting information provided in connection with a transaction related to any program.

“Stock” means all certificated and uncertificated shares, options, warrants, membership interests, general or limited partnership interests, participation or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity whether voting or nonvoting, including common stock, preferred stock, or any other “equity security” (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 as amended).

“Subsidiary” means, with respect to any Person, (i) any other Person whose shares of stock or other ownership interests having ordinary voting power (other than stock or other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the directors or other governing body of such other Person, are owned, directly or indirectly, by such Person or (ii) any other Person in which such Person owns, directly or indirectly, more than 50% of the equity interests at such time.

“Supporting Obligations” means all “supporting obligations” as such term is defined in the UCC.

“Term” means the Closing Date through the close of business on \_\_\_\_\_, subject to acceleration at the option of Secured Party upon the occurrence of an Event of Default hereunder or other termination hereunder.

“UCC” means the Uniform Commercial Code as the same may, from time to time be in effect in the State of California; provided, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, Secured Party’ Lien on any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of California, the term “UCC” shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions of this Agreement relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions; provided further, that to the extent that UCC is used to define any term herein or in any Ancillary Agreement and such term is defined differently in different Articles or Divisions of the UCC, the definition of such term contained in Article or Division 9 shall govern.



Exhibit A

Names and Addresses of Debtors

1. Joe

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2. Jane

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3. \_\_\_\_\_

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4. \_\_\_\_\_

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5. \_\_\_\_\_

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6. \_\_\_\_\_

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**SECURITY AGREEMENT**

By and among

\_\_\_\_\_, a \_\_\_\_\_,

as Secured Party

and

The Debtors listed on Exhibit A

collectively, as Debtors

Dated: \_\_\_\_\_

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