

BUSINESS LOAN AND SECURITY AGREEMENT

This Business Loan Agreement, dated as of _____, 20 ____ (the "Agreement") between MAIN STREET BUSINESS LOANS, LLC ("Lender"), with offices located at 1901 Avenue of the Stars, Suite 450, Los Angeles, CA 90067, and _____ d/b/a _____ ("Borrower"), with offices located at _____

By initialing where indicated immediately after this sentence, each of the Borrower and the Guarantors hereby acknowledges, covenants and agrees that this Agreement shall be governed by, and construed in accordance with, the laws of the State of California. The Borrower and the Guarantor(s) hereby submit to the jurisdiction of any California state or federal court sitting in San Francisco County.

[Borrower initials] _____ [Guarantor initials] _____ [Guarantor initials] _____

Loan # _____

BORROWER'S INFORMATION

Business Legal Name:

D/B/A

State of Incorporation/Organization:

Type of entity (check one):

☐ corporation

☐ limited liability company

☐ partnership

☐ limited partnership

☐ limited liability partnership

☐ sole proprietorship

Physical address:

City:

State:

Zip:

Mailing address:

City:

State:

Zip:

Date business started (mm/yy):

Federal ID or SS#:

Contact name:

Position:

Phone:

Fax:

E-mail:

Web Site:

Bank name:

City:

State:

Zip:

PRINCIPAL AMOUNT OF LOAN; TERMS OF REPAYMENT; FEES

Lender hereby agrees to provide financing to Borrower in the amount of the Principal Amount set forth immediately below and on the terms and conditions set forth herein and strictly conditioned upon and subject to Borrower's performance of all of its obligations set forth herein.

Principal Amount: \$ _____ **Net Loan Proceeds:** \$ _____

Total Repayment Amount: \$ _____ **Maturity Date:** _____ business days from the Commencement Date.

Payment Schedule: \$ _____ per business day (the "Daily Payment Amount") starting with an ACH debit on the Commencement Date, together with a final payment of \$ _____

Fees:

Origination Fee: 3% of the Principal Amount

Loan Processing Fee: \$ _____

Loan Servicing Fee: \$ 25 Monthly

Late Fee: \$ 25 per day

Returned Payment Fee: \$ 35 per occurrence

UNCONDITIONAL PERSONAL GUARANTEE

In consideration of the Lender (a Licensed California Finance Lender, License Number 6054509) entering into the Agreement, and in order to induce the Lender to enter into the Agreement, each of the undersigned (each, a "Guarantor") hereby personally, unconditionally and jointly and severally (if more than one) guarantees the prompt performance and the prompt payment to Lender, and to Lender's successors and assigns, of any and all Obligations (as such term is defined in Section 2 of the Agreement) owing to the Lender by the Borrower pursuant to the Agreement, including all costs, expenses and reasonable attorneys' fees which may be incurred as a result of the Borrower's default in the performance of its Obligations or as a result of the Guarantor's default under this Guarantee. The Guarantor hereby acknowledges and agrees that, in the event the Borrower's bank account does not have sufficient funds for the payment of the Obligations for which the Borrower is liable under the Agreement, the Guarantor will be liable to the Lender for such deficiency, without any presentment or demand made by the Lender. The Guarantor further acknowledges and agrees that in the event of a default by the Guarantor, the Lender may report such default to one or more credit bureaus. This is an absolute, irrevocable and continuing personal obligation that will remain in full force and effect until all of the Obligations are indefeasibly paid in full and the Lender has terminated this Personal Guaranty. This is a guaranty of payment and performance and not a guaranty of collection. Each Guarantor hereby acknowledges and agrees to repay the Obligations on demand. Each Guarantor hereby further acknowledges that the Lender has the right to extend, transfer or otherwise compromise or modify the Agreement without the Guarantor's further consent, and each Guarantor agrees to be bound by all such modifications. Each Guarantor hereby waives all defenses, legal, equitable, or otherwise available to him or her, and each Guarantor hereby waives all notices to which he or she might otherwise be entitled under law, including notices of protest, presentment, transfer, demand and default. Each Guarantor hereby further agrees that the Lender may proceed separately against each Guarantor without first proceeding against the Borrower, or against any other Guarantor or collateral. This Guaranty will not be terminated or affected by a Guarantor's death and will bind each Guarantor's heirs and personal representatives. If more than one Guarantor executes this Guaranty, each Guarantor's liability hereunder shall be joint and several. Each Guarantor hereby authorizes the Lender and its agents and representatives to take all steps reasonably necessary to verify all information provided by or about the Guarantor in connection with this Guaranty or the Agreement, and to order credit reports from time to time regarding the Guarantor for so long as any Obligations remain outstanding, or in the event that the Borrower or Guarantor potentially have any obligation to the Lender pursuant to the Agreement or this Guaranty, or if such measures are warranted by Lender's underwriting or collection procedures. Upon the Lender's request, each Guarantor shall promptly provide the Lender with current financial information and/or a new credit application in the Guarantor's name. Each Guarantor understands and agrees that the terms and conditions of the products and services offered by Lender, including this Agreement and any other documentation provided by the Lender ("Confidential Information") are Lender's proprietary and confidential information. Accordingly, unless disclosure is required by applicable law or court order, no Guarantor shall disclose Confidential Information to any person or entity other than such Guarantor's officers, employees, agents, designees, attorneys, and accountants (collectively, "Representatives") who need to know such information for the purpose of advising Guarantor, provided that such Representatives use such information solely to advise Guarantor, and first agree in writing to keep such information confidential. Each Guarantor hereby acknowledges and agrees that this Guaranty and the Agreement will be interpreted, administered and enforced in accordance with the laws of the State of California, applied without giving effect to conflict-of-laws principles. To the extent not prohibited by applicable law, EACH GUARANTOR HEREBY WAIVES HIS OR HER RIGHT TO A JURY with respect to any legal action or proceeding of any kind arising out of or related to this Guaranty, the Agreement, or any other documents evidencing the Obligations, except where such waiver is prohibited by law or deemed by a court of law to be against public policy. Any such claim or cause of action shall be determined by arbitration before a single arbitrator in the County of San Francisco, State of California, in accordance with the rules then in effect of the Commercial Panel of the American Arbitration Association. All such disputes, claims or controversies shall be brought by the parties in their respective individual capacities, and not as a plaintiff or class member in any purported class or representative proceeding, except where such waiver is prohibited by law as being against public policy. To the extent any party is permitted by law to proceed with a class or representative action against any other party, the parties hereby agree that: (1) the prevailing party shall not be entitled to recover attorneys' fees or costs associated with pursuing the class or representative action (notwithstanding any other provision in this Guaranty or the Agreement); and (2) the party who initiates or participates as a member of the class will not submit a claim or otherwise participate in any recovery secured through the class or representative action. Each Guarantor hereby expressly consents to the jurisdiction set forth herein and waives any claim of lack of personal jurisdiction, improper venue or forum non conveniens.

EACH GUARANTOR HEREBY

Signatures appear on the following page.

Guarantor Initials _____ Guarantor Initials _____

BORROWER AND GUARANTOR EXECUTION

Upon execution of this Agreement, each of the parties hereto shall be obligated hereunder and shall be subject to all of the terms and conditions stated on the front and reverse side hereof. The person executing this Agreement on behalf of the Borrower warrants and represents that he/she is authorized to bind the Borrower to all of the terms and conditions set forth on the front and reverse side of this Agreement and all of the information provided herein is true and accurate in all respects.

BORROWER:

By: X _____
(Sign Here)

Name: _____
(Print Name)

Title: _____

Date: _____

BORROWER:

By: X _____
(Sign Here)

Name: _____
(Print Name)

Title: _____

Date: _____

MAINSTREET BUSINESS LOANS, LLC:

By: X _____
(Sign Here)

Name: _____
(Print Name)

Title: _____

Date: _____

GUARANTOR 1:

By signing below, I agree to the terms of the Personal Guarantee above, even if signed as an officer of the borrower

By: X _____
(Sign Here)

Name: _____
(Print Name)

Home Address: _____

SSN: _____

Date: _____ Date of Birth: _____

GUARANTOR 2:

By signing below, I agree to the terms of the Personal Guarantee above, even if signed as an officer of the borrower

By: X _____
(Sign Here)

Name: _____
(Print Name)

Home Address: _____

SSN: _____

Date: _____ Date of Birth: _____

ADDITIONAL TERMS OF THIS AGREEMENT ARE SET FORTH IN THE TERMS AND CONDITIONS THAT FOLLOW.

TERMS AND CONDITIONS

1. Scope of Agreement; Identity of Borrower and Lender. This Business Loan and Security Agreement (the "Agreement") sets forth the terms and conditions of your business loan (the "Loan") from Main Street Business Loans, LLC. Please read this Agreement carefully and keep a copy for your records. In the Agreement, each of the words "you", "your" and "Borrower" refer to each individual or entity that signs this Agreement as borrower. Each of the words, "we", "us", "our" and "Lender" refer to Main Street Business Loans, LLC and its successors and assigns.

2. Authorization; Obligations Defined. The Borrower, and the person(s) signing this Agreement on behalf of the Borrower, each have full power and authority to enter into and perform all of the Borrower's Obligations under this Agreement, all of which have been duly authorized by all necessary and proper action. For purposes of this Agreement, the term, "Obligations" means all present and future payment and non-payment obligations owing by the Borrower to the Lender, whether or not for the payment of the Total Repayment Amount or other sums, whether or not evidenced by any note or other instrument, whether direct or indirect, absolute or contingent, due or to become due, joint or several, primary or secondary, liquidated or unliquidated, secured or unsecured, original or renewed or extended, whether arising before, during or after the commencement of any Bankruptcy Case in which the Borrower is a debtor, including but not limited to any obligations arising pursuant to letters of credit or acceptance transactions or any other financial accommodations; and all principal, interest, fees, charges, expenses, attorneys' fees and accountants' fees chargeable to the Borrower or incurred by the Lender in connection with this Agreement and/or the transaction(s) related thereto.

3. Secured Loan Transaction. The Borrower hereby acknowledges and agrees that, pursuant to this Agreement, the Borrower is entering into a secured loan transaction with the Lender that is in all events unconditionally and absolutely repayable in full by the Borrower, and that this transaction is not a purchase of Borrower's accounts receivable.

4. Commencement Date. This Agreement commences on the date that we accept this Agreement at our office located in San Francisco, California and the first ACH debit after the two (2) day trial period as described in Section 4(a) is initiated. The Borrower understands, acknowledges and agrees that the Lender is not obligated to remit the Principal Amount to you unless and until (i) you have submitted all required personal guaranties and other required documentation to the Lender, and (ii) we have perfected all security interests to which we are entitled under this Agreement.

(a) **Trial Period:** After this Agreement has been signed by the Borrower and Guarantor(s) and returned to the Lender but prior to the disbursement of the Net Loan Proceeds to the Borrower, pursuant to the ACH Agreement Borrower permits Lender to ACH debit the Daily Payment Amount for two (2) business days to ensure that the instructions in the ACH Agreement are correct and that the account information on file with the Lender is correct. Lender has the right to rescind this Agreement at the end of the Trial Period for any reason. Should any of the ACH debits during the Trial Period bounce/be rejected the fees as defined in this Agreement shall apply. Lender reserves the right to withhold the Net Loan Proceeds until and after three consecutive ACH debits successfully are posted. If Lender elects to fund the Net Loan Proceeds then all of the cash collected during the Trial Period shall be applied to reduce the Total Repayment Amount. If Lender decides not to fund the Net Loan Proceeds after the Trial Period at its sole discretion, this Agreement shall have no further effect and Lender shall promptly return to Borrower any cash received by Lender in connection with this Trial Period. At Lender's discretion, Lender may waive The Trial Period to avoid The Trial Period delay. To waive The Trial Period, Borrower must provide lender the login and password for the Designated Account. Lender will review the snapshot of activity to ascertain that The Payment Schedule can be met. Once reviewed Lender will determine whether to waive The Trial Period as described in this section. By signing this agreement and providing the login information about the Designated Account, Borrower gives the Lender the permission to login to the Designated Account and view the information for the purposes of this section or anytime the Borrower sees fit to login into the account under this agreement. Additionally, should the login change at any time during the Agreement, Borrower must provide the new login and password within 24 hours of the change. Failure to do so will constitute a default under the Agreement.

5. Loan Proceeds to be Used for Business Purposes Only. By signing this Agreement, you certify that all Loan proceeds are to be used solely for the business purposes set forth immediately below, and not for consumer, personal, family or household purposes, or to finance loans, dividends or other distributions to shareholders, partners, members or other owners of your company. You certify that you will only use the Principal Amount:

(a) to purchase or acquire the following specific products and services: (i) merchandise, inventory, goods and services for sale or rental to your customers, (ii) equipment, goods and services for business use, and (iii) insurance (excluding self-insurance), and

(b) for the following specific business purposes: (i) improvements and/or construction of facilities at your business location (but not to purchase real estate), (ii) training, public works projects and educational services needed by your business, and (iii) loans to finance specified sales transactions.

You understand that, in providing you with the Loan, the Lender is strictly relying upon your agreement not to use the Principal Amount for consumer, personal, family or household purposes. This Loan is not a "Consumer Transaction" as such term is defined in the Uniform Commercial Code of the State of California, as may be amended from time to time (the "UCC"). This Agreement and the Loan are exempt from certain federal and state laws, rules and regulations which grant certain rights to consumers, and impose certain duties upon lenders making loans for consumer or personal purposes. You also understand that, if you breach your certification regarding the purpose of the Loan, the Lender will still have the right to enforce your liability to repay the Obligations, regardless of the purpose for which you actually utilize the Principal Amount, and the Lender will still be entitled to pursue any remedy to which the Lender is entitled under law, in equity, under the Agreement or otherwise, even if such a remedy would not have been available to the Lender if the Loan had been made for consumer purposes.

6. Payment Obligation. The Borrower absolutely and unconditionally agrees to repay to the Lender the Total Repayment Amount and all other Obligations set forth in this Agreement without raising any counterclaim or right of set-off, recoupment, offset or other defense. The Borrower understands and acknowledges that in making the Loan to the Borrower, the Lender is relying upon such promises and agreements. The Borrower further acknowledges and agrees that it may not prepay the Obligations except as expressly set forth herein. The Borrower agrees to make payments to the Lender in accordance with the terms and conditions set forth in this Agreement and in that certain Direct ACH Authorization Agreement attached hereto and made a part hereof (the "ACH Agreement"). The Borrower's unconditional promise to repay the Lender means, among other things, that the Borrower waives (with respect to the Loan and any renewals, extensions or other modifications thereof): (a) protest, demand and presentment; (b) notice of dishonor, protest or suit; (c) all other notices or requirements pertaining to your liability for the Obligations; and (d) all rights of exemption under state property laws.

7. **ACH Payment Procedures.** The Lender will remit the Net Loan Proceeds to the Borrower by initiating an ACH credit to the Borrower's checking account (the "Designated Account") that is set forth in the ACH Agreement. Pursuant to the ACH Agreement, the Borrower has agreed to participate in the Lender's ACH Payment Program and has authorized the Lender to initiate ACH debits to the Designated Account in accordance with the Payment Schedule set forth herein and as further set forth in the ACH Agreement. The Borrower understands that the Daily Payment Amounts will be automatically ACH debited from the Designated Account pursuant to the Lender's Automatic Payment Plan (the "Automatic Payment Plan"), as is more fully set forth in the ACH Agreement on each business day. If any bank holiday falls on a weekday the payment due on the bank holiday will be ACH debited on the next business day along with the scheduled payment.

8. **Liability for Repayment; Substitute Payments.** The Borrower understands, acknowledges and agrees that the Borrower is liable for repayment of the Obligations in full even if the Borrower or the Lender terminates the ACH Agreement, or if there are insufficient funds on deposit in the Designated Account at any time or if there is any other reason why Borrower knows that Lender will be unable to process a payment under the ACH Payment Program. If any of the foregoing occurs at any time, the Borrower understands that it is responsible to promptly mail or otherwise deliver a check to the Lender in the amount of the outstanding Daily Payment Amount(s) that are due and payable (each, a "Substitute Payment"). Such Substitute Payments shall be made in good funds (i) by calling the Lender at 866-325-0117 and authorizing the Lender to initiate an ACH debit to the Designated Account for the amount of the outstanding payment, or (ii) via check, money order, wire transfer or other means in U.S. Dollars. If the Borrower is going to remit payment to the Lender via mail, overnight courier or via hand delivery, the Borrower shall remit payment to the Lender at: Main Street Business Loans, LLC, 1728 Ocean Avenue, Suite 214, San Francisco, CA 94112, Attn: Payment Remittance Department. The Borrower understands that the Lender is not responsible for any delay in processing and/or posting the Borrower's Substitute Payment, or is the result of payment being mailed or otherwise delivered by the Borrower to the wrong address. The Borrower further understands and acknowledges that, if the Borrower makes a Substitute Payment to the Lender, the Lender may elect, in its sole and absolute discretion, to process such payment as an additional payment and continue to process the Borrower's scheduled Automatic Payment Plan payments, or the Lender may reduce any scheduled Automatic Payment Plan payment by the amount of any such Substitute Payment.

9. **Lender's Rights Regarding Substitute Payments.** The Lender may elect, in its sole and absolute discretion, to accept Substitute Payments from the Borrower without waiving or in any way diminishing or impairing the Lender's rights under this Agreement. The Lender shall not be responsible for holding post dated checks, and the Lender will not incur any liability for depositing same immediately upon receipt thereof. Notwithstanding the foregoing, the Lender may elect, in its sole and absolute discretion, to accommodate the Borrower's wishes and hold a post dated check until the date specified on the check. The Borrower acknowledges and agrees that it will not, under any circumstances, remit checks to the Lender that are marked "payment in full", "without recourse", or words of similar effect. The Borrower understands that, if the Borrower writes any such language on a check, the Lender has the right not to deposit said check without incurring any liability or in any way diminishing or impairing the Lender's rights under this Agreement.

10. **Application of Payments.** The Borrower irrevocably waives the right to direct the application of any and all payments at any time or times hereafter received by the Lender from or on behalf of the Borrower. Subject to applicable law, the Borrower hereby irrevocably agrees that the Lender shall have the continuing exclusive right to apply any and all payments received at any time or times hereafter against the Obligations in such manner and order as the Lender may determine in its sole discretion.

11. **Prepayments.** The Borrower shall have the right to make payments at any time in reduction of the Obligations, in whole or in part; provided, that the Lender may apply any such prepayments to the Obligations, or a portion thereof, in any manner and in any order as Lender may determine in its sole discretion, notwithstanding contrary instructions received., and further, provided, that, notwithstanding prepayment, the Borrower shall remain liable for repayment of the full amount of the Obligations, including, without limitation, the Total Repayment Amount. Borrower agrees not to send Lender payments marked "paid in full", "without recourse" or similar language. If Borrower sends such payment, Lender may accept it without losing any of Lender's rights under this Agreement or otherwise.

12. **Fees.** The Borrower agrees to pay the following fees:

(a) **Origination Fee:** A one-time, nonrefundable Origination Fee in the amount set forth on the first page of this Agreement, which Origination Fee shall be deducted from the Loan proceeds.

(b) **Monthly Loan Servicing Fee.** A monthly Loan Servicing Fee in the amount set forth on the first page of this Agreement, which Loan Servicing Fee shall be debited on the 2nd day of each month or the first business day thereafter if the 2nd falls on a weekend or bank holiday.

(c) **Late Fee:** A Late Fee in the amount set forth on the first page of this Agreement, which Late Fee shall be due and payable if a scheduled payment is not received by the Lender on the date that it is due and payable pursuant to the Payment Schedule. The Late Fee shall be due and payable within twenty-four (24) hours of the date on which the scheduled payment was due and shall be ACH debited from the Designated Account by Lender and will be charged each day that the late payment is not paid.

13. **Grant of Security Interest; Authorization to File UCC Financing Statements.** To secure the performance of the covenants set forth herein and all of the Obligations of the Borrower to the Lender under this Agreement and under the ACH Agreement, the Borrower hereby grants to the Lender and/or its assignees or designees, if any, a continuing first priority security interest in the following property of the Seller: (a) All of the Borrower's now owned and hereafter acquired accounts, deposit accounts, amounts owing to Borrower now or in the future from any credit card processor processing the transactions of Borrower's customers via credit and/or debit card transactions, contract rights, chattel paper, tax refunds, documents, licenses, equipment, furniture, fixtures, general intangibles, instruments, inventory, investment property (including certificated and uncertificated securities, security entitlements, commodity contracts and commodity accounts), and commercial tort claims (as those terms are defined in Article 9 of the UCC in effect from time to time in the State of California), wherever located, now or hereafter owned or acquired by the Borrower, (b) all trademarks, trade names, service marks, logos and other sources of business identifiers, and all registrations, recordings and applications with the U.S. Patent and Trademark Office and all renewals, reissues and extensions thereof (collectively "Trademarks") whether now owned or hereafter acquired, together with any written agreements granting any right to use any Trademarks; (c) all proceeds, as that term is defined in Article 9 of the UCC; (d) all proceeds of proceeds, and all substitutions, replacements, accessions and records relating to all of the foregoing (all such security interests, the "Collateral"). The Borrower hereby authorizes and consents to the filing of UCC-1 Financing Statements by the Lender or any affiliate, subsidiary agent or assignee thereof, in order to perfect, amend or continue any interest of the Lender in the Collateral created under the UCC hereunder.

14. **Borrower's Representations, Warranties and Covenants.** The Borrower hereby represents, warrants and covenants all of the following as of the date hereof and for as long as any of the Obligations remain outstanding:

Section 14.1 **Existence and Authority.** The Borrower is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization or formation. The Borrower is qualified and licensed to do business in all jurisdictions in which any failure to do so would have a material adverse effect on the Borrower or any of its properties. The execution, delivery and performance by Borrower of this Agreement, the ☐ ACH Agreement, ☐ Insurance Letter, ☐ Third-Party payoff letter, ☐ Cross Corporate Guarantee (collectively, the "Loan Documents") have been duly and validly authorized, executed and delivered by, and are enforceable against, Borrower, and the Guarantors, in accordance with their respective terms

Section 14.2 **Name; Trade Names and Styles.** The name of the Borrower set forth in the heading to this Agreement is its correct and complete legal name as of the date hereof. The Borrower will give the Lender at least thirty (30) days' prior written notice before changing its name or doing business under any other name, and will provide Lender with a cross corporate guarantee or another document as required by Lender to protect its interest as to the new entity. The Borrower has complied with all laws relating to the conduct of business under a fictitious business name. Notwithstanding the foregoing, the Borrower and the Guarantors each understand, acknowledge and agree that, in connection with the Loan and the transactions contemplated by this Agreement, the Borrower may be required to employ a "doing business as" or "d/b/a" name.

Section 14.3 **Place of Business; Location of Collateral.** The Borrower's address is the Borrower's chief executive office, and it is the location of its books and records. The Borrower will give the Lender at least thirty (30) days' prior written notice before or changing its chief executive office or the location of its books and records to a location other than the Borrower's address, and will execute and deliver all financing statements and other agreements, instruments and documents which the Lender shall require as a result thereof.

Section 14.4 **Binding Agreements.** This Agreement, the ACH Agreement and the other Loan Documents executed and/or delivered in connection herewith or therewith, when issued and delivered pursuant hereto for value received shall constitute the valid and legally binding obligations of the Borrower, enforceable in accordance with their respective terms, except as enforcement may be limited by principles of equity, bankruptcy, insolvency, or other laws affecting the enforcement of creditors' rights generally.

Section 14.5 **Compliance with Laws.** The Borrower is in compliance in all material respects with all provisions of all applicable laws and regulations, including, without limitation, those relating to the Borrower's ownership of real or personal property, and all permits, licenses, approvals, consents, registrations and other authorizations that are required in order for the Borrower to own, operate and/or lease its properties and to conduct its business, and regarding the payment and withholding of taxes, ERISA and other employee, safety and environmental matters.

Section 14.6 **No Conflicting Laws or Agreements.** The execution, delivery and performance by the Borrower of this Agreement, the ACH Agreement, and the other Loan Documents: (i) does not violate any provision of the Borrower's articles of organization, bylaws, operating agreement or other organizational documents, as amended (collectively, "Charter Documents"), (ii) does not violate any order, decree or judgment, or any provision of any statute, rule or regulation, (iii) does not violate or conflict with, result in a breach of or constitute (with notice, or lapse of time, or both) a default under any shareholder agreement, stock preference agreement, mortgage, indenture or other agreement, instrument, contract or undertaking to which the Borrower is a party, or by which any of its properties is bound, (iv) does not constitute grounds for acceleration of any indebtedness or obligation under any agreement or instrument which is binding upon the Borrower or its property, (v) does not result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any property or assets of the Borrower, except for the liens granted hereunder to the Lender, and (vi) does not require the consent of any individual, corporation, sole proprietorship, partnership, joint venture, limited liability company, limited liability partnership, trust, estate, unincorporated organization, association, corporation, institution or other entity (each, a "Person").

Section 14.7 **Business Information; Lender's Reliance Thereon.** The information (financial and other) provided by or on behalf of the Borrower to the Lender in connection with the execution of or pursuant to this Agreement is true and correct in all material respects. The Borrower shall furnish the Lender with such information as the Lender may request from time to time. The Borrower acknowledges that the information (financial and other) provided by the Borrower has been relied upon by the Lender in connection with its decision to provide the Loan to the Borrower. All of the Borrower's outstanding capital stock or comparable ownership interests have been properly issued and are accurately reflected in the Borrower's books and records, which will be so maintained.

Section 14.8 **Title to Collateral.** The Borrower has good and marketable title to the Collateral. The Collateral now is and will remain free and clear of any and all liens, charges, security interests, encumbrances and adverse claims. The Lender now has, and will continue to have, a first-priority perfected and enforceable security interest in the Collateral, and the Borrower will at all times defend the Lender and the Collateral against all claims of others. None of the Collateral which is equipment is or will be affixed to any real property in such a manner, or with such intent, as to become a fixture. Except for leases or subleases as to which the Borrower has delivered to the Lender a landlord's waiver in form and substance satisfactory to the Lender, the Borrower is not a lessee or sub lessee under any real property lease or sublease pursuant to which the lessor or sub lessor may obtain any rights in any of the Collateral, and no such lease or sublease now prohibits, restrains, impairs or conditions, or will prohibit, restrain, impair or condition, the Borrower's right to remove any Collateral from the premises. Whenever any Collateral is located upon premises in which any third party has an interest (whether as owner, mortgagee, beneficiary under a deed of trust, lien or otherwise), the Borrower shall, whenever requested by the Lender, cause each such third party to execute and deliver to the Lender, in form and substance acceptable to the Lender, such waivers and subordinations as the Lender shall specify, so as to ensure that the Lender's rights in the Collateral are, and will continue to be, superior to the rights of any such third party. The Borrower will keep in full force and effect, and will comply with all the terms of, any lease of real property where any of the Collateral now or in the future may be located.

Section 14.9 **Borrower's Conduct.** The Borrower shall (a) conduct its business consistently with past practice as disclosed to the Lender by the Borrower; (b) not sell, dispose, convey or otherwise transfer its business or assets without the express prior written consent of the Lender and the assumption of all of the Borrower's obligations under this Agreement pursuant to documentation reasonably satisfactory to the Lender; (c) not commit fraud including, without limitation, that the Borrower shall not accept funds from the Lender hereunder with the intent not to repay such funds and/or immediately thereafter terminate its business without first paying to the Lender all funds due and payable to the Lender hereunder; (d) not default on any of its payment obligations under any agreement, instrument or document to which it or any of its affiliates is a party; and (e) not obtain additional financing of any kind without the express prior written consent of the Lender.

Section 14.10 **Continued Compliance.** The Borrower is and will continue to be in compliance with its Charter Documents, and with all agreements to which the Borrower or any of its properties may be bound.

Section 14.11 **Litigation.** There is no claim, suit, litigation, proceeding or investigation pending or (to the best of the Borrower's knowledge) threatened by

or against or affecting the Borrower or the Guarantors in any court or before any governmental agency (or any basis therefor known to the Borrower) which may result, either separately or in the aggregate, in any material adverse change in the financial condition or business of the Borrower or the Guarantors, or the value of the Collateral, or in any material impairment in the ability of the Borrower to carry on its business in substantially the same manner as now conducted. The Borrower will promptly inform the Lender in writing of any claim, proceeding, litigation or investigation in the future threatened or instituted by or against the Borrower or the Guarantors.

Section 14.12 **Continuance of Business; Solvency.** The Borrower represents and warrants that it has no intention whatsoever of closing or otherwise ceasing to operate its business, in whole or in part, either temporarily or permanently. The Borrower is solvent and is not considering or otherwise subject to any insolvency or bankruptcy proceeding. Neither the Borrower nor any Guarantor is aware of, or has participated in any discussions with or among the Borrower's executive officers, attorneys, accountants or any other advisors or creditors, regarding any potential insolvency, bankruptcy, receivership, or assignment for the benefit of the Borrower's creditors, and no such action or proceeding has been filed or is pending. The Borrower also represents and warrants that it will not merge or consolidate with or into any other entity, nor will it enter into any joint venture or partnership with any Person. The Borrower is also not subject to any pending or imminent eviction or foreclosure proceeding, other than as disclosed to the Lender by the Borrower.

Section 14.13 **Insurance.** The Borrower shall procure and maintain insurance with financially sound and reputable insurers in such amounts and against such risks as are consistent with past practice and as the Lender may require with respect to the Collateral, and the Borrower shall show proof of such insurance upon the reasonable request of the Lender. In all events, such insurance shall be in such minimum amounts that the Borrower will not be deemed a co-insurer under applicable insurance laws, regulations, and policies and otherwise shall be in such amounts, contain such terms, be in such forms and be for such periods as may be reasonably satisfactory to the Lender. In addition, all such insurance shall be payable to the Lender under a Lender Loss Payable Endorsement. The Borrower shall promptly notify the Lender of any loss of or damage to the Collateral.

Section 14.14 **Location and Preservation of Collateral.** Unless the Lender has agreed otherwise in writing, the Borrower agrees and warrants that (a) all Collateral (or records of the Collateral in the case of accounts, chattel paper and general intangibles) shall be located at the Borrower's address as shown in the application, (b) except for inventory sold or accounts collected in the ordinary course of the Borrower's business, the Borrower shall not sell, offer to sell, or otherwise transfer or dispose of the Collateral, (c) no one else has any interest in or claims against the Collateral that the Borrower has not already told the Lender about, (d) the Borrower shall not pledge, mortgage, encumber or otherwise permit the Collateral to be subject to any lien, security interest, encumbrance or charge, other than the security interest provided for in this Agreement, and (e) the Borrower shall not sell, offer to sell, or otherwise transfer or dispose of the Collateral for less than the fair market value thereof. The Borrower shall defend the Lenders' rights in the Collateral against the claims and demands of all other persons. All proceeds from any unauthorized disposition of the Collateral shall be held in trust for the Lender. This requirement, however, does not constitute consent by the Lender to any such disposition.

Section 14.15 **No Payment Default.** Neither the Borrower nor any of its affiliates is in default of any of its payment obligations under any agreement or instrument to any third party to which it is a party, nor is any third party attempting to collect funds from the Borrower or any of its affiliates.

Section 14.16 **Inspection.** The Borrower shall permit the Lender or Lender's officers, employees, agents, designees, attorneys, and accountants (collectively, "Representatives"), during usual business hours, without notice to the Borrower, to periodically (a) have access to all premises where Collateral is located, for the purposes of inspecting (and removing, if after the occurrence of an Event of Default) any of the Collateral, including the Borrower's books and records, and for the purposes of inspecting the Borrower's place of business and the sufficiency of the Borrower's inventory, (b) permit the Lender or its designees to inspect, audit, make copies of, and make extracts from the Borrower's records as the Lender may request, and (c) permit the Lender or its designees to examine, without limitation, whether the Borrower's places of business are entirely distinct, separate and apart from the Borrower's personal residence, and whether they are actively open for business. Without expense to the Lender, the Lender may use any of the Borrower's personnel, equipment, including computer equipment, programs, printed output and computer readable media, supplies and premises for the collection of accounts and realization on other Collateral as the Lender, in its sole discretion, deems appropriate. The Lender may also photograph the Borrower's places of business, including any signage, and the Lender may photograph any principals of the Borrower, and all of such photographs shall be deemed to be the property of the Lender and to be within the public domain.

Section 14.17 **Proceeds and Expenses of Dispositions.** The Borrower shall pay to the Lender on demand any and all expenses, including attorneys' fees and disbursements, incurred or paid by the Lender in protecting, preserving, realizing, administering and enforcing the Lender's rights under or in respect of any of the Obligations or any of the Collateral. The Borrower shall be so obligated regardless of whether or not the Borrower is a party to the action or proceeding involving the Lender, and regardless of whether the Borrower is made aware of any such claim or proceeding before it is resolved. To the extent permitted by applicable law, all such expenses will constitute a part of the Obligations and will be secured by this Agreement. After deducting all of said expenses, subject to applicable law, the residue of any proceeds of collection or sale of the Obligations or Collateral shall, to the extent actually received in cash, be applied to the payment of the Obligations in such order or preference as the Lender may determine, notwithstanding contrary instructions received by Lender from the Borrower or any other third party. These rights shall be in addition to all of the Lender's other rights and remedies to which it is entitled upon an Event of Default.

Section 14.18 **Indemnification.** The Borrower shall defend, protect, indemnify and hold harmless the Lender and the Lender's Representatives from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel which may be imposed on, incurred by, or asserted against such persons, whether direct or indirect or consequential) in any manner relating to or arising out of the Obligations, the Loan Documents, the Collateral or any of the Borrower's assets, or any act, event or transaction related or attendant hereto or thereto, the making of the Loan or the use of the proceeds of the Loans, any amount required to be expended in connection therewith, together with interest thereon at the greater of (i) five (5.0%) percent per annum, or (ii) the maximum rate of non-usurious interest permitted by applicable law, such interest to constitute a part of the Obligations and to be payable on demand; provided, however, that the Borrower will have no obligation with respect to any matter which is determined, by final order of a court of competent jurisdiction, to have been caused by or to have resulted from the gross negligence or willful misconduct of that Person. The provisions of this Section 14.18 will survive the payment of all Obligations and the termination of this Agreement for any reason.

Section 14.19 **Maintenance of Collateral.** Unless and until the Borrower performs all of its Obligations hereunder in full, the Borrower agrees

- (a) to preserve and maintain the Collateral in good order, repair and condition at all times, (b) to responsibly utilize the Collateral in the manner for which it was originally intended,
- (c) to pay when due all claims for work done, or goods or services rendered, in connection with the Collateral, and

(d) to comply with all laws, rules, regulations, insurance policies and other governmental requirements that are in any way applicable to the Collateral. Section 14.20 **Filing of Tax Returns; Payment of Taxes and Liens.** The Borrower shall timely file all state, local and federal tax returns, and shall timely pay all taxes, assessments, liens and other contributions required of the Borrower, and the Borrower shall furnish the Lender with proof thereof promptly upon the Lender's request.

Section 14.21 **Notification of Changes.** The Borrower will promptly notify the Lender in writing of any change in its officers or directors, or managing members, as applicable, the opening of any new bank account or other deposit account, or any material adverse change in the business or financial affairs of the Borrower or the Guarantors, or the existence of any circumstance which would make any representation or warranty of the Borrower untrue in any material respect or constitute a material breach of any covenant of the Borrower.

Section 14.22 **Further Assurances.** The Borrower agrees, at its expense, to take all actions, and execute or cause to be executed and delivered to Lender all agreements, instruments, documents as the Lender may request from time to time, to fully effectuate the transactions contemplated by this Agreement and the other Loan Documents.

15. STATEMENTS AND REPORTS.

Section 15.1 **Credit Reports.** The Borrower authorizes, acknowledges and agrees that, in connection with the execution of this Agreement and the transactions contemplated hereunder, the Lender may obtain investigative or consumer reports with respect to the Borrower and the Guarantor(s). Accordingly, the Borrower and each of the Guarantor(s) authorizes the Lender, its Representatives, and any credit reporting agency employed by the Lender, to investigate any references given or any other statements of data obtained from or about the Borrower or any of its principals for the purpose of this Agreement, and to obtain credit reports at any time now or in the future with respect to the Borrower and the Guarantor(s). Upon the Borrower's or any Guarantor's request, the Lender will advise the Borrower or Guarantor if the Lender obtained a credit report and the Lender will give the Borrower or the Guarantor the credit bureau's name and address. Upon the Lender's request, the Borrower and each Guarantor shall promptly provide the Lender with current financial information and/or a new credit application, or both, in the Borrower's name and in the name of each Guarantor, respectively, at any time promptly upon the Lender's request. The Borrower authorizes the Lender to act as the Borrower's agent for purposes of accessing and retrieving transaction history information regarding the Borrower from the Borrower's designated merchant processor(s).

Section 15.2 **Monthly Statements.** The Lender will provide the Borrower with electronic access to on-line monthly statements reflecting various information about the Loan, including the outstanding balance, daily activity and fees, and any payments made by the Borrower. Should the online system not be available the Lender will provide Borrower with an electronic copy of the statements. Upon the Borrower's request, the Lender will provide the Borrower with paper account statements reflecting the foregoing.

Section 15.3 **Authorized Disclosure.** The Borrower acknowledges and agrees that the Lender may report information regarding the Borrower's credit performance in respect of the Loan to third party credit and data reporting agencies and to other third parties, to the extent permitted by law. The Borrower also acknowledges and agrees that the Lender may disclose information regarding the Loan and the Borrower which the Lender believes in good faith to be necessary and appropriate in response to legal process or governmental reporting requirements. The Borrower hereby expressly authorizes the foregoing disclosures.

16. **Events of Default.** Each of the following shall constitute an "Event of Default" under this Agreement: (a) the Lender is unable to successfully initiate ACH debits to the Designated Account in accordance with the Payment Schedule on any three (3) consecutive payment dates, and the Borrower fails to otherwise make the Daily Payments on such three (3) consecutive dates; (b) the Lender is unable to successfully initiate ACH debits to the Designated Account in accordance with the Payment Schedule on any five (5) payment dates in any one (1) month period, and the Borrower fails to otherwise make the Daily Payments on such dates; (c) the Borrower fails to perform or comply with any other material term, provision, condition, covenant or agreement contained in this Agreement or in any other Loan Document; (d) any material provision of this Agreement or any of the other Loan Documents ceases, for any reason, to be valid and binding on the Borrower or is contested by the Borrower or any Guarantor; (e) any representation, warranty, or covenant made or furnished to the Lender by the Borrower or any Guarantor is or becomes false or misleading in any material respect; (f) the Borrower commits an event of default under any other agreement with the Lender, or with any assignee or affiliate of the Lender, or under any material third party agreement that pertains to the Borrower's business or property, or pertains to the repayment of money; (g) the Borrower legally dissolves, liquidates or otherwise ceases to actively conduct a substantial part of its business in ordinary course in whole or in part; (h) the Borrower fails to pay its debts when due, or a genuine possibility arises that the Borrower's indebtedness to a lender other than the Lender could be accelerated; (i) the security interest of a third party creditor of the Borrower (1) becomes entitled to take priority over the Lender's security interest in all or any part of the Collateral, or (2) repossesses or attempts to repossess or reclaim any of the Borrower's assets, and which will, in the Lender's discretion, result in a material impairment of the prospect of repayment of the Obligations; (j) the Borrower fails to maintain the levels of insurance required hereunder; (k) the Borrower is prevented or constrained from operating its business in whole or in part in ordinary course as the result of a court order of any kind; (l) a judgment is entered against the Borrower and is not satisfied or otherwise disposed of within fifteen

(15) days of entry; (m) an order for relief is entered against the Borrower or any Guarantor by any United States Bankruptcy Court; (n) the Borrower or any Guarantor: (1) does not generally pay its debts as they become due (within the meaning of 11 U.S.C. 303(h) as at any time amended, or any successor statute thereto); (2) makes an assignment for the benefit of creditors; (3) applies for or consents to the appointment of a custodian, receiver, trustee, or similar officer for it or for all or any substantial part of its assets, or such custodian, receiver, trustee, or similar officer is appointed without the application or consent of the Borrower or any Guarantor; (4) the Borrower or any Guarantor institutes (by petition, application, answer, consent, or otherwise) any bankruptcy, insolvency, reorganization, moratorium, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction; or any such proceeding shall be instituted (by petition, application, or otherwise) against the Borrower or any Guarantor;

(o) any judgment, writ, warrant of attachment, execution, or similar process is issued or levied against a substantial portion of the property of the Borrower or any Guarantor which remains undismissed for a period of 60 days; (p) a state or federal tax lien is filed against any of the Borrower's assets; (q) an adverse change occurs with respect to the financial condition of the Borrower or any Guarantor, or with respect to the operations of the Borrower, which the Lender determines in good faith will result in a material impairment of the prospect of repayment of the Obligations; (r) the Borrower dies, if the Borrower is an individual, or the principal owner(s), chief executive officer, general partner, other primary manager or Person owning ten (10.00%) percent or more of the Borrower dies, where the Borrower is a sole proprietorship, corporation, partnership or limited liability company; (s) the Borrower commits fraud, including, without limitation, that the Borrower accepts funds from the Lender hereunder with the intent not to repay such funds and immediately thereafter terminates its business without first paying to the Lender all funds due and payable to the Lender hereunder, (t) the Borrower obtains additional financing without the express prior written consent of the Lender, or obtains any other working capital wherein Borrower's payment of the resulting obligation occurs by daily or weekly remittance by any means,

(u) the Borrower sells, disposes, conveys or otherwise transfers its business or assets without the express prior written consent of the Lender; (v) the Lender reasonably and in good faith deems itself insecure; or (w) any Guarantor dies, or any Guarantor defaults in the performance of its obligations to the Lender, or notifies the Lender of its intention to rescind, modify, terminate or revoke the Guaranty with respect to future transactions, or the Guaranty shall cease to be in full force and effect for any reason whatever.

17. REMEDIES.

Section 17.1 Upon the occurrence of any Event of Default the Lender may, at its option: (a) declare this Agreement and all of Lender's obligations hereunder terminated; (b) declare all Obligations to be immediately due and payable, without presentment, demand, protest, or notice of any kind, all of which are hereby expressly waived by the Borrower; (c) debit the Designated Account for all outstanding and unpaid Obligations; (d) immediately and without expiration of any period of grace, enforce payment of all Obligations and exercise any and all other remedies granted to it under the Loan Documents, at law, in equity, as a secured creditor under the UCC, or otherwise; (e) take possession of, send notices regarding and collect directly the Collateral, with or without judicial process (including without limitation the right to notify the United States postal authorities to redirect mail addressed to the Borrower to an address designated by Lender); (f) by its own means or with judicial assistance, enter the Borrower's premises and take possession of the Collateral, or render it unusable, or dispose of the Collateral on such premises in compliance with Section 17.3 below, without any liability for rent, storage, utilities or other sums, and Borrower shall not resist or interfere with such action; (g) require the Borrower at the Borrower's expense to assemble all or any part of the Collateral (other than real estate or fixtures) and make it available to the Lender at any place designated by the Lender; (h) have a receiver appointed to take possession of all or part of the Collateral with the power to protect and preserve the Collateral, and to operate the Collateral preceding foreclosure or sale. Lender's right to appointment of a receiver shall exist whether or not the apparent value of the Collateral exceeds the Obligations hereunder. The receiver may serve without bond if permitted by law. Employment by Lender shall not disqualify a person from serving as a receiver. If Lender chooses to sell any or all of the Collateral, Lender may obtain a judgment against Borrower for any deficiency remaining on the Obligations due to Lender after application of all amounts received from the exercise of the rights provided in this Agreement. Borrower shall be liable for a deficiency even if the sale is of accounts or chattel paper. Borrower hereby acknowledges and agrees that, upon an Event of Default, Lender shall also be entitled to, but not limited to, damages equal to the dollar amount by which the aggregate Obligations that are due and payable to Lender exceed the aggregate payments in respect thereof received by Lender from Borrower.

Section 17.2 In addition to Lender's other remedies set forth herein, and such other remedies as are available to Lender under law and in equity, Borrower hereby also grants Lender an irrevocable power of attorney, which power of attorney shall be coupled with an interest, and hereby appoints Lender or any of Lender's Representatives as Borrower's attorney in fact, to take any and all action necessary to direct any credit and/or debit card processor utilized by Borrower to make payments to Lender instead of to Borrower upon an Event of Default.

Section 17.3 The Borrower hereby agrees that a notice received by it at least seven (7) days before the time of any intended public sale or of the time after which any private sale or other disposition of the Collateral is to be made, shall be deemed to be reasonable notice of such sale or other disposition. If permitted by applicable law, any perishable inventory or Collateral which threatens to speedily decline in value or which is sold on a recognized market may be sold immediately by the Lender without prior notice to the Borrower. The Borrower covenants and agrees not to interfere with or impose any obstacle to the Lender's exercise of its rights and remedies with respect to the Collateral, after the occurrence of an Event of Default hereunder. The Lender shall have no obligation to clean up or prepare the Collateral for sale. If the Lender sells any of the Collateral upon credit, the Borrower will only be credited with payments actually made by the purchaser thereof, that are received by the Lender. The Lender may, in connection with any sale of the Collateral specifically disclaim any warranties of title or the like.

Section 17.4 Nature of Remedies. Except as may be prohibited by applicable law, all of the Lender's rights and remedies, whether pursuant to this Agreement, the other Loan Documents or by any other writing, are cumulative and may be exercised singularly or concurrently. If the Lender elects to pursue any particular remedy, this shall not constitute a waiver of the Lender's rights to pursue any other remedy, nor shall the Lender's forbearance or delay in exercising any remedy be deemed to waive any of the Lender's rights or remedies or create any course of dealing between the parties. If the Borrower fails to perform any of its obligations hereunder in any manner, and the Lender elects to make expenditures or to perform such obligations in Borrower's stead, this will not in any way impair the Lender's right to declare an Event of Default and pursue all available remedies. **THE BORROWER WAIVES ANY REQUIREMENT THAT THE LENDER INFORM THE BORROWER BY AFFIRMATIVE ACT OR OTHERWISE OF ANY ACCELERATION OF THE BORROWER'S OBLIGATIONS HEREUNDER.**

18. ADDITIONAL TERMS.

Section 18.1 **Maximum Rate of Interest.** Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under any Loan Document will not exceed the maximum rate of non-usurious interest permitted by applicable law (the "Maximum Rate"). If the Lender will receive interest in an amount that exceeds the Maximum Rate, the excess interest will be applied to the principal amount of the Loan or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Lender exceeds the Maximum Rate, the Lender may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder. In the event of any conflict or inconsistency between this provision and any other provisions hereof or of the other Loan Documents, this provision shall govern and control.

Section 18.2 **Power of Attorney.** The Borrower hereby irrevocably grants to the Lender an irrevocable power of attorney, which power of attorney shall be coupled with an interest, and hereby appoints the Lender and its designees as the Borrower's attorney-in-fact, to take any and all actions necessary or appropriate to settle all of the Borrower's obligations hereunder, including, without limitation, to: (a) collect all monies due to the Lender in respect of the Obligations and the Collateral, (b) receive, take, endorse, assign, deliver, accept and deposit in the name of the Lender or the Borrower, any and all cash checks, notes, drafts, remittances and other instruments and documents relating to the Obligations or the Collateral, (c) notify any customer or account debtor to remit payment directly to the Lender and endorse the Borrower's name on any related invoice, receipt bill or tiding or notice of assignment, and (d) take or bring, in the name of the Lender or the Borrower, all steps, actions, suits or proceedings deemed by the Lender necessary or desirable to effect collection of or other realization upon the Obligations or the Collateral, or otherwise to enforce the Lender's rights with respect thereto.

Section 18.3 **Term of Agreement.** This Agreement shall be in full force and effect until the Obligations have been indefeasibly paid in full.

Section 18.4 **Borrower Bankruptcy.** In the event that the Borrower becomes a debtor in bankruptcy, this Agreement cannot be assumed or enforced and the Lender's obligation to perform hereunder shall terminate.

19. **Confidentiality.** Borrower and each Guarantor each understand and agree that the terms and conditions of the products and services offered by the Lender, including this Agreement and any other documentation provided by the Lender ("Confidential Information") are Lender's proprietary and confidential information. Accordingly, unless disclosure is required by applicable law or court order, Borrower and each Guarantor shall not disclose Confidential Information to any Person other than Borrower's or Guarantors' respective Representatives who need to know such information for the purpose of advising Borrower or a Guarantor, provided that such Representatives use such information solely to advise Borrower and/or a Guarantor, and first agree in writing to keep such information confidential.

20. MISCELLANEOUS.

Section 20.1 **Modifications; Amendment.** No modification, amendment or waiver of any provision of this Agreement shall be effective unless the same shall be in writing and signed by the party affected.

Section 20.2 **Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be delivered by mail, overnight delivery or hand delivery to the respective parties to this Agreement. Notices shall be sent to the addresses set forth on the face of the Agreement. Section

20.3 **Waiver, Remedies.** No failure on the part of the Lender to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise of any other right. The remedies provided hereunder are cumulative and not exclusive of any remedies provided by law or equity.

Section 20.4 **Binding Effect; Assignment.** This Agreement shall be binding upon and inure to the benefit of Lender, the Borrower and their respective successors and assigns, except that the Borrower shall not have the right to assign its rights or obligations hereunder or any interest herein, in whole or in part, without the prior written consent of the Lender which consent may be withheld in the Lender's sole discretion. Any prohibited assignment shall be absolutely void. The Lender's consent to any such assignment by the Borrower shall not release the Borrower from its liability for the Obligations. The Lender reserves the right to assign this Agreement with or without prior notice to the Borrower. The Lender also reserves the right to sell, assign, transfer or otherwise convey all or any part of the Lender's rights hereunder, in which event the Lender shall have the right to disclose to third Persons all documentation and information in the Lender's possession regarding the Borrower, the Guarantors and the Obligations. Any assignee of all or part of the Lender's rights hereunder shall also assume the Lender's obligations hereunder, in which event the Lender shall be released from such obligations.

Section 20.5 **Governing Law; Dispute Resolution.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of California with respect to any suit, action or proceeding arising out of or relating to this Agreement. California law shall govern all issues concerning the validity of this Agreement, the construction of its terms and the interpretation and enforcement of the rights and duties of the parties. The Lender, the Borrower and the Guarantor(s) each hereby acknowledge and agree that any dispute, claim or controversy arising out of, relating to, or concerning the subject matter of this Agreement, shall be determined by arbitration before a single arbitrator in the County of San Francisco, State of California, in accordance with the rules then in effect of the Commercial Panel of the American Arbitration Association. All such disputes, claims or controversies shall be brought by the parties in their respective individual capacities, and not as a plaintiff or class member in any purported class or representative proceeding, except where such waiver is prohibited by law as being against public policy. To the extent any party is permitted by law to proceed with a class or representative action against any other party, the parties hereby agree that: (1) the prevailing party shall not be entitled to recover attorneys' fees or costs associated with pursuing the class or representative action (notwithstanding any other provision in this Agreement); and (2) the party who initiates or participates as a member of the class will not submit a claim or otherwise participate in any recovery secured through the class or representative action. The arbitrator may grant injunctions or other equitable relief in such dispute or controversy, however, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. The decision of the arbitrator shall be final, conclusive and binding on the parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court having subject matter jurisdiction to do so in the County of San Francisco, State of California. Each of the parties hereby consents to the personal jurisdiction of the State of California and irrevocably waives any defense or objection to such personal jurisdiction and any claim that a proceeding brought before the American Arbitration Association as set forth herein has been brought in an improper venue or inconvenient forum.

Section 20.6 **Costs to enforce Agreement Payable by Borrower.** The Lender shall be entitled to receive from the Borrower and the Borrower shall pay, all costs associated with a breach by the Borrower of the covenants set forth herein or other obligations or any of the representations and warranties of the Borrower and the enforcement thereof, including but not limited to court costs and attorneys' fees and disbursements.

Section 20.7 **Survival of Representations, etc.** All representations, warranties and covenants herein shall survive the execution and delivery of this Agreement and shall continue in full force and effect until all obligations under this Agreement shall have been satisfied in full and this Agreement shall have terminated.

Section 20.8 **Severability.** In case anyone or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

Section 20.9 **Entire Agreement.** This Agreement contains the entire agreement and understanding between the Borrower and the Lender and supersedes all prior agreements and understandings relating to the subject matter hereof unless otherwise specified, reaffirmed or restated herein.

Section 20.10 **Jury Trial Waiver.** The parties hereto waive trial by jury in any court in any suit, action or proceeding on any matter arising in connection with or in any way related to the transactions of which this Agreement is a part or the enforcement hereof, except where such waiver is prohibited by law or deemed by a court of law to be against public policy. The parties hereto acknowledge that each makes this waiver knowingly, wittingly and voluntarily and without duress, and only after extensive consideration of the ramifications of this waiver with their attorneys.

Section 20.11 **Counterpart Signature Pages.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original hereof and admissible into evidence, and all of which together shall be deemed to be a single instrument. Delivery of an executed counterpart of the signature page to this Agreement by facsimile, email or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement, and any party delivering such an executed counterpart of the signature page to this Agreement by facsimile, email or other electronic transmission to any other party shall thereafter also promptly deliver a manually executed counterpart of this Agreement to such other party, provided that the failure to deliver such manually executed counterpart shall not affect the validity, enforceability, or binding effect of this Agreement.