

Strafford

Presenting a live 90-minute webinar with interactive Q&A

Collateral-Based Financing Using Accounts Receivable and Inventory

Strategies for Lenders and Borrowers Crafting Commercial Loan and Security Agreements

THURSDAY, DECEMBER 16, 2010

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

Paul B. Hahn, Partner, Golenbock Eiseman Assor Bell & Peskoe, New York

Harvey C. Guberman, Ballon Stoll Bader & Nadler, New York

The audio portion of the conference may be accessed via the telephone or by using your computer's speakers. Please refer to the instructions emailed to registrants for additional information. If you have any questions, please contact Customer Service at 1-800-926-7926 ext. 10.

LOAN AND SECURITY AGREEMENT

Borrower:

Address:

Credit Limit

\$

Date

THIS LOAN AND SECURITY AGREEMENT (collectively with the Schedule to Loan Agreement (the “Schedule”) attached hereto, the “Agreement”) dated the date set forth on the cover page, is entered into by and between the borrower named on the cover page (the “Borrower”), whose address is set forth on the cover page and _____ (“LENDER”), whose address is _____.

1.1 Defined Terms As used in this Agreement, the following terms have the definitions set forth below:

“Acquisition” has the meaning set forth in Section 4.1(x) hereof.

“Acquisition Documents” has the meaning set forth in Section 4.1(x) hereof.

“ADA” has the meaning set forth in Section 4.1(v) hereof.

“Additional Sums” has the meaning set forth in Section 2.8(a) hereof.

“Affiliate” means any Person controlling, controlled by or under common control with Borrower. For purposes of this definition, “control” means the possession, directly or indirectly, of the power to direct or cause direction of the management and policies of any Person, whether through ownership of common or preferred stock or other equity interests, by contract or otherwise. Without limiting the generality of the foregoing, each of the following shall be an Affiliate: any officer, director, employee or other agent of Borrower, any shareholder, member or subsidiary of Borrower, and any other Person with whom or which Borrower has common shareholders, officers or directors. Notwithstanding the foregoing, those Persons who are “LENDERS” (including without limitation Merion) as that term is defined under the terms of the Subordinated Term Loan Agreement shall not be an Affiliate.

“Agreement” has the meaning set forth in the preamble.

“Applicable Law” has the meaning set forth in Section 8.2(a) hereof.

“Applicable Usury Law” has the meaning set forth in Section 2.8(b) hereof.

“Assumed Obligations” shall have the meaning set forth in the recitals above.

“Assumed Monetary Amount” shall have the meaning set forth in the recitals above.

“Blocked Account” has the meaning set forth in Section 2.9(c) hereof.

“Business Day” means any day on which commercial banks in New York, New York are open for business.

“Calculation Date” means The last day of each Fiscal Quarter of Holdings and its Consolidated Subsidiaries

“Capital Expenditures” means any expenditure (whether in cash or deferred obligation, and whether by purchase or through a Capital Lease) that would be classified as a capital expenditure on a statement of cash flow of Borrower prepared in accordance with GAAP.

“Capital Lease” means any lease of property by Borrower that, in accordance with GAAP, should be capitalized for financial reporting purposes and reflected as a liability on the balance sheet of Borrower.

“Capital Lease Obligations” means all debts, liabilities and obligations of a lessee under a Capital Lease.

“Capital Stock” – As applicable (i) in the case of a corporation, capital stock (including all common stock), (ii) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock, (iii) in the case of a partnership, partnership interests (whether general or limited), (iv) in the case of a limited liability company, membership interests and (v) any other equity interest or participation in an issuing Person that confers on the holder thereof the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, provided that Capital Stock shall not mean any executive compensation or other similar benefit program whereby an organization provides bonuses or other compensation in cash only to its executives and other employees.

“Cash Equivalents” - (a) securities issued, or directly and fully guaranteed or insured, by the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than six (6) months from the date of acquisition, (b) U.S. dollar denominated time deposits, certificates of deposit

and bankers' acceptances of (i) any domestic commercial bank of recognized standing having capital and surplus in excess of \$500,000,000, or (ii) any bank (or the parent company of such bank) whose short-term commercial paper rating from Standard & Poor's Ratings Services ("S&P") is at least A-2 or the equivalent thereof or from Moody's Investors Service, Inc. ("Moody's") is at least P-2 or the equivalent thereof in each case with maturities of not more than six (6) months from the date of acquisition (any bank meeting the qualifications specified in clauses (b)(i) or (ii), an "Approved Bank"), (c) repurchase obligations with a term of not more than seven (7) days for underlying securities of the types described in clause (a) above entered into with any Approved Bank, (d) commercial paper issued by any Approved Bank or by the parent company of any Approved Bank and commercial paper issued by, or guaranteed by, any industrial or financial company with a short-term commercial paper rating of at least A-2 or the equivalent thereof by S&P or at least P-2 or the equivalent thereof by Moody's, or guaranteed by any industrial company with a long term unsecured debt rating of at least A or A2, or the equivalent of each thereof, from S&P or Moody's, as the case may be, and in each case maturing within six (6) months after the date of acquisition and (e) investments in money market funds substantially all of whose assets are comprised of securities of the type described in clauses (a) through (d) above.

"Closing Fee" has the meaning set forth in the Schedule.

"Closing Date" means the date set forth on the cover page of this Agreement.

"Code" means the Uniform Commercial Code as adopted and in effect in the State of New York from time to time.

"Collateral" has the meaning set forth in Section 3.1 hereof.

"Collateral Monitoring Fee" has the meaning set forth in the Schedule.

"Consolidated" – When used with reference to any term defined herein means that term as applied to the accounts, financial condition and results of operations of any Person and its Subsidiaries consolidated in accordance with GAAP after eliminating intercompany items and minority interests.

"Consolidated Subsidiaries" Collectively, the Subsidiaries of any Person whose financial condition and results of operations are Consolidated with such Person in its Consolidated financial statements.

"Default" shall mean the occurrence of an event which through the passage of time, or the giving of notice, or both, would constitute an Event of Default

"Deposit Accounts" has the meaning set forth in Section 9-102 of the Code.

"Dominion Account" has the meaning set forth in Section 2.9(c) hereof.

"EBITA" means with respect to any Person or Consolidated group of Persons, the sum of (x) the net income after taxes of such Person or group plus (x) to the extent deducted in determining the net income after taxes of such Person or group, Interest Expense, income taxes and amortization expense of such Person or group, less to the extent included in determining the net income after taxes of such Person or group, non-recurring or extraordinary gains of such Person or group (including gains on the sale of assets other than sales of Inventory in the ordinary course of business), all as shown on a statement of income for such Person or group for any measurement period prepared in accordance with GAAP.

"EBITDA" means with respect to any Person or Consolidated group of Persons, the sum of (x) the EBITA of such Person or group plus (y) to the extent deducted in determining the EBITA of such Person or group, depreciation expense of such Person or group, all as shown on a statement of income for such Person for any measurement period prepared in accordance with GAAP.

"Eligible Inventory" means Inventory which LENDER, in its Permitted Discretion, deems Eligible Inventory, based on such considerations as LENDER may from time to time deem appropriate. Without limiting the generality of the foregoing, no Inventory shall be Eligible Inventory unless, in LENDER's Permitted Discretion, such Inventory (i) consists of raw materials and finished goods, in good, new and salable condition which are not obsolete or unmerchantable, and are not comprised of packaging materials or supplies; (iii) meets all standards imposed by any governmental agency or authority; (iv) conforms in all respects to the warranties and representations set forth herein; (v) is at all times subject to LENDER's duly perfected, first priority security interest; and (vi) is situated at a location in compliance with Section 5.15 hereof; and (vii) is located in the State of _____.

"Eligible Receivables" means Receivables arising in the ordinary course of Borrower's business from the sale of goods or rendition of services, which LENDER, in its Permitted Discretion, shall deem eligible based on such considerations as LENDER may from time to time deem appropriate. Without limiting the foregoing, a Receivable shall not be deemed to be an Eligible Receivable if (i) the account debtor has failed to pay the

Receivable within a period of ninety (90) days from the invoice date to the extent of any amount remaining unpaid after such period; (ii) the account debtor has failed to pay more than 50% of all outstanding Receivables owed by it to Borrower within a period of ninety (90) days from the invoice date (iii) the account debtor is an Affiliate of Borrower; (iv) the goods relating thereto are placed on consignment, guaranteed sale, "bill and hold," "COD" or other terms pursuant to which payment by the account debtor may be conditional; (v) the account debtor is not located in the United States, unless the Receivable is supported by a letter of credit or other form of guaranty or security, in each case in form and substance satisfactory to LENDER; (vi) the account debtor is the United States or any department, agency or instrumentality thereof or any State, city or municipality of the United States; (vii) Borrower is or may become liable to the account debtor for goods sold or services rendered by the account debtor to Borrower; (viii) the account debtor disputes liability or makes any claim with respect thereto (up to the amount of such liability or claim), or is subject to any insolvency or bankruptcy proceeding, or becomes insolvent, fails or goes out of a material portion of its business; (ix) the amount thereof consists of late charges or finance charges; (x) the amount thereof consists of a credit balance more than ninety (90) days past due; (xi) the face amount thereof exceeds \$50,000.00, unless accompanied by evidence of shipment of the goods relating thereto satisfactory to LENDER in its Permitted Discretion; (xii) the invoice constitutes a progress billing on a project not yet completed, except that the final billing at such time as the matter has been completed and delivered to the customer may be deemed an Eligible Receivable; (xiii) the amount thereof is not yet represented by an invoice or bill issued in the name of the applicable account debtor which lists Borrower's Florida office as the billing office.

"Equipment" means all of Borrower's present and hereafter acquired machinery, molds, machine tools, motors, furniture, equipment, furnishings, fixtures, trade fixtures, motor vehicles, tools, parts, dyes, jigs, goods and other tangible personal property (other than Inventory) of every kind and description used in Borrower's operations or owned by Borrower and any interest in any of the foregoing, and all attachments, accessories, accessions, replacements, substitutions, additions or improvements to any of the foregoing, wherever located.

"Environmental Costs" has the meaning set forth in Section 8.3 hereof.

"ERISA" means the Employment Retirement Income Security Act of 1974, as amended, and the regulations thereunder.

"ERISA Affiliate" means each trade or business (whether or not incorporated and whether or not foreign) which is or may hereafter become a member of a group of

which Borrower is a member and which is treated as a single employer under ERISA Section 4001(b)(1), or IRC Section 414.

"Event of Default" means any of the events set forth in Section 7.1 of this Agreement.

"Examination Fee" has the meaning set forth in the Schedule.

"Excess Availability" means, as of the date of determination thereof, the amount by which the average daily total principal balance of the Revolving Credit Loans facility which Borrower would be permitted to have outstanding, based on the formulas and reserves set forth in the Schedule, exceeds the sum of the Receivable Loans and the Inventory Loans then actually outstanding, such excess then being reduced by an amount necessary to provide for the payment of all accounts payable of Borrower which are more than sixty (60) days past due date and all book overdrafts.

"Facility Fee" has the meaning set forth in the Schedule.

"Fiscal Quarter" – means a fiscal quarter of Holdings and its Consolidated Subsidiaries (i.e., the three month periods ending on or about March 31, June 30, September 30 and December 31 of each calendar year).

"GAAP" means generally accepted accounting principles in the United States of America as in effect from time to time as set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and the statements and pronouncements of the Financial Accounting Standards Boards which are applicable to the circumstances as of the date of determination consistently applied, except that, for the financial covenants set forth in this Agreement, GAAP shall be determined on the basis of such principles in effect on the date hereof

"General Intangibles" means all general intangibles (as that term is defined in Section 9-102 of the Code) of Borrower, whether now owned or hereafter created or acquired by Borrower, also including, without limitation, all choses in action, causes of action, corporate or other business records, Deposit Accounts, inventions, designs, drawings, blueprints, Trademarks, Licenses and Patents, names, trade secrets, goodwill, copyrights, registrations, licenses, franchises, customer lists, security and other deposits, rights in all litigation presently or hereafter pending for any cause or claim (whether in contract, tort or otherwise), and all judgments now or hereafter arising therefrom, all claims of Borrower against LENDER, rights to purchase or sell real or personal property, rights as a licensor or licensee of any kind, royalties, telephone numbers, proprietary information, purchase orders, and all insurance policies and claims

(including without limitation credit, liability, property and other insurance) tax refunds and claims, computer programs, discs, tapes and tape files, claims under guaranties, security interests or other security held by or granted to Borrower to secure payment of any of the Receivables by an account debtor, all rights to indemnification and all other intangible property of every kind and nature (other than Receivables).

“Guarantor(s)” has the meaning set forth in the Schedule.

“Hazardous Substance” has the meaning set forth in Section 8.2 hereof.

“Indebtedness” means all of Borrower’s present and future obligations, liabilities, debts, claims and indebtedness, contingent, fixed or otherwise, however evidenced, created, incurred, acquired, owing or arising, whether under written or oral agreement, operation of law or otherwise, and includes, without limiting the foregoing (i) the Obligations, (ii) obligations and liabilities of any Person secured by a lien, claim, encumbrance or security interest upon property owned by Borrower, even though Borrower has not assumed or become liable therefor, (iii) obligations and liabilities created or arising under any lease (including Capital Leases) or conditional sales contract or other title retention agreement with respect to property used or acquired by Borrower, even though the rights and remedies of the lessor, seller or LENDER are limited to repossession, (iv) all unfunded pension fund obligations and liabilities and (v) deferred taxes.

“Initial Term” has the meaning set forth on the Schedule.

“Inventory” means all of Borrower’s now owned and hereafter acquired goods, merchandise or other personal property, wherever located, to be furnished under any contract of service or held for sale or lease, all raw materials, work in process, finished goods and materials and supplies of any kind, nature or description which are or might be used or consumed in Borrower’s business or used in connection with the manufacture, packing, shipping, advertising, selling or finishing of such goods, merchandise or other personal property, and all documents of title or other documents representing them.

“Inventory Loans” has the meaning set forth in the Schedule.

“IRC” means the Internal Revenue Code of 1986, as amended, and the regulations thereunder.

“LENDER Affiliate” has the meaning set forth in Section 9.22 hereof.

“Letter of Credit Fee” has the meaning set forth in Section 2.13 hereof.

“Letters of Credit” has the meaning set forth on Section 2.13 hereof.

“Loans” has the meaning set forth in Section 2.2 hereof, and shall without limitation include the Assumed Monetary Amount..

“Loan Documents” means, collectively, this Agreement, any note or notes executed by Borrower and payable to LENDER, and any other present or future agreement entered into in connection with this Agreement, together with all alterations, amendments, changes, extensions, modifications, refinancings, refundings, renewals, replacements, restatements, or supplements, of or to any of the foregoing.

“Loan Party” means Borrower, each Guarantor, and each other party (other than LENDER and Merion) to any Loan Document.

“Loan Reserves” means, as of any date of determination, such amounts as LENDER may from time to time establish and revise in good faith reducing the amount of Revolving Credit Loans which would otherwise be available to Borrower under the lending formula(s) provided in the Schedule: (a) to reflect events, conditions, contingencies or risks which, as determined by LENDER in good faith, do or may affect either (i) the Collateral or any other property which is security for the Obligations or its value, (ii) the assets, business or prospects of Borrower or any Guarantor or (iii) the security interests and other rights of LENDER in the Collateral (including the enforceability, perfection and priority thereof) or (b) to reflect LENDER’s good faith belief that any collateral report or financial information furnished by or on behalf of Borrower or any Guarantor to LENDER is or may have been incomplete, inaccurate or misleading in any material respect or (c) in respect of any state of facts which LENDER determines in good faith constitutes an Event of Default or may, with notice or passage of time or both, constitute an Event of Default.”

“Loan Year” means each twelve month period commencing on the Closing Date.

“Merion” means Merion Investment Partners, L.P. a Delaware limited partnership.

“Management Agreement” means the Management Agreement between _____

“Maximum Interest Rate” has the meaning set forth in Section 2.8(b) hereof.

“Multiemployer Plan” means a “multiemployer plan” as defined in ERISA Sections 3(37) or 4001(a)(3) or IRC Section 414(f) which covers employees of Borrower or any ERISA Affiliate.

“Net Worth” at any date means the Borrower’s net worth as determined in accordance with GAAP.

“Obligations” means all present and future loans, advances, debts, liabilities, obligations, covenants, duties and indebtedness at any time owing by Borrower to LENDER (including without limitation the Assumed Obligations), whether evidenced by this Agreement, any note or other instrument or document, whether arising from an extension of credit, opening of a Letter of Credit, banker’s acceptance, loan, guaranty, indemnification or otherwise, whether direct or indirect (including, without limitation, those acquired by assignment and any participation by LENDER in Borrower’s debts owing to others), absolute or contingent, due or to become due, including, without limitation, all interest, charges, expenses, fees, attorney’s fees, expert witness fees, Examination Fee, Letter of Credit Fees, Collateral Monitoring Fee, Closing Fee, Facility Fee, Termination Fee, and any other sums chargeable to Borrower hereunder or under any other agreement with LENDER (including without limitation all interest, charges, expenses, fees and other sums accruing after commencement of any case, proceeding or other action relating to the bankruptcy, insolvency or reorganization of the Borrower).

“Operating Agreement” means the Limited Liability Operating Agreement of the Borrower.

“Overadvance” has the meaning set forth in Section 2.3.

“Overline” has the meaning set forth in Section 2.3.

“PBGC” means the Pension Benefit Guarantee Corporation.

“Permitted Discretion” means LENDER’s judgment exercised in good faith based upon its consideration of any factor which LENDER believes in good faith: (i) will or could adversely affect the value of any Collateral, the enforceability or priority of LENDER’s liens thereon or the amount which LENDER would be likely to receive (after giving consideration to delays in payment and costs of enforcement) in the liquidation of such Collateral; (ii) suggests that any collateral report or financial information delivered to LENDER by any Person on behalf of the Borrower is incomplete, inaccurate or misleading in any material respect; (iii) materially increases the likelihood of a bankruptcy, reorganization or other insolvency proceeding involving the Borrower, any Loan Party or any of the Collateral, or (iv) creates or reasonably could be expected to create an Event of Default. In exercising such judgment, LENDER may consider such factors already included in or tested by the definition of Eligible Receivables or Eligible Inventory, as well as any of the

following: (i) the financial and business climate of the Borrower’s industry and general macroeconomic conditions, (ii) changes in collection history and dilution with respect to the Receivables, (iii) changes in demand for, and pricing of, Inventory, (iv) changes in any concentration of risk with respect to Receivables and/or Inventory, and (v) any other factors that change the credit risk of lending to the Borrower on the security of the Receivables and Inventory. The burden of establishing lack of good faith hereunder shall be on the Borrower.

“Permitted Encumbrance” means each of the liens, mortgages and other security interests set forth on the Schedule 6.2; provided however, no Permitted Encumbrance, shall create or otherwise cause or suffer or permit to exist or be effective, directly or indirectly, (i) any prohibition or restriction (including any agreement to provide equal and ratable security to any other Person in the event a Lien is granted to or for the benefit of LENDER) on the creation or existence of any Lien upon the Property of Borrower, or (ii) any contractual obligation which may restrict or inhibit LENDER’s rights or ability to sell or otherwise dispose of the Collateral or any part thereof after the occurrence and during the continuance of an Event of Default.

“Permitted Indebtedness” means the Indebtedness as set forth on the Schedule 6.2.

“Person” means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, government, or any agency or political division thereof, or any other entity.

“Plan” means any plan described in ERISA Section 3(2) maintained for employees of Borrower or any ERISA Affiliate, other than a Multiemployer Plan.

“Prepared Financials” means the balance sheets of Borrower as of the date set forth in the Schedule in the section entitled ‘Reporting Requirements’, and as of each subsequent date on which audited balance sheets are delivered to LENDER from time to time hereunder, and the related statements of operations, changes in stockholder’s equity and changes in cash flow for the periods ended on such dates.

“Prime Rate” has the meaning set forth in the Schedule.

“Prohibited Transaction” means any transaction described in Section 406 of ERISA which is not exempt by reason of Section 408 of ERISA, and any transaction described in Section 4975(c) of the IRC which is not exempt by reason of Section 4975(c)(2) of the IRC.

“Property” has the meaning set forth in Section 8.2(c) hereof.

“Receivable Loans” has the meaning set forth on the Schedule.

“Receivables” means all of Borrower’s now owned and hereafter acquired accounts (whether or not earned by performance), proceeds of any letters of credit naming Borrower as beneficiary, contract rights, chattel paper, instruments, documents and all other forms of obligations at any time owing to Borrower, all guaranties and other security therefor, whether secured or unsecured, all merchandise returned to or repossessed by Borrower, and all rights of stoppage in transit and all other rights or remedies of an unpaid vendor, lienor or secured party.

“Renewal Term” has the meaning set forth on the Schedule.

“Reportable Event” means a reportable event described in Section 4043 of ERISA or the regulations thereunder, a withdrawal from a Plan described in Section 4063 of ERISA, or a cessation of operations described in Section 4068(f) of ERISA.

“Revolving Credit Loans” has the meaning set forth in the Schedule.

“Revolving Credit Limit” has the meaning set forth in the Schedule.

“Revolving Interest Rate” has the meaning set forth in the Schedule.

“Schedule” has the meaning set forth in the preamble.

“Subsidiary” – Shall mean, as to any Person, (a) any corporation more than fifty percent (50%) of whose Capital Stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the Directors of such corporation (irrespective of whether or not at the time, any class or classes of the Capital Stock of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person directly or indirectly through Subsidiaries, (b) any partnership, limited liability company, association, joint venture or other entity in which such Person directly or indirectly through Subsidiaries has more than a fifty percent (50%) interest in the total capital, total income and/or total ownership interests of such entity at any time and (c) any partnership in which such Person is a general partner.

“Termination Fee” has the meaning set forth in Section 9.2(d) hereof.

“Total Facility” has the meaning set forth in Section 2.1 hereof.

“Total Funded Debt” means collectively, as of any Calculation Date, the sum of all Indebtedness for borrowed money, including the balance outstanding under the Senior Subordinated Term Loans (as defined in the Subordinated Term Loan Agreement), all Indebtedness of Borrower to LENDER, all Capital Lease Obligations and the Seller Debt, all as would be shown on a balance sheet of Holdings and its Consolidated Subsidiaries prepared on such Calculation Date in accordance with GAAP

“Trademarks, Copyrights, Licenses and Patents” means all of Borrower’s right, title and interest in and to, whether now owned or hereafter acquired: (i) trademarks, trademark registrations, trade names, trade name registrations, and trademark or trade name applications, including without limitation such as are listed on the Schedule attached hereto and made a part hereof, as the same may be amended from time to time, and (a) renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, (d) all rights corresponding thereto throughout the world, and (e) the goodwill of the business operated by Borrower connected with and symbolized by any trademarks or trade names; (ii) copyrights, copyright registrations and copyright applications, including without limitation such as are listed on the Schedule attached hereto and made a part hereof, as the same may be amended from time to time, and (a) renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world; (iii) license agreements, including without limitation such as are listed on the Schedule attached hereto and made a part hereof, and the right to prepare for sale, sell and advertise for sale any Inventory now or hereafter owned by Borrower and now or hereafter covered by such licenses; and (iv) patents and patent applications, registered or pending, including without limitation such as are listed on the Schedule attached hereto, together with all income, royalties, shop rights, damages and payments thereto, the right to sue for infringements thereof, and all rights thereto throughout the world and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof.

Other Terms All accounting terms used in this Agreement, unless otherwise indicated, shall have the meanings given to such terms in accordance with GAAP.

All other terms contained in this Agreement, unless otherwise indicated, shall have the meanings provided by the Code, to the extent such terms are defined herein.

2. LOANS; INTEREST RATE AND OTHER CHARGES.

2.1 Total Facility Upon the terms and conditions set forth herein and provided that no Event of Default or Default, shall have occurred and be continuing, LENDER shall, upon Borrower's request, make advances to Borrower from time to time in an aggregate outstanding principal amount not to exceed the Total Facility amount (the "Total Facility") set forth on the Schedule hereto, subject to deduction of reserves for accrued interest and such other reserves as LENDER deems proper from time to time, and less amounts LENDER may be obligated to pay in the future on behalf of Borrower. The Schedule is an integral part of this Agreement and all references to "herein", "herewith" and words of similar import shall for all purposes be deemed to include the Schedule.

2.2 Loans Advances under the Total Facility ("Loans" and individually, a "Loan") shall be comprised of the amounts shown on the Schedule and shall include without limitation the Assumed Monetary Amount.

2.3 Overlines; Overadvances. If at any time or for any reason the outstanding amount of advances extended or issued pursuant hereto exceeds any of the dollar limitations ("Overline") or percentage limitations ("Overadvance") in the Schedule, then Borrower shall, upon LENDER's demand, immediately pay to LENDER, in cash, the full amount of such Overline or Overadvance which, at LENDER's option, may be applied to reduce the outstanding principal balance of the Loans. Without limiting Borrower's obligation to repay to LENDER on demand the amount of any Overline or Overadvance, Borrower agrees to pay LENDER interest on the outstanding principal amount of any Overline or Overadvance, on demand, at the rate set forth on the Schedule and applicable to the Revolving Credit Loans.

2.4 Loan Account. All advances made hereunder (including without limitation all advances made by LENDER under or in connection with any Letter of Credit) shall be added to and deemed part of the Obligations when made. LENDER may from time to time charge all Obligations of Borrower to Borrower's loan account with LENDER.

2.5 Interest; Fees Borrower shall pay LENDER interest on the daily outstanding balance of the Obligations at the per annum rate set forth on the Schedule. Borrower shall also pay LENDER the fees set forth on the Schedule.

2.6 Default Interest Rate, Over-advance Interest Rate. Upon the occurrence and during the continuation of

an Event of Default, Borrower shall pay LENDER interest on the daily outstanding balance of the Obligations at a rate per annum which is four percent (4%) in excess of the rate which would otherwise be applicable thereto pursuant to the Schedule. Upon the occurrence and during the continuation of, the Revolving Credit Loans exceeding the Revolving Credit Limit (without there being any implication that any such circumstance shall be acceptable to LENDER) Borrower shall pay LENDER interest on the daily outstanding balance of the Obligations at a rate per annum which is three percent (3%) in excess of the rate which would otherwise be applicable thereto pursuant to the Schedule

2.7 Examination Fee. Borrower agrees to pay to LENDER the Examination Fee in the amount set forth on the Schedule in connection with each audit or examination of Borrower performed by LENDER prior to or after the date hereof. Without limiting the generality of the foregoing, Borrower shall pay to LENDER an initial Examination Fee in an amount equal to the amount set forth on the Schedule. Such initial Examination Fee shall be deemed fully earned at the time of payment and due and payable upon the closing of this transaction, and shall be deducted from any good faith deposit paid by Borrower to LENDER prior to the date of this Agreement.

2.8 Excess Interest. (a) The contracted for rate of interest of the loan contemplated hereby, without limitation, shall consist of the following: (i) the interest rate set forth on the Schedule, calculated and applied to the principal balance of the Obligations in accordance with the provisions of this Agreement; (ii) interest after an Event of Default, calculated and applied to the amount of the Obligations in accordance with the provisions hereof; (iii) interest after an Overadvance calculated and applied to the amount of the Obligations in accordance with the provisions hereof; and (iv) all Additional Sums (as herein defined), if any. Borrower agrees to pay an effective contracted for rate of interest which is the sum of the above-referenced elements. The Examination Fee, attorneys fees, expert witness fees, Letter of Credit Fees, collateral monitoring fees, closing fees, facility fees, Termination Fees, other charges, goods, things in action or any other sums or things of value paid or payable by Borrower (collectively, the "Additional Sums"), whether pursuant to this Agreement or any other documents or instruments in any way pertaining to this lending transaction, or otherwise with respect to this lending transaction, that under any applicable law may be deemed to be interest with respect to this lending transaction, for the purpose of any applicable law that may limit the maximum amount of interest to be charged with respect to this lending transaction, shall be payable by Borrower as, and shall be deemed to be, additional interest and for such purposes only, the agreed upon and "contracted for rate of interest" of this lending transaction shall be deemed to be

increased by the rate of interest resulting from the inclusion of the Additional Sums.

(b) It is the intent of the parties to comply with the usury laws of the State of New York (the "Applicable Usury Law"). Accordingly, it is agreed that notwithstanding any provisions to the contrary in this Agreement, or in any of the documents securing payment hereof or otherwise relating hereto, in no event shall this Agreement or such documents require the payment or permit the collection of interest in excess of the maximum contract rate permitted by the Applicable Usury Law (the "Maximum Interest Rate"). In the event (a) any such excess of interest otherwise would be contracted for, charged or received from Borrower or otherwise in connection with the loan evidenced hereby, or (b) the maturity of the Obligations is accelerated in whole or in part, or (c) all or part of the Obligations shall be prepaid, so that under any of such circumstances the amount of interest contracted for, shared or received in connection with the loan evidenced hereby, would exceed the Maximum Interest Rate, then in any such event (1) the provisions of this paragraph shall govern and control, (2) neither Borrower nor any other Person now or hereafter liable for the payment of the Obligations shall be obligated to pay the amount of such interest to the extent that it is in excess of the Maximum Interest Rate, (3) any such excess which may have been collected shall be either applied as a credit against the then unpaid principal amount of the Obligations or refunded to Borrower, at LENDER's option, and (4) the effective rate of interest shall be automatically reduced to the Maximum Interest Rate. It is further agreed, without limiting the generality of the foregoing, that to the extent permitted by the Applicable Usury Law; (x) all calculations of interest which are made for the purpose of determining whether such rate would exceed the Maximum Interest Rate shall be made by amortizing, prorating, allocating and spreading during the period of the full stated term of the loan evidenced hereby, all interest at any time contracted for, charged or received from Borrower or otherwise in connection with such loan; and (y) in the event that the effective rate of interest on the loan should at any time exceed the Maximum Interest Rate, such excess interest that would otherwise have been collected had there been no ceiling imposed by the Applicable Usury Law shall be paid to LENDER from time to time, if and when the effective interest rate on the loan otherwise falls below the Maximum Interest Rate, to the extent that interest paid to the date of calculation does not exceed the Maximum Interest Rate, until the entire amount of interest which would otherwise have been collected had there been no ceiling imposed by the Applicable Usury Law has been paid in full. Borrower further agrees that should the Maximum Interest Rate be increased at any time hereafter because of a change in the Applicable Usury Law, then to

the extent not prohibited by the Applicable Usury Law, such increases shall apply to all indebtedness evidenced hereby regardless of when incurred; but, again to the extent not prohibited by the Applicable Usury Law, should the Maximum Interest Rate be decreased because of a change in the Applicable Usury Law, such decreases shall not apply to the indebtedness evidenced hereby regardless of when incurred.

2.9 Principal Payments; Proceeds of Collateral

(a) Principal Payments. That portion of the Obligations consisting of principal payable on account of Loans shall be payable by Borrower to LENDER immediately upon the earliest of (i) the receipt by LENDER or Borrower of any proceeds of any of the Collateral, to the extent of said proceeds, (ii) the occurrence of an Event of Default in consequence of which LENDER elects to accelerate the maturity and payment of such loans, or (iii) any termination of this Agreement pursuant to Section 9.2 hereof; provided, however, that any Overadvance or Overline shall be payable on demand pursuant to the provisions of Section 2.3 hereof.

(b) Collections. LENDER or its designee may, at any time after the occurrence of a Default notify account debtors that the Receivables have been assigned to LENDER and of LENDER's security interest therein, and may collect the Receivables directly and charge the collection costs and expenses to Borrower's loan account. Borrower agrees that, in computing the charges under this Agreement, all items of payment shall be deemed applied by LENDER on account of the Obligations two (2) Business Days after receipt by LENDER (but for purposes of determining availability, under the percentage limitations and dollar limitations for advances, on the same Business Day after receipt by LENDER) of good funds which have been finally credited to LENDER's account, whether such funds are received directly from Borrower or from the Blocked Account bank or the Dominion Account bank, pursuant to Section 2.9(c) hereof, and this provision shall apply regardless of the amount of the Obligations outstanding or whether any Obligations are outstanding; provided, that if any such good funds are received after 12:00 p.m. noon (New York time) on any Business Day or at any time on any day not constituting a Business Day, such funds shall be deemed received on the immediately following Business Day. LENDER is not, however, required to credit Borrower's account for the amount of any item of payment which LENDER in its Permitted Discretion believes is unlikely to be collected and LENDER may charge Borrower's loan account for the amount of any item of payment which is returned to LENDER unpaid.

(c) Establishment of a Lockbox Account or Dominion Account. Borrower shall cause all proceeds of Collateral to be deposited into a lockbox account, or such other "blocked account" as LENDER may require (each, a "**Blocked Account**") by directing all account debtors and other third parties to remit all payments owing to Borrower to the lockbox established in connection with the Blocked Account pursuant to an arrangement with such bank as may be selected by Borrower and be acceptable to LENDER which proceeds, unless otherwise provided herein, shall be applied in payment of the Obligations in such order as LENDER determines in its sole discretion. In the event Borrower nevertheless directly receives payment or other financial proceeds of any Collateral, it shall do so as Trustee for LENDER and shall immediately deliver all payments to LENDER in their original form duly endorsed or cause same to be deposited into the Blocked Account. Borrower shall issue to any such bank an irrevocable letter of instruction directing said bank to transfer such funds so deposited to LENDER, either to any account maintained by LENDER at said bank or by wire transfer to appropriate account(s) of LENDER. All funds deposited in a Blocked Account shall immediately become the sole property of LENDER and Borrower shall obtain the agreement by such bank to waive any offset rights against the funds so deposited. LENDER assumes no responsibility for any Blocked Account arrangement, including without limitation, any claim of accord and satisfaction or release with respect to deposits accepted by any bank thereunder. Alternatively, LENDER may establish depository accounts in the name of LENDER at a bank or banks for the deposit of such funds (each, a "Dominion Account") and Borrower shall deposit all proceeds of Receivables and all cash proceeds of any sale of Inventory or, to the extent permitted herein, Equipment or cause same to be deposited, in kind, in such Dominion Accounts of LENDER in lieu of depositing same to Blocked Accounts, and, unless otherwise provided herein, all such funds shall be applied by LENDER to the Obligations in such order as LENDER determines in its sole discretion. To the extent (if any) that LENDER holds good funds which constitute net cash credit balances standing in Borrower's favor, such net cash credit balances which are held by LENDER shall earn interest at a rate equal to ____percent (___%) below the Prime Rate in effect from time to time, from the date such net cash credit balances arise until the date of actual payments thereof by LENDER to Borrower.

(d) Payments Without Deductions. Borrower shall pay principal, interest, and all other amounts payable hereunder, or under any other Loan Document, without any deduction whatsoever, including, but not limited to, any deduction for any setoff or counterclaim.

(e) Collection Days Upon Repayment. In the event Borrower repays the Obligations in full at any time hereafter, such payment in full shall be credited (conditioned upon final collection) to Borrower's loan account two (2) Business Days after LENDER's receipt thereof.

(f) Monthly Accountings. LENDER shall provide Borrower monthly with an account of advances, charges, expenses and payments made pursuant to this Agreement. Such account shall be deemed correct, accurate and binding on Borrower and an account stated (except for reverses and re-applications of payments made and corrections of errors discovered by LENDER), unless Borrower notifies LENDER in writing to the contrary within thirty (30) days after each account is rendered, describing the nature of any alleged errors or admissions.

2.10 Application of Collateral. Except as otherwise provided herein, LENDER shall have the continuing and exclusive right to apply or reverse and re-apply any and all payments to any portion of the Obligations in such order and manner as LENDER shall determine in its sole discretion. To the extent that Borrower makes a payment or LENDER receives any payment or proceeds of the Collateral for Borrower's benefit which is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver or any other party under any bankruptcy law, common law or equitable cause, or otherwise, then, to such extent, the Obligations or part thereof intended to be satisfied shall be revived and continue as if such payment or proceeds had not been received by LENDER.

2.11 Application of Payments. The amount of all payments or amounts received by LENDER with respect to the Loan shall be applied to the extent applicable under this Agreement: (i) first, to accrued interest through the date of such payment, including any Default Interest; (ii) then, to any late fees, overdue risk assessments, Examination Fee and expenses, collection fees and expenses and any other fees and expenses due to LENDER hereunder; and (iii) last, the remaining balance, if any, to the unpaid principal balance of the Loan; provided however, while an Event of Default exists under this Agreement, or under any other Loan Document, each payment hereunder shall be applied to amounts owed to LENDER by Borrower as LENDER in its sole discretion may determine. In calculating interest and applying payments as set forth above: (a) interest shall be calculated and collected through the date a payment is actually applied by LENDER under the terms of this Agreement; (b) interest on the outstanding balance shall be charged during any grace period permitted hereunder; (c) at the end of each month, all accrued and unpaid interest and other charges provided for hereunder shall be

added to the principal balance of the Loan; and (d) to the extent that Borrower makes a payment or LENDER receives any payment or proceeds of the Collateral for Borrower's benefit that is subsequently invalidated, set aside or required to be repaid to any other Person, then, to such extent, the Obligations intended to be satisfied shall be revived and continue as if such payment or proceeds had not been received by LENDER and LENDER may adjust the Loan balances as LENDER, in its sole discretion, deems appropriate under the circumstances.

2.12 Capital Adequacy. If the LENDER determines at any time that its Return (as hereinafter defined) has been reduced as a result of any Capital Adequacy Rule change, LENDER may so notify the Borrower and require the Borrower, beginning thirty (30) days after notice, to pay it the amount necessary to restore its return to what it would have been had there been no such rule change in. For the purposes hereof: (i) "Capital Adequacy Rule" means any law, rule, regulation, guideline, directive, requirement or request regarding capital adequacy, or the interpretation or administration thereof by any governmental or regulatory authority, central bank or comparable agency, whether or not having the force of law, that applies to any LENDER, including rules requiring financial institutions to maintain total capital in amounts based upon percentages of outstanding loans, binding loan commitments and letters of credit; (ii) "Return," for any period, means the percentage determined by dividing (x) the sum of interest and ongoing fees earned by the LENDER under this Agreement during such period, by (y) the average capital LENDER is required to maintain during such period as a result of its being a party to this Agreement, as determined by LENDER based upon its total capital requirements and a reasonable attribution formula that takes account of the Capital Adequacy Rules then in effect, costs of issuing or maintaining any and amounts received or receivable under this Agreement with respect to any Advance. Return may be calculated for each calendar quarter and for the shorter period between the end of a calendar quarter and the date of termination in whole of this Agreement; and "Rule Change" means any change in any capital adequacy rule occurring after the date of this Agreement, or any change in the interpretation or administration thereof by any governmental or regulatory authority, but the term does not include any changes that at the closing date of this Agreement are scheduled to take place under the existing Capital Adequacy Rules.

2.13 Letters of Credit. At the request of Borrower, LENDER may, in its sole discretion, arrange for the issuance of letters of credit for the account of Borrower and guarantees of payment of such letters of credit, in each case in form and substance satisfactory to LENDER

in its sole discretion (collectively, "**Letters of Credit**"). The aggregate face amount of all outstanding Letters of Credit from time to time shall not exceed the amount shown on the Schedule, and shall be reserved against the availability of Revolving Credit Loans. Borrower shall pay all bank charges for the issuance of Letters of Credit, together with an additional fee to LENDER equal to the percentage set forth on the Schedule 2.13 hereof of the aggregate face amount of each Letter of Credit outstanding from time to time during the term of this Agreement (the "**Letter of Credit Fee**"). The Letter of Credit Fee shall be deemed to be fully earned upon the issuance of each Letter of Credit and shall be due and payable on the first Business Day of each month following a month during which any Letter of Credit is outstanding. Any advance by LENDER under or in connection with a Letter of Credit shall constitute an Obligation hereunder. Each Letter of Credit shall have an expiration date no later than thirty (30) days prior to the last day of the Initial Term or, if issued during any Renewal Term no later than thirty (30) days prior to the last day of any such Renewal Term. Immediately upon any termination of this Agreement, Borrower shall either: (i) provide cash collateral to LENDER in an amount equal to 105% of the maximum amount of LENDER's obligations under or in connection with all then outstanding Letters of Credit, or (ii) cause to be delivered to LENDER releases of all LENDER's obligations under outstanding Letters of Credit. At LENDER's discretion, any proceeds of Collateral received by LENDER may be held as the cash collateral required by this Section 2.13. Borrower hereby agrees to indemnify, save, and hold LENDER harmless from any loss, cost, expense, or liability, including payments made by LENDER, expenses, and reasonable attorneys' fees incurred by LENDER arising out of or in connection with any Letters of Credit. Borrower agrees to be bound by the issuing bank's regulations and interpretations of any Letters of Credit caused by LENDER to be issued for Borrower's account, and Borrower understands and agrees that LENDER shall not be liable for any error, negligence, or mistake, whether of omission or commission, in following Borrower's instructions or those contained in the Letters of Credit or any modifications, amendments, or supplements thereto. Borrower understands that LENDER may indemnify the bank issuing a Letter of Credit for certain costs or liabilities arising out of claims by Borrower against such issuing bank. Borrower hereby agrees to indemnify and hold LENDER harmless with respect to any loss, cost, expense, or liability incurred by LENDER under any such indemnification by LENDER to any issuing bank.

3. SECURITY

3.1 Security Interest in the Collateral To secure the payment and performance of the Obligations when due,

Borrower hereby grants to LENDER a first priority security interest (subject only to Permitted Encumbrances) in all of Borrower's now owned or hereafter acquired or arising assets including without limitation all of the Borrower's now owned and hereafter acquired or arising Inventory, Equipment, Receivables, life insurance policies and the proceeds thereof, Trademarks, Copyrights, Licenses and Patents, Investment Property, Letter of Credit Rights, Documents, Electronic Chattel Paper, Instruments, and General Intangibles (including without limitation Borrower's rights (but not its obligations) under the Acquisition Documents), including, without limitation, all of Borrower's Deposit Accounts, money, any and all property now or at any time hereafter in LENDER's possession (including claims and credit balances), and all proceeds (including proceeds of any insurance policies, proceeds of proceeds and claims against third parties), all products and all books and records and computer data related to any of the foregoing (all of the foregoing, together with all other property in which LENDER may be granted a lien or security interest, is referred to herein, collectively, as the "Collateral").

3.2 Perfection and Protection of Security Interest. Borrower shall, at its expense, take all actions requested by LENDER at any time to perfect, maintain, protect and enforce LENDER's first priority security interest and other rights in the Collateral and the priority thereof from time to time, including, without limitation, (i) executing and filing financing or continuation statements and amendments thereof and executing and delivering such documents and titles in connection with motor vehicles as LENDER shall require, all in form and substance reasonably satisfactory to LENDER, (ii) maintaining a perpetual inventory and complete and accurate stock records, (iii) delivering to LENDER warehouse receipts covering any portion of the Collateral located in warehouses and for which warehouse receipts are issued, and transferring Inventory to warehouses reasonably designated by LENDER, (iv) placing notations on Borrower's books of account to disclose LENDER's security interest therein and (v) delivering to LENDER all letters of credit on which Borrower is named beneficiary. LENDER may file, without Borrower's signature, one or more financing statements disclosing LENDER's security interest under this Agreement. Borrower agrees that a carbon, photographic, photostatic or other reproduction of this Agreement or of a financing statement is sufficient as a financing statement. If any Collateral is at any time in the possession or control of any warehouseman, bailee or any of Borrower's agents or processors, Borrower shall notify such Person of LENDER's security interest in such Collateral and, upon LENDER's request, instruct them to hold all such Collateral for LENDER's account subject to LENDER's instructions. From time to time, Borrower

shall, upon LENDER's request, execute and deliver confirmatory written instruments pledging the Collateral to LENDER, but Borrower's failure to do so shall not affect or limit LENDER's security interest or other rights in and to the Collateral. Until the Obligations have been fully satisfied and LENDER's obligation to make further advances hereunder has terminated, LENDER's security interest in the Collateral shall continue in full force and effect.

3.3 Preservation of Collateral. LENDER may, in its Permitted Discretion, at any time discharge any lien or encumbrance on the Collateral or bond the same, pay any insurance which it reasonably believes to be unpaid, maintain guards, pay any service bureau, obtain any record or take any other action to preserve the Collateral and charge the cost thereof to Borrower's loan account as an Obligation.

3.4 Insurance. Borrower will maintain and deliver evidence to LENDER of such insurance as is reasonably required by LENDER, written by insurers, in amounts, and with LENDER's loss payee, additional insured, and other endorsements, reasonably satisfactory to LENDER. All premiums with respect to such insurance shall be paid by Borrower as and when due. Accurate and certified copies of the policies shall be delivered by Borrower to LENDER. If Borrower fails to comply with this Section, LENDER may (but shall not be required to) procure such insurance and endorsements at Borrower's expense and charge the cost thereof to Borrower's loan account as an Obligation.

3.5 Collateral Reporting: Inventory Invoices. Borrower shall not re-date any invoice or sale from the original date thereof or make sales on extended terms beyond those customary in Borrower's industry, or otherwise extend or modify the term of any Receivable. If Borrower becomes aware of any matter affecting any Receivable, including information affecting the credit of the account debtor thereon, Borrower shall promptly notify LENDER in writing.

(b) Instruments. In the event any Receivable of a material amount (individually or in the aggregate) is or becomes evidenced by a promissory note, trade acceptance or any other instrument for the payment of money, Borrower shall immediately deliver such instrument to LENDER appropriately endorsed to LENDER and, regardless of the form of any presentment, demand, notice of dishonor, protest and notice of protest with respect thereto, Borrower shall remain liable thereon until such instrument is paid in full.

(c) Physical Inventory. Borrower shall conduct a physical count of the Inventory at least once per year (but upon the occurrence and during the continuance of an Event of Default or if LENDER in its reasonable opinion

has reason to believe that there is some irregularity in the Inventory of the Borrower, then at such intervals as LENDER requests) and Borrower shall promptly supply LENDER with a copy of such accounts accompanied by a report of the value (calculated at the lower of cost or market value on a first in, first out basis) of the Inventory and such additional information with respect to the Inventory as LENDER may request from time to time.

(d) Returns. For so long as no Event of Default has occurred and is continuing and subject to the provisions of Section 3.5(b), if any account debtor returns any Inventory to Borrower in the ordinary course of its business, Borrower shall promptly determine the reason for such return and promptly issue a credit memorandum to the account debtor (sending a copy to LENDER) in the appropriate amount. In the event any attempted return occurs after the occurrence and during the continuance of any Event of Default, Borrower shall (i) hold the returned Inventory in trust for LENDER, (ii) segregate all returned Inventory from all of Borrower's other property, (iii) conspicuously label the returned Inventory as LENDER's property, and (iv) immediately notify LENDER of the return of any Inventory, specifying the reason for such return, the location and condition of the returned Inventory, and on LENDER's request deliver such returned Inventory to LENDER.

(e) Borrower shall not consign any Inventory.

3.6 Receivables Eligibility. (a) (i) Borrower represents and warrants that each Receivable covers and shall cover a bona fide sale or lease and delivery by it of goods or the rendition by it of services in the ordinary course of its business, and shall be for a liquidated amount and at the time the Receivable is created LENDER's security interest shall not be subject to any offset, deduction, counterclaim, rights of return or cancellation, lien or other condition (provided however that should there subsequently arise an offset, deduction, counterclaim, rights of return or cancellation, lien or other condition with respect to a Receivable such Receivable shall in LENDER's sole discretion no longer be an Eligible Receivable). If any representation or warranty herein is breached as to any Receivable or any Receivable ceases to be an Eligible Receivable for any reason other than payment thereof, then LENDER may, in addition to its other rights hereunder, designate any and all Receivables owing by that account debtor as not Eligible Receivables; provided, that LENDER shall in any such event retain its security interest in all Receivables, whether or not Eligible Receivables, until the Obligations

have been fully satisfied and LENDER's obligation to provide loans hereunder has terminated.

(ii) LENDER at any time shall be entitled to (i) establish and increase or decrease reserves against Eligible Receivables and Eligible Inventory, (ii) reduce the advance rates in the Schedule or restore such advance rates to any level equal to or below the advance rates set forth in the Schedule or (iii) impose additional restrictions (or eliminate the same) to the standards of eligibility set forth in the definitions of "Eligible Receivables" and "Eligible Inventory," in the exercise of its Permitted Discretion. LENDER may but shall not be required to rely on the schedules and/or reports delivered to LENDER in connection herewith in determining the then eligibility of Receivables and Inventory. Reliance thereon by LENDER from time to time shall not be deemed to limit the right of LENDER to revise advance rates or standards of eligibility as provided above.

(b) Disputes. Borrower shall notify LENDER promptly of all disputes or claims and settle or adjust such disputes or claims at no expense to LENDER, but no discount, credit or allowance shall be granted to any account debtor and no returns of merchandise shall be accepted by Borrower without LENDER's consent, except for discounts, credits and allowances made or given in the ordinary course of Borrower's business. LENDER may, at any time after the occurrence and during the continuance of an Event of Default, settle or adjust disputes or claims directly with account debtors for amounts and upon terms which LENDER considers advisable in its reasonable credit judgment and, in all cases, LENDER shall credit Borrower's loan account with only the net amounts received by LENDER in payment of any Receivables.

3.7. Equipment. Borrower shall keep and maintain the Equipment in good operating condition and repair and make all necessary replacements thereto to maintain and preserve the value and operating efficiency thereof at all times consistent with Borrower's past practice, ordinary wear and tear excepted. Borrower shall not permit any item of Equipment to become a fixture (other than a trade fixture) to real estate or an accession to other property.

3.8 Other Liens; No Disposition of Collateral. Borrower represents, warrants and covenants that except for LENDER's security interest, Permitted Encumbrances, and such other liens, claims and encumbrances as may be permitted by LENDER in its sole discretion from time to time in writing, (a) all Collateral is and shall continue to be owned by it free and clear of all liens, claims and encumbrances whatsoever and (b) Borrower shall not, without LENDER's prior written approval, sell, encumber or dispose of or permit the sale, encumbrance or disposal of any Collateral or all or any substantial part of any of its other assets (or any

interest of Borrower therein), except for the sale of Inventory in the ordinary course of Borrower's business and except (i) equipment which is used in trade for the purchase of replacement equipment within the limitations of allowed Capital Expenditures hereunder, and (ii) the sale or disposal of obsolete or worn Equipment and the disposal of other Equipment in any fiscal year having a value of less than five percent (5%) of the then total value of Borrower's Equipment, provided the proceeds of any such sale are paid to LENDER. In the event LENDER gives any such prior written approval with respect to any such sale of Collateral, the same may be conditioned on the sale price being equal to, or greater than, an amount acceptable to LENDER. The proceeds of any such sales of Collateral shall be remitted to LENDER pursuant to this Agreement for application to the Obligations.

3.9 Collateral Security. The Obligations shall constitute one loan secured by the Collateral. LENDER may, in its sole discretion, (i) exchange, enforce, waive or release any of the Collateral, (ii) apply Collateral and direct the order or manner of sale thereof as it may determine, and (iii) settle, compromise, collect or otherwise liquidate any Collateral in any manner without affecting its right to take any other action with respect to any other Collateral.

4. CONDITIONS OF CLOSING

4.1 Initial Advance. The LENDER's willingness to enter in to this Agreement on the Closing Date is subject to the fulfillment, to the satisfaction of LENDER and its counsel, of each of the following conditions on or prior to the date set forth on the Schedule:

(a) Loan Documents. LENDER shall have received each of the following Loan Documents: (i) the Agreement fully and properly executed by Borrower; (ii) such security agreements, intellectual property assignments, pledge agreements, mortgages and deeds of trust as LENDER may require with respect to this Agreement, duly acknowledged for recording or filing in the appropriate governmental offices; (iii) such Blocked Account or Dominion Account agreements as it shall determine; and, (iv) such other documents, instruments and agreements in connection herewith as LENDER shall require, executed, certified and/or acknowledged by such parties as LENDER shall designate;

(b) Minimum Excess Availability. Borrower shall have Excess Availability under the Revolving Credit Loans facility of not less than the amount specified in the Schedule, after giving effect to the initial advance hereunder and after giving effect to any applicable Loan Reserves against borrowing availability under the Revolving Credit Loans.

(c) Terminations by Existing LENDER. Borrower's and Seller's existing LENDER(s) (if any) shall have

executed and delivered UCC termination statements and other documentation evidencing the termination of its liens and security interests in the assets of Borrower or a subordination agreement in form and substance satisfactory to LENDER in its sole discretion;

(d) Charter Documents. LENDER shall have received copies of Borrower's By-laws, Operating Agreement and Articles or Certificate of formation, as amended, modified, or supplemented to the Closing Date, certified by an officer of Borrower;

(e) Good Standing. LENDER shall have received a certificate of company status with respect to Borrower, dated within ten (10) days of the Closing Date, by the Secretary of State of the state of formation of Borrower, which certificate shall indicate that Borrower is in good standing in such state;

(f) Foreign Qualification. LENDER shall have received certificates of corporate status with respect to Borrower and each other Loan Party, each dated within sixty (60) days of the Closing Date, issued by the Secretary of State of each state, in which such party's failure to be duly qualified or licensed would have a material adverse effect on its financial condition or assets, indicating that such party is in good standing;

(g) Authorizing Resolutions and Incumbency. LENDER shall have received a certificate from the Secretary of Borrower attesting to (i) the adoption of resolutions of Borrower's Board of Directors, and shareholders or members if necessary, authorizing the borrowing of money from LENDER and execution and delivery of this Agreement and the other Loan Documents to which Borrower is a party, and authorizing specific officers of Borrower to execute same, and (ii) the authenticity of original specimen signatures of such officers;

(h) Insurance. LENDER shall have received the insurance certificates and certified copies of policies required by Section 3.4 hereof, in form and substance satisfactory to LENDER and its counsel, together with an additional insured endorsement in favor of LENDER with respect to all liability policies and a LENDER's loss payable endorsement in favor of LENDER with respect to all casualty and business interruption policies, each in form and substance acceptable to LENDER and its counsel;

(i) Searches; Certificates of Title. LENDER shall have received searches reflecting the filing of its financing statements and fixture filings in such jurisdictions as it shall determine, and shall have received certificates of title with respect to the Collateral which shall have been duly executed in a manner sufficient to perfect all of the security interests granted to LENDER;

(j) Landlord, Bailee and Mortgagee Waivers. LENDER shall have received landlord, bailee and/or mortgagee waivers from the lessors, bailees and/or mortgagees of all locations where any Collateral is located;

(k) Fees. Borrower shall have paid all fees payable by it on the Closing Date pursuant to this Agreement;

(l) Opinion of Counsel. LENDER shall have received an opinion of Borrower's and Seller's counsel, covering such matters as LENDER shall determine in its sole discretion;

(m) Officer Certificate. LENDER shall have received a certificate of the President and the Chief Financial Officer or similar official of Borrower, attesting to the accuracy of each of the representations and warranties of Borrower set forth in this Agreement and the fulfillment of all conditions precedent to the initial advance hereunder;

(n) Solvency Certificate. If requested, LENDER shall have received a signed certificate of the Borrower's duly elected Chief Financial Officer concerning the solvency and financial condition of Borrower, on LENDER's standard form;

(o) Search and References. LENDER shall have received and approved the results of UCC, other lien, tax lien, litigation, judgment, and bankruptcy searches regarding Borrower.

(p) Lease and Landlord's Consent. LENDER shall require that the Lease in favor of Borrower regarding Borrower's facility at the Borrowers location in Tampa , FL shall be for a term (including renewal options) through the Maturity Date. LENDER shall further require that, a Landlord's Consent Agreement and Estoppel Certificate, in form and substance satisfactory to LENDER from the Landlords of all premises at the locations listed in the Schedule be provided to LENDER, allowing for the cure of defaults under such lease and continuance in occupancy of such premises in the event of defaults by Borrower pursuant either to the Lease or the Loan Documents.

(q) No Material Adverse Changes. Prior to the Closing Date, there shall have occurred no material adverse change in the financial condition of Borrower, At the closing, Borrower shall deliver to LENDER an officer's certification confirming that Borrower is unaware of the existence of any such material adverse change.

(r) Material Agreements. LENDER shall have received, reviewed and approved all material agreements to which Borrower shall be a party, including any such agreements of Seller which Borrower shall assume.

(s) Projections. Borrower shall submit cash flow projections and pro forma balance sheet and pro forma financial statements with adjusting entries (i) showing that the proposed financing will provide sufficient funds for the Borrower's projected working capital needs, and (ii) showing: (1) that the Borrower will have reasonably sufficient capital for the conduct of its business following the initial funding, and (2) that the Borrower will not incur debts beyond its ability to pay such debts as they mature.

(t) Opinions. To the extent any Person other than Borrower shall be parties to the Loan Documents, LENDER reserves the right to require satisfactory opinions of counsel for each such Person concerning the proper organization of such Person and the due authorization, execution, delivery, enforceability, validity and binding effect of the Loan Documents to which such Person is a party. Each such opinion of counsel shall confirm, to the satisfaction of LENDER, that the opinion is being delivered to LENDER at the instruction of the party represented by such counsel, that LENDER is entitled to rely on such opinion and that for purposes of such reliance, LENDER is deemed to be in privity with the opining counsel.

(u) ADA Compliance. If necessary, as of the Closing Date, Borrower shall be in compliance with the Americans with Disabilities Act of 1990 ("ADA"), or, if any renovations of Borrower's facilities or modifications of Borrower's employment practices shall be required to bring them into compliance with the ADA, review and approval by LENDER of Borrower's proposed plan to come into such compliance. Borrower shall deliver representations and warranties to LENDER concerning Borrower's compliance with the ADA, and no evidence shall have come to the attention of LENDER indicating that Borrower is not in compliance with the ADA (except to the extent that LENDER has reviewed and approved Borrower's plan to come into compliance).

(v) Schedule Conditions. Borrower shall have complied with all additional conditions precedent as set forth in the Schedule attached hereto.

(w) Other Matters. All other documents and legal matters in connection with the transactions contemplated by this Agreement shall have been delivered, executed and recorded and shall be in form and substance satisfactory to LENDER and its counsel including, without limitation, each of the items listed on the Closing Checklist attached as Exhibit 4.1 hereto.

4.2 Subsequent Advances LENDER's making any advance hereunder (including the initial advance) shall be subject to the further conditions precedent that, on and as of the date of such advance or Letter of Credit issuance:

(a) the representations and warranties of Borrower set

forth in this Agreement shall be accurate in all material respects, before and after giving effect to such advance or issuance and to the application of any proceeds thereof; (b) no Event of Default and no event which, with notice or passage of time or both, would constitute an Event of Default has occurred and is continuing, or would result from such advance or issuance or from the application of any proceeds thereof; (c) no material adverse change has occurred in the Borrower's business, operations, financial condition of the Borrower since the date of the last financial statement delivered by Borrower to LENDER, or in the condition of the Collateral or other assets of Borrower or in the prospect of repayment of the Obligations; and (d) LENDER shall have received such other approvals, or documents as LENDER shall reasonably request in connection with the Collateral or the power and authority of the Borrower.

5. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants that:

5.1 Due Organization. It is a limited liability company duly organized, validly existing and in good standing under the laws of the State set forth on the Schedule, is qualified and authorized to do business and is in good standing in all states in which such qualification and good standing are necessary in order for it to conduct its business and own its property, and has all requisite power and authority to conduct its business as presently conducted, to own its property and to execute and deliver each of the Loan Documents to which it is a party and perform all of its Obligations thereunder, and has not taken any steps to wind-up, dissolve or otherwise liquidate its assets;

5.2 Other Names. Borrower has not, during the preceding five (5) years, been known by or used any other company or fictitious name except as set forth on the Schedule, nor has Borrower been the surviving entity of a merger or consolidation or acquired all or substantially all of the assets of any Person during such time ;

5.3 Due Authorization. The execution, delivery and performance by Borrower of the Loan Documents to which it is a party have been authorized by all necessary corporate action and do not and shall not constitute a violation of any applicable law or of Borrower's Articles or certificate of formation or by-laws, Operating Agreement or in any material manner any other document, agreement or instrument to which Borrower is a party or by which Borrower or its assets are bound ;

5.4 Binding Obligation. Each of the Loan Documents to which Borrower is a party is the legal, valid and binding obligation of Borrower enforceable against Borrower in accordance with its terms;

5.5 Intangible Property. Borrower possesses adequate assets, licenses, patents, patent applications,

copyrights, trademarks, trademark applications and trade names for the present and planned future conduct of its business, without any known conflict with the rights of others, and each is valid and has been duly registered or filed with the appropriate governmental authorities except where the failure to do so would not give rise to any material adverse effect upon the Borrower or its business; each of Borrower's patents, patent applications, copyrights, trademarks and trademark applications which have been registered or filed with any governmental authority (including the U.S. Patent and Trademark Office and the Library of Congress) are listed by name, date and filing number on the Schedule;

5.6 Capital. Borrower has capital sufficient to conduct its business, is able to pay its debts as they mature, and owns property having a fair salable value greater than the amount required to pay all of its debts (including contingent debts);

5.7 Material Litigation. Borrower has no pending or to its knowledge overtly threatened litigation, actions or proceedings which would materially and adversely affect its business, assets, operations, prospects or condition, financial or otherwise, or the Collateral or any of LENDER's interests therein;

5.8 Title; Security Interests of LENDER. Borrower has good, indefeasible and merchantable title to the Collateral and, upon the execution and delivery of the Loan Documents, the filing of UCC-1 Financing Statements, delivery of the certificate(s) evidencing any pledged securities, the filing of any collateral assignments or security agreements regarding Borrower, Trademarks, Copyrights, Licenses and/or Patents, if any, with the appropriate governmental offices, in each case in the appropriate offices, this Agreement and such documents shall create valid and perfected first priority liens in the Collateral, subject only to Permitted Encumbrances;

5.9 Restrictive Agreements; Labor Contracts. Borrower is not a party or subject to any contract or subject to any charge, corporate restriction, judgment, decree or order materially and adversely affecting its business, assets, operations, prospects or condition, financial or otherwise, or which restricts its right or ability to incur Indebtedness (other than under the Subordinated Term Loan Agreement and the Seller Debt), and it is not party to any labor dispute. In addition, no labor contract is scheduled to expire during the Initial Term of this Agreement, except as disclosed to LENDER in writing prior to the date hereof;

5.10 Laws. Borrower is not in violation of any applicable statute, regulation, ordinance or any order of any court, tribunal or governmental agency, in any respect materially and adversely affecting the Collateral or its

business, assets, operations, prospects or condition, financial or otherwise;

5.11 Consents. Borrower has obtained or caused to be obtained or issued any required consent of a governmental agency or other Person in connection with the financing contemplated hereby;

5.12 Defaults. There does not exist any Default or Event of Default hereunder, and Borrower is not in default with respect to any note, indenture, loan agreement, mortgage, lease, deed or other agreement to which it is a party or by which it or its assets are bound, nor has any event occurred which, with the giving of notice or the lapse of time, or both, would cause such a default;

5.13 Financial Condition. The Prepared Financials fairly present Borrower's financial condition and results of operations and those of such other Persons described therein as of the date thereof in all material respects; there are no material omissions from the Prepared Financials or other facts or circumstances not reflected in the Prepared Financials; and there has been no material and adverse change in such financial condition or operations since the date of the initial Prepared Financials delivered to LENDER hereunder;

5.14 ERISA. None of Borrower, any ERISA Affiliate, or any Plan is or has been in violation of any of the provisions of ERISA, any of the qualification requirements of IRC Section 401(a) or any of the published interpretations thereunder, nor has Borrower or any ERISA Affiliate received any notice to such effect. No notice of intent to terminate a Plan has been filed under Section 4041 of ERISA, nor has any Plan been terminated under ERISA. The PBGC has not instituted proceedings to terminate, or appointed a trustee to administer, a Plan. No lien upon the assets of Borrower has arisen with respect to a Plan. No prohibited transaction or Reportable Event has occurred with respect to a Plan. Neither Borrower nor any ERISA Affiliate has incurred any withdrawal liability with respect to any Multiemployer Plan. Borrower and each ERISA Affiliate have made all contributions required to be made by them to any Plan or Multiemployer Plan when due. There is no accumulated funding deficiency in any Plan, whether or not waived;

5.15 Taxes. Borrower has filed all tax returns and such other reports as it is required by law to file and has paid or made adequate provision for the payment on or prior to the date when due of all taxes, assessments and similar charges that are due and payable;

5.16 Locations; Borrower's chief executive office and the offices and locations where it keeps the Collateral (except for Inventory in transit) are at the locations set forth on the Schedule, except to the extent that such

locations may have been changed after notice to LENDER in accordance with Section 6.1.5 hereof;

5.17 Business Relationships. There exists no actual or to Borrower's knowledge threatened termination, cancellation or limitation of, or any modification or change in, the business relationship between Borrower and any customer or any group of customers whose purchases individually or in the aggregate are material to the business of Borrower, or with any material supplier, and there exists no present condition or state of facts or circumstances which would materially and adversely affect Borrower or prevent Borrower from conducting such business after the consummation of the transactions contemplated by this Agreement in substantially the same manner in which it has heretofore been conducted; and.

5.18 Reaffirmations. Each request for a loan made by Borrower pursuant to this Agreement shall constitute (i) an automatic representation and warranty by Borrower to LENDER that there does not then exist any Default or Event of Default and (ii) a reaffirmation as of the date of said request of all of the representations and warranties of Borrower contained in this Agreement and the other Loan Documents (except as to those which specifically pertain to an earlier date).

6. COVENANTS

6.1 Affirmative Covenants. Borrower covenants that, so long as any Obligation remains outstanding and this Agreement is in effect, it shall:

6.1.2 Taxes. File all tax returns and pay or make adequate provision for the payment of all taxes, assessments and other charges on or prior to the date when due;

6.1.3 Notice of Litigation. Promptly notify LENDER in writing of any litigation, suit or administrative proceeding which may materially and adversely affect the Collateral or Borrower's business, assets, operations, prospects or condition, financial or otherwise, whether or not the claim is covered by insurance;

6.1.4 ERISA. Notify LENDER in writing (i) promptly upon the occurrence of any event described in Paragraph 4043 of ERISA, other than a termination, partial termination or merger of a Plan or a transfer of a Plan's assets and (ii) prior to any termination, partial termination or merger of a Plan or a transfer of a Plan's assets;

6.1.5 Change in Location. Notify LENDER in writing thirty (30) days prior to any change in the location of Borrower's chief executive office or the location of any Collateral, or Borrower's opening or closing of any other place of business;

6.1.6 Corporate Existence. Maintain its corporate existence and its qualification to do business and good

standing in all states necessary for the conduct of any material portion of its business and the ownership of its property and maintain adequate assets, licenses, patents, copyrights, trademarks and trade names for the conduct of its business;

6.1.7 Labor Disputes. Promptly notify LENDER in writing of any labor dispute to which Borrower is or may become subject and the expiration of any labor contract to which Borrower is a party or bound;

6.1.8 Violations of Law. Promptly notify LENDER in writing of any violation of any law, statute, regulation or ordinance of any governmental entity, or of any agency thereof, applicable to Borrower which may materially and adversely affect the Collateral or Borrower's business, assets, prospects, operations or condition, financial or otherwise;

6.1.9 Defaults. Notify LENDER in writing within five (5) Business Days of Borrower's default under any note, indenture, loan agreement, mortgage, lease or other agreement to which Borrower is a party or by which Borrower is bound, or of any other default under any Indebtedness of Borrower;

6.1.10 Capital Expenditures. Promptly notify LENDER in writing of the making of any Capital Expenditure materially affecting Borrower's business, assets, prospects, operations or condition, financial or otherwise, except to the extent permitted in the Schedule;

6.1.11 Books and Records. Keep adequate records and books of account with respect to its business activities in which proper entries are made in accordance with GAAP, reflecting all of its financial transactions;

6.1.12 Leases; Warehouse Agreements. Provide LENDER with (i) copies of all agreements between Borrower and any landlord, warehouseman or bailee which owns any premises at which any Collateral may, from time to time, be located (whether for processing, storage or otherwise), and (ii) without limiting the landlord, bailee and/or mortgagee waivers to be provided pursuant to Section 4.1(j) hereof, additional landlord, bailee and/or mortgagee waivers in form acceptable to LENDER with respect to all locations where any Collateral is hereafter located;

6.1.13 Additional Documents. At LENDER's request, promptly execute or cause to be executed and delivered to LENDER any and all documents, instruments or agreements deemed necessary by LENDER to facilitate the collection of the Obligations or the Collateral or otherwise to give effect to or carry out the terms or intent of this Agreement or any of the other Loan Documents. Without limiting the generality of the foregoing, if any of the Receivables with a face value in excess of \$1,000 arises out of a contract with the United States of America

or any department, agency, subdivision or instrumentality thereof, Borrower shall promptly notify LENDER of such fact in writing and shall execute any instruments and take any other action required or requested by LENDER to comply with the provisions of the Federal Assignment of Claims Act; and

6.1.14 Financial Covenants. Comply with the financial covenants set forth on the Schedule.

6.2 Negative Covenants Without LENDER's prior written consent, which consent LENDER may withhold in its sole discretion, so long as any Obligation remains outstanding and this Agreement is in effect, Borrower shall not:

6.2.1 Mergers. Merge or consolidate with or acquire any other Person, or make any other material change in its capital structure or in its business or operations which might adversely affect the repayment of the Obligations;

6.2.2 Loans. Make or have outstanding loans, advances, or extensions of credit to, or capital contributions or investments in, any Person, except that Borrower may own (a) the Capital Stock of its Subsidiaries (provided that such Capital Stock is pledged to LENDER), (b) cash and Cash Equivalents, and (c) securities of an account debtor received by the Borrower in satisfaction of a dispute with such account debtor or in connection with a bankruptcy of such account debtor (provided such securities are pledged to LENDER).

6.2.3 Distributions, Redemptions and Payments of Indebtedness: No Borrower shall, nor shall any Subsidiary of any Borrower, declare or pay or make any form of Distribution as that term is defined in the Subordinated Term Loan Agreement as in effect on the date hereof, except as may be permitted under the terms of Section 7.6 of, the Subordinated Term Loan Agreement as in effect on the date hereof.

6.2.4 Adverse Transactions. Enter into any transaction which materially and adversely affects the Collateral or its ability to repay the Obligations in full as and when due;

6.2.5 Indebtedness of Others. Guarantee or become directly or contingently liable for the Indebtedness of any Person, except by endorsement of instruments for deposit.;

6.2.6 Repurchase. Make a sale to any customer on a bill-and-hold, guaranteed sale, sale and return, sale on approval, consignment, or any other repurchase or return basis;

6.2.7 Name. Use any corporate or fictitious name other than its corporate name as set forth in its Articles or Certificate of Incorporation on the date hereof or as set forth on the Schedule;

6.2.8 Prepayment. Prepay any Indebtedness other than trade payables, and the Obligations;

6.2.9 Capital Expenditure. Make or incur any Capital Expenditure if, after giving effect thereto, the aggregate amount of all Capital Expenditures by Borrower in any fiscal year would exceed the amount set forth on the Schedule;

6.2.10 Compensation. Pay total compensation, including salaries, withdrawals, fees, bonuses, commissions, drawing accounts and other payments, whether directly or indirectly, in money or otherwise, during any fiscal year to Borrower's executives, officers and directors in amounts which are in excess of reasonable compensation when compared to comparable salaries within Borrower's industry and geographic location;

6.2.11 Indebtedness. Create, incur, assume or permit to exist any Indebtedness (including Indebtedness in connection with Capital Leases) other than Permitted Indebtedness which shall not be in excess of the amounts set forth on the Schedule 6.2, other than (i) the Obligations, (ii) trade payables and other contractual obligations to suppliers and customers incurred in the ordinary course of business, and (iii) other Indebtedness existing on the date of this Agreement and reflected in the Prepared Financials (except Indebtedness paid on the date of this Agreement from proceeds of the initial advances hereunder), and (iv) Subordinated Debt;

6.2.12 Affiliate Transactions. Except as set forth below, sell, transfer, distribute or pay any money or property to any Affiliate, or invest in (by capital contribution or otherwise) or purchase or repurchase any stock or Indebtedness, or any property, of any Affiliate, or become liable on any guaranty of the indebtedness, dividends or other obligations of any Affiliate. Notwithstanding the foregoing, Borrower may pay compensation permitted by Section 6.2.10 to employees who are Affiliates and, if no Event of Default has occurred, Borrower may engage in transactions with Affiliates in the normal course of business, in amounts and upon terms which are fully disclosed to LENDER and which are no less favorable to Borrower than would be obtainable in a comparable arm's length transaction with a Person who is not an Affiliate.

6.2.13 Nature of Business Enter into any new business or make any material change in any of Borrower's business objectives, purposes or operations;

6.2.14 LENDER's Name. Use the name of LENDER in connection with any of Borrower's business or activities, except in connection with internal business matters or as required in dealings with governmental agencies and financial institutions or with trade creditors of Borrower, solely for credit reference purposes; or

6.2.15 Margin Security. Borrower will not (and has not in the past) engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation G or Regulation U issued by the Board of Governors of the Federal Reserve System), and no proceeds of any Loan or other advance will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock, or in any manner which might cause such Loan or other advance or the application of such proceeds to violate (or require any regulatory filing under) Regulation G, Regulation T, Regulation U, Regulation X or any other regulation of the Board of Governors of the Federal Reserve System, in each case as in effect on the date or dates of such Loan or other advance and such use of proceeds. Further, no proceeds of any Loan or other advance will be used to acquire any security of a class which is registered pursuant to Section 12 of the Securities Exchange Act of 1934.

6.2.16 Real Property. Purchase or acquire any real property without LENDER's prior written consent, a condition of which consent shall include delivery of appropriate environmental reports and analysis, in form and substance satisfactory to LENDER and its counsel.

7. **DEFAULT AND REMEDIES**

7.1 Events of Default.

Any one or more of the following events shall constitute an Event of Default under this Agreement:

(a) Borrower fails to pay when due and payable any portion of the Obligations at stated maturity, upon acceleration or otherwise (except that in the event a payment is due to LENDER from Borrower because of the pay down of an Overadvance which arose from unexpected circumstances which caused previously Eligible Inventory or Eligible Receivables to cease being eligible, then in such event such failure to make payment when due shall constitute an Event of Default if such failure to make payment continues for three (3) days after demand for such payment is made upon Borrower);

(b) Borrower or any other Loan Party or Subordinating Creditor fails or neglects to perform, keep, or observe any Obligation or agreement with LENDER, including, but not limited to, any term, provision, condition, covenant or agreement contained in any Loan Document to which Borrower or such other Loan is a party other than those referred to in clause (ii) of this section (b), or (ii) Borrower fails or neglects to perform, keep, or observe any Obligation including, but not limited to, any term, provision, condition, covenant or agreement contained in this Agreement in sections 6.1.6, 3.6 or 5.13 and such failure is not cured within 30 days after the earlier of (A) delivery of written notice thereof by

LENDER, and (B) the time at which Borrower knew or became aware, or reasonably should have know or become aware, thereof;

(c) Any material adverse change occurs in Borrower's business, assets, operations, prospects or condition, financial or otherwise;

(d) The prospect of repayment of any portion of the Obligations or the value or priority of LENDER's security interest in the Collateral is materially impaired;

(e) Any portion of Borrower's assets is seized, attached, subjected to a writ or distress warrant, is levied upon or comes into the possession of any judicial officer;

(f) Borrower shall generally not pay its debts as they become due or shall enter into any agreement (whether written or oral), or offer to enter into any agreement, with all or a significant number of its creditors regarding any moratorium or other indulgence with respect to its debts or the participation of such creditors or their representatives in the supervision, management or control of the business of Borrower;

(g) Any bankruptcy or other insolvency proceeding is commenced by Borrower, or any such proceeding is commenced against Borrower and remains undischarged or unstayed for sixty (60) days;

(h) Any notice of lien, levy or assessment is filed of record with respect to any of Borrower's assets;

(i) Any judgments are entered against Borrower in an aggregate amount exceeding \$50,000.00 in any fiscal year (which if being appealed remain unstayed or unbonded while pending appeal);

(j) Any default shall occur under (i) any material agreement (if such agreement is in connection with a monetary amount and such agreement involves in excess of \$20,000.00 in connection with any one agreement or in excess of \$50,000.00 in the aggregate in connection with multiple agreements at any time outstanding such agreement(s) shall be deemed material) between Borrower and any third party including, without limitation, any default which would result in a right by such third party to accelerate the maturity of any Indebtedness of Borrower to such third party, or (ii) any Subordinated Debt;

(k) Any representation or warranty made or deemed to be made by Borrower, any Affiliate or any other Loan Party or Subordinating Creditor in any Loan Document or any other statement, document or report made or delivered to LENDER in connection therewith shall prove to have been misleading in any material respect;

(l) Any Guarantor dies (or if a corporation or other business entity, dissolves or otherwise terminates its existence, merges or consolidates with another or changes

ownership of its capital stock), or any Guarantor terminates or attempts to terminate its Guaranty or any security therefor or becomes subject to any bankruptcy or other insolvency proceeding;

(m) Any Prohibited Transaction or Reportable Event shall occur with respect to a Plan which could have a material adverse effect on the financial condition of Borrower; any lien upon the assets of Borrower in connection with any Plan shall arise; Borrower or any of its ERISA Affiliates shall fail to make full payment when due of all amounts which Borrower or any of its ERISA Affiliates may be required to pay to any Plan or any Multiemployer Plan as one or more contributions thereto; Borrower or any of its ERISA Affiliates creates or permits the creation of any accumulated funding deficiency, whether or not waived; or

(n) **NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, LENDER RESERVES THE RIGHT TO CEASE MAKING ANY LOANS DURING ANY CURE PERIOD STATED ABOVE, AND THEREAFTER IF AN EVENT OF DEFAULT HAS OCCURRED.**

7.2 Remedies. Upon the occurrence and during the continuance of a Default or an Event of Default, LENDER may, at its option and in its sole discretion and in addition to all of its other rights under the Loan Documents, cease making Loans. Upon the occurrence and during the continuance of an Event of Default LENDER may, at its option and in its sole discretion and in addition to all of its other rights under the Loan Document terminate this Agreement and/or declare all of the Obligations to be immediately payable in full. Borrower agrees that LENDER shall also have all of its rights and remedies under applicable law, including, without limitation, the default rights and remedies of a secured party under the Code, and upon the occurrence of and during the continuance of an Event of Default Borrower hereby consents to the appointment of a receiver by LENDER in any action initiated by LENDER pursuant to this Agreement and to the jurisdiction and venue set forth in Section 9.26 hereof, and Borrower waives notice and posting of a bond in connection therewith. Further, LENDER may, at any time, upon the occurrence of and during the continuance of an Event of Default take possession of the Collateral and keep it on Borrower's premises, at no cost to LENDER, or remove any part of it to such other place(s) as LENDER may desire, or Borrower shall, upon LENDER's demand, at Borrower's sole cost, assemble the Collateral and make it available to LENDER at a place reasonably convenient to LENDER. LENDER upon the occurrence of and during the continuance of an Event of Default may sell and

deliver any Collateral at public or private sales, for cash, upon credit or otherwise, at such prices and upon such terms as LENDER deems advisable, at LENDER's discretion, and may, if LENDER deems it reasonable, postpone or adjourn any sale of the Collateral by an announcement at the time and place of sale or of such postponed or adjourned sale without giving a new notice of sale. Borrower agrees that LENDER has no obligation to preserve rights to the Collateral or marshal any Collateral for the benefit of any Person. LENDER is hereby granted a license or other right to use, without charge, Borrower's labels, patents, copyrights, name, trade secrets, trade names, trademarks and advertising matter, or any similar property, in completing production, advertising or selling any Collateral and Borrower's rights under all licenses and all franchise agreements shall inure to LENDER's benefit. Any requirement of reasonable notice shall be met if such notice is mailed postage prepaid to Borrower at its address set forth in the heading to this Agreement at least ten (10) days before sale or other disposition. The proceeds of sale shall be applied, first, to all attorneys fees and other expenses of sale, and second, to the Obligations in such order as LENDER shall elect, in its sole discretion. LENDER shall return any excess to Borrower and Borrower shall remain liable for any deficiency to the fullest extent permitted by law.

7.3 Standards for Determining Commercial Reasonableness. Borrower and LENDER agree that the following conduct by LENDER with respect to any disposition of Collateral shall conclusively be deemed commercially reasonable (but other conduct by LENDER, including, but not limited to, LENDER's use in its sole discretion of other or different times, places and manners of noticing and conducting any disposition of Collateral shall not be deemed unreasonable): Any public or private disposition: (i) as to which on no later than the tenth (10th) calendar day prior thereto written notice thereof is mailed or personally delivered to Borrower and, with respect to any public disposition, on no later than the tenth (10) calendar day prior thereto notice thereof describing in general non-specific terms, the Collateral to be disposed of is published once in a newspaper of general circulation in the county where the sale is to be conducted (provided that no notice of any public or private disposition need be given to the Borrower or published if the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market); (ii) which is conducted at any place designated by LENDER, with or without the Collateral being present; and (iii) which commences at any time between 8:00 a.m. and 5:00 p.m. New York time. Without limiting the generality of the foregoing, Borrower expressly agrees that, with respect to any disposition of accounts, instruments and general intangibles, it shall be commercially reasonable for LENDER to direct any

prospective purchaser thereof to ascertain directly from Borrower any and all information concerning the same, including, but not limited to, the terms of payment, aging and delinquency, if any, the financial condition of any obligor or account debtor thereon or guarantor thereof, and any collateral therefor.

8. EXPENSES AND INDEMNITIES

8.1 Expenses. Borrower covenants that, so long as any Obligation remains outstanding and this Agreement remains in effect, it shall promptly reimburse LENDER for all reasonable costs, fees and expenses incurred by LENDER in connection with the negotiation, preparation, execution, delivery, administration and enforcement of each of the Loan Documents, including, but not limited to, the reasonable attorneys' and paralegals' fees of in-house and outside counsel, expert witness fees, lien, title search and insurance fees, appraisal fees, all charges and expenses incurred in connection with any and all environmental reports and environmental remediation activities, and all other costs, expenses, taxes and filing or recording fees payable in connection with the transactions contemplated by this Agreement, including without limitation all such costs, fees and expenses as LENDER shall incur or for which LENDER shall become obligated in connection with: (i), any inspection or verification of the Collateral, (ii) any proceeding relating to the Loan Documents or the Collateral, (iii) actions taken with respect to the Collateral and LENDER's security interest therein, including, without limitation, the defense or prosecution of any action involving LENDER and Borrower or any third party, (iv) enforcement of any of LENDER's rights and remedies with respect to the Obligations or Collateral and (v) consultation with LENDER's attorneys and participation in any workout, bankruptcy or other insolvency or other proceeding involving any Loan Party or any Affiliate, whether or not suit is filed or the issues are peculiar to federal bankruptcy or state insolvency laws. Borrower shall also pay all LENDER charges in connection with bank wire transfers, forwarding of loan proceeds, deposits of checks and other items of payment, returned checks, establishment and maintenance of lockboxes and other Blocked Accounts, and all other bank and administrative matters, in accordance with LENDER's schedule of bank and administrative fees and charges in effect from time to time.

8.2 Environmental Matters Definitions. The following definitions apply to the provisions of this Section 8.2: (a) the term "Applicable Law" shall include, but shall not be limited to, all local, state and/or federal laws, rules, regulations or ordinances, whether currently in existence or hereafter enacted, which govern, to the extent applicable to the Property or to Borrower, (i) the existence, cleanup and/or remedy of contamination on

real property; (ii) the protection of the environment from soil, air or water pollution, or from spilled, deposited or otherwise emplaced contamination; (iii) the emission or discharge of hazardous substances into the environment; (iv) the control of hazardous wastes; or (v) the use, generation, transport, treatment, removal or recovery of Hazardous Substances; (b) the term "Hazardous Substance" shall mean (i) any oil, flammable substance, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, materials or pollutants which either pose a hazard to the Property or to persons on or about the Property or cause the Property to be in violation of any Applicable Law; (ii) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls, or radon gas; (iii) any chemical, material or substance defined as or included in the definition of "hazardous substances," "waste," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," or "toxic substances" or words of similar import under any Applicable Law; (iv) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority which may or could pose a hazard to the health or safety of the occupants of the Property or the owners and/or occupants of property adjacent to or surrounding the Property, or any other person coming upon the Property or adjacent property; and (v) any other chemical, materials or substance which may or could pose a hazard to the environment; and (c) the term "Property" shall mean all real property, wherever located, in which Borrower or any Affiliate of Borrower has any right, title or interest, whether now existing or hereafter arising, and including, without limitation, as owner, lessor or lessee.

8.3 Covenants and Representations. (1) Borrower represents and warrants that there have not been during the period of Borrower's possession of any interest in the Property and, to the best of its knowledge after reasonable inquiry, there have not been at any other times, any activities on the Property involving, directly or indirectly, the use, generation, treatment, storage or disposal of any Hazardous Substances except in compliance with Applicable Law (i) under, on or in the land included in the Property, whether contained in soil, tanks, sumps, ponds, lagoons, barrels, cans or other containments, structures or equipment, (ii) incorporated in the buildings, structures or improvements included in the Property, including any building material containing asbestos, or (iii) used in connection with any operations on or in the Property. (2) Without limiting the generality of the foregoing and to the extent not included within the scope of this Section 8.3, Borrower represents and warrants that it is in full compliance with Applicable Law and has received no

notice from any Person or any governmental agency or other entity of any violation by Borrower or its Affiliates of any Applicable Law. (3) Borrower shall be solely responsible for and agrees to indemnify LENDER, protect and defend LENDER with counsel reasonably acceptable to LENDER, and hold LENDER harmless from and against any claims, actions, administrative proceedings, judgments, damages, punitive damages, penalties, fines, costs, liabilities (including sums paid in settlements of claims), interest or losses, attorneys' fees (including any fees and expenses incurred in enforcing this indemnity), consultant fees, expert fees, and other out-of-pocket costs or expenses actually incurred by LENDER (collectively, the "Environmental Costs"), that may, at any time or from time to time, arise directly or indirectly from or in connection with: (i) the presence, suspected presence, release or suspected release of any Hazardous Substance whether into the air, soil, surface water or groundwater of or at the Property, or any other violation of Applicable Law, or (ii) any breach of the foregoing representations and covenants; except to the extent any of the foregoing result from the actions of LENDER, its employees, agents and representatives gross negligence or wilful misconduct. All Environmental Costs incurred or advanced by LENDER shall be deemed to be made by LENDER in good faith and shall constitute Obligations hereunder.

9. MISCELLANEOUS.

9.1 Examination of Records; Financial Reporting.

(a) Examinations. LENDER shall at all reasonable times upon prior notice have full access to and the right to examine, audit, make abstracts and copies from and inspect Borrower's records, files, books of account and all other documents, instruments and agreements relating to the Collateral and the right to check, test and appraise the Collateral. Borrower shall deliver to LENDER any instrument necessary for LENDER to obtain records from any service bureau maintaining records for Borrower. All instruments and certificates prepared by Borrower showing the value of any of the Collateral shall be accompanied, upon LENDER's request, by copies of related purchase orders and invoices. LENDER may, at any time after the occurrence and during the continuance of an Event of Default, remove from Borrower's premises Borrower's books and records (or copies thereof) or require Borrower to deliver such books and records or copies to LENDER. LENDER may, without expense to LENDER, use such of Borrower's personnel, supplies and premises as may be reasonably necessary for maintaining or enforcing LENDER's security interest.

(b) Reporting Requirements. Borrower shall furnish LENDER, upon request, such information and statements as LENDER shall request from time to time regarding

Borrower's business affairs, financial condition and the results of its operations. Without limiting the generality of the foregoing, Borrower shall provide LENDER with: (i) LENDER's standard form collateral and loan report, daily, and upon LENDER's request, copies of sales journals, cash receipt journals, and deposit slips; (ii) upon LENDER's request, copies of sales invoices, customer statements and credit memoranda issued, remittance advices and reports; (iii) copies of shipping and delivery documents, upon request; (iv) on or prior to the date set forth on the Schedule, monthly agings (aged from invoice date) and reconciliations of Receivables (with listings of concentrated accounts), payables reports, inventory reports, compliance certificates and unaudited financial statements with respect to the prior month prepared on a basis consistent with such statements prepared in prior months and otherwise in accordance with GAAP; (v) audited annual consolidated and consolidating financial statements, prepared in accordance with GAAP applied on a basis consistent with the most recent Prepared Financials provided to LENDER by Borrower, including balance sheets, income and cash flow statements, accompanied by the unqualified report thereon of independent certified public accountants acceptable to LENDER, as soon as available, and in any event, within one hundred twenty (120) days after the end of each of Borrower's fiscal years; and (vi) such certificates relating to the foregoing as LENDER may request, including, without limitation, a monthly certificate from the president and the chief financial officer of Borrower showing Borrower's compliance with each of the financial covenants set forth in this Agreement, and stating whether any Event of Default has occurred or event which, with giving of notice or the passage of time, or both, would constitute an Event of Default, and if so, the steps being taken to prevent or cure such Event of Default. All reports or financial statements submitted by Borrower shall be in reasonable detail and shall be certified by the principal financial officer of Borrower as being complete and correct.

(c) Guarantor's Financial Statements and Tax Returns. Borrower shall cause each of the Guarantor (if any) to deliver to LENDER such Guarantor's annual financial statement (in form acceptable to LENDER) and a copy of such Guarantor's federal income tax return with respect to the corresponding year, in each case on the date when such tax return is due or, if earlier, on the date when available.

9.2 Term; Termination (a) The Initial Term of the Revolving Credit Loans facility and the obligation of LENDER to made advances with respect thereto in accordance with this Agreement shall be as set forth on the Schedule, and the Revolving Credit Loans facility and this Agreement shall be automatically renewed for one or

more Renewal Term(s) as set forth in the Schedule, unless earlier terminated as provided herein.

(b) Prior Notice. Each party shall have the right to terminate this Agreement effective at the end of the Initial Term or at the end of any Renewal Term by giving the other party written notice not less than thirty (30) days prior to the effective date of such termination, by registered or certified mail.

(c) Payment in Full. Upon the effective date of termination, the Obligations shall become immediately due and payable in full in cash.

(d) Early Termination; Termination Fee. In addition to the procedure set forth in Section 9.2(b), Borrower may terminate this Agreement at any time but only upon thirty (30) days' prior written notice and prepayment of the Obligations. Upon any such early termination by Borrower or any termination of this Agreement by LENDER upon the occurrence of an Event of Default, then, and in any such event, Borrower shall pay to LENDER upon the effective date of such termination a fee (the "Termination Fee") in an amount equal to the amount shown on the Schedule.

9.3 Recourse to Security; Certain Waivers. All Obligations shall be payable by Borrower as provided for herein and, in full, at the termination of this Agreement; recourse to security shall not be required at any time. Borrower waives presentment and protest of any instrument and notice thereof, notice of default and, to the extent permitted by applicable law, all other notices to which Borrower might otherwise be entitled.

9.4 No Waiver by LENDER. Neither LENDER's failure to exercise any right, remedy or option under this Agreement, any supplement, the Loan Documents or other agreement between LENDER and Borrower nor any delay by LENDER in exercising the same shall operate as a waiver. No waiver by LENDER shall be effective unless in writing and then only to the extent stated. No waiver by LENDER shall affect its right to require strict performance of this Agreement. LENDER's rights and remedies shall be cumulative and not exclusive.

9.5 Binding on Successor and Assigns. All terms, conditions, promises, covenants, provisions and warranties shall inure to the benefit of and bind LENDER's and Borrower's respective representatives, successors and assigns.

9.6 Severability. If any provision of this Agreement shall be prohibited or invalid under applicable law, it shall be ineffective only to such extent, without invalidating the remainder of this Agreement.

9.7 Amendments; Assignments. This Agreement may not be modified, altered or amended, except by an agreement in writing signed by Borrower and LENDER.

Borrower may not sell, assign or transfer any interest in this Agreement or any other Loan Document, or any portion thereof, including, without limitation, any of Borrower's rights, title, interests, remedies, powers and duties hereunder or thereunder. Borrower hereby consents to LENDER's participation, sale, assignment, transfer or other disposition, at any time or times hereafter, of this Agreement and any of the other Loan Documents, or of any portion hereof or thereof, including, without limitation, LENDER's rights, title, interests, remedies, powers and duties hereunder or thereunder. In connection therewith, LENDER may disclose all documents and information which LENDER now or hereafter may have relating to Borrower or Borrower's business. To the extent that LENDER assigns its rights and obligations hereunder to a third party, LENDER shall thereafter be released from such assigned obligations to Borrower and such assignment shall effect a novation between Borrower and such third party.

9.8 Integration. This Agreement, together with the Schedule (which is a part hereof) and the other Loan Documents, reflect the entire understanding of the parties with respect to the transactions contemplated hereby.

9.9 Survival. All of the representations and warranties of Borrower contained in this Agreement shall survive the execution, delivery and acceptance of this Agreement by the parties. No termination of this Agreement or of any guaranty of the Obligations shall affect or impair the powers, obligations, duties, rights, representations, warranties or liabilities of the parties hereto and all shall survive such termination.

9.10 Evidence of Obligations. Each Obligation may, in LENDER's discretion, be evidenced by notes or other instruments issued or made by Borrower to LENDER. If not so evidenced, such Obligation shall be evidenced solely by entries upon LENDER's books and records.

9.11 Loan Requests. Each oral or written request for a loan by any Person who purports to be any employee, officer or authorized agent of Borrower shall be made to LENDER on or prior to 11:00 a.m., New York time, on the Business Day on which the proceeds thereof are requested to be paid to Borrower and shall be conclusively presumed to be made by a Person authorized by Borrower to do so and the crediting of a loan to Borrower's operating account shall conclusively establish Borrower's obligation to repay such loan. Unless and until Borrower otherwise directs LENDER in writing, all loans shall be wired to Borrower's operating account set forth on the Schedule.

9.12 Notices. Any notice required hereunder shall be in writing and addressed to the Borrower and LENDER at their addresses set forth at the beginning of this Agreement. Notices hereunder shall be deemed received

on the earlier of receipt, whether by mail, personal delivery, facsimile, or otherwise, or upon deposit in the United States mail, postage prepaid.

9.13 Brokerage Fees. Borrower represents and warrants to LENDER that, with respect to the financing transaction herein contemplated, no Person is entitled to any brokerage fee or other commission, and Borrower agrees to indemnify and hold LENDER harmless against any and all such claims.

9.14 Disclosure. No representation or warranty made by Borrower in this Agreement, or in any financial statement, report, certificate or any other document furnished in connection herewith contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements herein or therein not misleading. There is no fact known to Borrower or which reasonably should be known to Borrower which Borrower has not disclosed to LENDER in writing with respect to the transactions contemplated by this Agreement which materially and adversely affects the business, assets, operations, prospects or condition (financial or otherwise), of Borrower.

9.15 Publicity. LENDER is hereby authorized to issue appropriate press releases and to cause a tombstone to be published announcing the consummation of this transaction and the aggregate amount thereof.

9.16 Captions. The Section titles contained in this Agreement are without substantive meaning and are not part of this Agreement.

9.17 Injunctive Relief. Borrower recognizes that, in the event Borrower fails to perform, observe or discharge any of its Obligations under this Agreement, any remedy at law may prove to be inadequate relief to LENDER. Therefore, LENDER, if it so requests, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

9.18 Counterparts; Facsimile Execution. This Agreement may be executed in one or more counterparts, each of which taken together shall constitute one and the same instrument, admissible into evidence. Delivery of an executed counterpart of this Agreement by telefacsimile shall be equally as effective as delivery of a manually executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile shall also deliver a manually executed counterpart of this Agreement, but the failure to deliver a manually executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

9.19 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 or exhibits hereto.

9.20 Time of Essence. Time is of the essence for the performance by Borrower of the Obligations set forth in this Agreement.

9.21 Limitation of Actions. Borrower agrees that any claim or cause of action by Borrower against LENDER, or any of LENDER's directors, officers, employees, agents, accountants or attorneys, based upon, arising from, or relating to this Agreement, or any other present or future agreement, or any other transaction contemplated hereby or thereby or relating hereto or thereto, or any other matter, cause or thing whatsoever, whether or not relating hereto or thereto, occurred, done, omitted or suffered to be done by LENDER, or by LENDER's directors, officers, employees, agents, accountants or attorneys, whether sounding in contract or in tort or otherwise, shall be barred unless asserted by Borrower by the commencement of an action or proceeding in a court of competent jurisdiction by the filing of a complaint within one year after the first act, occurrence or omission upon which such claim or cause of action, or any part thereof, is based and service of a summons and complaint on an officer of LENDER or any other Person authorized to accept service of process on behalf of LENDER, within 30 days thereafter. Borrower agrees that such one-year period of time is a reasonable and sufficient time for Borrower to investigate and act upon any such claim or cause of action. The one-year period provided herein shall not be waived, tolled, or extended except by a specific written agreement of LENDER. This provision shall survive any termination of this Loan Agreement or any other agreement.

9.22 Liability. Neither LENDER nor any LENDER Affiliate shall be liable for any indirect, special, incidental or consequential damages in connection with any breach of contract, tort or other wrong relating to this Agreement or the Obligations or the establishment, administration or collection thereof (including without limitation damages for loss of profits, business interruption, or the like), whether such damages are foreseeable or unforeseeable, even if LENDER has been advised of the possibility of such damages. Neither LENDER, nor any LENDER Affiliate shall be liable for any claims, demands, losses or damages, of any kind whatsoever, made, claimed, incurred or suffered by the Borrower through the ordinary negligence of LENDER, or any LENDER Affiliate. "LENDER Affiliate" shall mean LENDER's directors, officers, employees, agents, attorneys or any other Person or entity affiliated with or representing LENDER.

9.23 Notice of Breach by LENDER. Borrower agrees to give LENDER written notice of (i) any action or inaction by LENDER or any attorney of LENDER in

connection with any Loan Documents that may be actionable against LENDER or any attorney of LENDER or (ii) any defense to the payment of the Obligations for any reason, including, but not limited to, commission of a tort or violation of any contractual duty or duty implied by law. Borrower agrees that unless such notice is fully given as promptly as possible (and in any event within thirty (30) days) after Borrower has knowledge, or with the exercise of reasonable diligence should have had knowledge, of any such action, inaction or defense, Borrower shall not assert, and Borrower shall be deemed to have waived, any claim or defense arising therefrom.

9.24 Application of Insurance Proceeds. The net proceeds of any casualty insurance insuring the Collateral, after deducting all costs and expenses (including attorneys' fees) of collection, shall be applied, at LENDER's option, either toward replacing or restoring the Collateral, in a manner and on terms satisfactory to LENDER, or toward payment of the Obligations. Any proceeds applied to the payment of Obligations shall be applied in such manner as LENDER may elect. In no event shall such application relieve Borrower from payment in full of all installments of principal and interest which thereafter become due in the order of maturity thereof.

9.25 Power of Attorney. Borrower appoints LENDER and its designees as Borrower's attorney, with the power to endorse Borrower's name on any checks, notes, acceptances, money orders or other forms of payment or security that come into LENDER's possession; to sign Borrower's name on any invoice or bill of lading relating to any Receivable, on drafts against customers, on assignments of Receivables, on notices of assignment, financing statements and other public records, on verifications of accounts and on notices to customers or account debtors; to send requests for verification of Receivables to customers or account debtors; after the occurrence of any Event of Default, to notify the post office authorities to change the address for delivery of Borrower's mail to an address designated by LENDER and to open and dispose of all mail addressed to Borrower; and to do all other things LENDER deems necessary or desirable to carry out the terms of this Agreement. Borrower hereby ratifies and approves all acts of such attorney. Neither LENDER nor any of its designees shall be liable for any acts or omissions nor for any error of judgment or mistake of fact or law while acting as Borrower's attorney. This power, being coupled with an interest, is irrevocable until the Obligations have been fully satisfied and LENDER's obligation to provide loans hereunder shall have terminated

9.26 Governing Law; Waivers. THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ENFORCEMENT OF THE

OBLIGATIONS, SHALL BE INTERPRETED IN ACCORDANCE WITH THE INTERNAL LAWS (AND NOT THE CONFLICT OF LAWS RULES) OF THE STATE OF NEW YORK GOVERNING CONTRACTS TO BE PERFORMED ENTIRELY WITHIN SUCH STATE. BORROWER HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF NEW YORK IN THE STATE OF NEW YORK OR, AT THE SOLE OPTION OF LENDER, IN ANY OTHER COURT IN WHICH LENDER SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. BORROWER WAIVES ANY OBJECTION OF FORUM NON CONVENIENS AND VENUE. BORROWER FURTHER WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON IT, AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS BE MADE IN THE MANNER SET FORTH IN SECTION 9.12 HEREOF FOR THE GIVING OF NOTICE. BORROWER FURTHER WAIVES ANY RIGHT IT MAY OTHERWISE HAVE TO COLLATERALLY ATTACK ANY JUDGMENT ENTERED AGAINST IT.

9.27 MUTUAL WAIVER OF RIGHT TO JURY TRIAL LENDER AND BORROWER EACH HEREBY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO: (i) THIS AGREEMENT; (ii) ANY OTHER PRESENT OR FUTURE INSTRUMENT OR AGREEMENT BETWEEN LENDER AND BORROWER; OR (iii) ANY CONDUCT, ACTS OR OMISSIONS OF LENDER OR BORROWER OR ANY OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, ATTORNEYS OR ANY OTHER PERSONS AFFILIATED WITH LENDER OR BORROWER; IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE.

9.28 Counterparts This Agreement may be executed in any number of separate counterparts, each of which shall be deemed to be an original and all of which, taken together, shall constitute one and the same agreement.

BALANCE OF THIS PAGE
INTENTIONALLY LEFT BLANK

Borrower:

By: _____
Name: _____
Title: _____

LENDER:

By _____
Title _____

Schedule to Loan and Security Agreement

**Borrower:
Address:**

Date:

This Schedule forms an integral part of the Loan and Security Agreement between the above Borrower and Lender dated the above date, and all references herein and therein to "this Agreement" shall be deemed to refer to said Agreement and to this Schedule.

TOTAL FACILITY (SECTION 2.1):

LOANS (SECTION 2.2):

Revolving Credit Loans: A revolving line of credit consisting of loans against Borrower's Eligible Receivables ("**Receivable Loans**") and against Borrower's Eligible inventory ("**Inventory Loans**") (the Receivable Loans and the Inventory Loans shall be collectively referred to as the "**Revolving Credit Loans**") in an aggregate outstanding principal amount not to exceed the lesser of (a) or (b) below:

- (a) _____ Million Dollars (\$____000,000.00) (the "**Revolving Credit Limit**"), less any Loan Reserves, or
- (b) an amount equal to the following:
- (i) an amount equal to (A) _____% of the net amount of Eligible Receivables arising from sales to customers located in the United States, less (B) the aggregate undrawn face amount (plus duty, freight and bank charges) of all outstanding Letters of Credit, except that with respect to those documentary Letters of Credit (if any) specifically issued in connection with the purchase of finished goods Inventory which would otherwise be Eligible Inventory, the face amount of any such Letter of Credit for purposes of this calculation shall be reduced by an amount equal to _____% of the cost of any such finished goods Inventory which is purchased through such Letter of Credit; plus
- (ii) an amount not to exceed the lesser of:
- (A) an amount equal to _____% of the value of Borrower's Eligible Inventory calculated at the lower of cost or market value and determined on a first in first out basis, or
- (B) _____ Dollars (\$_____); less
- (iii) any Loan Reserves.

INTEREST AND FEES (SECTION 2.5):

Revolving Interest Rate. Borrower shall pay LENDER interest on the daily outstanding balance of Borrower's Revolving Credit Loans at a per annum rate of ____Percent (____%) in excess of the rate of interest announced publicly by _____Bank, (or any successor thereto), from time to time as its "prime rate" (the "**Prime Rate**") which may not be such institution's lowest rate. The interest rate chargeable hereunder in respect of the Revolving Credit Loans (herein, the "**Revolving Interest Rate**") shall be increased or decreased, as the case may be, without notice or demand of any kind, upon the announcement of any change in the Prime Rate but in no event shall the Prime Rate be less than ____ Percent (____%) per annum for the purpose of calculating the Revolving Interest Rate. Each change in the Prime Rate shall be effective hereunder on the first day following the announcement of such change. Interest charges and all other fees and charges herein shall be computed on the basis of a year of 360 days and actual days elapsed and shall be payable to LENDER in arrears on the first day of each month.

Facility Fee. Borrower shall pay to LENDER a facility fee equal to ____Percent (____%) per annum of the amount of the Total Facility payable at Closing and ____Percent (____%) of the Total Facility payable on each anniversary of the Closing Date ("**Facility Fee**"). The Facility Fee shall be deemed fully earned at the time when due and is otherwise due and payable annually, commencing upon the first anniversary of the date of this Agreement and continuing on each subsequent anniversary thereof.

Examination Fee. Borrower agrees to pay to LENDER an examination fee in the amount of \$____.00 per person per day in connection with each audit or examination of Borrower performed by LENDER prior to or after the date hereof, plus all costs and expenses incurred in connection therewith (the "**Examination Fee**"). Without limiting the generality of the foregoing, Borrower shall pay to LENDER an initial Examination Fee in an amount equal to \$____.00 per person per day, plus all costs and expenses incurred in connection therewith. Such initial Examination Fee shall be deemed fully earned at the time of payment and due and payable upon the closing of this transaction, and shall be deducted from any good faith deposit paid by Borrower to LENDER prior to the date of this Agreement.

LETTERS OF CREDIT (SECTION 2.13):

All outstanding Letters of Credit shall be reserved against the availability of Revolving Credit Loans as set forth in Section 2.13 and in Section 2.2 of this Schedule above. The Letter of Credit Fee shall equal ____ of one percent (____ of 1%) of the face amount of each Letter of Credit opened from time to time during the term of this Agreement and ____ of one percent (____th of 1%) of the face amount of each Letter of Credit for each month or part thereof in which a Letter of Credit remains outstanding. The Letter of Credit Fee shall be deemed to be fully earned and shall be due and payable upon the issuance of each Letter of Credit.

CONDITIONS OF CLOSING (SECTION 4.1):

LENDER's willingness to make the initial advance hereunder or to issue or arrange for the issuance of the initial Letter of Credit hereunder is subject to the fulfillment, to the satisfaction of LENDER and its counsel, of each of the following conditions, in addition to the conditions set forth in Sections 4.1 and 4.2 above:

Borrower shall cause the conditions precedent set forth in Section 4.1 of this Agreement and set forth above in this Schedule to be satisfied, and shall provide evidence to LENDER that all such conditions precedent have been satisfied, on or before _____.

BORROWER INFORMATION:

Borrower's State of formation (Section 5.1):

Borrower's copyrights, patents trademarks, and licenses (Section 5.5):

Fictitious Names/ (Section 5.2):

Prior Corporate Names:

Borrower Locations (Section 5.16):

Permitted Encumbrances (Section 6.2):

FINANCIAL COVENANTS (SECTION 6.1.14):

Borrower shall comply with all of the following covenants. Compliance shall be determined as of the end of each quarter, except as otherwise specifically provided below:

NEGATIVE COVENANTS (SECTION 6.2):

Employee Advances: Borrower shall not make any loans or advances to Employees except in the ordinary course of business and consistent with the past practices in an aggregate amount not exceeding at any time \$_____.

Capital Expenditures: Borrower shall not expend for Capital Expenditures, on an aggregate basis, more than \$_____ during any four (4) consecutive Fiscal Quarters.

Indebtedness: Borrower shall not create, incur, assume or permit to exist any Indebtedness (including Indebtedness in connection with Capital Leases and those secured by purchase money security interests) in excess of \$_____ at any time outstanding other than (i) the Obligations, (ii) trade payables and other contractual obligations to suppliers and customers incurred in the ordinary course of business and (iii) other Indebtedness existing on the date of this Agreement and reflected in Schedule 6.2 attached hereto (other than Indebtedness paid on the date of this Agreement from proceeds of the initial advances hereunder) which is subordinated to LENDER on terms which are in form and substance satisfactory to LENDER.

REPORTING REQUIREMENTS (SECTION 9.1):

1. Borrower shall provide LENDER with monthly agings aged by invoice date and reconciliations of Receivables within fifteen (15) days after the end of each month.
2. Borrower shall provide LENDER with monthly accounts payable agings aged by invoice date, outstanding or held check registers and inventory certificates within fifteen (15) days after the end of each month.
3. Borrower shall provide LENDER with monthly perpetual inventory reports for the Inventory valued on a first-in, first-out basis at the lower of cost or market (in accordance with GAAP) or such other inventory reports as are reasonably requested by LENDER, all within fifteen (15) days after the end of each month.
4. Borrower shall provide LENDER with monthly unaudited internally prepared financial statements within thirty (30) days after the end of each month.
5. Borrower shall provide LENDER with audited consolidated and consolidating fiscal financial statements within one hundred twenty (120) days after the end of each fiscal year, as more specifically described in Section 9.1(b) hereof, and with an opinion issued by a Certified Public Accountant which is acceptable to LENDER.
6. Borrower shall provide LENDER with annual operating budgets (including income statements, balance sheets and cash flow statements, by month) for the upcoming fiscal year of Borrower within thirty (30) days prior to the end of each fiscal year of Borrower.
7. Borrower's balance sheets for purposes of the definition of Prepared Financials shall be as of the Closing Date.
8. Borrower shall provide LENDER with a compliance certificate at the end of each fiscal quarter signed by the Chief Executive Officer of the Borrower in form and substance satisfactory to LENDER setting forth that the Borrower is in compliance with all of the provisions of this Agreement or setting forth in detail the manner in which the Borrower is not in compliance with this Agreement.

TERM (SECTION 9.2):

The initial term of this Agreement shall be _____(s) from the date hereof (the “**Initial Term**”) and shall be automatically renewed for successive periods of one (1) year each (each, a “**Renewal Term**”), unless earlier terminated as provided in Section 7 or 9.2 above or elsewhere in this Agreement.

TERMINATION FEE (SECTION 9.2):

Revolving Credit Loans Facility. The Termination Fee applicable to the Revolving Credit Loans facility provided for in Section 9.2(d) shall be an amount equal to the following percentage of the Total Facility amount:

DISBURSEMENT (SECTION 9.11):

Unless and until Borrower otherwise directs LENDER in writing, all loans shall be wired to Borrower’s following operating account:

BANK, Account # _____

THE BALANCE OF THIS PAGE IS LEFT INTENTIONALLY BLANK

Borrower:

By: _____
Name: _____
Title: _____

LENDER:

.

By _____
Title _____

SCHEDULE 6.2

Permitted Indebtedness

The following are Permitted Indebtedness :

Permitted Encumbrances

The following are Permitted Encumbrances:

(a) Liens in favor of LENDER

(b) Liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance, social security and other like laws and in connection with leases or trade contracts;

(c) Purchase money Liens securing Indebtedness not to exceed \$_____ at any one time outstanding, provided, that (x) any such Lien attaches to the subject Property concurrently with or within twenty (20) days after the acquisition thereof, (y) such Lien attaches only to the subject Property and (z) the principal amount of such Indebtedness secured thereby does not exceed 100% of the cost of all Property financed by the holder thereof; and (ii) Liens arising under Capital Leases permitted under Section 7.5(d) to the extent such Liens attach only to the Property that is the subject of such Capital Leases;

(d) Any attachment of judgment Lien provided that the enforcement of such Lien is effectively stayed and such Lien secures claims not otherwise constituting an Event of Default;

(e) Easements, rights of way, restrictions, zoning ordinances, reservations, covenants and other similar charges, title exceptions or encumbrances relating to real Property of the Borrowers incurred in the ordinary course of business that, either individually or in the aggregate, are not substantial in amount, do not interfere in any material respect with the use of the Property affected or the ordinary conduct of the business of the Borrowers and do not result in material diminution in value of the Property subject thereto;

(f) customary rights of set-off under deposit agreements or under the UCC of banks or other financial institutions where Borrower maintains deposits (other than deposits intended as cash collateral) in the ordinary course of business; and

(h) Claims or demands of materialmen, mechanics, carriers, warehousemen, landlords, and other like persons, provided the payment thereof is not yet due, and provided they are subordinate to the liens of LENDER on terms which are in form and substance satisfactory to LENDER.

FACTOR INC.
RETAIL
Collection Factoring Agreement

Client Name

Ladies/Gentlemen:

The following shall constitute the terms upon which we shall act as your sole factor (see Section 12 for the definition of certain capitalized terms):

SECTION 1. Sale of Accounts

- 1.1 You hereby sell, assign and transfer to us and we hereby purchase from you all of your now outstanding and hereafter created or acquired Accounts as the sole and exclusive owner thereof.
- 1.2 We will not assume the Credit Risk on any Accounts. We shall have full recourse to you for all Accounts.

SECTION 2. Payment and Fees

- 2.1 We will purchase your Accounts in bulk and will pay you as the purchase price the net amount thereof calculated by deducting from the gross amount of each Account the discount, if any, our factoring commission and all credits, including, without limitation, merchandise returns, allowances, and chargebacks and all other charges provided for hereunder. The purchase price less advances, interest and any other amounts due us will be paid to you on the Collection Date.
- 2.2 At the time we purchase each Account, or thereafter, we may, upon your request, and in our sole discretion, advance up to _____percent (____%) of the purchase price of eligible Accounts but in no event more than _____U.S. Dollars (\$_____) in the aggregate at any time outstanding.

- 2.3 In the event that now or at any time or times hereafter any Account scheduled to us is or becomes an ineligible Account, you will pay to us, immediately upon notice thereof from us, an amount equal to the monies theretofore advanced by us to you on such ineligible Account.
- 2.4 You will pay us: (a) a nonrefundable transactions closing fee of _____ Thousand U.S. Dollars (\$____,000) upon your and our execution of this Agreement, and (b) a nonrefundable collateral monitoring fee of _____ Thousand U.S. Dollars (\$____,000) per annum payable monthly in advance commencing on the effective date of this Agreement.
- 2.5 We will charge your account our standard wire transfer fee on all wire transfers, and you will reimburse us for exchange on checks, charges for returned items and all other bank charges. We may also, at our option, charge your account for all amounts owing by you to us under this Agreement and all other Obligations.

SECTION 3. Interest

- 3.1 You will pay us interest on the daily balance of all monies remitted, paid or otherwise advanced to you or for your account net of all payments received from you or on your behalf including the purchase price of Accounts purchased by us hereunder which is credited to your factoring account on the Collection Date. Interest will be calculated daily at a rate per annum equal to ____ percent (____%) plus the Base Rate (the "Interest Rate") and will be charged to your factoring account monthly in arrears. The Interest Rate will also be charged to you on all other indebtedness due from you to us under this Agreement and on all Obligations, except those specifying a different rate, from the date incurred through the date paid. Any publicly announced decrease or increase in the Base Rate shall result in an adjustment to the Interest Rate on the next business day. Interest shall be calculated on the basis of 360-day year for the actual number of days elapsed. In no event shall the Interest Rate exceed the maximum rate permitted by applicable law and in the event excess interest is paid hereunder, such excess amount shall be considered a repayment of principal.
- 3.2 If funds remain with us past the Collection Date ("matured funds"), we will pay you interest on such matured funds at the rate per annum equal to the Base Rate minus _____ percent (____%). Any change in the Base Rate shall result in an adjustment in the matured funds rate on the next business day.
- 3.3 If an Account or any payment is charged back to you after the Collection Date, you will pay us interest at the Interest Rate on such Net Account or such payment from the Collection Date to the chargeback date.

SECTION 4. Representations, Warranties and Covenants

- 4.1 You represent, warrant and covenant as to each Account sold and assigned to us hereunder that, at the time of its creation, each Account is a valid bona fide account, representing an undisputed indebtedness incurred by the named account debtor for goods actually sold and

delivered or for services completely rendered; there are no setoffs, offsets or counterclaims, genuine or otherwise, against each Account; no agreement exists permitting any deduction or discount (other than the discount stated on the invoice); you are the lawful owner of each Account and have the right to sell and assign the same to us; each Account is free of all security interests, liens and encumbrances other than those in our favor, and each Account is due and payable in accordance with its terms.

- 4.2 You shall not grant or suffer to exist any lien upon or security interest in any of your assets in favor of any party other than us without our prior written consent.
- 4.3 You are duly incorporated and in good standing under the laws of the State of New York and qualified to transact business in all States where such qualification is required; the execution, delivery and performance of this Agreement have been duly authorized and are not in contravention of any applicable law, your corporate charter or bylaws or any agreement or order by which you are bound.
- 4.4 You shall not change your corporate name or the location of your offices or open any new offices without giving us at least thirty (30) days prior written notice thereof.
- 4.5 All books and records pertaining to the Accounts or to any inventory owned by you shall be maintained solely and exclusively at the above address or the addresses listed in Section 4.4 hereof and no such books and records shall be moved or transferred without giving us thirty (30) days prior written notice thereof.
- 4.6 You shall not sell, lease, transfer or otherwise dispose of all or substantially all of your property or assets, or consolidate with or merge into or with any corporation or entity without our prior written consent.
- 4.7 No discounts, credits or allowances will be issued, granted or allowed by you to customers without our prior written consent; provided, however, that until we notify you to the contrary, you may presume our consent. Discounts, credits or allowances once issued may be claimed only by the customer.
- 4.8 You will maintain a system of accounting established and administered in accordance with sound business practices to permit preparation of financial statements in conformity with Generally Accepted Accounting Principals (GAAP). You will deliver to us the financial statements and other reports described below, and compliance with all financial covenants shall be evaluated by us on a quarterly basis.

(a) Within thirty (30) days of the end of each calendar month, you will deliver to us internally prepared monthly financial statements.

(b) As soon as available and in any event within forty-five (45) days after the end of each fiscal quarter, you will deliver to us quarterly balance sheets (reviewed by a firm of independent certified public accountants) as at the end of such period and the related statements of income, stockholders' equity and cash flow for such fiscal quarter.

(c) As soon as available and in any event within ninety (90) days after the end of each fiscal year, you will deliver to us annual financial statements consisting of balance sheets, income statements and cash flow statements, which report shall be certified without qualification by a firm of independent certified public accountants and shall state, among other things, that the examination by such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards.

- 4.9 The accounting firm selected by you to review and prepare your financial statement must be reasonably acceptable to us.
- 4.10 You will deliver to us on a bi-weekly basis your accounts receivable agings.
- 4.11 You will deliver to us on a weekly basis your borrowing base certificates listing Accounts that are (i) eligible for advances pursuant to Section 2.2 hereof; (ii) Accounts that are thirty (30) days past due; (iii) Accounts that are sixty (60) days past due; (iv) Accounts that are ninety (90) days past due; and (v) all other Accounts.
- 4.12 You will deliver to us on a weekly basis your Accounts reconciliation report.
- 4.13 We will conduct quarterly field examinations and audits of your books and records in accordance with our internal policies.

SECTION 5. Disputes, Chargebacks and Reserves

- 5.1 With respect to any Account, upon: (a) the occurrence of a breach of any of the representations or warranties contained in Section 4.1; (b) the assertion by a customer of a Dispute or other defense to payment; or (c) the Account becoming sixty (60) days past due or otherwise ineligible, we may charge back such Account to you.
- 5.2 You shall notify us immediately in the event that a customer alleges any Dispute. We may, but are not obligated to, settle, compromise, adjust or litigate all such Disputes or returns upon such terms as we deem advisable. If an unadjusted Dispute delays the payment of any Account when due, we shall have the right to charge back to you that Account and all other amounts owing by that customer.
- 5.3 We shall have the right to charge back to you any payment which we receive with respect to any Account if such payment is subsequently disgorged by us, whether as a result of any proceeding in bankruptcy or otherwise.
- 5.4 A chargeback shall not constitute a resale to you of any such Account; however, upon payment by you to us of all money due with respect to such charged back Account, title thereto shall revert to you, subject, however, to our security interest therein. You agree to indemnify and save us harmless from and against any and all loss, costs and expenses caused by or arising out of any Account including, but not limited to, collection expenses and attorneys' fees incurred by us with respect thereto.

- 5.5 We may maintain such reserves as we, in our sole discretion, deem advisable as security for the payment and performance of all of your Obligations.

SECTION 6. Administration

- 6.1 (a) You shall, from time to time, execute and deliver to us confirmatory schedules of Accounts sold to us, together with one copy of each invoice and, upon our request, evidence acceptable to us of shipment and such other documentation and proofs of delivery as we may require. Each invoice shall bear a notice, in form satisfactory to us, that it is payable to you at our lockbox, Post Office Box _____, __[City]____, __[State]____ __[Zip]____. All expenses incurred in establishing such lockbox or lockboxes and accounts shall be paid by you. You agree to prepare and mail all invoices, but we may do so at our option. You agree to execute and deliver to us such further instruments of assignment, financing statements and instruments of further assurance as we may reasonably require. You authorize us to execute on your behalf and file such

UCC financing statements as we may deem necessary in order to perfect and maintain the security interests granted by you to us in accordance with this and any other agreement between you and us, and you further agree that we may file this Agreement or a copy hereof as such UCC financing statement. You agree to bear the cost of all filing fees, filing taxes, search reports, legal fees and other charges incurred by us in the perfection, protection and preservation of the rights and collateral security herein granted to us.

- (b) We shall have the right to communicate with and if necessary, at our sole discretion, institute collection proceedings with respect to an account debtor under any Account: (i) if any portion of the account debtor's indebtedness is more than sixty (60) days past due; (ii) if more than \$10,000 of the account debtor's indebtedness is more than thirty (30) days past due; and (iii) after an account debtor has called a meeting of its creditors or committed an act on bankruptcy or insolvency.
- (c) If any remittances are made directly to you, your employees or agents, you shall act as trustee of an express trust for our benefit, hold the same as our property and deliver the same to us forthwith in kind. We and/or such designee as we may from time to time appoint, are hereby appointed your attorney-in-fact to endorse your name on any and all checks or other forms or remittances received by us where such endorsement is required to effect collection; this power, being coupled with an interest, is irrevocable.
- (d) We may, at all times, have access to, inspect and make extracts from all your records, files and books of account. We may, at any time after default by you hereunder, remove from your premises all such records, files and books relating to Accounts. You will promptly furnish us with all statements prepared by or for you showing your financial condition and the results of your operations and such other statements as we may reasonably require. You authorize us to communicate directly with your independent certified public accountants and

authorize such accountants to discuss your financial condition and statements directly with us.

- 6.2 We shall render a monthly Statement of Account to you within twenty (20) days after the end of each month. Such Statement of Account shall constitute an account stated unless you make written objection thereto within thirty (30) days from the date such statement is mailed to you.
- 6.3 You authorize us to disclose such information as we deem appropriate to persons making credit inquiries about you.

SECTION 7. Collateral Security

As collateral security for all Obligations, you hereby assign and grant to us a continuing security interest in: (i) all of your presently existing and hereafter created Accounts and general intangibles and the proceeds thereof; (ii) all monies, securities and other property now or hereafter held or received by, or in transit to us from or for you, whether for safekeeping, pledge, custody, transmission, collection or otherwise, and all of your deposits and credit balances in our possession; (iii) all returned, reclaimed or repossessed goods and the documents evidencing or relating to such goods; (iv) all books, records and other property at any time evidencing or relating to the Accounts; and (v) the proceeds of any insurance policies covering any of the foregoing. Recourse to the collateral security herein provided shall not be required, and you shall at all times remain liable for the payment and performance of all of your Obligations upon demand by us.

SECTION 8. Events of Default

The occurrence of any of the following acts or events shall constitute an Event of Default: (a) if you fail to make payment of any of your Obligations when due, (b) if you fail to make any remittance required by this Agreement, (c) if you commit any breach of any of the terms, representations, warranties, covenants, conditions or provisions of this Agreement, or of any present or future supplement or amendment hereto or of any other agreement between us, (d) if you become unable to meet your debts as they mature, (e) if you deliver to us a false financial statement, (f) if you call, or have called by a third party, a meeting of your creditors, (g) if you have commenced by or against you any bankruptcy proceeding, insolvency, arrangement or similar proceeding, (h) if you suspend or discontinue doing business for any reason, (i) if a receiver or trustee of any kind is appointed for you or any of your property, (j) if any guarantor of your Obligations shall become insolvent or have commenced by or against such guarantor any bankruptcy proceeding, insolvency,

arrangement or similar proceeding, (k) if any guaranty of your Obligations is terminated, or (l) if any change of your ownership occurs with respect to more than forty (40%) percent of your capital stock in one or more related transactions.

Upon the occurrence of an Event of Default, we shall have the right to terminate this Agreement and all other arrangements existing between you and us forthwith and without notice, and all of your Obligations to us shall mature and become immediately due and payable and we shall have the right to withhold any further payments to you until all Obligations have been paid in full. We shall have the right to immediately communicate with any and all account debtors and directly collect all outstanding Accounts. In addition, we shall have all the rights of a secured party under the Uniform Commercial Code, including, without limitation, the right to take possession of any collateral in which we have a security interest and to dispose of same at public or private sale and you will be liable for any deficiency. We shall not be required to proceed against any collateral but may proceed against you directly. In the event we institute suit against you, you agree to pay our costs and reasonable attorney's fees.

SECTION 9. Term and Termination

This Agreement shall continue in full force and effect until the third anniversary of the effective date hereof and thereafter until terminated by either party hereto giving the other party not less than sixty (60) days prior written notice thereof. In the event you terminate this Agreement prior to the such third anniversary date, you shall pay to us a prepayment fee, not as a penalty but as liquidated damages for such early termination, in the amount of:_____ . Notice of termination shall be given by messenger, registered or certified mail or commercial delivery service; provided, however, that you shall not terminate this Agreement so long as you are indebted or obligated to us in connection with any other financing arrangements. Notwithstanding such notice of termination, our respective rights and obligations arising out of transactions having their inception prior to the specified date of termination shall not be affected by such termination and all terms, provisions and conditions hereof, including, but not limited to, the security interests hereinabove granted to us, shall continue in full force and effect until all Obligations have been paid in full. All of the representations, warranties and covenants made herein shall survive the termination of this Agreement.

SECTION 10. Modification

This Agreement cannot be changed or terminated orally; it constitutes the entire agreement between us and shall be binding upon our respective successors and assigns, but may not be assigned by you without our prior written consent. No delay or failure on our part in exercising any right, privilege, or option hereunder shall operate as a waiver thereof or of any other right, privilege or option. No waiver whatsoever shall be valid unless in writing, signed by us, and then only to the extent therein set forth. If any term or provision of this Agreement is held invalid under any statute, rule or regulation of any jurisdiction competent to make such determination, the remaining terms and provisions hereof shall not be affected, but shall remain in full force and effect.

SECTION 11. Governing Law, Venue and Waiver of Jury

This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York. You hereby consent to the jurisdiction of any local, state or federal court located within the State and City of New York. If you presently are, or in the future become, a nonresident of the State of New York, you hereby waive personal service of any and all process and agree that all such service of process may be made by certified or registered mail, return receipt requested, directed to you at your address appearing in our records and service so made shall be complete ten (10) days after the same has been posted as aforesaid. YOU HEREBY WAIVE YOUR RIGHT TO TRIAL BY JURY IN ANY SUIT OR PROCEEDING ARISING UNDER OR RELATING TO THIS AGREEMENT.

SECTION 12. Definitions

12.1 "Accounts" - All presently existing and hereafter created accounts, contract rights and general intangibles relating thereto, notes, drafts and other forms of obligations owed to or owned by you arising or resulting from the sale of goods or the rendering of services, all proceeds thereof, all guaranties and security therefor, and all goods and rights represented thereby or arising therefrom including, but not limited to, the right of stoppage in transit, replevin and reclamation.

12.2 "Base Rate" - The rate of interest publicly announced from time to time by. as its prime or base rate (or equivalent).

12.3 "Collection Date" - Three (3) business days after the receipt by us of payment of the Account.

12.4 "Credit Risk" - The risk that a customer will be financially unable to pay an Account at maturity.

12.5 "Dispute" - A dispute or claim, *bona fide* or otherwise, as to price, terms, quantity, quality or any other cause or defense to payment whatsoever.

12.6 "Net Account" - The gross face amount of an Account less the discount thereof offered by you and taken by us.

12.7 "Obligations" - All loans, advances, debts, liabilities, obligations, covenants and duties owing by you to us, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising including, without limitation, invoices for goods or services purchased by you from any customer whose accounts are factored or financed by us and indebtedness arising under any guaranty made by you or issued by us on your behalf.

SECTION 13. Acceptance

This proposal is submitted to you unsigned and shall constitute an agreement between your and us only when signed by you and us.

Very truly yours,

FACTOR, INC.

By: _____

Name: _____

Title: _____

Effective Date: _____

ACCEPTED AND AGREED TO:

CLIENT

By: _____

Name: _____

Title: _____