

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

Current report filing

Filing Date: **2022-07-11** | Period of Report: **2022-07-06**
SEC Accession No. [0001851734-22-000372](#)

([HTML Version](#) on [secdatabase.com](#))

FILER

Youngevity International, Inc.

CIK: **1569329** | IRS No.: **900890517** | State of Incorporation: **DE** | Fiscal Year End: **1231**
Type: **8-K** | Act: **34** | File No.: **001-38116** | Film No.: **221077639**
SIC: **5961** Catalog & mail-order houses

Mailing Address
2400 BOSWELL ROAD
CHULA VISTA CA 91914

Business Address
2400 BOSWELL ROAD
CHULA VISTA CA 91914
619-934-3980

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (date of earliest event reported): **July 6, 2022**

YOUNGEVITY INTERNATIONAL, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation)

001-38116
(Commission File No.)

90-0890517
(IRS Employer Identification No.)

2400 Boswell Road, Chula Vista, CA 91914
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: **(619) 934-3980**

N/A
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class

Trading Symbol(s)

Name of each exchange on which registered

Indicate by check mark whether the registrant is an emerging growth company as defined in in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by checkmark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01. Entry into a Material Definitive Agreement.

On July 6, 2022, CLR Roasters, LLC (“CLR”), a wholly owned subsidiary of Youngevity International, Inc. (the “Company”), entered into a loan and security agreement (the “Loan and Security Agreement”) with GemCap Solutions, LLC (“GemCap”) pursuant to which CLR issued to GemCap a secured revolving loan promissory note in the principal sum of up to \$4,000,000 (the “Note”). The Loan and Security Agreement provides for a line of credit in an amount equal to the lesser of (a) \$4,000,000 or (b) the Borrowing Base, which is defined as the sum of (A) the product obtained by multiplying the outstanding amount of all eligible accounts receivable, net of all taxes, discounts, allowances and credits given or claimed, by up to 80%, plus (B) the lesser of (i) the product obtained by multiplying the cost of then-existing eligible inventory by 70% and (ii) the sum of (x) which is the product obtained by multiplying the lower of cost or market price of then-existing eligible green coffee inventory by 60% and (y) the product obtained by multiplying the lower of cost or market price of then-existing eligible roasted inventory by 70%.

The outstanding principal balance of the line of credit bears interest based upon a 360-day year with interest charged for each day the principal amount is outstanding including the date of actual payment. The interest rate is a rate equal to the greater of (a) 7.50% or (b) the sum of the prime rate plus 3.50%. At closing, the GemCap line of credit was used to pay off CLR’s line of credit balance with Crestmark Bank of approximately \$1,717,000.

As collateral security for the payment and performance of the obligations, CLR granted and conveyed to GemCap a first priority continuing security interest in and lien upon all owned and hereafter acquired or created property and assets of CLR and the proceeds and products thereof, which property, assets and proceeds, together with all other collateral security for the obligations granted to or otherwise acquired by GemCap, is considered collateral, such as, accounts receivables, inventory, deposit accounts, property and equipment and intangible assets.

The Loan and Security Agreement contains certain financial and nonfinancial covenants with which the Company must comply to maintain its borrowing availability and avoid penalties, such as a prohibition on additional indebtedness and other liens. The Note matures in June 2024. In addition, pursuant to a Secured Continuing Guarantee, dated July 6, 2022 (the “Guarantee”), the Company’s Chief Executive Officer and Chief Operating Officer personally guaranteed CLR’s obligations to GemCap under the Loan and Security Agreement.

The Loan and Security Agreement contains customary representations, warranties, conditions and indemnification obligations of the parties. The representations, warranties and covenants contained in the Loan and Security Agreement were made only for purposes of such agreement and as of a specific date, were solely for the benefit of the parties to such agreements and may be subject to limitations agreed upon by the contracting parties.

The foregoing descriptions of the terms of the Loan and Security Agreement, the Note and the Guarantee are qualified in their entirety by reference to the full text of the Loan and Security Agreement, the Note and the Guarantee, copies of which are filed as Exhibits 10.1, 10.2 and 10.3, respectively, to this Current Report on Form 8-K and incorporated herein by reference.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation Under an Off-balance Sheet Arrangement of a Registrant.

The information set forth under Item 1.01 above of this Current Report on Form 8-K is incorporated by reference in this Item 2.03.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

The following exhibits are filed with this Current Report on Form 8-K:

Exhibit Number	Description
10.1	Loan and Security Agreement, dated July 6, 2022, by and between CLR Roasters, LLC and GemCap Solutions, LLC
10.2	Secured Promissory Note (Revolving Loans), dated July 6, 2022, by and between GemCap Solutions, LLC and CLR Roasters LLC
10.3	Secured Continuing Guarantee, dated July 1, 2022, executed by Stephan Wallach and Michelle Wallach, by and between GemCap Solutions, LLC and CLR Roasters LLC

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

YOUNGEVITY INTERNATIONAL, INC.

Date: July 11, 2022

By: /s/ David Briskie

Name: David Briskie

Title: President and Chief Investment Officer

-3-

LOAN AND SECURITY AGREEMENT

by and between

GEMCAP SOLUTIONS, LLC

as Lender

and

CLR ROASTERS LLC,

as Borrower

Dated: July 6, 2022

LOAN AND SECURITY AGREEMENT

LOAN AND SECURITY AGREEMENT (as the same may be amended, supplemented, restated, or otherwise modified from time to time, the “**Agreement**”), dated as of July 6, 2022, by and between CLR ROASTERS LLC, a Florida limited liability company with a principal place of business located at 2141 NW 72nd St., Miami, FL 33122 (“**Borrower**”) and GEMCAP SOLUTIONS, LLC, a Delaware limited liability company with offices at 9901 I.H. 10 West, Suite 800, San Antonio, TX 78230 (together with its successors and assigns, the “**Lender**”).

RECITALS:

WHEREAS, Borrower desires to enter into a revolving loan credit facility with Lender; and

WHEREAS, Lender is willing to establish such credit facility on the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements herein contained and other good and valuable consideration, Lender and Borrower mutually covenant, warrant and agree as follows:

SECTION 1. DEFINITIONS AND RULES OF INTERPRETATION AND CONSTRUCTION

Specific Terms Defined. Capitalized terms used herein and not otherwise defined have the following meanings:

1.1 “**Account Debtor**” or “**account debtor**” means “account debtor”, as defined in Article 9 of the UCC, and any other obligor in respect of an Account.

1.2 “**Accounts**” or “**accounts**” shall mean “**accounts**” as defined in the UCC, and, in addition, any and all obligations of any kind at any time due and/or owing to Borrower, whether now existing or hereafter arising, and all rights of Borrower to receive payment or any other consideration including, without limitation, invoices, contract rights, accounts receivable, general intangibles, choses-in-action, notes, drafts, acceptances, instruments and all other debts, obligations and liabilities in whatever form owing to Borrower from any Person, Governmental Authority or any other entity, all security therefor, and all of Borrower’s rights to receive payments for goods sold (whether delivered, undelivered, in transit or returned) or services rendered (whether or not earned by performance), which may be represented thereby, or with respect thereto, and all security therefor, including, but not limited to, all rights as an unpaid vendor (including stoppage in transit, replevin or reclamation), all rights of enforcement and collection, and all additional amounts due from any Account Debtor, whether or not invoiced, together with all Proceeds and products of any and all of the foregoing.

1.3 “**ACH**” shall have the meaning set forth in Section 2.5 hereof.

1.4 “**Additional Appraisals**” shall have the meaning set forth in Section 13.9 hereof.

1.5 “**Advance**” shall have the meaning as set forth in Section 1(c)(ii) of the Loan Agreement Schedule.

1.6 “**Affiliate**” shall mean, with respect to any Person, (a) any other Person that, directly or indirectly, controls, is controlled by, or is under common control with such Person, including any Subsidiary, or (b) any other Person who is a director, manager or officer or who functions in a similar role) (i) of such Person, (ii) of any Subsidiary of such Person or (iii) of any Person described in clause (a) above. For the purposes of this definition, control of a Person shall mean the power (direct or indirect) to direct or cause the direction of the management or the policies of such Person, whether through the ownership of any voting securities, by contract or otherwise.

1.7 “**Agreement**” shall mean this Loan and Security Agreement (including the Loan Agreement Schedule, all Exhibits annexed hereto and the Borrower’s Disclosure Schedule) as originally executed or, if amended, modified, supplemented, renewed or extended from time to time, as so amended, modified, supplemented, renewed or extended.

1.8 “**Appraisals**” shall mean the Inventory Appraisal.

1.9 “**Appraised Forced Liquidation Value**” shall mean a professional opinion of the estimated most probable net amount expressed in terms of currency which could typically be realized at a properly advertised and conducted public auction sale of used personal property, held by a licensed and experienced liquidator at the Borrower’s Premises under forced sale conditions and under then-existing economic trends, as of the effective date of the appraisal report after all direct auction expenses have been deducted, exclusive of a buyer’s premium. Not considered in the auction expenses are attorney fees, rent, building repairs, maintenance, etc. that are not under the liquidator’s control. Conclusions taken into consideration are physical location, difficulty of removal, physical condition, adaptability, specialization, marketability, overall appearance and psychological appeal. Further, the ability of the asset group to draw sufficient prospective buyers to ensure competitive offers is considered. All assets are to be sold on a piecemeal basis “as is” with purchasers responsible for removal of assets at their own risk and expenses. The licensed and experienced liquidator is assuming in their evaluation that all equipment will be free of hazardous waste at the time of sale.

1.10 “**Appraised Net Orderly Liquidation Value**” shall mean a professional opinion of the estimated most probable net amount expressed in terms of currency which could typically be realized when assets are sold piecemeal, through negotiation, over a predetermined period of time by an experienced liquidator and under present day economic trends, as of the effective date of the appraisal report after all direct sale expenses have been deducted. Orderly liquidation value assumes that the buyer is responsible for all removal costs and is purchasing the assets "as is, where is" with no warranties or representations as to the condition of the assets being made by the seller. It is further assumed that the assets are properly advertised in a manner considered to be commercially reasonable. Buyer and seller further acknowledge that if an acceptable price cannot be negotiated within the time period specified the final option would be to offer the assets for sale at public auction. Not considered in the sale expenses are attorney fees, building repairs, maintenance, etc. that are not under the liquidator’s control. Conclusions taken into consideration are physical location, difficulty of removal, physical condition, adaptability, specialization, marketability, overall appearance and psychological appeal. Further, the ability of the asset group to draw sufficient prospective buyers to ensure competitive offers is considered. The licensed and experienced liquidator is assuming in their evaluation that all equipment will be free of hazardous waste at the time of sale.

1.11 “**Availability**” shall mean, as of any date of determination, the lesser of (i) the Borrowing Base (as set forth in the most recently delivered Borrowing Certificate), and (ii) Four Million Dollars (\$4,000,000.00).

1.12 “**Balance Sheet**” means the balance sheet of Borrower dated as of the Balance Sheet Date.

1.13 “**Balance Sheet Date**” means March 31, 2022.

1.14 “**Bankruptcy Code**” means Title 11 of the United States Code entitled “Bankruptcy”, as the same may be amended, modified or supplemented from time to time, and any successor statute thereto.

1.15 “**Borrower**” has the meaning set forth in the introductory paragraph hereof.

1.16 “**Borrower’s Disclosure Schedule**” means the disclosure schedule prepared by Borrower that is being delivered to Lender concurrently herewith or, if amended, modified, supplemented, renewed, extended or replaced from time to time, as so amended, modified, supplemented, renewed, extended or replaced.

1.17 “**Borrower’s Premises**” means the property leased by the Borrower located at 2141 NW 72nd St., Miami, FL 33122.

1.18 “**Borrowing Base**” shall be calculated at any time as the sum of (A) the product obtained by multiplying the outstanding amount of all Eligible Accounts, net of all Taxes, discounts, allowances and credits given or claimed, by up to eighty percent (80.0%), plus (B) the lesser of (i) the product obtained by multiplying the Cost of then-existing Eligible Inventory by seventy percent (70%) and (ii) the sum of (x) the product obtained by multiplying the lower of Cost or Market Price of then-existing Eligible Green Inventory by sixty percent (60%) and (ii) the product obtained by multiplying the lower of Cost or Market Price of then-existing Eligible Roasted Inventory seventy percent (70%).

1.19 “**Borrowing Certificate**” shall have the meaning as set forth in Section 1(c)(v) of the Loan Agreement Schedule.

1.20 “**Business**” means producer and wholesaler of coffee.

1.21 “**Business Day**” shall mean any day other than a Saturday, Sunday or any other day on which banks located in the State of Texas are authorized or required to close under applicable banking laws.

1.22 “**Capital Assets**” shall mean, in accordance with GAAP, fixed assets, both tangible (such as land, buildings, fixtures, machinery and equipment) and intangible (such as patents, copyrights, trademarks, franchises and goodwill).

1.23 “**Change of Control**” shall have the meaning as set forth in Section 10.1 hereof.

1.24 “**Chattel Paper**” shall have the meaning ascribed to such term in the UCC.

1.25 “Closing Date” shall mean the date of this Agreement.

1.26 “Collateral” shall have the meaning as set forth in Section 5.1 hereof.

1.27 “Collection Account” has the meaning set forth in Section 1(c)(vi) of the Loan Agreement Schedule.

1.28 “Collection Days” shall mean a period equal to the greater of (i) two (2) Business Days after the deposit of Collections into the Collection Account, or (ii) such longer period as may be required by the financial institution with whom the Collection Account is maintained, in either event for which interest may be charged on the aggregate amount of such deposits at the Interest Rate or, if applicable, the Default Interest Rate.

1.29 “Collections” means with respect to any Account, all cash collections on such Account.

1.30 “Commercial Tort Claims” shall have the meaning ascribed to such term in the UCC.

1.31 “Compliance Certificate” has the meaning set forth in Section 7(b)(v) of the Loan Agreement Schedule.

1.32 “Cost” means the lower of Borrower’s actual cost of Eligible Inventory, as verified by Lender.

1.33 “Default” means any condition or event which with the giving of notice or passage of time or both would, unless cured or waived, become an Event of Default.

1.34 “Default Interest Rate” has the meaning set forth in Section 3(b) of the Loan Agreement Schedule.

1.35 “Deposit Account Control Agreement” means any deposit account control agreement with respect to any Account of Borrower as originally executed or, if amended, modified, supplemented, renewed, extended or replaced from time to time, as so amended, modified, supplemented, renewed, extended or replaced.

1.36 “Deposit Accounts” shall have the meaning ascribed to such term in the UCC.

1.37 “Document” or “document” shall have the meaning ascribed to such term in the UCC.

1.38 “Domain Name, URL and IP Address Assignment” means the Domain Name, URL and IP Address Assignment in form and substance acceptable to Lender as originally executed or, if amended, modified, supplemented, renewed, extended or replaced from time to time, as so amended, modified, supplemented, renewed, extended or replaced.

1.39 “Early Principal Amount(s)” has the meaning set forth in Section 7(b)(iv) of the Loan Agreement Schedule.

1.40 “Electronic Chattel Paper” shall have the meaning ascribed to such term in the UCC.

1.41 “Eligible Accounts” means, subject to the criteria below, an Account of a Borrower, which was generated in the Ordinary Course of Business, which was generated originally in the name of a Borrower and not acquired via assignment or otherwise, and which Lender, in its good faith credit judgment and discretion, deems to be an Eligible Account. The net amount of an Eligible Account at any time shall be (a) the face amount of such Eligible Account as originally billed *minus* all cash collections and other proceeds of such Account received from or on behalf of the Account Debtor thereunder as of such date and any and all returns, rebates, discounts (which may, at Lender’s option, be calculated on shortest terms), credits, allowances or excise taxes of any nature at any time issued, owing, claimed by Account Debtors, granted, outstanding or payable in connection with such Accounts at such time, and (b) adjusted by applying percentages (known as “**liquidity factors**”) by payor and/or payor class based upon the applicable Borrower’s actual recent collection history for each such payor and/or payor class in a manner consistent with Lender’s underwriting practices and procedures. Such liquidity factors may be adjusted by Lender from time to time as warranted by Lender’s underwriting practices and procedures and using Lender’s good faith credit judgment. Without limiting the generality of the foregoing, no Account shall be an Eligible Account if:

(1) the Account arises from the sale of goods, the sale was not an absolute, bona fide sale, or the Account does not otherwise represent an undisputed bona fide indebtedness incurred by the Account Debtor therein named, for a fixed sum as set forth in the invoice relating thereto with respect to an unconditional sale and delivery upon the stated terms of goods sold by the Borrower collectible in accordance with its terms;

(2) the Account arises from the sale of goods, any part of any goods the sale of which has given rise to the Account has been returned, rejected, lost, or damaged (but only to the extent that such goods have been so returned, rejected, lost or damaged);

(3) the amounts of the Accounts reported to Lender are not absolutely owing to Borrower and/or arise from sales on consignment, guaranteed sales or other terms under which payment by the Account Debtors may be conditional or contingent;

(4) the Account arises from the performance of services, the services have not actually been performed or the services were undertaken in violation of any law;

(5) the Account Debtor’s chief executive office or principal place of business is not located in the United States;

(6) the Account is payable in a currency other than United States dollars;

(5) such Accounts arise from progress billings, retainages or bill and hold sales;

(6) there are contra relationships, setoffs, counterclaims or disputes existing with respect thereto;

(7) the Inventory giving rise thereto are subject to any Liens except for the Liens of Lender;

(8) such Accounts are not free and clear of all Liens except for the Liens of Lender;

(9) such Accounts are Accounts with respect to which the Account Debtor or any officer or employee thereof is an officer, employee or agent of or is affiliated with Borrower, directly or indirectly, whether by virtue of family membership, ownership, control, management or otherwise, or if the Account Debtor holds any Indebtedness of Borrower;

(10) such Accounts are Accounts with respect to which the Account Debtor is the United States or any state or political subdivision thereof or any department, agency or instrumentality of the United States, any state or political subdivision;

(11) Borrower has not delivered to Lender or Lender's representative such documents as Lender may have requested in connection with such Accounts and Lender has not received a verification of such Accounts, satisfactory to it, if sent to the Account Debtor or any other obligor or any bailee;

(12) there are any facts existing or threatened which might result in any material adverse change in the Account Debtor's financial condition;

(13) such Accounts are owed by an Account Debtor with respect to which more than 25% of such Account Debtor's Accounts have remained unpaid for more than ninety (90) days after the invoice date thereof;

(14) such Accounts have remained unpaid for more than ninety (90) days after the invoice date thereof;

(15) such Accounts are not in full conformity with the representations and warranties made by Borrower to Lender with respect thereto;

(16) Lender is not reasonably satisfied with the credit standing of the Account Debtor in relation to the amount of credit extended;

(17) such Accounts are evidenced by chattel paper or an instrument of any kind with respect to or in payment of the Account unless such instrument is duly endorsed to and in possession of Lender or represents a check in payment of an account;

(18) such Accounts include any returns, discounts, claims, credits and allowances;

(19) Borrower is unable to bring suit and enforce its remedies against the Account Debtor through judicial process;

(20) such Accounts represent interest payments, late or finance charges owing to Borrower;

(21) the total unpaid Accounts of the Account Debtor, in the aggregate, obligated on the Account exceed twenty percent (20%) of the net amount of all Eligible Accounts owing from all Account Debtors (but only the amount of the Accounts of such Account Debtor exceeding such twenty percent (20%) limitation shall be considered ineligible); and

(22) such Accounts are in any way otherwise unsatisfactory to Lender in its sole discretion.

1.42 “Eligible Green Inventory” shall mean Eligible Inventory consisting solely of unroasted, raw coffee beans.

1.43 “Eligible Inventory” shall mean Inventory, including Eligible Green Inventory and Eligible Roasted Inventory, owned by Borrower, with the existence, possession and Cost thereof evidenced by documentation provided by Borrower in form and substance satisfactory to Lender, excluding any Inventory having any of the following characteristics:

(1) Inventory that is either work-in-process or raw materials (excluding Raw Goods to the extent Raw Goods constitute Eligible Green Inventory or Eligible Roasted Inventory);

(2) Inventory packaging materials, office supplies or cleaning supplies;

(3) In-transit Inventory;

(4) Inventory as to which Lender has not received a waiver in form and substance acceptable to Lender from the applicable landlord, warehouseman, filler, processor or packer in respect thereof;

(5) Inventory not subject to a duly perfected first priority security interest in Lender's favor;

(6) Inventory that is subject to any Lien in favor of any Person other than Lender that is not subordinate to Lender's first priority security interest on terms satisfactory to Lender in its sole and absolute discretion;

(7) Inventory on consignment from any Person, on consignment to any Person or subject to any bailment;

(8) Inventory that is (i) damaged, defective, or tainted, (ii) slow-moving as determined in Lender's sole and absolute discretion, (iii) obsolete or not currently saleable in the normal course of the Borrower's operations, or (iv) subject to shrinkage;

(9) Inventory that the Borrower has returned, has attempted to return, is in the process of returning or intends to return to the vendor thereof;

(10) Inventory manufactured or produced by the Borrower pursuant to a license unless the applicable licensor has agreed in writing to permit the Lender to exercise its rights and remedies against such Inventory;

(11) Inventory not covered by a casualty insurance policy acceptable to Lender in its sole and absolute discretion and under which Lender has been named as a loss payee and additional insured;

(12) Inventory with contra-account liability;

(13) Inventory that is located at any warehouse or other premises other than (a) Borrower's Premises, or (b) any other premises expressly approved by Lender in writing; and

(14) Inventory otherwise deemed ineligible by Lender in its sole and absolute discretion.

1.44 "Eligible Roasted Inventory" shall mean Eligible Inventory consisting solely of roasted (whole or ground) coffee beans.

1.45 "Environment" means all air, surface water, groundwater or land, including, without limitation, land surface or subsurface, including, without limitation, all fish, wildlife, biota and all other natural resources.

1.46 "Environmental Law" or "Environmental Laws" shall mean all federal, state and local laws, statutes, ordinances and regulations now or hereafter in effect, and in each case as amended or supplemented from time to time, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment relating to the regulation and protection of human health, safety, the environment and natural resources (including ambient air, surface water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species and vegetation).

1.47 "Environmental Liabilities and Costs" shall mean, as to any Person, all liabilities, obligations, responsibilities, remedial actions, losses, damages, punitive damages, consequential damages, treble damages, costs and expenses (including all fees, disbursements and expenses of counsel, experts and consultants and costs of investigation and feasibility studies), fines, penalties, sanctions and interest incurred as a result of any claim or demand by any other Person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute, including any Environmental Law, permit, order or agreement with any Governmental Authority or other Person, and which arise from any environmental, health or safety conditions, or a Release or conditions that are reasonably likely to result in a Release, and result from the past, present or future operations of such Person or any of its Affiliates.

1.48 "Environmental Lien" shall mean any Lien in favor of any Governmental Authority for Environmental Liabilities and Costs.

1.49 "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as the same now exists or may from time to time hereafter be amended, modified, recodified or supplemented, together with all rules, regulations and interpretations thereunder or related thereto.

1.50 "Equipment" shall mean "equipment", as such term is defined in the UCC, now owned or hereafter acquired by Borrower, wherever located, and shall include, without limitation, the machinery and equipment set forth on Section 5.4(j) to the Borrower's Disclosure Schedule annexed hereto, and all other equipment, machinery, furniture, Fixtures, computer equipment, telephone equipment, molds, tools, dies, partitions, tooling, transportation equipment, all other tangible assets used in connection with the manufacture, sale or lease of goods or rendition of services, and Borrower's interests in any leased equipment, and all repairs, modifications, alterations, additions, controls and operating accessories, attachments and parts thereof or thereto, and all substitutions and replacements therefor.

1.51 “**Equity Interests**” shall mean, with respect to any Person, any and all shares, rights to purchase, options, warrants, general, limited or limited liability partnership interests, membership interests, units, participations or other equivalents of or interest in (regardless of how designated) equity of such Person, whether voting or nonvoting, including common stock, preferred stock, convertible securities or any other “equity security” (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC (or any successor thereto) under the 1934 Act).

1.52 “**Event of Default**” shall mean the occurrence or existence of any event or condition described in Section 11 of this Agreement.

1.53 “**Financial Statements**” shall have the meaning set forth in Section 8.9 hereof.

1.54 “**Financing Statements**” shall mean the Uniform Commercial Code UCC Financing Statements and Uniform Commercial Code UCC Financing Statement Amendments to be filed with applicable Governmental Authorities of each State or Commonwealth or political subdivisions thereof pursuant to which Lender shall perfect its security interest in the Collateral.

1.55 “**Fiscal Year**” shall mean that twelve (12) month period commencing on January 1 and ending on December 31.

1.56 “**Fixtures**” shall have the meaning ascribed to such term in the UCC.

1.57 “**GAAP**” means generally accepted accounting principles in effect in the United States of America at the time of any determination, and which are applied on a consistent basis. All accounting terms used in this Agreement which are not expressly defined in this Agreement shall have the meanings given to those terms by GAAP, unless the context of this Agreement otherwise requires.

1.58 “**General Intangibles**” shall have the meaning ascribed to such term in the UCC.

1.59 “**Goods**” shall have the meaning ascribed to such term in the UCC.

1.60 “**Governmental Authority**” or “**Governmental Authorities**” shall mean any federal, state, county or municipal governmental agency, court, tribunal, department, instrumentality, board, commission, officer, official or entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

1.61 “**Guarantees**” means the Secured Continuing Guaranty of each Guarantor as originally executed or, if amended, modified, supplemented, renewed, extended or replaced from time to time, as so amended, modified, supplemented, renewed, extended or replaced.

1.62 “**Guarantor**” means each of Stephen Wallach and Michelle Wallach, married individuals with a principal residence at 2400 Boswell Road, Chula Vista, CA 91914.

1.63 “**Hazardous Substances**” shall mean (a) substances that are defined or listed in, or otherwise classified pursuant to, any applicable laws or regulations as “hazardous substances,” “hazardous materials,” “hazardous wastes,” “toxic substances,” or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, or “EP toxicity,” (b) oil, petroleum, or petroleum derived substances, natural gas, natural gas liquids, synthetic gas, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources, (c) any flammable substances or explosives or any radioactive materials, and (d) asbestos in any form or electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million.

1.64 “**Indebtedness**” shall mean, with respect to any Person, all of the obligations of such Person which, in accordance with GAAP, should be classified upon such Person’s balance sheet as liabilities, or to which reference should be made by footnotes thereto, including without limitation, with respect to Borrower, in any event and whether or not so classified, including the following:

(a) all debt and similar monetary obligations of a Person, whether direct or indirect;

(b) all obligations of a Person arising or incurred under or in respect of any guaranties (whether direct or indirect) of such Person with respect to the indebtedness of any other Person; and

(c) all obligations of a Person arising or incurred under or in respect of any Lien upon or in any property owned by Borrower that secures indebtedness of another Person, even though such Person has not assumed or become liable for the payment of such indebtedness.

1.65 “**Instruments**” shall have the meaning ascribed to such term in the UCC.

1.66 “**Intellectual Property**” shall mean all of the following intellectual property used in the conduct of the business of Borrower: (a) inventions, processes, techniques, discoveries, developments and related improvements, whether or not patentable; (b) United States patents, patent applications, divisionals, continuations, reissues, renewals, registrations, confirmations, re-examinations, extensions and any provisional applications, of any such patents or patent applications, and any foreign or international equivalent of any of the foregoing; (c) unregistered, United States registered or pending trademark, trade dress, service mark, service name, trade name, brand name, logo, domain name, or business symbol and any foreign or international equivalent of any of the foregoing; (d) work specifications, software (including object and source code listing) and artwork; (e) technical, scientific and other know-how and information, trade secrets, methods, processes, practices, formulas, designs, assembly procedures, specifications owned or used by Borrower; (f) copyrights; (g) work for hire; (h) customer and mailing lists; (i) any and all rights of the Borrower to the name “CLR Roasters” “Café La Rica”, “Josie’s Java House”, “CLR Roaster’s Gourmet Blend” or any derivations thereof; (j) Borrower’s entire customer list and database and all assets used or useful by Borrower in the conduct of its Business over the internet or in any electronic medium; (k) all websites, IP addresses, URLs or domain names owned by Borrower; (l), the patents, trademarks, websites, IP addresses, URLs, domain names and such other items set forth on Section 8.22 to the Borrower’s Disclosure Schedule; and (m) all goodwill associated with the items described in (a) through and including (l).

1.67 “**Interest Rate**” shall mean the Revolving Loan Interest Rate(s).

1.68 “**Intercreditor Agreements**” shall mean the Subordination Agreement between Lender and each Subordinated Creditor.

1.69 “**Inventory**” shall mean “inventory,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower, wherever located, and, in any event, shall include, without limitation, all raw materials, work-in-process, finished and semi-finished Inventory including, without limitation, all materials, parts, components and supplies relating to the manufacture or assembly thereof, packaging and shipping supplies relating thereto, and all other inventory, merchandise, goods and other personal property now or hereafter owned by Borrower, which are held for sale, exchange or lease or are furnished or are to be furnished under a contract of service or an exchange arrangement or which constitute raw materials, work-in-process or materials used or consumed or to be used or consumed in Borrower’s business, or the processing, packaging, delivery or shipping of the same, and all finished goods and the products of the foregoing, whatever form and wherever located; and all names or marks affixed to or to be affixed thereto for purposes of selling same by the seller, manufacturer, lessor or licensor thereof and all right, title and interest of Borrower therein and thereto.

1.70 “**Inventory Appraisal**” means the field exam of the Inventory performed by Ascend dated on or about May 31, 2022.

1.71 “**Investment Property**” shall have the meaning ascribed to such term in the UCC.

1.72 “**Landlord Waiver and Access Agreements**” means the Landlord Waiver and Access Agreement with each landlord of Borrower as originally executed or, if amended, modified, supplemented, renewed, extended or replaced from time to time, as so amended, modified, supplemented, renewed, extended or replaced.

1.73 “**Lender**” shall have the meaning set forth in the introductory paragraph hereof.

1.74 “**Letter-of-Credit Rights**” means “letter-of-credit rights” as such term is defined in the UCC, including rights to payment or performance under a letter of credit, whether or not the beneficiary thereof has demanded or is entitled to demand payment or performance.

1.75 “**Lien**” or “**lien**” shall mean any mortgage, deed of trust, pledge, security interest, hypothecation, assignment, lien (statutory or other, including, without limitation, liens imposed by any Governmental Authority, whether arising under PACA, if applicable, or otherwise), charge or other encumbrance of any kind or nature whatsoever (including, without limitation, pursuant to any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the UCC or comparable law of any jurisdiction to evidence any of the foregoing) on personal or real property or fixtures.

1.76 “**Loan(s)**” shall mean the aggregate principal amount(s) advanced to, made available to, or paid for the benefit of, Borrower as Revolving Loans as set forth in this Agreement and the other Loan Documents.

1.77 “**Loan Agreement Schedule**” shall mean the Loan Agreement Schedule dated of even date herewith, signed by Borrower and delivered together with this Agreement, which Loan Agreement Schedule is incorporated herein by reference.

1.78 “**Loan Documents**” shall mean this Agreement and any and all other agreements, notes, documents, mortgages, financing statements, guaranties, intercreditor agreements, subordination agreements, certificates and instruments executed and/or delivered by Borrower or any other Person to Lender pursuant to and in connection with the Loan(s) and this Agreement, including, without limitation, the Revolving Loan Note, the Guarantee, the Intercreditor Agreement (s), the Landlord Waiver, the Domain Name, URL and IP Address Assignment, the Trademark Security Agreement and the Power of Attorney.

1.79 “Market Price” shall mean, as of any date of determination, the current market price of the applicable coffee as reported by the International Coffee Organization or similar public reporting organization acceptable to Lender in its sole discretion.

1.80 “Material Adverse Effect” means a material adverse effect on (a) the Business, assets, liabilities, financial condition, results of operations or business prospects of Borrower, (b) the ability of Borrower or any Guarantor to perform its obligations under any Loan Document to which it is a party, (c) the value of the Collateral or the rights of Lender therein, (d) the validity or enforceability of any of the Loan Documents, (e) the rights and remedies of Lender under any of such Loan Documents, or (f) the timely payment of the principal of or interest on the Loan(s) or other amounts payable in connection therewith. All determinations of materiality shall be made by the Lender in its reasonable judgment.

1.81 “Material Contract” means any contract or other arrangement (other than Loan Documents), whether written or oral, to which Borrower is a party as to which the breach, nonperformance, cancellation or failure to renew by any party thereto could have a Material Adverse Effect.

1.82 “Maturity Date” shall mean the earlier of (i) June __, 2024, and (ii) the date Lender may exercise any of its remedies pursuant to the terms hereof.

1.83 “Maximum Credit” means the sum of (i) up to Four Million Dollars (\$4,000,000.00) subject to Availability, the Inventory Appraisal or the Additional Appraisals, as applicable, any Reserves and the Revolving Loan Commitment.

1.84 “Net Liquidation Value” shall mean the lesser of (i) the term ‘Net Orderly Liquidation Value’ as set forth in the Inventory Appraisal, and (ii) the estimated net dollar amount recovery as estimated by Lender which could be realized at a public auction sale of the Inventory conducted on an “as is” basis after all costs and expenses associated with the sale (including, without limitation, rent payments, removal costs, repair and broom cleaning of premises, liquidator fees and expenses and other charges related to such liquidation).

1.85 “1934 Act” shall mean the Securities Exchange Act of 1934, as amended.

1.86 “Notes” shall mean, collectively, the Revolving Loan Note.

1.87 “Obligations” shall mean all obligations, liabilities, Loans and Indebtedness of every kind, nature and description owing by Borrower to Lender pursuant to the Loan Documents, including, without limitation, principal, interest, repurchase obligations, charges, fees, costs and expenses, however evidenced, whether as principal, surety, endorser, guarantor or otherwise, whether now existing or hereafter arising, whether arising before, during or after the Term or after the commencement of any case with respect to Borrower under the United States Bankruptcy Code or any similar statute (including, without limitation, the payment of interest and other amounts which would accrue and become due but for the commencement of such case), whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured.

1.88 “Ordinary Course of Business” means, in respect of any transaction involving any Borrower or Guarantor, the ordinary course of business of such Borrower or Guarantor, as conducted by such Borrower or Guarantor in accordance with past practices.

1.89 “Organizational Documents” means, in the case of a corporation, its Articles of Incorporation, Certificate of Incorporation and By-Laws; in the case of a general partnership, its Articles of Partnership and any partnership agreement; in the case of a limited partnership, its Articles of Limited Partnership and any partnership agreement; in the case of a limited liability company, its Articles of Organization and Operating Agreement or Regulations, if any; in the case of a limited liability partnership, its Articles of Limited Liability Partnership; or alternatively, in each case, the legal equivalent thereof in the jurisdiction of its organization, together with all other formation or governing documents, schedules, exhibits, amendments, addendums, modifications, replacements, additions, or restatements of the foregoing, which are in effect.

1.90 “Overadvance” shall have the meaning as set forth in Section 1(c)(iv) of the Loan Agreement Schedule.

1.91 “PACA” means the Perishable Agricultural Commodities Act, 1930, 7 U.S.C. §§499a *et seq.*

1.92 “Trademark Security Agreement” shall mean the Trademark Security Agreement as originally executed or, if amended, modified, supplemented, renewed, extended or replaced from time to time, as so amended, modified, supplemented, renewed, extended or replaced, and all documents executed in connection with the Trademark Security Agreement.

1.93 “Payment Intangibles” shall have the meaning ascribed to such term in the UCC.

1.94 “Permitted Actions” shall mean any or all of the following with respect to the Collateral: inspect; assemble; appraise; display, sever; remove; maintain; use or operate; prepare for sale or lease; process or repair; and/or lease, transfer and/or sell any or all of the Collateral by private sale or public disposition from any of the locations where any Collateral may be located.

1.95 “Permitted Encumbrances” shall mean Liens as are set forth on Section 9.9 of the Borrower’s Disclosure Schedule.

1.96 “Permitted Indebtedness” shall mean (i) the unsecured Indebtedness consisting of accounts payable or trade payables of the Borrower incurred in the ordinary course of Business and repayable in accordance with customary trade practices, (ii) Indebtedness secured by Permitted Encumbrances, and (iii) Indebtedness set forth on Section 10.4 of the Borrower’s Disclosure Schedule.

1.97 “Person” or “person” shall mean, as applicable, any individual, sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, business trust, unincorporated association, joint stock corporation, trust, joint venture or other entity or any government or any agency or instrumentality or political subdivision thereof.

1.98 “**Power of Attorney**” shall mean the Power of Attorney as originally executed or, if amended, modified, supplemented, renewed, extended or replaced from time to time, as so amended, modified, supplemented, renewed, extended or replaced, and all documents executed in connection with the Power Attorney.

1.99 “**Proceeds**” shall have the meaning ascribed to such term in the UCC and shall also include, but not be limited to, (a) any and all proceeds of any and all insurance policies (including, without limitation, life insurance, casualty insurance, business interruption insurance, credit insurance, directors and officers insurance and errors and omissions insurance), indemnity, warranty or guaranty payable to Borrower from time to time with respect to any of the Collateral or otherwise, (b) any and all payments (in any form whatsoever) made or due and payable to Borrower from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any governmental body, authority, bureau or agency or any other Person (whether or not acting under color of Governmental Authority) and (c) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

1.100 “**Promissory Note**” shall have the meaning ascribed to such term in the UCC.

1.101 “**Raw Goods**” or “**Raw Materials**” means Inventory consisting of coffee beans that are acceptable to Lender in its sole discretion.

1.102 “**Release**” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a Hazardous Substance into the Environment.

1.103 “**Reserves**” shall mean, as of any date of determination, such amounts as Lender may from time to time establish and revise in its sole discretion reducing the amount of the Revolving Loan Commitment (a) to reflect events, conditions, contingencies or risks which, as determined by Lender in its sole discretion, do or may adversely 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, (iii) the security interests and other rights of Lender in the Collateral (including the enforceability, perfection and priority thereof), or (iv) Borrower’s ability to perform its Obligations under the Loan Documents; or (b) in respect of any state of facts which Lender determines in its sole discretion constitutes an Event of Default or may, with notice or passage of time or both, constitute an Event of Default.

1.104 “**Responsible Officer**” means either a Manager or the President or the Chief Executive Officer of Borrower.

1.105 “**Revolving Loan Commitment**” shall mean, at any given time, the difference between (i) Availability and (ii) the sum of the Reserves related to the Revolving Loans plus outstanding Revolving Loans plus any other Obligations relating to the Revolving Loans.

1.106 “**Revolving Loan Note**” shall mean the “Secured Promissory Note (Revolving Loans)” as may be amended, restated, modified or supplemented from time to time.

1.107 “**Revolving Loan Prepayment Fee**” shall have the meaning set forth in Section 4(b) of the Loan Agreement Schedule.

1.108 “**Revolving Loan Interest Rate(s)**” is as set forth in Section 3(a) of the Loan Agreement Schedule.

1.109 “**Revolving Loans**” shall have the meaning as set forth in Section 1(c)(i) of the Loan Agreement Schedule.

1.110 “**SEC**” shall mean the United States Securities and Exchange Commission.

1.111 “**Securities**” shall have the meaning ascribed to such term in the UCC.

1.112 “**Software**” shall have the meaning ascribed to such term in the UCC.

1.113 “**Solvent**” means, with respect to any Person, that such Person (a) owns and will own assets the fair saleable value of which (i) are greater than the total amount of its liabilities, and (ii) greater than the amount that will be required to pay the probable liabilities of its then existing debts as they become absolute and matured considering all financing alternatives and potential asset sales reasonably available to it; (b) has capital that is not unreasonably small in relation to its business as presently conducted or after giving effect to any contemplated transaction; and (c) does not intend to incur and does not believe that it will incur debts beyond its ability to pay such debts as they become due.

1.114 “**Subordinated Creditor**” means VFI KR SPE I LLC, a Utah limited liability company with offices at 2800 East Cottonwood Parkway, 2nd Floor, Salt Lake City, UT 84121.

1.115 “**Subsidiary**” shall mean, as to any Person, a corporation, limited liability company or other entity with respect to which more than fifty (50%) percent of the outstanding Equity Interests of each class having voting power is at the time owned by such Person or by one or more Subsidiaries of such Person or by such Person.

1.116 “**Supporting Obligations**” shall have the meaning ascribed to such term in the UCC.

1.117 “**Tangible Chattel Paper**” shall have the meaning ascribed to such term in the UCC.

1.118 “**Tax**” or “**Taxes**” has the meaning set forth in Section 8.12(d).

1.119 “**Tax Deduction**” has the meaning set forth in Section 8.12(c).

1.120 “**Term**” shall have the meaning set forth in Section 4.1.

1.121 “**UCC**” shall mean the Uniform Commercial Code as presently enacted in Texas (or any successor legislation thereto), and as the same may be amended from time to time, and the state counterparts thereof as may be enacted in such states or jurisdictions where any of the Collateral is located or held.

1.122 “Rules of Interpretation and Construction. In this Agreement unless the context otherwise requires:

(a) All terms used herein which are defined in the UCC shall have the meanings given therein unless otherwise defined in this Agreement;

(b) Sections mentioned by number only are the respective Sections of this Agreement as so numbered;

(c) Words importing a particular gender shall mean and include the other gender and words importing the singular number mean and include the plural number and vice versa;

(d) Words importing persons shall mean and include firms, associations, partnerships (including limited partnerships), societies, trusts, corporations, limited liability companies or other legal entities, including public or governmental bodies, as well as natural persons;

(e) Each reference in this Agreement to a particular person shall be deemed to include a reference to such person's successors and permitted assigns;

(f) Any headings preceding the texts of any Section of this Agreement, and any table of contents or marginal notes appended to copies hereof are intended, solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect;

(g) If any clause, provision or section of this Agreement shall be ruled invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any of the remaining provisions thereof;

(h) The terms “herein”, “hereunder”, “hereby”, “hereto”, and any similar terms as used in this Agreement refer to this Agreement; the term “heretofore” means before the date of execution of this Agreement; and the term “hereafter” shall mean after the date of execution of this Agreement;

(i) If any clause, provision or section of this Agreement shall be determined to be apparently contrary to or conflicting with any other clause, provision or section of this Agreement, then the clause, provision or section containing the more specific provisions shall control and govern with respect to such apparent conflict;

(j) Unless otherwise specified, (i) all accounting terms used herein or in any Loan Document shall be interpreted in accordance with GAAP, (ii) all accounting determinations and computations hereunder or thereunder shall be made in accordance with GAAP and (iii) all financial statements required to be delivered hereunder or thereunder shall be prepared in accordance with GAAP;

(k) An Event of Default that occurs shall exist or continue or be continuing unless such Event of Default is waived by Lender in accordance with the terms of this Agreement;

(l) The word “and” when used from time to time herein shall mean “or” or “and/or” if such meaning is expansive of the rights or interests of Lender in the given context;

(m) All references herein and in the other Loan Documents to times of day shall refer to San Antonio, Texas time, unless otherwise specified to the contrary; and

(n) No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party hereto by reason of such party or his or its counsel having, or being deemed to have, structured or drafted such provision.

SECTION 2. LOANS

2.1 Loan(s). The terms and provisions of Sections 1(b) and 1(c) of the Loan Agreement Schedule are incorporated herein by reference and made a part hereof.

2.2 Maximum Credit. The aggregate principal amount of the Loans shall not exceed the amount of the Maximum Credit.

2.3 Use of Proceeds. Borrower shall use the proceeds of the Loans solely for the purposes set forth in Section 1(d) the Loan Agreement Schedule.

2.4 Repayment. Borrower shall repay the Loan(s) and other Obligations in accordance with this Agreement and the Note(s).

2.5 ACH. In order to satisfy Borrower’s payment of amounts due under the Loans and all fees, expenses and charges with respect thereto that are due and payable under this Agreement or any other Loan Document, Borrower hereby irrevocably authorizes the Lender to initiate manual and automatic electronic (debit and credit) entries through the Automated Clearing House or other appropriate electronic payment system (“ACH”) to all deposit accounts maintained by Borrower, wherever located. At the request of the Lender, Borrower shall complete, execute and deliver to the institution set forth below (with a copy to the Lender) any ACH agreement, voided check, information and/or direction letter reasonably necessary to so instruct Borrower’s depository institution. Borrower (i) shall maintain in all respects this ACH arrangement; (ii) shall not change depository institutions without Lender’s prior written consent, and if consent is received, shall immediately execute similar ACH instruction(s), and (iii) waives any and all claims for loss or damage arising out of debits or credits to/from the depository institution, whether made properly or in error. Borrower has so communicated with and instructed the institution(s) set forth in Section 1(e) of the Loan Agreement Schedule.

SECTION 3. INTEREST, FEES AND CHARGES

3.1 Interest. Interest on the Loan(s) shall accrue as set forth in Sections 3(a) and 3(b) of the Loan Agreement Schedule.

3.2 Fees. Borrower shall pay Lender, or Lender’s designee, the fees set forth in Section 3(c) of the Loan Agreement Schedule. Such fees, other than the audit fees referenced therein, shall be deemed fully earned on the date hereof, shall be paid from Loan proceeds, and shall not be subject to rebate or proration for any reason.

3.3 Fees and Expenses. Borrower shall pay, on Lender's demand, all costs, expenses, filing fees and Taxes payable in connection with the preparation, execution, delivery, recording, administration, collection, liquidation, defense and enforcement of the Loan Documents, Lender's rights in the Collateral, and all other existing and future agreements or documents contemplated herein or related hereto, including any amendments, waivers, supplements or consents which may now or hereafter be made or entered into in respect hereof, or in any way involving claims or defenses asserted by Lender or claims or defenses against Lender asserted by Borrower or any third party directly or indirectly arising out of or related to the relationship between Borrower and Lender, including, but not limited to the following, whether incurred before, during or after the Term or after the commencement of any case with respect to Borrower under the United States Bankruptcy Code or any similar or successor statute: (a) all costs and expenses of filing or recording (including UCC Financing Statements and mortgage filing fees); (b) all title insurance and other insurance premiums, appraisal fees, fees incurred in connection with any environmental report and audit, survey and search fees and charges; (c) all fees relating to the wire transfer of loan proceeds and other funds and fees for returned checks; and (d) all costs, fees and disbursements of counsel to Lender. If any fees, costs or charges payable to Lender hereunder are not paid when due, such amounts shall be added to the Obligations and accrue interest at the Default Interest Rate until paid.

3.4 Savings Clause. It is the intention of Borrower and Lender to conform strictly to the usury laws applicable to Lender. Accordingly, if the transactions contemplated hereby would be usurious under applicable law then, in that event, notwithstanding anything to the contrary in the Notes or this Agreement or in any other Loan Document, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under applicable law and is contracted for, taken, reserved, charged or received under the Notes or this Agreement or under any other Loan Document or otherwise in connection with the Loans shall under no circumstances exceed the maximum amount allowed by such applicable law, and any excess shall be credited by Lender on the principal amount of the Loans (or, if the principal amount of the Loans shall have been paid in full, refunded to Borrower); and (ii) in the event that the maturity of the Loans is accelerated or in the event of any required or permitted prepayment, then such consideration that constitutes interest under law applicable to Lender may never include more than the maximum amount allowed by such applicable law, and interest in excess of such maximum allowed amount, if any, provided for in this Agreement or otherwise shall be canceled automatically as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited by Lender on the principal amount of the Loans (or, if the principal amount of the Loans shall have been paid in full, refunded by Lender to Borrower). All calculations made to compute the rate of interest that is contracted for, taken, reserved, charged or received under the Notes, this Agreement or any other Loan Document or otherwise in connection with the Loans shall, for the purpose of determining whether such rate exceeds the maximum amount allowed by law applicable to Lender, be made, to the extent permitted by such applicable law, by amortizing, prorating and spreading in equal parts during the period of the full stated term of the Loans evidenced by the Notes all interest at any time contracted for, taken, reserved, charged or received by Lender in connection therewith. To the extent that the maximum non-usurious rate is determined by the laws of the State of Texas, the maximum non-usurious rate shall be determined by reference to the indicated rate ceiling (as defined and described in Chapter 303.001, et seq., of the Texas Finance Code, as amended) at the applicable time in effect. Lender hereby advises Borrower to seek the advice of an attorney and an accountant in connection with the execution of the Loan Documents and the incurrence of the Loans, and Borrower represents and warrants to Lender that it has had the opportunity to seek, and has in fact sought, the advice of an attorney and an accountant of Borrower's choice in connection therewith.

SECTION 4. TERM

4.1 Term. This Agreement shall continue until all Obligations shall have been indefeasibly paid in full (the “**Term**”).

4.2 Early Termination; Loan Prepayment Fees.

(a) Lender shall have the right to terminate this Agreement and accelerate payment of the Obligations at any time upon or after the occurrence of an Event of Default.

(b) Borrower may prepay the Loans as set forth in Sections 4(a) or 4(b) of the Loan Agreement Schedule.

(c) Borrower shall prepay the Loans as set forth in Sections 4(c) and 4(d) of the Loan Agreement Schedule.

SECTION 5. COLLATERAL

5.1 Security Interests in Borrower’s Assets. As collateral security for the payment and performance of the Obligations, Borrower hereby grants and conveys to Lender a first priority continuing security interest in and Lien upon all now owned and hereafter acquired or created property and assets of Borrower and the Proceeds and products thereof (which property, assets and Proceeds, together with all other collateral security for the Obligations now or hereafter granted to or otherwise acquired by Lender, are referred to herein collectively as the “**Collateral**”), including, without limitation, the property described in this Section 5.1 and all property of Borrower now or hereafter held or possessed by Lender, and including the following :

(a) Accounts;

(b) Chattel Paper (whether tangible or electronic);

(c) Commercial Tort Claims;

(d) Deposit Accounts;

(e) Documents;

(f) Equipment;

(g) Fixtures;

(h) General Intangibles (including, without limitation the website domain names set forth on Section 8.22 to the Borrower’s Disclosure Schedule);

(i) Goods;

(j) Instruments;

(k) Inventory;

- (l) Investment Property;
- (m) Letter-of-Credit Rights;
- (n) Supporting Obligations;
- (o) Payment Intangibles;
- (p) Promissory Notes;
- (q) Software;
- (r) Securities (whether certificated or uncertificated);
- (s) warehouse receipts;
- (t) cash monies;
- (u) tax and duty refunds;
- (v) Intellectual Property;

(w) All present and future books and records relating to any of the above including, without limitation, all present and future books of account of every kind or nature, purchase and sale agreements, invoices, ledger cards, bills of lading and other shipping evidence, statements, correspondence, memoranda, credit files and other data relating to the Collateral or any Account Debtor whether stored physically or electronically, together with the tapes, disks, diskettes and other data and software storage media and devices, file cabinets or containers in or on which the foregoing are stored (including any rights of Borrower with respect to any of the foregoing maintained with or by any other Person);

(x) The Additional Collateral, if any, set forth in Section 5(a) of the Loan Agreement Schedule;

(y) Any and all products and Proceeds of the foregoing in any form including, without limitation, all insurance claims, warranty claims and proceeds and claims against third parties for loss or destruction of or damage to any or the foregoing; and

(z) All substitutions for, additions, attachments, accessories, accessions, and improvements to and replacements of any or all of the foregoing.

5.2 Financing Statements. Borrower hereby authorizes Lender to prepare and file Financing Statements with respect to the Collateral in form acceptable to Lender and its counsel, and hereby ratifies any actions taken by Lender prior to or after the date hereof in respect of the preparation and filing of Financing Statements. Borrower shall, at all times, do, make, execute, deliver and record, register or file all Financing Statements and other instruments, acts, pledges, leasehold or other mortgages, amendments, modifications, assignments and transfers (or cause the same to be done), and will deliver to Lender such instruments and/or documentation evidencing items of Collateral, as may be requested by Lender to better secure or perfect Lender's security interest in the Collateral or any Lien with respect thereto. Borrower acknowledges that it is not authorized to file any termination statement with respect to any Financing Statement in favor of Lender without the prior written consent of Lender and agrees that it will not do so without the prior written consent of Lender. In addition, Borrower hereby authorizes Lender to record the Liens in favor of the Lender in the U.S. Patent and Trademark Office and the U.S. Copyright Office, as applicable, and the taking of any actions required under the laws of jurisdictions outside the United States with respect to Intellectual Property included in the Collateral.

5.3 License Grant. The terms of Section 5(b) of the Loan Agreement Schedule are incorporated herein by reference and made a part hereof.

5.4 Representations, Warranties and Covenants Concerning the Collateral. Borrower represents and warrants (each of which such representations and warranties shall survive execution and delivery of this Agreement and shall be deemed repeated upon the making of each request for a Revolving Loan and made as of the time of each and every Revolving Loan hereunder) and covenants as follows:

(a) (i) All of the Collateral owned by it is owned by it free and clear of all Liens (including any claim of infringement) except those in Lender's favor and Permitted Encumbrances and (ii) none of the Collateral is subject to any agreement prohibiting the granting of a Lien or requiring notice of or consent to the granting of a Lien.

(b) It shall not encumber, mortgage, pledge, assign or grant any Lien upon any Collateral or any other assets to anyone other than the Lender and except for Permitted Encumbrances.

(c) The Liens granted pursuant to this Agreement, upon the filing of Financing Statements in respect of Borrower in favor of the Lender in the applicable filing office of the state of organization of Borrower (other than as to such Collateral consisting of Securities and Collateral perfected through "control", as defined in and used in the UCC), the recording of the Liens in favor of the Lender in the U.S. Patent and Trademark Office and the U.S. Copyright Office, as applicable, and the taking of any actions required under the laws of jurisdictions outside the United States with respect to Intellectual Property included in the Collateral which is created under such laws, constitute valid perfected first priority security interests in all of the Collateral in favor of the Lender, as security for the prompt and complete payment and performance of the Obligations, enforceable in accordance with the terms hereof.

(d) No security agreement, mortgage, deed of trust, financing statement, equivalent security or Lien instrument or continuation statement covering all or any part of the Collateral is or will be on file or of record in any public office, except those relating to the Liens of Lender and Permitted Encumbrances.

(e) It shall not dispose of any of the Collateral whether by sale, lease or otherwise except for (i) the sale of Inventory in the ordinary course of business and (ii) the disposition or transfer in the ordinary course of business of worn out or obsolete Equipment if consented to in advance in writing by Lender, in Lender's sole and absolute discretion, and then only to the extent that the proceeds of any such disposition are used to acquire replacement Equipment which is subject to the Lender's security interest or are used to repay the Obligations, as determined by Lender in its sole and absolute discretion.

(f) It shall defend the right, title and interest of the Lender in and to the Collateral against the claims and demands of all Persons whomsoever, and take such actions, including (i) all actions necessary to grant the Lender “control” of any Investment Property, Deposit Accounts, Letter-of-Credit Rights or Electronic Chattel Paper owned by it, with any agreements establishing control to be in form and substance satisfactory to the Lender, (ii) the prompt (but in no event later than two (2) Business Days following the Lender’s request therefor) delivery to the Lender of all original Instruments, Chattel Paper, negotiable Documents and certificated Securities owned by it (in each case, accompanied by stock powers, allonges or other instruments of transfer executed in blank), (iii) notification to third parties of the Lender’s interest in Collateral at the Lender’s request, and (iv) the institution of litigation against third parties as shall be prudent in order to protect and preserve Borrower’s and/or the Lender’s interests in the Collateral.

(g) It shall promptly, and in any event within two (2) Business Days after the same is acquired by it, notify the Lender of any Commercial Tort Claim acquired by it and, unless otherwise consented to by the Lender, it shall enter into a supplement to this Agreement granting to the Lender a Lien in such Commercial Tort Claim for the benefit of Lender.

(h) It shall perform in a reasonable time all other steps requested by the Lender to create and maintain in the Lender’s favor a valid perfected first Lien in all Collateral subject only to Permitted Encumbrances.

(i) It shall notify the Lender promptly, and in any event within two (2) Business Days after obtaining knowledge thereof (i) of any material delay in its performance of any of its obligations to any Account Debtor; (ii) of any assertion by any Account Debtor of any material claims, offsets or counterclaims; (iii) of any allowances, credits and/or monies granted by it to any Account Debtor; (iv) of all material adverse information relating to the financial condition of an Account Debtor; (v) of any material return of Inventory; and (vi) of any loss, damage or destruction of any of the Collateral .

(j) Section 5.4(j) of the Borrower’s Disclosure Schedule contains a true and complete list of certain specific machinery and equipment owned by Borrower as of the Closing Date and the location of such certain specific machinery and equipment. Borrower shall not permit any Equipment to become a fixture to real estate or accessions to other personal property. Borrower shall keep and maintain its Equipment in good operating condition, except for ordinary wear and tear, and shall make all necessary repairs and replacements thereof so that the value and operating efficiency shall at all times be maintained and preserved.

(k) Section 5.4(k) of the Borrower’s Disclosure Schedule lists all banks and other financial institutions at which it maintains deposits and/or other accounts, and such Schedule correctly identifies the name, address and telephone number of each such depository, the name in which the account is held, a description of the purpose of the account, and the complete account number. Borrower shall not establish any depository or other bank account with any financial institution (other than the accounts set forth on Section 5.4(k) of the Borrower’s Disclosure Schedule) without providing Lender with written notification thereof and providing similar information related thereto.

(l) On the date hereof, its exact legal name (as indicated in the public record of its jurisdiction of organization), former legal names (as indicated in the public record of its jurisdiction of organization), jurisdiction of organization, organizational identification number, if any, from the jurisdiction of organization, and the location of its chief executive office and all other offices or locations out of which it conducts business or operations, are specified on Section 5.4(l) of the Borrower's Disclosure Schedule. It has furnished to the Lender its Organizational Documents and long-form good standing certificate as of a date which is within thirty (30) days of the date hereof. It is organized solely under the law of the jurisdiction so specified and has not filed any certificates of domestication, transfer or continuance in any other jurisdiction. Except as otherwise indicated on Section 5.4(l) of the Borrower's Disclosure Schedule, the jurisdiction of its organization of formation is required to maintain a public record showing it to have been organized or formed. Except as specified on Section 5.4(l) of the Borrower's Disclosure Schedule, it has not changed its name, jurisdiction of organization, chief executive office or place of business or its corporate or company structure in any way (e.g., by merger, consolidation, change in form or otherwise) within the last five years and has not within the last five years become bound (whether as a result of merger or otherwise) as a grantor under a security agreement entered into by another Person, which has not heretofore been terminated.

(m) Borrower shall maintain and keep all of its books and records concerning the Collateral at its executive offices listed in Section 5.4(l) of the Borrower's Disclosure Schedule.

(n) It will not, except upon thirty (30) days' prior written notice to the Lender, Lender's consent in its sole discretion and delivery to the Lender of all additional financing statements and other documents and legal opinions reasonably requested by the Lender to maintain the validity, perfection and priority of the security interests provided for herein: (i) change its jurisdiction of organization or the location of its chief executive office from that referred to in Section 5.4(l) of the Borrower's Disclosure Schedule; or (ii) change its name, identity or organizational structure.

(o) Except pursuant to the terms hereof, none of the Collateral is subject to any prohibition against encumbering, pledging, hypothecating or assigning the same or requires notice or consent to Borrower's doing of the same.

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

(q) Borrower shall execute and deliver to Lender such Deposit Account Control Agreements as Lender may request in its sole discretion. All cash collections or other monies received by Borrower at any of its retail locations shall promptly, and in any event not later than two (2) days following receipt thereof, be deposited by Borrower into the Collections Account.

(r) The additional representations, warranties and covenants set forth in Section 5(c) of the Loan Agreement Schedule are incorporated herein by reference and made a part hereof.

SECTION 6. CONDITIONS TO MAKING INITIAL LOANS

The obligation of Lender to make the initial Loan(s) shall be subject to the satisfaction or waiver by Lender, prior thereto or concurrently therewith, of each of the following conditions precedent:

6.1 Loan Documents. Each of the Loan Documents shall have been duly and properly authorized, executed and delivered by Borrower and the other parties thereto and shall be in full force and effect as of the date hereof.

6.2 Representations and Warranties. Each of the representations and warranties made by or on behalf of Borrower to Lender in this Agreement and in other Loan Documents shall be true and correct in all respects as of the date hereof, provided that any such representation or warranty that is qualified by materiality shall be true and correct in all material respects as of the date hereof.

6.3 Certified Copies of Formation Documents. Lender shall have received from Borrower, certified by the Responsible Officer to be true and complete on and as of a date which is not more than ten (10) Business Days prior to the date hereof, a copy of each of the Organizational Documents of Borrower in effect on such date of certification.

6.4 Proof of Action. Lender shall have received from Borrower a copy, certified by a duly authorized officer to be true and complete on and as of the date which is not more than ten (10) Business Days prior to the date hereof, of the records of all corporate or company action taken by Borrower to authorize (a) its execution and delivery of each of the Loan Documents to which it is or is to become a party as contemplated or required by this Agreement, (b) its performance of all of its agreements and obligations under each of such documents, and (c) the incurring of the Obligations contemplated by this Agreement.

6.5 Collateral. Lender shall have obtained a first, perfected security interest in the Collateral of Borrower, subject only to the Permitted Encumbrances.

6.6 Insurance. Lender shall have received evidence of insurance, additional insured and loss payee endorsements required hereunder and under the other Loan Documents, in form and substance satisfactory to Lender, and certificates of insurance policies and/or endorsements naming Lender as additional insured and lender loss payee.

6.7 Validity of Collateral Representation. Lender shall have received a statement by the appropriate officers of Borrower which shall represent and certify the validity of the Collateral.

6.8 ACH Agreement. Lender shall have received from Borrower an agreement executed by Borrower which irrevocably authorizes Lender to initiate manual and automatic electronic (debit and credit) entries through the Automated Clearing House or other appropriate electronic payment system to all deposit accounts maintained by Borrower, wherever located.

6.9 IRS Forms 8821. Lender shall have received from Borrower an executed Form 8821 to be submitted to the Internal Revenue Service which shall grant Lender access to Borrower's Tax information.

6.10 IRS Form W-9. Lender shall have received from Borrower an executed Form W-9 to be submitted to the Internal Revenue Service which shall allow Lender to verify Borrower's tax identification number(s).

6.11 Pay Proceeds Letter. Borrower shall have delivered to Lender a pay proceeds letter with respect to the disbursement of the proceeds of the initial Loan(s) in form and substance satisfactory to Lender, which letter shall provide for, among other things, the payment or reimbursement of all costs, fees and expenses incurred by Lender in connection with this Agreement and the other Loan Documents, including, without limitation, Lender's due diligence expenses, legal fees, closing fees and the first installment of the annual line fee, if any.

6.12 No Event of Default. No event shall have occurred on or prior to the date of each initial Loan by Lender hereunder and be continuing on the date of each such initial Loan by Lender hereunder, and no condition shall exist on the date of each Loan by Lender hereunder, which constitutes an Event of Default or which would, with notice or the lapse of time, or both, constitute an Event of Default under this Agreement or any other Loan Document; and, Lender shall have received a certification from a Responsible Officer with respect to the foregoing in form and substance satisfactory to Lender.

6.13 Additional Deliveries. Borrower shall have delivered to Lender such other documents and instruments reasonably requested by Lender, including, without limitation, the documents set forth on Section 6 of the Loan Agreement Schedule.

SECTION 7. CONDITIONS TO MAKING ALL LOANS

If it is contemplated in this Agreement that more than one advance will be made by Lender under Section 2.1 hereof, the obligations of Lender to make all Loan(s) hereunder shall be subject to the satisfaction or waiver by Lender, prior thereto or concurrently therewith, of each of the conditions set forth in Section 6 and, in addition, all of the following conditions precedent:

7.1 Applications and Compliance. The application for such Loan(s) shall have been made by Borrower to Lender in accordance with the applicable provisions of this Agreement and in compliance with all provisions of this Agreement.

7.2 Representations and Warranties. Each of the representations and warranties made by or on behalf of Borrower to Lender in this Agreement or in other Loan Documents shall have been true and correct in all material respects when made (provided that any such representation or warranty that is qualified as to materiality shall be true and correct in all respects), shall, for all purposes of this Agreement, be deemed to be repeated on and as of the date of each Loan by Lender hereunder and shall be true and correct in all respects on and as of each such date, except to the extent that any of such representations and warranties relate, by the express terms thereof, solely to a date prior to the date of each Loan by Lender hereunder, and Lender shall have received a certification from a Responsible Officer of Borrower with respect to the foregoing in form and substance satisfactory to Lender.

7.3 Performance, etc. Borrower shall have duly and properly performed, complied with and observed each of its covenants, agreements and obligations contained in this Agreement and in any other Loan Documents on the date of each Loan by Lender hereunder, and Lender shall have received a certification from a Responsible Officer with respect to the foregoing in form and substance satisfactory to Lender. No event shall have occurred on or prior to the date of each Loan by Lender hereunder and be continuing on the date of each Loan by Lender hereunder, and no condition shall exist on the date of each Loan by Lender hereunder, which constitutes an Event of Default or which would, with notice or the lapse of time, or both, constitute an Event of Default under this Agreement or any other Loan Document, and Lender shall have received a certification from a Responsible Officer with respect to the foregoing in form and substance satisfactory to Lender.

SECTION 8. REPRESENTATIONS AND WARRANTIES

Borrower hereby represents and warrants to Lender, knowing and intending that Lender shall rely thereon in making the Loan(s) contemplated hereby (each of which representations and warranties shall be continuing unless expressly made in relation only to a specific date), that:

8.1 Existence.

(a) Borrower (i) is a corporation or limited liability company duly organized or formed, validly existing and in good standing under the laws of the jurisdiction of its organization or formation, (ii) is in good standing in all other jurisdictions in which it is required to be qualified to do business as a foreign corporation or limited liability company, (iii) has all requisite corporate or limited liability company power and authority and full legal right to own or to hold under lease its properties and to carry on the business as presently engaged and (iv) has been issued all required federal, state and local licenses, certificates or permits necessary, required or appropriate to the operation of its Business.

(b) Borrower has corporate or limited liability company power and authority and has full legal rights to enter into each of the Loan Documents to which it is a party, and to perform, observe and comply with all of its agreements and obligations under each of such documents.

8.2 No Violation, etc. The execution and delivery by Borrower of the Loan Documents to which Borrower is a party, the performance by Borrower of all of its agreements and obligations under each of such documents, and the incurring by Borrower of all of the Obligations contemplated by this Agreement, have been duly authorized by all necessary corporate or limited liability company actions on the part of Borrower and, if required, its shareholders, and do not and will not (a) contravene any provision of Borrower's charter, Organizational Documents, bylaws, operating agreement or other governing documents or this Agreement (each as from time to time in effect), (b) conflict with, or result in a breach of the terms, conditions, or provisions of, or constitute a default under, or result in the creation of any Lien upon any of the property of Borrower under, any agreement, mortgage or other instrument to which Borrower is or may become a party, (c) violate or contravene any provision of any law, regulation, order, ruling or interpretation thereunder or any decree, order or judgment or any court or governmental or regulatory authority, bureau, agency or official (all as from time to time in effect and applicable to such entity), (d) other than waivers required from Borrower's landlords, require any waivers, consents or approvals by any third party, including any creditors or trustees for creditors of Borrower, or (e) require any approval, consent, order, authorization, or license by, or giving notice to, or taking any other action with respect to, any Governmental Authority.

8.3 Binding Effect of Documents, etc. Borrower has duly executed and delivered each of the Loan Documents to which Borrower is a party, and each of the Loan Documents is valid, binding and in full force and effect. The agreements and obligations of Borrower as contained in each of the Loan Documents constitute, or upon execution and delivery thereof will constitute, legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms, subject, as to the enforcement of remedies only, to limitations imposed by federal and state laws regarding bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights and remedies generally, and by general principles of law and equity.

8.4 No Events of Default.

(a) No Event of Default has occurred and is continuing and no event has occurred and is continuing and no condition exists that would, with notice or the lapse of time, or both, constitute an Event of Default.

(b) Borrower is not in default under any Material Contract to which Borrower is a party or by which Borrower or any property of Borrower is bound.

(c) Borrower's execution, delivery and performance of and compliance with this Agreement and the other Loan Documents will not, with or without the passage of time or giving of notice, result in any violation of law, or be in conflict with or constitute a default under any term or provision, or result in the creation of any Lien upon any of Borrower's properties or assets or the suspension, revocation, impairment, forfeiture or nonrenewal, of any permit, license, authorization or approval applicable to Borrower, or any of its businesses or operations or any of its assets or properties.

8.5 No Governmental Consent Necessary. No consent or approval of, giving of notice to, registration with or taking of any other action in respect of, any Governmental Authority is required with respect to the execution, delivery and performance by Borrower of this Agreement and the other Loan Documents to which it is a party.

8.6 No Proceedings. Except as set forth on Section 8.6 of the Borrower's Disclosure Schedule, there are no actions, suits, or proceedings pending or, to the best of Borrower's knowledge, threatened against or affecting Borrower in any court or before any Governmental Authority.

8.7 No Violations of Laws; Licenses and Permits. Borrower has conducted, and is conducting, its Business, so as to comply in all material respects with all applicable federal, state, county and municipal statutes and regulations including, without limitation, PACA, if applicable. Neither Borrower nor any officer, director, manager, member or shareholder of Borrower is charged with, or so far as is known by Borrower, is under investigation with respect to, any violation of any such statutes, regulations or orders, which could have a Material Adverse Effect. Borrower has been issued all required federal, state and local licenses, certificates or permits required for the operation of its business.

8.8 Use of Proceeds of the Loan(s). Proceeds from the Loan(s) shall be used only for those purposes set forth in this Agreement. No part of the proceeds of the Loan(s) shall be used, directly or indirectly, for the purpose of purchasing or carrying any margin stock or for the purpose of purchasing or carrying or trading in any stock under such circumstances as to involve Borrower in a violation of any statute or regulation. In particular, without limitation of the foregoing, no part of the proceeds from the Loan(s) is intended to be used to acquire any publicly held stock of any kind.

8.9 Financial Statements; Indebtedness.

(a) The balance sheet of Borrower as of 12/31/2021, and the related statement of operations, stockholders' equity and cash flows (together with the related notes) for the Fiscal Year ended 12/31/2021, and the balance sheet of Borrower and the related statement of operations, stockholders' or members' equity and cash flows (together with the related notes) for the 12-month period ended 12/31/2021 (collectively, the "**Financial Statements**") fairly present, as of the date thereof, the financial position of Borrower, and the results of its operations, cash flows and stockholders' equity in all material aspects.

(b) Except as shown on the most recent Financial Statements, (i) Borrower has no Indebtedness as of the date hereof which would adversely affect the financial condition of Borrower or the Collateral, and (ii) Borrower has no liabilities, contingent or otherwise, except those which, individually or in the aggregate, are not material to the financial condition or operating results of Borrower.

8.10 Changes in Financial Condition. Since the Balance Sheet Date, there has been no material adverse change and no material adverse development in the Business, properties, operations, condition (financial or otherwise), results of operations or prospects of Borrower. Since the Balance Sheet Date, Borrower has not (i) declared or paid any dividends, (ii) sold any assets, individually or in the aggregate, outside of the ordinary course of business, (iii) had capital expenditures outside of the ordinary course of business, (iv) engaged in any transaction with any Affiliate or (v) engaged in any other transaction outside of the ordinary course of business.

8.11 Equipment. Borrower shall keep and maintain its Equipment in good operating condition, and shall make all necessary repairs and replacements thereof so that the value and operating efficiency shall at all times be maintained and preserved.

8.12 Taxes and Assessments.

(a) Borrower has paid and discharged when due all taxes, assessments and other governmental charges which may lawfully be levied or assessed upon its income and profits, or upon all or any portion of any property belonging to it, whether real, personal or mixed, to the extent that such taxes, assessment and other charges have become due. Borrower has filed all tax returns, federal, state and local, and all related information, required to be filed by it.

(b) Borrower shall make all payments to be made by it hereunder without any Tax Deduction (as defined below), unless a Tax Deduction is required by law. If Borrower is aware that it must make a Tax Deduction (or that there is a change in the rate or the basis of a Tax Deduction), it shall promptly notify Lender. If a Tax Deduction is required by law to be made by Borrower, the amount of the payment due from Borrower shall be increased to an amount which (after making the Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required. If Borrower is required to make a Tax Deduction, Borrower shall make the minimum Tax Deduction allowed by law and shall make any payment required in connection with that Tax Deduction within the time allowed by law. Within thirty (30) days of making either a Tax Deduction or a payment required in connection with a Tax Deduction, Borrower shall deliver to Lender evidence satisfactory to Lender that the Tax Deduction has been made or (as applicable) the appropriate payment has been paid to the relevant taxing authority.

(c) “**Tax Deduction**” means a deduction or withholding for or on account of Tax from a payment under a Loan Document.

(d) “**Tax**” or “**Taxes**” means any tax, levy, impost, duty or other charge or withholding of a similar nature, including any income, franchise, stamp, documentary, excise or property tax, charge or levy (in each case, including any related penalty or interest).

8.13 ERISA. Borrower is in compliance in all material respects with the applicable provisions of ERISA and all regulations issued thereunder by the United States Treasury Department, the Department of Labor and the Pension Benefit Guaranty Corporation.

8.14 Solvency. After giving effect to each Revolving Loan, and the liabilities and obligations of Borrower, Borrower is Solvent.

8.15 Environmental Matters.

(a) Borrower has duly complied with, and its facilities, business assets, property, leaseholds and Equipment are in compliance in all respects with, the provisions of all Environmental Laws.

(b) Borrower has been issued all required federal, state and local licenses, certificates or permits required under Environmental Laws for the operation of its Business.

8.16 United States Anti-Terrorism Laws; Holding Company Status.

(a) In this Section 8.16:

“**Anti-Terrorism Law**” means each of: (i) Executive Order No. 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism (the “**Executive Order**”); (ii) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 (commonly known as the USA Patriot Act); (iii) the Money Laundering Control Act of 1986, Public Law 99-570; and (iv) any similar law enacted in the United States of America subsequent to December 31, 2004.

“**holding company**” has the meaning given to it in the United States Public Utility Holding Company Act of 1935, and any successor legislation and rules and regulations promulgated thereunder.

“**investment company**” has the meaning given to it in the United States Investment Company Act of 1940.

“**public utility**” has the meaning given to it in the United States Federal Power Act of 1920.

“**Restricted Party**” means any person listed: (i) in the Annex to the Executive Order; (ii) on the Specially Designated Nationals and Blocked Persons list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury; or (iii) in any successor list to either of the foregoing.

(b) Borrower is not (i) a holding company or subject to regulation under the United States Public Utility Holding Company Act of 1935; (ii) a public utility or subject to regulation under the United States Federal Power Act of 1920; (iii) required to be registered as an investment company or subject to regulation under the United States Investment Company Act of 1940; or (iv) subject to regulation under any United States Federal or State law or regulation that limits its ability to incur or guarantee Indebtedness.

(c) To the best of Borrower’s knowledge, Borrower (i) is not, and is not controlled by, a Restricted Party; (ii) has not received funds or other property from a Restricted Party; and (iii) is not in breach of and is not the subject of any action or investigation under any Anti-Terrorism Law.

(d) Borrower has taken reasonable measures to ensure compliance with the Anti-Terrorism Laws.

8.17 Customers and Vendors. There are no disputes with any customers, suppliers, manufacturers, vendors and independent contractors of Borrower in excess of \$5,000 in the aggregate with any such party.

8.18 Representations, Warranties and Covenants Concerning the Collateral. The representations, warranties and covenants of Borrower set forth in Section 5.4 hereof are incorporated in this Section 8.17 by reference.

8.19 Books and Records. Borrower maintains its chief executive office and its books and records related to the Collateral at its address set forth in Section 5.4(l) of the Borrower’s Disclosure Schedule.

8.20 Ownership and Control. All of the issued and outstanding Equity Interests of Borrower are owned beneficially and of record according to the percentages set forth in Section 8.20 of the Borrower’s Disclosure Schedule.

8.21 Changes. Since the Balance Sheet Date, except as disclosed in Section 8.21 of the Borrower’s Disclosure Schedule, with respect to Borrower, there has not been:

(a) any change in its Business, assets, liabilities, condition (financial or otherwise), properties, operations or prospects, which, individually or in the aggregate, has had, or could reasonably be expected to have, a Material Adverse Effect;

(b) any resignation or termination of any of its officers, key employees or groups of employees;

(c) any change, except in the ordinary course of business, in its contingent obligations by way of guaranty, endorsement, indemnity, warranty or otherwise;

(d) any damage, destruction or loss, whether or not covered by insurance, which has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(e) any waiver by it of a valuable right or of a material debt owed to it;

(f) any direct or indirect loans made by it to any of its stockholders, managers, employees, officers or directors, other than advances made in the ordinary course of business;

(g) any material change in any compensation arrangement or agreement with any employee, manager, officer, director or equity holder;

(h) any declaration or payment of any dividend or other distribution of its assets;

(i) any labor organization activity related to it;

(j) any debt, obligation or liability incurred, assumed or guaranteed by it, except those for immaterial amounts and for current liabilities incurred in the ordinary course of business;

(k) any sale, assignment, transfer, abandonment or other disposition of any Collateral other than Inventory in the ordinary course of business;

(l) any change in any Material Contract to which it is a party or by which it is bound which, either individually or in the aggregate, has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(m) any other event or condition of any character that, either individually or in the aggregate, has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; or

(n) any arrangement or commitment by it to do any of the acts described in subsection (a) through (m) of this Section 8.20.

8.22 Intellectual Property.

(a) Except for Permitted Encumbrances, (1) Borrower holds all Intellectual Property that it owns free and clear of all Liens and restrictions on use or transfer, whether or not recorded, and has sole title to and ownership of or has the full, exclusive (subject to the rights of its licensees) right to use in its field of business such Intellectual Property; and Borrower holds all Intellectual Property that it uses but does not own under valid licenses or sub-licenses from others; (2) the use of the Intellectual Property by Borrower does not violate or infringe on the rights of any other Person; (3) Borrower has not received any notice of any conflict between the asserted rights of others and Borrower with respect to any Intellectual Property; (4) Borrower has used its commercially reasonable best efforts to protect its rights in and to all Intellectual Property; (5) Borrower is in compliance with all material terms and conditions of its agreements relating to the Intellectual Property; (6) Borrower is not, and since the Balance Sheet Date has not been, a defendant in any action, suit, investigation or proceeding relating to infringement or misappropriation by Borrower of any Intellectual Property nor has Borrower been notified of any alleged claim of infringement or misappropriation by Borrower of any Intellectual Property; (7) to the knowledge of Borrower, none of the products or services Borrower is researching, developing, proposes to research and develop, make, have made, use, or sell, infringes or misappropriates any Intellectual Property right of any third party; (8) none of the trademarks and service marks used by Borrower, to the knowledge of Borrower, infringes the trademark or service mark rights of any third party and (9) to Borrower's knowledge, none of the material processes and formulae, research and development results and other know-how relating to Borrower's Business, the value of which to Borrower is contingent upon maintenance of the confidentiality thereof, has been disclosed to any Person other than Persons bound by written confidentiality agreements.

(b) Section 8.22 of Borrower's Disclosure Schedule sets forth a true and complete list of (i) all Intellectual Property owned or claimed by Borrower, together with any and all registration or application numbers for any Intellectual Property filed or issued by any Intellectual Property registry (and in the case of any and all domain names registered by or on behalf of Borrower, the name of the registrar(s) thereof) and (ii) all Intellectual Property licenses which are either material to the business of Borrower or relate to any material portion of Borrower's Inventory, including licenses for standard software having a replacement value of more than \$10,000. None of such Intellectual Property licenses are reasonably likely to be construed as an assignment of the licensed Intellectual Property to Borrower. Borrower shall update such Section 8.22 of the Borrower's Disclosure Schedule upon each new claim, use, registration or application of or for Intellectual Property by Borrower, and upon Borrower becoming the licensee under any license described in the foregoing clause (b)(ii).

8.23 Employees. Borrower has no collective bargaining agreements with any of its employees. There is no labor union organizing activity pending or, to Borrower's knowledge, threatened with respect to Borrower. Except as set forth in Section 8.23 of the Borrower's Disclosure Schedule, Borrower is not a party to or bound by any currently effective deferred compensation arrangement, bonus plan, incentive plan, profit sharing plan, retirement agreement or other employee compensation plan or agreement. To Borrower's knowledge, no employee of Borrower, nor any consultant with whom Borrower has contracted, is in violation of any material term of any employment contract or any other contract relating to the right of any such individual to be employed by, or to contract with, Borrower or to receive any benefits; and, to Borrower's knowledge, the continued employment by Borrower of its present employees, and the performance of Borrower's contracts with its independent contractors, will not result in any such violation. Except for employees who have a current effective employment agreement with Borrower, as set forth in Section 8.23 of the Borrower's Disclosure Schedule, no employee of Borrower has been granted the right to continued employment by Borrower or to any material compensation following termination of employment with Borrower. Borrower is not aware that any officer, director, manager, partner, key employee or group of employees intends to terminate his, her or their employment with Borrower, nor does Borrower have a present intention to terminate any of the same.

8.24 Tax Status. Borrower (i) has made or filed all federal and state income and all other Tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all Taxes and other governmental assessments and charges that are shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and for which it has set aside on its books a provision in the amount of such Taxes being contested in good faith and (iii) has set aside on its books provisions reasonably adequate for the payment of all Taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid Taxes payable by Borrower claimed to be due by the taxing authority of any jurisdiction, and the officers of the Borrower know of no basis for any such claim.

8.25 Representations and Warranties: True, Accurate and Complete. None of the representations, certificates, reports, warranties or statements now or hereafter made or delivered to Lender pursuant hereto or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact necessary in order to make the statements contained herein and therein, in light of the circumstances in which they are made, not misleading.

8.26 Fees; Brokers; Finders. There are no fees, commissions or other compensation due to any third party acting on behalf of or at the direction of Borrower in connection with the Loan Documents, except as set forth on Section 8.26 of the Borrower's Disclosure Schedule. All negotiations relative to the Loan Documents, and the transactions contemplated thereby, have been carried on by the Borrower with the Lender without the intervention of any other person or entity acting on behalf of the Borrower, and in such manner as not to give rise to any claim against the Borrower or the Lender for any finder's fee, brokerage commission or like payment due to any third party acting on behalf of or at the direction of Borrower, and if any such fee, commission or payment is payable, it shall be the sole responsibility of the Borrower and the Borrower shall pay, and indemnify the Lender for, the same.

8.27 Commercial Purpose. Borrower warrants that the Loans are being used solely to acquire or carry on a business or commercial enterprise, and/or Borrower is a business or commercial organization. Borrower further warrants that all of the proceeds of the Loans shall be used for commercial purposes and stipulates that Loans shall be construed for all purposes as a commercial loan, and is made for other than personal, family or household purposes.

SECTION 9. AFFIRMATIVE COVENANTS

Until the indefeasible payment and satisfaction in full of all Obligations and the termination of this Agreement, Borrower hereby covenants and agrees as follows:

9.1 Notify Lender. Borrower shall promptly, and in any event within two (2) Business Days, inform Lender (a) if any one or more of the representations and warranties made by Borrower in this Agreement or in any document related hereto shall no longer be entirely true, accurate and complete in any respect, (b) of any Equipment listed on Section 5.4(J) to the Borrower's Disclosure Schedule which is not in good order and repair, and in running and marketable condition, ordinary wear and tear excepted; (c) of all material adverse information relating to the financial condition of Borrower; (d) of any material return of goods; (e) of any loss, damage or destruction of any of the Collateral; and (f) of any other events or occurrences set forth in Section 7(a) of the Loan Agreement Schedule.

9.2 Change in Ownership, Directors, Managers or Officers. Borrower shall promptly notify Lender of any changes in Borrower's managers, directors and/or officers and in the ownership of Borrower and hereby authorizes Lender to perform background checks and any other due diligence as Lender may require in its sole and absolute discretion with respect to such new managers, directors and/or officers.

9.3 Pay Taxes and Liabilities; Comply with Agreement. Borrower shall promptly pay, when due, or otherwise discharge, all Indebtedness, sums and liabilities of any kind now or hereafter owing by Borrower to its employees as wages or salaries or to Lender and Governmental Authorities however created, incurred, evidenced, acquired, arising or payable, including, without limitation, the Obligations, income Taxes, excise Taxes, sales and use Taxes, license fees, and all other Taxes with respect to any of the Collateral, or any wages or salaries paid by Borrower or otherwise, unless the validity of which are being contested in good faith by Borrower by appropriate proceedings, provided that Borrower shall have maintained reasonably adequate reserves and accrued the estimated liability on Borrower's balance sheet for the payment of same.

9.4 Observe Covenants, etc. Borrower shall observe, perform and comply with the covenants, terms and conditions of this Agreement and the other Loan Documents.

9.5 Maintain Corporate Existence and Qualifications. Borrower shall maintain and preserve in full force and effect, its corporate existence and rights, franchises, licenses and qualifications necessary to continue its Business, and comply with all applicable statutes, rules and regulations pertaining to the operation, conduct and maintenance of its existence and Business including, without limitation, all federal, state and local laws relating to benefit plans, environmental safety, or health matters, and hazardous or liquid waste or chemicals or other liquids (including use, sale, transport and disposal thereof).

9.6 Financial Reports and Other Information. Borrower shall deliver or cause to be delivered to Lender:

(a) **Reports.** The financial reports and other information set forth in Section 7(b) of the Loan Agreement Schedule, on the dates set forth therein. The Borrower shall further comply with all its covenants set forth therein.

(b) **Notice of Litigation, Judgments, Environmental, Health or Safety Complaints.**

(i) Within two (2) Business Days after commencement or receipt by Borrower, written notice to Lender of all litigation and of all proceedings involving the Borrower or any of its assets, together with a copy of all pleadings and demands;

(ii) Within two (2) Business Days thereafter, written notice to Lender of the entry of any judgment or the institution of any lawsuit or of other legal or equitable proceedings or the assertion of any cross claim or counterclaim seeking monetary damages from Borrower; and

(iii) Within two (2) Business Days thereafter, notice or copies if written of all claims, complaints, orders, citations or notices, whether formal or informal, written or oral, from a governmental body or private person or entity, relating to air emissions, water discharge, noise emission, solid or liquid waste disposal, hazardous waste or materials, or any other environmental, health or safety matter, which adversely affect Borrower. Such notices shall include, among other information, the name of the party who filed the claim, the potential amount of the claim, and the nature of the claim.

(c) **Other Information.** Upon demand,

(i) Certificates of insurance for all policies of insurance to be maintained by Borrower pursuant hereto;

(ii) All information received by Borrower affecting the financial status or condition of any Account Debtor or the payment of any Account, including but not limited to, invoices, original orders, shipping and delivery receipts; and

(iii) An estoppel certificate executed by the Responsible Officer of Borrower indicating that there then exists no Event of Default and no event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default.

(d) **Additional Information.** From time to time, such other information as Lender may reasonably request, including financial projections and cash flow analysis.

9.7 Comply with Laws. Borrower shall comply with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority, compliance with which is necessary to maintain its corporate existence or the conduct of its Business or non-compliance with which would adversely affect in any respect its ability to perform its obligations or any security given to secure its obligations.

9.8 Insurance Required.

(a) Borrower shall cause to be maintained, in full force and effect on all property of Borrower including, without limitation, all Inventory and Equipment, insurance in such amounts against such risks as is satisfactory to Lender in its sole and absolute discretion, including, but without limitation, business interruption, liability, fire, boiler, theft, burglary, pilferage, vandalism, malicious mischief, loss in transit, and hazard insurance and, if as of the date hereof, any of the leased real property of Borrower is in an area that has been identified by the Secretary of Housing and Urban Development as having special flood or mudslide hazards, and on which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, then Borrower shall maintain flood insurance. Said policy or policies shall:

(i) Be in a form and with insurers which are satisfactory to Lender;

(ii) Be for such risks, and for such insured values as Lender or its assigns may reasonably require in order to replace the property in the event of actual or constructive total loss;

(iii) Designate Lender as additional insured and lender loss payee as Lender's interest may from time to time appear;

(iv) Contain a "breach of warranty clause" whereby the insurer agrees that a breach of the insuring conditions or any negligence by Borrower or any other person shall not invalidate the insurance as to Lender and its assignee;

(v) Provide that they may not be canceled or altered without thirty (30) days prior written notice to Lender; and

(vi) Upon demand, be delivered to Lender.

(b) Borrower shall cause to be maintained, in full force and effect, directors and officers insurance and errors and omissions insurance, in each case, in form and substance satisfactory to Lender and with a coverage limitation satisfactory to Lender.

(c) Borrower shall obtain such additional insurance as Lender may reasonably require.

(d) Borrower shall, in the event of loss or damage of any Collateral, forthwith notify Lender and file proofs of loss with the appropriate insurer. Borrower hereby authorizes Lender to endorse any checks or drafts constituting insurance proceeds.

(e) Borrower shall forthwith upon receipt of insurance proceeds endorse and deliver the same to Lender.

(f) In no event shall Lender be required either to (i) ascertain the existence of or examine any insurance policy or (ii) advise Borrower in the event such insurance coverage shall not comply with the requirements of this Agreement.

9.9 Condition of Collateral; No Liens. Borrower shall (i) maintain all Collateral in good condition and repair at all times, (ii) preserve the Collateral against any loss, damage, or destruction of any nature, (iii) keep the Collateral free and clear of any Liens, except for the Liens of Lender and Permitted Encumbrances set forth on Section 9.9 of the Borrower's Disclosure Schedule, and shall not permit Collateral to become a fixture to real estate or accessions to other personal property.

9.10 Payment of Proceeds. Borrower shall forthwith upon receipt of all Proceeds of Collateral, pay such Proceeds (insurance or otherwise) up to the amount of the then-outstanding Obligations over to Lender for application against the Obligations in such order and manner as Lender may elect.

9.11 Records. Borrower shall at all times keep accurate and complete records of its operations, of the Collateral and the status of each Account, which records shall be maintained at its executive offices as set forth on Section 5.4(1) of the Borrower's Disclosure Schedule.

9.12 Pay Obligations. Borrower shall promptly and timely pay all Obligations when due in accordance with the Loan Documents.

9.13 Delivery of Documents. If any Proceeds of Accounts shall include, or any of the Accounts shall be evidenced by, notes, trade acceptances or instruments or documents, or if any Inventory is covered by documents of title or chattel paper, whether or not negotiable, then Borrower waives protest regardless of the form of the endorsement. If Borrower fails to endorse any instrument or document, Lender is authorized to endorse it on Borrower's behalf.

9.14 United States Contracts. Section 7(c) of the Loan Agreement Schedule is hereby incorporated by reference and made a part hereof.

9.15 Name Changes; Location Changes.

(a) Borrower shall promptly notify Lender of any changes in the name of Borrower or if Borrower is known by or conducting business under any names other than those set forth in this Agreement.

(b) Borrower shall deliver not less than thirty (30) days prior written notice to Lender if Borrower intends to conduct any of its Business or operations at or out of offices or locations other than those set forth in Section 5.4(l) of the Borrower's Disclosure Schedule, or if it changes the location of its chief executive office or the address at which it maintains its books and records.

9.16 Further Assurances. Borrower shall at any time or from time to time upon request of Lender take such steps and execute and deliver such Financing Statements and other documents all in the form of substance satisfactory to Lender relating to the creation, validity or perfection of the security interests provided for herein, under the UCC or which are reasonably necessary to effectuate the purposes and provisions of this Agreement. Borrower shall defend the right, title and interest of Lender in and to the Collateral against the claims and demands of all Persons whomsoever, and take such actions, including (i) all actions necessary to grant Lender "control" of any Investment Property, Deposit Accounts, Letter-of-Credit Rights or Electronic Chattel Paper owned by it, with any agreements establishing control to be in form and substance satisfactory to Lender, (ii) the prompt (but in no event later than two (2) Business Days following Lender's request therefor) delivery to Lender of all original Instruments, Chattel Paper, negotiable Documents and certificated Securities owned by it (in each case, accompanied by stock powers, allonges or other instruments of transfer executed in blank), (iii) notification of Lender's interest in Collateral at Lender's request, and (iv) the institution of litigation against third parties as shall be prudent in order to protect and preserve Borrower's and/or Lender's respective and several interests in the Collateral.

9.17 Indemnification. Borrower shall indemnify, protect, defend and save harmless Lender, as well as Lender's directors, officers, trustees, employees, agents, attorneys, members and shareholders (hereinafter referred to collectively as the "**Indemnified Parties**" and individually as an "**Indemnified Party**") from and against (a) any and all losses, damages, expenses or liabilities of any kind or nature and from any suits, claims or demands, by third parties (including, without limitation, claims of brokers and finders), including reasonable counsel fees incurred in investigating or defending such claim, suffered by any of them and caused by, relating to, arising out of, resulting from, or in any way connected with the Loan(s), the transactions contemplated herein and the Loan Documents, and (b) any and all losses, damages, expenses or liabilities sustained by Lender in connection with any Environmental Liabilities and Costs. In case any action shall be brought against an Indemnified Party based upon any of the above and in respect to which indemnity may be sought against Borrower, the Indemnified Party against whom such action was brought shall promptly notify Borrower in writing, and Borrower shall assume the defense thereof, including the employment of counsel selected by Borrower and reasonably satisfactory to the Indemnified Party, the payment of all costs and expenses and the right to negotiate and consent to settlement. Upon reasonable determination made by the Indemnified Party, the Indemnified Party shall have the right to employ separate counsel in any such action and to participate in the defense thereof; provided, however, that the Indemnified Party shall pay the costs and expenses incurred in connection with the employment of separate counsel. Borrower shall not be liable for any settlement of any such action effected without its consent, but if settled with Borrower's consent, or if there be a final judgment for the claimant in any such action, Borrower agrees to indemnify and save harmless said Indemnified Party against whom such action was brought from and against any loss or liability by reason of such settlement or judgment, except as otherwise provided above. The provisions of this Section 9.17 shall survive the termination of this Agreement and the final repayment of the Obligations.

9.18 Additional Covenants. The terms and provisions of Section 8 of the Loan Agreement Schedule are incorporated herein by reference and made a part hereof.

SECTION 10. NEGATIVE COVENANTS

Until payment and satisfaction in full of all Obligations and the termination of this Agreement, Borrower hereby covenants and agrees as follows:

10.1 Change of Control; No Creation of Subsidiaries. Borrower will not consolidate with, merge with, or acquire the stock or a material portion of the assets of any person, firm, joint venture, partnership, corporation, or other entity, whether by merger, consolidation, purchase of stock or otherwise if any such action results in a Change of Control (as defined below). Borrower will not create or permit to exist any Subsidiary unless such new Subsidiary is a wholly-owned Subsidiary and is designated by Lender as either a co-borrower or guarantor hereunder and such Subsidiary shall have entered into all such documentation required by Lender, including, without limitation, to grant to Lender a first priority perfected security interest in substantially all of such Subsidiary's assets to secure the Obligations. In addition, Borrower will not acquire a material portion of the assets of any entity in a manner that is not addressed by the foregoing provisions of this Section 10.1 if such action would impair Lender's rights hereunder or in the Collateral.

A "Change of Control" shall be deemed to have occurred if:

(i) any "Person," which shall mean a "person" as such term is used in Sections 13(d) and 14(d) of the 1934 Act, or group of Persons is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, of securities of Borrower representing 50% or more of the combined voting power of Borrower's then outstanding voting securities;

(ii) individuals, who at the Closing Date constitute the Board of Directors or the managers of Borrower, and any new director or manager whose election by the Board of Directors or managers of Borrower, or whose nomination for election by Borrower's equity holders, was approved by a vote of at least one-half (1/2) of the directors or managers then in office (other than in connection with a contested election), cease for any reason to constitute at least a majority of the Board of Directors or managers of Borrower;

(iii) the stockholders or members of Borrower approve (I) a plan of complete liquidation of Borrower or (II) the sale or other disposition by Borrower of all or substantially all of Borrower's assets; or

(iv) a merger or consolidation of Borrower with any other entity is consummated, other than:

- (A) a merger or consolidation which results in the voting securities of Borrower outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the surviving entity's outstanding voting securities immediately after such merger or consolidation; or
- (B) a merger or consolidation which would result in the directors or managers of Borrower (who were directors or managers immediately prior thereto) continuing to constitute more than 50% of all directors or managers of the surviving entity immediately after such merger or consolidation.

In this paragraph (iv), “surviving entity” shall mean only an entity in which all of Borrower’s equity holders immediately before such merger or consolidation (determined without taking into account any equity holders properly exercising appraisal or similar rights) become equity holders by the terms of such merger or consolidation, and the phrase “directors or managers of Borrower (who were directors or managers immediately prior thereto)” shall include only individuals who were directors or managers of Borrower at the Closing Date.

10.2 Disposition of Assets or Collateral. Borrower will not sell, lease, transfer, convey, or otherwise dispose of any or all of its assets or Collateral, other than the disposition or transfer in the ordinary course of business. In furtherance and not in limitation of the foregoing, Borrower will not sell, lease, transfer, convey, or otherwise dispose of any or all Equipment listed on Section 5.4(j) to the Borrower’s Disclosure Schedule without the prior written consent of Lender.

10.3 Other Liens. Borrower will not incur, create or permit to exist any Lien on any of its property or assets, whether now owned or hereafter acquired, except for (a) those Liens in favor of Lender created by this Agreement and the other Loan Documents; and (b) the Permitted Encumbrances.

10.4 Other Liabilities. Except as set forth in Section 10.4 of the Borrower’s Disclosure Schedule, Borrower will not incur, create, assume, or permit to exist, any Indebtedness or liability on account of either borrowed money or the deferred purchase price of property, except (i) Obligations to Lender, (ii) debt expressly subordinated to Borrower’s Indebtedness to Lender pursuant to a subordination agreement in form and substance satisfactory to Lender or (iii) Indebtedness incurred in connection with any of the Permitted Encumbrances.

10.5 Additional Covenants. The terms and provisions of Section 8 of the Loan Agreement Schedule are incorporated herein by reference and made a part hereof.

10.6 Advances. Borrower will not make any loans or advance any funds to any Person, other than advances to employees of Borrower in the ordinary course of business, with outstanding advances to any employee not to exceed \$2500 at any time.

10.7 Guaranties. Borrower will not assume, guaranty, endorse, contingently agree to purchase or otherwise become liable upon the obligation of any Person, except by the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business.

10.8 Transfers of Notes or Accounts. Borrower will not sell, assign, transfer, discount or otherwise dispose of any Accounts or any promissory note payable to Borrower, with or without recourse.

10.9 Dividends. Borrower will not declare or pay any cash dividend, make any distribution on, redeem, retire or otherwise acquire directly or indirectly, any of its Equity Interests without the prior written consent of Lender.

10.10 Payments to Affiliates. Except as set forth in Section 10.10 of the Borrower's Disclosure Schedule, or as otherwise approved by Lender in writing in advance, Borrower shall not make any payments of cash or other property to any Affiliate.

10.11 Modification of Documents. Borrower will not change, alter or modify, or permit any change, alteration or modification of its Organizational Documents in any manner that might adversely affect Lender's rights hereunder as a secured lender or its Collateral without Lender's prior written consent.

10.12 Change Business or Name. Borrower will not engage in any business other than the Business, or change its names as it appears in the official filings of its state of organization.

10.13 Settlements. Other than in the ordinary course of its Business, Borrower will not compromise, settle or adjust any claims in any amount relating to any of the Collateral, without the prior written consent of Lender.

10.14 Restrictive Agreements. No Borrower will directly or indirectly (a) enter into or assume any agreement (other than the Loan Documents) prohibiting the creation or assumption of any Lien upon its assets or properties, whether now owned or hereafter acquired, or (b) create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind (except as provided by the Loan Documents) on the ability of any Subsidiary to: (i) make payments or pay dividends or other distributions on any equity interest to any Borrower or any Subsidiary; (ii) pay any obligation owed to any Borrower or any Subsidiary; (iii) makes loans or advances to any Borrower or any Subsidiary; (iv) transfer any of its property or assets to any Borrower or any Subsidiary.

SECTION 11. EVENTS OF DEFAULT

The occurrence of any of the following shall constitute an event of default (hereinafter referred to as an “**Event of Default**”):

11.1 Failure to Pay. The failure by Borrower to pay, when due, (a) any payment of principal, interest, fees or other charges due and owing to Lender pursuant to any obligations of Borrower to Lender including, without limitation, those Obligations arising pursuant to this Agreement or any Loan Document, or under any other agreement for the payment of monies then due and payable to Lender, or (b) any Taxes due to any Governmental Authority.

11.2 Failure of Insurance. Failure of one or more of the insurance policies required hereunder to remain in full force and effect; failure on the part of Borrower to pay or cause to be paid all premiums when due on the insurance policies pursuant to this Agreement; failure on the part of Borrower to take such other action as may be requested by Lender in order to keep said policies of insurance in full force and effect until all Obligations have been indefeasibly paid in full; and failure on the part of Borrower to execute any and all documentation required by the insurance companies issuing said policies to effectuate said assignments.

11.3 Failure to Perform. Borrower's failure to perform or observe any covenant, term or condition of this Agreement or in any other Loan Document.

11.4 Cross Default. Borrower's default under any agreement or contract with a third party which default would result in a liability to Borrower in excess of \$25,000.

11.5 False Representation or Warranty. Borrower shall have made any statement, representation or warranty in this Agreement or in any other Loan Document to which Borrower is a party or in a certificate executed by Borrower incident to this Agreement, which is at any time found to have been false in any material respect at the time such representation or warranty was made.

11.6 Liquidation, Voluntary Bankruptcy, Dissolution, Assignment to Creditors. Any resolution shall be passed or any action (including a meeting of creditors) shall be taken by Borrower for the termination, winding up, liquidation or dissolution of Borrower, or Borrower shall make an assignment for the benefit of creditors, or Borrower shall file a petition in voluntary liquidation or bankruptcy, or Borrower shall file a petition or answer or consent seeking, or consenting to, the reorganization of Borrower or the readjustment of any of the Indebtedness of Borrower under any applicable insolvency or bankruptcy laws now or hereafter existing (including the United States Bankruptcy Code), or Borrower shall consent to the appointment of any receiver, administrator, liquidator, custodian or trustee of all or any part of the property or assets of Borrower or any corporate or company action shall be taken by Borrower for the purposes of effecting any of the foregoing.

11.7 Involuntary Petition Against Borrower. Any petition or application for any relief is filed against Borrower under applicable insolvency or bankruptcy laws now or hereafter existing (including the United States Bankruptcy Code) or under any insolvency, reorganization, receivership, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction now or hereafter in effect (whether at law or in equity), and is not discharged or stayed within thirty (30) days of the filing thereof.

11.8 Judgments; Levies. Judgments or attachments aggregating in excess of \$10,000 at any given time are obtained against Borrower which remain unstayed for a period of ten (10) days or are enforced.

11.9 Change in Condition. There occurs any event or a change in the condition or affairs, financial or otherwise, of Borrower which, in the reasonable opinion of Lender, impairs Lender's security or the ability of Borrower to discharge its obligations hereunder or any other Loan Document or which impairs the rights of Lender in the Collateral.

11.10 Environmental Claims. Lender determines that any Environmental Liabilities and Costs or Environmental Lien with respect to Borrower will have a potentially adverse effect on the financial condition of Borrower or on the Collateral.

11.11 Failure to Notify. If at any time Borrower fails to provide Lender immediately with notice or copies, if written, of all complaints, orders, citations or notices with respect to environmental, health or safety complaints.

11.12 Failure to Deliver Documentation. Borrower shall fail to obtain and deliver to Lender any other documentation required to be signed or obtained as part of this Agreement, or shall have failed to take any reasonable action requested by Lender to perfect, protect, preserve and maintain the security interests and Lien on the Collateral provided for herein.

11.13 Material Adverse Effect. A Material Adverse Effect shall have occurred.

11.14 Change of Control. Borrower undergoes a Change of Control.

11.15 Dissolution; Maintenance of Existence. Borrower is dissolved, or Borrower fails to maintain its corporate existence in good standing, or the usual business of Borrower ceases or is suspended in any respect.

11.16 Indictment. The indictment of Borrower or any director or Responsible Officer of Borrower under any criminal statute, or commencement of criminal or civil proceedings against Borrower, pursuant to which statute or proceedings the penalties or remedies sought or available include forfeiture of any portion of the property of Borrower.

11.17 Tax Liens. The filing of a Lien for any unpaid Taxes filed by any Governmental Authority against Borrower or any of its assets.

11.18 Challenge to Validity of Loan Documents. Borrower attempts to terminate or challenge the validity of, or its liability under, this Agreement or any other Loan Document, or any proceeding shall be brought to challenge the validity, binding effect of any Loan Document, or any Loan Document ceases to be a valid, binding and enforceable obligation of Borrower.

11.19 Claims Against Lender. Any claim asserted by Borrower seeking to challenge the Loan Documents, Lender's Liens in the Collateral or otherwise commencing any cause of action against the Lender.

11.20 Other Events of Default. Any events and/or occurrences set forth on Section 9 of the Loan Agreement Schedule.

SECTION 12. REMEDIES

12.1 Acceleration; Other Remedies. Upon the occurrence and during the continuation of an Event of Default:

(a) Lender shall have all rights and remedies provided in this Agreement, any of the other Loan Documents, the UCC or other applicable law, all of which rights and remedies may be exercised without notice to Borrower, all such notices being hereby waived, except such notice as is expressly provided for hereunder or is not waivable under applicable law. All rights and remedies of Lender are cumulative and not exclusive and are enforceable, in Lender's discretion, alternatively, successively, or concurrently on any one or more occasions and in any order Lender may determine. Without limiting the foregoing, Lender may (i) by notice to the Borrower (A) suspend or terminate the Revolving Loan Commitment and the obligations of Lender with respect thereto, in whole or in part, and/or (B) declare all or any portion of the Obligations to be, and the Obligations shall thereupon become, immediately due and payable, with accrued interest thereon, without presentment, demand, protest, notice of demand, notice of intent to accelerate, notice of acceleration, or other notice of any kind, all of which are hereby waived by Borrower and Borrower will pay the same; provided, however, that in the case of any of the Events of Default specified in Sections 11.6 and 11.7 above, without any notice to Borrower or any other act by the Lender, the Revolving Loan Commitment and the obligations of the Lender with respect thereto shall thereupon immediately and automatically terminate and all of the Obligations shall become immediately due and payable without presentment, demand, protest, notice of demand, notice of intent to accelerate, notice of acceleration or other notice of any kind, all of which are hereby waived by Borrower and Borrower will pay the same, (ii) with or without judicial process or the aid or assistance of others, enter upon any premises on or in which any of the Collateral may be located and take possession of the Collateral or complete processing, manufacturing and repair of all or any portion of the Collateral, (iii) require Borrower, at Borrower's expense, to assemble and make available to Lender any part or all of the Collateral at any place and time designated by Lender, (iv) collect, foreclose, receive, appropriate, setoff and realize upon any and all Collateral, (v) notify Account Debtors or other obligors to make payment directly to Lender, or notify bailees as to the disposition of Collateral, (vi) extend the time of payment of, compromise or settle for cash, credit, return of merchandise, and upon any terms or conditions, any and all Accounts or other Collateral which includes a monetary obligation and discharge or release the Account Debtor or other obligor, without affecting any of the Obligations, and (vii) sell, lease, transfer, assign, deliver or otherwise dispose of any and all Collateral (including, without limitation, entering into contracts with respect thereto, by public or private sales at any exchange, broker's board, any office of Lender or elsewhere) at such prices or terms as Lender may deem reasonable, for cash, upon credit or for future delivery, with Lender having the right to purchase the whole or any part of the Collateral at any such public sale, all of the foregoing being free from any right or equity of redemption of Borrower, which right or equity of redemption is hereby expressly waived and released by Borrower. If any of the Collateral or other security for the Obligations is sold or leased by Lender upon credit terms or for future delivery, the Obligations shall not be reduced as a result thereof until payment therefor is finally collected by Lender. If notice of disposition of Collateral is required by law, ten (10) days prior notice by Lender to Borrower designating the time and place of any public sale or the time after which any private sale or other intended disposition of Collateral is to be made, shall be deemed to be reasonable notice thereof and Borrower waives any other notice. In the event Lender institutes an action to recover any Collateral or seeks recovery of any Collateral by way of prejudgment remedy, Borrower waives the posting of any bond which might otherwise be required

(b) Lender may apply the Proceeds of Collateral actually received by Lender from any sale, lease, foreclosure or other disposition of the Collateral to payment of any of the Obligations, in whole or in part (including attorneys' fees and legal expenses incurred by Lender with respect thereto or otherwise chargeable to Borrower) and in such order as Lender may elect, whether or not then due. Borrower shall remain liable to Lender for the payment on demand of any deficiency together with interest at the Default Interest Rate and all costs and expenses of collection or enforcement, including reasonable attorneys' fees and legal expenses.

(c) Lender may, at its option, cure any default by Borrower under any agreement with a third party or pay or bond on appeal any judgment entered against Borrower, discharge Taxes and Liens at any time levied on or existing with respect to the Collateral, and pay any amount, incur any expense or perform any act which, in Lender's sole and absolute judgment, is necessary or appropriate to preserve, protect, insure, maintain, or realize upon the Collateral. Such amounts paid by Lender shall be repayable by Borrower on demand and added to the Obligations, with interest payable thereon at the Default Interest Rate. Lender shall be under no obligation to effect such cure, payment, bonding or discharge, and shall not, by doing so, be deemed to have assumed any obligation or liability of Borrower.

(d) Lender and Lender's agents shall have the right to utilize any of Borrower's customer lists, registered names, trade names or trademarks to publicly advertise, sell, lease, transfer, assign, deliver or otherwise dispose of any and all Collateral and Borrower will be deemed to have waived and voided any confidentiality agreements by and between Borrower and Lender.

12.2 Set-off. Lender shall have the right, immediately and without notice of other action, to set-off against any of Borrower's liabilities to Lender any money or other liability owed by Lender or any Affiliate of Lender (and such Affiliate of Lender is hereby authorized to effect such set-off) in any capacity to Borrower, whether or not due, and Lender or such Affiliate shall be deemed to have exercised such right of set-off and to have made a charge against any such money or other liability immediately upon the occurrence of such Event of Default even though the actual book entries may be made at a time subsequent thereto. The right of set-off granted hereunder shall be effective irrespective of whether Lender shall have made demand under or in connection with the Loan(s). None of the rights of Lender described in this Section are intended to diminish or limit in any way Lender's or Affiliates of Lender's common-law set-off rights.

12.3 Costs and Expenses. Borrower shall be liable for all costs, charges and expenses, including attorneys' fees and disbursements, incurred by Lender by reason of the occurrence of any Event of Default or the exercise of Lender's remedies with respect thereto, each of which shall be repayable by Borrower on demand with interest at the Default Interest Rate, and added to the Obligations and compounded daily.

12.4 No Marshalling. Lender shall be under no obligation whatsoever to proceed first against any of the Collateral or other property which is security for the Obligations before proceeding against any other of the Collateral. It is expressly understood and agreed that all of the Collateral or other property which is security for the Obligations stands as equal security for all Obligations, and that Lender shall have the right to proceed against any or all of the Collateral or other property which is security for the Obligations in any order, or simultaneously, as in its sole and absolute discretion it shall determine. It is further understood and agreed that Lender shall have the right, subject to the notice provisions in Section 12.1 of this Agreement, as it in its sole and absolute discretion shall determine, to sell any or all of the Collateral or other property which is security for the Obligations in any order or simultaneously, as Lender shall determine in its sole and absolute discretion.

12.5 No Implied Waivers; Rights Cumulative. No delay on the part of Lender in exercising any right, remedy, power or privilege hereunder or under any other Loan Document or provided by statute or at law or in equity or otherwise shall impair, prejudice or constitute a waiver of any such right, remedy, power or privilege or be construed as a waiver of any Event of Default or as an acquiescence therein. No right, remedy, power or privilege conferred on or reserved to Lender hereunder or under any other Loan Document or otherwise is intended to be exclusive of any other right, remedy, power or privilege. Each and every right, remedy, power or privilege conferred on or reserved to Lender under this Agreement or under any of the other Loan Documents or otherwise shall be cumulative and in addition to each and every other right, remedy, power or privilege so conferred on or reserved to Lender and may be exercised by Lender at such time or times and in such order and manner as Lender shall (in its sole and absolute discretion) deem expedient.

12.6 Right to Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Collateral, with the power to protect and preserve the Collateral, to operate the Collateral preceding foreclosure or sale, and to collect the revenue from the Collateral and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Collateral exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

SECTION 13. OTHER RIGHTS OF LENDER

13.1 Collections. Borrower hereby authorizes Lender to, and Lender shall make such arrangements as it shall deem necessary or appropriate to, collect the Accounts and any other monetary obligations included in, or Proceeds of, the Collateral at any time whether or not an Event of Default has occurred. Borrower shall, at Borrower's expense and in the manner requested by Lender from time to time, direct that remittances and all other Proceeds of accounts and other Collateral up to the amount of the then Obligations shall be (a) remitted in kind to Lender, (b) sent to a post office box designated by and/or in the name of Lender, or in the name of Borrower, but as to which access is limited to Lender and/or (c) deposited into a bank account maintained in the name of Lender and/or a blocked bank account under arrangements with the depository bank under which all funds deposited to such blocked bank account are required to be transferred solely to Lender. In connection therewith, Borrower shall execute such post office box and/or blocked bank account agreements as Lender shall specify.

13.2 Repayment of Obligations; Application. All Obligations shall be payable at Lender's office set forth in the Loan Agreement Schedule or at a bank or such other place as Lender may expressly designate from time to time for purposes of this Section. Lender shall apply all payments received from Borrower and all Proceeds of Collateral received by Lender and all other amounts received by Lender to the Loan(s) whether or not then due or to any other Obligations then due, in whatever order or manner Lender shall determine.

13.3 Lender Appointed Attorney-in-Fact.

(a) Borrower hereby irrevocably constitutes and appoints Lender, with full power of substitution, as its true and lawful attorney-in-fact, with full irrevocable power and authority in its place and stead and in its name or otherwise, from time to time in Lender's discretion, at Borrower's sole cost and expense, to take any and all appropriate action and to execute and deliver any and all documents and instruments which Lender may deem reasonably necessary or advisable to accomplish the purposes of this Agreement, including, without limiting the generality of the foregoing: (i) at any time any of the Obligations are outstanding, (A) to transmit to Account Debtors, other obligors or any bailees notice of the interest of Lender in the Collateral or request from Account Debtors or such other obligors or bailees at any time, in the name of Borrower or Lender or any designee of Lender, information concerning the Collateral and any amounts owing with respect thereto, (B) to execute in the name of Borrower and file against Borrower in favor of Lender Financing Statements or amendments with respect to the Collateral, or record a copy or an excerpt hereof in the United States Copyright Office or the United States Patent and Trademark Office and to take all other steps as are necessary in the reasonable opinion of Lender under applicable law to perfect the security interests granted herein, and (C) to pay or discharge Taxes, Liens, security interests or other encumbrances levied or placed on or threatened against the Collateral; and (ii) after and during the continuation of an Event of Default, (A) to receive, take, endorse, assign, deliver, accept and deposit, in the name of Lender or Borrower, any and all cash, checks, commercial paper, drafts, remittances and other instruments and documents relating to the Collateral or the Proceeds thereof, (B) to notify Account Debtors or other obligors to make payment directly to Lender, or notify bailees as to the disposition of Collateral, (C) to change the address for delivery of mail to Borrower and to receive and open mail addressed to Borrower, (D) take or bring, in the name of Lender or Borrower, all steps, actions, suits or proceedings deemed by Lender necessary or desirable to effect collection of or other realization upon the Collateral, (E) to obtain and adjust insurance required pursuant to this Agreement and to pay all or any part of the premiums therefor and the costs thereof, (F) to assemble, market and/or sell any Inventory or other Collateral, (G) to take any and all action and to execute and deliver any and all documents and instruments which Lender may deem reasonably necessary or advisable to (a) accomplish the purposes of perfecting, continuing and preserving, a continuing first priority security interest in any of the Collateral in favor of Lender, and (b) effect a transfer of any of the Collateral to Lender or to Lender's designees, and (H) to extend the time of payment of, compromise or settle for cash, credit, return of merchandise, and upon any terms or conditions, any and all Accounts or other Collateral which includes a monetary obligation and discharge or release the Account Debtor or other obligor, without affecting any of the Obligations.

(b) Borrower hereby ratifies, to the extent permitted by law, all that Lender shall lawfully and in good faith do or cause to be done by virtue of and in compliance with this Agreement. The powers of attorney granted pursuant to this Agreement are each a power coupled with an interest and shall be irrevocable until the Obligations are paid indefeasibly in full.

13.4 Release; Indemnification. Borrower (i) hereby waives any claim in tort, contract or otherwise which Borrower may have against Lender, its officers, partners, members, directors, employees, agents, representatives and designees (collectively, the “**Lender Agents**”) which may arise out of the relationship between Borrower and any such Person prior to the Closing Date; and (ii) absolutely and unconditionally releases and discharges Lender, its respective Affiliates and the Lender Agents from any and all claims, causes of action, losses, damages or expenses or any other liability arising which may arise out of any relationship between Borrower, Lender, such Affiliate or the Lender Agents or which otherwise relates to this Agreement or acts taken in furtherance thereof, whether as attorney-in-fact or otherwise, whether of omission or commission, and whether based upon any error of judgment or mistake of law or fact, except for gross negligence or willful misconduct as determined by a final and non-appealable order from a court of competent jurisdiction. Borrower acknowledges that it makes this waiver and release knowingly, voluntarily and only after considering the ramifications of this waiver and release with its legal counsel. Borrower shall defend, indemnify and hold harmless Lender, each Lender Affiliate, each of their respective directors, officers, partners, members, shareholders, participants, employees, professionals and agents, and each of their respective successors and assigns (each, an “**Indemnified Party**”), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel for an Indemnified Party in connection with any investigative, administrative or judicial proceeding commenced or threatened, court costs and costs of appeal at all appellate levels, investigation and laboratory fees, consultant fees and litigation expenses), that may be imposed on, incurred by, or asserted against any Indemnified Party (collectively, the “**Indemnified Liabilities**”) arising out of or related to (i) the execution, enforcement, performance, or administration of this Agreement, any of the other Loan Documents, the transactions contemplated hereby; (ii) any breach by Borrower or any Affiliate thereof of their obligations under, or any misrepresentation by any of the foregoing contained in, any Loan Document; (iii) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any hazardous materials on, from or affecting Borrower’s Premises or any Environmental Liabilities and Costs; (iv) any violation of any federal, state, or local law by Borrower or any Affiliate thereof and (v) any other matter arising out of or related to the Loan, Borrower, Borrower’s Premises or any Collateral; provided, however, that Borrower shall not have any obligation to any Indemnified Party hereunder to the extent that it is judicially determined by a court of competent jurisdiction in a final, non-appealable judgment that such Indemnified Liabilities are the result of the gross negligence or willful misconduct of such Indemnified Party. Any amounts payable to any Indemnified Party by reason of the application of this Section 13.4 shall be payable on demand and shall bear interest at the Default Interest Rate from the date loss or damage is sustained by any Indemnified Party until paid. **IT IS THE INTENT OF THE PARTIES HERETO THAT THE INDEMNIFIED PARTIES BE INDEMNIFIED FOR THEIR OWN SOLE OR CONTRIBUTORY NEGLIGENCE.**

13.5 Uniform Commercial Code. At all times prior and subsequent to an Event of Default hereinafter, Lender shall be entitled to all the rights and remedies of a secured party under the UCC with respect to all Collateral.

13.6 Preservation of Collateral. At all times prior and subsequent to an Event of Default hereinafter, Lender may (but without any obligation to do so) take any and all action which in its sole and absolute discretion is necessary and proper to preserve its interest in the Collateral, including without limitation the payment of debts of Borrower which might, in Lender's sole and absolute discretion, impair the Collateral or Lender's security interest therein, and the sums so expended by Lender shall be secured by the Collateral, shall be added to the amount of the Obligations due Lender and shall be payable on demand with interest at the rate applicable to the Loans set forth in Section 3.1 hereof from the date expended by Lender until repaid by Borrower. After written notice by Lender to Borrower and automatically, without notice, after an Event of Default, Borrower shall not, without the prior written consent of Lender in each instance, (a) grant any extension of time of payment of any Accounts, (b) compromise or settle any Accounts for less than the full amount thereof, (c) release in whole or in part any Account Debtor or other person liable for the payment of any of the Accounts or any such other Collateral, or (d) grant any credits, discounts, allowances, deductions, return authorizations or the like with respect to any of the Accounts.

13.7 Lender's Right to Cure. In the event Borrower shall fail to perform any of its Obligations hereunder or under any other Loan Document, then Lender, in addition to all of its rights and remedies hereunder, may perform the same, but shall not be obligated to do so, at the cost and expense of Borrower. Such costs and expenses shall be added to the amount of the Obligations due Lender, and Borrower shall promptly reimburse Lender for such amounts together with interest at the Default Interest Rate from the date such sums are expended until repaid by Borrower.

13.8 Inspection of Collateral. From time to time as requested by Lender, Lender or its designee shall have access, (a) prior to an Event of Default, at the sole expense of Borrower, during reasonable business hours to all of the premises where Collateral is located for the purpose of inspecting the Collateral and to all of Borrower's Collateral, and all books and records of Borrower, and Borrower shall permit Lender or Lender's designees to make copies of such books and records or extracts therefrom as Lender may request, and (b) on or after an Event of Default, at the sole expense of Borrower, at any time and without notice, to all of the premises where Collateral is located for the purposes of inspecting, disposing, preserving, protecting and realizing upon the Collateral, and all Borrower's books and records, and Borrower shall permit Lender or its designee to make such copies of such books and records or extracts therefrom as Lender may request. Without expense to Lender, Lender may use such of Borrower's personnel, equipment, including computer equipment, programs, printed output and computer readable media, supplies and premises for the realization on the Collateral as Lender, in its sole and absolute discretion, deems appropriate. Borrower hereby irrevocably authorizes all accountants and third parties to disclose and deliver to Lender at Borrower's expense all financial information, books and records, work papers, management reports and other information in its possession regarding Borrower.

13.9 Additional Appraisals. Lender shall have the right to obtain, on an annual basis or more often if Lender deems necessary in its sole and absolute discretion, an appraisal of the Equipment and/or the Inventory from an appraiser selected by Lender in its sole and absolute discretion (each, the "Additional Appraisals") at the sole cost and expense of Borrower. If the Additional Appraisals for Equipment sets forth Equipment that is Missing, Damaged, Sold or Devalued Equipment, Borrower shall with respect to such Missing, Damaged, Sold or Devalued Equipment, immediately pay Lender the amounts as described in Section 4(c) of the Loan Agreement Schedule.

SECTION 14. PROVISIONS OF GENERAL APPLICATION

14.1 Waivers. Borrower waives demand, presentment, notice of demand, notice of intent to accelerate, notice of acceleration, notice of dishonor or protest and notice of protest of any instrument of Borrower or others which may be included in the Collateral.

14.2 Survival. All covenants, agreements, representations and warranties made by Borrower herein or in any other Loan Document or in any certificate, report or instrument contemplated hereby shall survive any independent investigation made by Lender and the execution and delivery of this Agreement, and such certificates, reports or instruments and shall continue so long as any Obligations are outstanding and unsatisfied, applicable statutes of limitations to the contrary notwithstanding.

14.3 Notices. All notices, requests and demands to or upon the respective parties hereto shall be in writing and either (a) delivered by hand or (b) delivered by national overnight courier service, and shall be deemed to have been duly given or made upon receipt by the receiving party. All notices, requests and demands are to be given or made to the respective parties at the addresses set forth on Section 11 of the Loan Agreement Schedule (or to such other addresses as either party may designate by notice in accordance with the provisions of Section 11 of the Loan Agreement Schedule).

14.4 Amendments; Waiver of Defaults. The terms of this Agreement shall not be amended, waived, altered, modified, supplemented or terminated in any manner whatsoever except by a written instrument signed by Lender and Borrower. Any default or Event of Default by Borrower may only be waived by a written instrument specifically describing such default or Event of Default and signed by the Lender.

14.5 Binding on Successors.

(a) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided, however, that Borrower may not assign any of its rights or obligations under this Agreement or the other Loan Documents to any Person without the prior written consent of Lender.

(b) Lender may assign any or all of the Obligations together with any or all of the security therefor to any Person and any such assignee shall succeed to all of Lender's rights with respect thereto. Lender shall notify Borrower of any such assignment. Upon such assignment, Lender shall have no further obligations under the Loan Documents. Lender may from time to time sell or otherwise grant participations in any of the Obligations and the holder of any such participation shall, subject to the terms of any agreement between Lender and such holder, be entitled to the same benefits as Lender with respect to any security for the Obligations in which such holder is a participant.

14.6 Invalidity. Any provision of this Agreement which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

14.7 Publicity. Borrower hereby authorizes Lender to make appropriate announcements of the financial arrangement entered into by and between Borrower and Lender, including, without limitation, announcements which are commonly known as tombstones, in such publications and to such selected parties as Lender shall in its sole and absolute discretion deem appropriate, or as required by applicable law.

14.8 Section or Paragraph Headings. Section and paragraph headings are for convenience only and shall not be construed as part of this Agreement.

14.9 APPLICABLE LAW. THIS AGREEMENT, THE NOTES AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS) AND APPLICABLE FEDERAL LAW. THE PARTIES AGREE AND ACKNOWLEDGE THAT THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF TEXAS AND THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF TEXAS, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY RIGHT TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS.

14.10 WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY WAIVES ANY AND ALL RIGHTS IT MAY HAVE NOW OR HEREAFTER UNDER THE LAWS OF THE UNITED STATES OF AMERICA OR ANY STATE TO A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING EITHER DIRECTLY OR INDIRECTLY IN ANY ACTION OR PROCEEDING BETWEEN BORROWER, LENDER OR ITS SUCCESSORS AND ASSIGNS, OUT OF OR IN ANY WAY CONNECTED WITH THE LOAN DOCUMENTS, THE OBLIGATIONS AND/OR THE COLLATERAL. IT IS INTENDED THAT SAID WAIVER SHALL APPLY TO ANY AND ALL DEFENSES, RIGHTS, AND/OR COUNTERCLAIMS IN ANY ACTION OR PROCEEDINGS BETWEEN BORROWER AND LENDER. BORROWER WAIVES ALL RIGHTS TO INTERPOSE ANY CLAIMS, DEDUCTIONS, SETOFFS OR COUNTERCLAIMS OF ANY KIND, NATURE OR DESCRIPTION IN ANY ACTION OR PROCEEDING INSTITUTED BY BUYER WITH RESPECT TO THE LOAN DOCUMENTS, THE OBLIGATIONS, THE COLLATERAL OR ANY MATTER ARISING THEREFROM OR RELATING THERETO, EXCEPT COMPULSORY COUNTERCLAIMS. THE PARTIES ACKNOWLEDGE THAT A RIGHT TO A JURY TRIAL IS A CONSTITUTIONAL RIGHT, THAT THEY HAVE HAD AN OPPORTUNITY TO CONSULT WITH INDEPENDENT COUNSEL, AND THAT THIS JURY WAIVER HAS BEEN ENTERED INTO KNOWINGLY AND VOLUNTARILY BY ALL PARTIES TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

14.11 CONSENT TO JURISDICTION. BORROWER HEREBY (a) IRREVOCABLY SUBMITS AND CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY TEXAS STATE OR FEDERAL COURT SITTING IN SAN ANTONIO, TEXAS WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, THE OBLIGATIONS AND/OR THE COLLATERAL OR ANY MATTER ARISING THEREFROM OR RELATING THERETO, (b) AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH SUIT, ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH TEXAS STATE OR FEDERAL COURT, (c) WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE OR FORUM NON CONVENIENS WITH RESPECT THERETO, AND (d) AGREES THAT A FINAL JUDGMENT IN ANY SUCH SUIT, ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. IN ANY SUCH ACTION OR PROCEEDING, BORROWER WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT OR OTHER PROCESS AND PAPERS THEREIN AND AGREES THAT THE SERVICE THEREOF MAY BE MADE BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO BORROWER AT ITS OFFICES SET FORTH HEREIN OR OTHER ADDRESS THEREOF OF WHICH LENDER HAS RECEIVED NOTICE AS PROVIDED IN THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, BORROWER CONSENTS TO THE COMMENCEMENT BY LENDER OF ANY SUIT, ACTION OR PROCEEDING IN ANY OTHER JURISDICTION TO ENFORCE LENDER'S RIGHTS IN AND TO THE COLLATERAL AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING.

14.12 Waiver of Consequential Damages, Etc. To the fullest extent permitted by law, Borrower agrees not to assert, and hereby waives, in any legal action or other proceeding, any claim against Lender or any Lender Affiliate, on any theory of liability, for special, indirect, consequential, special, exemplary or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, the Loan or the use of the proceeds thereof.

14.13 Entire Agreement. THIS WRITTEN LOAN AGREEMENT (TOGETHER WITH THE OTHER LOAN DOCUMENTS) REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

14.14 Counterparts. This Agreement may be executed in counterparts and by facsimile or other electronic signatures, each of which when so executed, shall be deemed an original, but all of which shall constitute but one and the same instrument.

14.15 Joint and Several Obligations. If more than one Person is a Borrower hereunder, the provisions of Section 12 of the Loan Agreement Schedule shall apply.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK AND SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, this Loan and Security Agreement has been duly executed as of the day and year first above written.

BORROWER:

CLR ROASTERS LLC

By: /s/ Dave Briskie
Name: Dave Briskie
Title: President and CIO

LENDER:

GEMCAP SOLUTIONS, LLC

By: /s/ David Ellis
David Ellis, Co-President

[SIGNATURE PAGE - LOAN AND SECURITY AGREEMENT]

SECURED PROMISSORY NOTE (REVOLVING LOANS)

Up to \$4,000,000.00

July 6, 2022

FOR VALUE RECEIVED, the undersigned CLR ROASTERS LLC, a Florida limited liability company with a principal place of business located at 2141 NW 72nd St., Miami, FL 33122, (the “**Borrower**”), hereby unconditionally promises to pay to the order of GEMCAP SOLUTIONS, LLC, a Delaware limited liability company with offices at 9901 I.H. 10 West, Suite 800, San Antonio, TX 78230 (together with its successors, transferees and assigns, “**Lender**”), on or before the Maturity Date, the principal sum of up to FOUR MILLION DOLLARS (\$4,000,000.00) in accordance with the terms of this Secured Promissory Note (Revolving Loans) (this “**Note**”) and the Loan and Security Agreement, of even date herewith, entered into by and between Borrower and Lender (as amended from time to time, the “**Loan Agreement**”). Capitalized terms used herein and not defined herein shall have the meanings given to them in the Loan Agreement. This Note is a Revolving Loan Note referred to in the Loan Agreement and is entitled to the benefits thereof.

INTEREST; DUE DATE; PREPAYMENT: Interest on the unpaid principal balance hereof shall accrue on the unpaid principal balance of Advances at the Revolving Loan Interest Rate as set forth in and computed pursuant to the Loan Agreement. Following and during the continuation of an Event of Default, interest on the unpaid principal balance shall accrue at an annual rate equal to the Default Interest Rate as set forth in the Loan Agreement.

All accrued interest on the unpaid principal balance of Revolving Loans hereunder, including interest charges for Collection Days, shall be payable by Borrower in arrears (x) prior to the Maturity Date, on the seventh (7th) day of each calendar month (if such date is not a Business Day, then on the first Business Day thereafter), commencing on August 7, 2022, (y) in full on the Maturity Date, and (z) on demand after the Maturity Date.

Subject to the prepayment provisions as set forth herein and in the Loan Agreement, Borrower may borrow, repay and reborrow Revolving Loans, as set forth in the Loan Agreement.

The entire principal balance of this Note then outstanding, plus any accrued and unpaid interest thereon, plus unpaid fees, together with all penalties and late payment fees, if any, shall be due and payable on the Maturity Date pursuant to the terms of the Loan Agreement and the other Loan Documents.

Prior to the Maturity Date, Borrower may voluntarily prepay the entire unpaid principal amount of the Revolving Loans without premium or penalty, provided, however, that, (i) such prepayment is no less than the amount of the then-outstanding aggregate principal sum of all Revolving Loans hereunder and all accrued and unpaid interest thereon, (ii) as part of such prepayment, Borrower shall pay Lender all other amounts due to Lender pursuant to this Note, the Term Loan Note, the Loan Agreement and the other Loan Documents, and (iii) in the event Borrower makes such prepayment on or before July 6, 2024, then Borrower shall pay to Lender an amount equal to the Revolving Loan Prepayment Fee. The Revolving Loan Prepayment Fee is intended to compensate Lender for committing and deploying funds for Borrower’s Revolving Loans pursuant to the Loan Agreement and for Lender’s loss of investment of such funds in connection with such early termination, and is not intended as a penalty. The Revolving Loan Prepayment Fee also shall be due and payable by Borrower to Lender if Lender accelerates the payment of the Obligations on or before July 6, 2024, due to the occurrence of an Event of Default.

PAYMENT AND COLLECTION: In order to satisfy Borrower’s payment of amounts due under the Loans and all fees, expenses and charges with respect thereto that are due and payable under this Note, the Loan Agreement and the other Loan Documents, Borrower hereby irrevocably authorizes Lender to initiate manual and automatic electronic (debit and credit) entries through the Automated Clearing House or other appropriate electronic payment system (“ACH”) to all deposit accounts maintained by Borrower, wherever located. At the request of Lender, Borrower shall complete, execute and deliver to the institution set forth below (with a copy to the Lender) an ACH agreement, voided check, information and/or direction letter reasonably necessary to so instruct Borrower’s depository institutions. Borrower (i) shall maintain in all respects this ACH arrangement; (ii) shall not change depository institutions without Lender’s prior written consent, and if consent is received, shall immediately execute similar ACH instruction(s), and (iii) waives any and all claims for loss or damage arising out of debits or credits to/from the depository institution, whether made properly or in error. Borrower has communicated with and instructed the institution(s) set forth below:

Bank Name: Bank of America
Address: 701 Brickell Avenue
Miami, Florida 33131
ABA#: 063100277
Account #: 8980 9011 8826
Phone: 305-347-2911
Reference: CLR Roasters – Operating Account
Contact Person: Antoinette Infante

MAXIMUM RATE OF INTEREST. It is the intention of Borrower and Lender to conform strictly to the usury laws applicable to Lender. Accordingly, if the transactions contemplated hereby would be usurious under applicable law then, in that event, notwithstanding anything to the contrary in this Note, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under applicable law and is contracted for, taken, reserved, charged or received under this Note or otherwise in connection with the Loan evidenced hereby shall under no circumstances exceed the maximum amount allowed by such applicable law, and any excess shall be credited by Lender on the principal amount of the Loan evidenced hereby (or, if the principal amount of the Loan evidenced hereby shall have been paid in full, refunded to Borrower); and (ii) in the event that the maturity of the Loan evidenced hereby is accelerated or in the event of any required or permitted prepayment, then such consideration that constitutes interest under law applicable to Lender may never include more than the maximum amount allowed by such applicable law, and interest in excess of such maximum allowed amount, if any, provided for in this Note shall be canceled automatically as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited by Lender on the principal amount of the Loan evidenced hereby (or, if the principal amount of the Loan evidenced hereby shall have been paid in full, refunded by Lender to Borrower). All calculations made to compute the rate of interest that is contracted for, taken, reserved, charged or received under this Note or otherwise in connection with the Loan evidenced hereby shall, for the purpose of determining whether such rate exceeds the maximum amount allowed by law applicable to Lender, be made, to the extent permitted by such applicable law, by amortizing, prorating and spreading in equal parts during the period of the full stated term of the Loan evidenced by this Note all interest at any time contracted for, taken, reserved, charged or received by Lender in connection therewith. To the extent that the maximum nonusurious rate is determined by the laws of the State of Texas, the maximum nonusurious rate shall be determined by reference to the indicated rate ceiling (as defined and described in Chapter 303.001, et seq., of the Texas Finance Code, as amended) at the applicable time in effect. Lender hereby advises Borrower to seek the advice of an attorney and an accountant in connection with the execution of this Note and the incurrence of the Loan evidenced hereby, and Borrower represents and warrants to Lender that it has had the opportunity to seek, and has in fact sought, the advice of an attorney and an accountant of Borrower’s choice in connection therewith.

FEES AND COSTS: All fees, costs and expenses set forth in this Note, the Loan Agreement and other Loan Documents shall be paid by Borrower in accordance with the terms hereof and thereof. All fees, costs and expenses as provided in this Note, the Loan Agreement and other Loan Documents not paid when due shall be added to principal and shall thereafter bear interest at the Default Interest Rate.

PLACE OF PAYMENT; NOTICES: All payments hereon shall be made, and all notices to the Lender required or authorized hereby shall be given, at the office of Lender at the address designated in the Loan Agreement, or to such other place as Lender may from time to time direct by written notice to Borrower.

APPLICATION OF PAYMENTS: All payments made hereunder shall be made without defense or set-off for any debt or other claim which Borrower may assert against Lender. All payments received hereunder shall be applied in accordance with the provisions of the Loan Agreement.

AMOUNTS DUE: All amounts payable hereunder are payable by check, ACH payment or wire transfer in immediately available funds to the account number specified by Lender, in lawful money of the United States. At Lender's option, Lender may charge the Borrower's accounts for the interest accrued hereunder. Borrower agrees to perform and comply with each of the covenants, conditions, provisions and agreements contained in every instrument now evidencing or securing the indebtedness evidenced hereby.

SECURITY: This Note is secured by a pledge of the Collateral as described in the Loan Documents and is entitled to the benefits of any and all Guaranties. Borrower hereby acknowledges, admits and agrees that Borrower's obligations under this Note, the Loan Agreement and the other Loan Documents are full recourse obligations of Borrower to which Borrower pledges its full faith and credit.

DEFAULTS; REMEDIES: Upon the occurrence and continuation of any Event of Default under the Loan Agreement, all principal and all accrued interest then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable, all as provided in the Loan Agreement. In such event, the Lender shall have all of the rights and remedies set forth in the Loan Agreement and the other Loan Documents. The failure to exercise any of the rights and remedies set forth in the Loan Agreement or the other Loan Documents shall not constitute a waiver of the right to exercise the same or any other option at any subsequent time in respect of the same event or any other event. The acceptance by Lender of any payment which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any rights and remedies at that time or at any subsequent time or nullify any prior exercise of any such rights and remedies.

WAIVERS: The Borrower waives notice of demand, demand for payment, presentment for payment, protest, notice of nonpayment or dishonor, diligence, notice of intent to accelerate, notice of acceleration, and any and all other notices and demands of any kind. No failure on the part of the Lender or any other holder hereof to exercise, and no delay in exercising, any right, power or privilege hereunder shall operate as a waiver thereof or a consent thereto; nor shall a single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

TERMINOLOGY: Any reference herein to Lender shall be deemed to include and apply to every subsequent holder of this Note.

LOAN AGREEMENT: Reference is made to the Loan Agreement for provisions as to the Loan Documents, Loans, Collateral, fees, charges, remedies and other matters. If there is any conflict between the terms of this Note and the terms of the Loan Agreement, the terms of the Loan Agreement shall control.

HEADINGS: The headings in this Note are for convenience of reference only and shall not affect the meaning or interpretation of this Note or any provision hereof.

ATTORNEYS' FEES AND COSTS: If the Lender incurs any loss, costs or expenses in enforcing or collecting this Note, in whole or in part, or enforcing any of the terms of any of the other Loan Documents, the Borrower agrees to pay all losses, costs and expenses so paid or incurred by Lender including, without limitation, attorneys' fees and costs.

NON-PAYMENT OF FEES AND COSTS: All fees, costs and expenses as provided in this Note, the Loan Agreement and other Loan Documents not paid when due shall be added to principal and shall thereafter bear interest at the Default Interest Rate.

APPLICABLE LAW. THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS) AND APPLICABLE FEDERAL LAW. THE PARTIES AGREE AND ACKNOWLEDGE THAT THIS NOTE WAS NEGOTIATED IN THE STATE OF TEXAS AND THE LOAN EVIDENCED HEREBY WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF TEXAS, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY RIGHT TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS NOTE.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY WAIVES ANY AND ALL RIGHTS IT MAY HAVE NOW OR HEREAFTER UNDER THE LAWS OF THE UNITED STATES OF AMERICA OR ANY STATE TO A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING EITHER DIRECTLY OR INDIRECTLY IN ANY ACTION OR PROCEEDING BETWEEN BORROWER, LENDER OR ITS SUCCESSORS AND ASSIGNS, OUT OF OR IN ANY WAY CONNECTED WITH THE LOAN DOCUMENTS, THE OBLIGATIONS AND/OR THE COLLATERAL. IT IS INTENDED THAT SAID WAIVER SHALL APPLY TO ANY AND ALL DEFENSES, RIGHTS, AND/OR COUNTERCLAIMS IN ANY ACTION OR PROCEEDINGS BETWEEN BORROWER AND LENDER. BORROWER WAIVES ALL RIGHTS TO INTERPOSE ANY CLAIMS, DEDUCTIONS, SETOFFS OR COUNTERCLAIMS OF ANY KIND, NATURE OR DESCRIPTION IN ANY ACTION OR PROCEEDING INSTITUTED BY BUYER WITH RESPECT TO THE LOAN DOCUMENTS, THE OBLIGATIONS, THE COLLATERAL OR ANY MATTER ARISING THEREFROM OR RELATING THERETO, EXCEPT COMPULSORY COUNTERCLAIMS. THE PARTIES ACKNOWLEDGE THAT A RIGHT TO A JURY TRIAL IS A CONSTITUTIONAL RIGHT, THAT THEY HAVE HAD AN OPPORTUNITY TO CONSULT WITH INDEPENDENT COUNSEL, AND THAT THIS JURY WAIVER HAS BEEN ENTERED INTO KNOWINGLY AND VOLUNTARILY BY ALL PARTIES TO THIS NOTE, THE LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS. IN THE EVENT OF LITIGATION, THIS NOTE MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

CONSENT TO JURISDICTION. BORROWER HEREBY (a) IRREVOCABLY SUBMITS AND CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY TEXAS STATE OR FEDERAL COURT SITTING IN SAN ANTONIO, TEXAS WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF THIS NOTE OR ANY MATTER ARISING THEREFROM OR RELATING THERETO, (b) AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH SUIT, ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH TEXAS STATE OR FEDERAL COURT, (c) WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE OR FORUM NON CONVENIENS WITH RESPECT THERETO, AND (d) AGREES THAT A FINAL JUDGMENT IN ANY SUCH SUIT, ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. IN ANY SUCH ACTION OR PROCEEDING, BORROWER WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT OR OTHER PROCESS AND PAPERS THEREIN AND AGREES THAT THE SERVICE THEREOF MAY BE MADE BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO BORROWER AT ITS OFFICES SET FORTH IN THE LOAN AGREEMENT OR OTHER ADDRESS THEREOF OF WHICH LENDER HAS RECEIVED NOTICE AS PROVIDED IN THE LOAN AGREEMENT. NOTWITHSTANDING THE FOREGOING, BORROWER CONSENTS TO THE COMMENCEMENT BY LENDER OF ANY SUIT, ACTION OR PROCEEDING IN ANY OTHER JURISDICTION TO ENFORCE LENDER'S RIGHTS IN AND TO THE COLLATERAL AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING.

ASSIGNMENT: Lender reserves the right to sell, assign, transfer, negotiate, or grant participation interests in all or any part of this Note, or any interest in Lender's rights and benefits hereunder.

LOST NOTE: In the event of the loss, theft, destruction or mutilation of this Note, upon request of Lender and submission of evidence reasonably satisfactory to the Borrower of such loss, theft, destruction or mutilation, and, in the case of any such loss, theft, or destruction, upon delivery of a bond or indemnity reasonably satisfactory to Borrower, or in the case of any such mutilation, upon surrender and cancellation of this Note, Borrower will issue a new Note of like tenor as the lost, stolen, destroyed or mutilated Note.

JOINT AND SEVERAL LIABILITY: Without limitation upon any provision of any other Loan Document, if more than one Person constitutes a Borrower pursuant to this Note, each such Person, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Persons constituting Borrowers, with respect to the payment and performance of all of the Loans and other Obligations evidenced by this Note, it being the intention of the undersigned that all of the Loans and other Obligations evidenced by this Note shall be the joint and several obligations of each of the undersigned without preferences or distinction among them.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK AND SIGNATURE ON NEXT PAGE]

IN WITNESS WHEREOF, this Secured Promissory Note (Revolving Loans) has been duly executed and delivered by Borrower as of the day and year first above written.

BORROWER:

CLR ROASTERS, LLC

By: /s/ Dave Briskie

Name: Dave Briskie

Title: President and CIO

[SIGNATURE PAGE – SECURED PROMISSORY NOTE (REVOLVING LOANS)]

SECURED CONTINUING GUARANTEE

THIS SECURED CONTINUING GUARANTEE (this “Guarantee”) is executed by Stephan Rhodes Wallach and Michelle Grace Wallach, married individuals with a principal residence at 2400 Boswell Road, Chula Vista, CA 91914 and a mailing address at PO Box 210880, Chula Vista, CA 91921 (the “Guarantor”), in favor of **GEMCAP SOLUTIONS, LLC**, a Delaware limited liability company with offices at 9901 I.H. 10 West, Suite 800, San Antonio, TX 78230 (together with its successors and assigns, the “Lender”), with respect to Indebtedness (defined herein) of CLR ROASTERS LLC, a Florida limited liability company with a principal place of business located at 2141 NW 72nd St., Miami, FL 33122 (the “Borrower”).

1. Continuing Guarantee. For valuable consideration, Guarantor hereby unconditionally guarantees and promises to promptly pay to Lender, at the address indicated above or at such other address as Lender may direct, in lawful money of the United States, all Indebtedness of Borrower to Lender when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter. The liability of Guarantor under this Guarantee is not limited as to the principal amount of the Indebtedness guaranteed and includes, without limitation, liability for all interest, fees, indemnities and other costs and expenses relating to or arising out of the Indebtedness. In giving this Guarantee, Guarantor hereby acknowledges that this Guarantee is a guaranty of payment (and not of collection), and that the liability of Guarantor under this Guarantee is present, absolute, unconditional, continuing, primary, direct and independent of the obligations of Borrower to Lender. Lender shall not be required to pursue any other remedies including, without limitation, its remedies against Borrower under any Loan Documents evidencing Indebtedness of Borrower, before pursuing Lender’s rights and remedies against Guarantor under this Guarantee.

2. Definitions.

(a) “Indebtedness” shall mean: (i) any and all debts, duties, obligations and liabilities of Borrower to Lender, now or hereafter existing, whether voluntary or involuntary and however arising, whether direct or indirect or acquired by Lender by assignment, succession, or otherwise, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, held or to be held by Lender for its own account or as agent for another or others, whether Borrower may be liable individually or jointly with others, whether recovery upon such debts, liabilities, and obligations may be or hereafter become barred by any statute of limitations, and whether such debts, liabilities, and obligations may be or hereafter become otherwise unenforceable and regardless of whether recovery thereon is discharged in any bankruptcy, insolvency or other proceeding, including without limitation, any of the same that arise from or in connection with Lender’s acquisition of a security interest or other interest in any property of Borrower; and (ii) any and all attorneys’ fees, court costs, and collection charges incurred in endeavoring to collect or enforce any of the foregoing against Borrower, Guarantor, or any other person liable thereon (whether or not suit be brought) and any other expense of, for or incidental to collection thereof. Guarantor hereby acknowledges and agrees that acceptance by Lender of this Guarantee shall not constitute a commitment of any kind by Lender to permit Borrower to incur Indebtedness to Lender.

(b) “Loan Documents” shall mean loan agreements between Borrower and Lender and promissory notes from Borrower in favor of Lender evidencing or relating to any of the Indebtedness, and all deeds of trust, mortgages, security agreements, and all other agreements, documents, and instruments executed by Borrower, Guarantor and/or any other person in connection with such loan agreements and promissory notes, as such loan agreements, promissory notes, security agreements, and other agreements, documents and instruments are now in effect and as hereafter amended, restated, renewed or superseded.

3. Rights of Lender. Guarantor hereby consents and agrees that, without notice to or by Guarantor and without affecting or impairing in any way the obligations or liability of Guarantor under this Guarantee, Lender may, from time to time before or after revocation of this Guarantee, do any one or more of the following in Lender's sole and absolute discretion: (a) renew, compromise, extend, accelerate, or otherwise change the time for payment or accept partial payments of, compromise or settle, renew, discharge the performance of, refuse to enforce or release all or any parties to, any or all of the Indebtedness, or otherwise change the terms of the Indebtedness or any part thereof, including increase or decrease of the rate of interest thereon; (b) grant any other indulgence to Borrower or any other person in respect of any or all of the Indebtedness or any other matter; (c) accept, release, waive, surrender, enforce, exchange, modify, impair, or extend the time for the performance, discharge, or payment of, any and all property of any kind securing any or all of the Indebtedness, or any and all property of any kind securing Guarantor's obligations under this Guarantee or securing any other guaranty of any or all of the Indebtedness or on which Lender at any time may have a lien, or refuse to enforce its rights or make any compromise or settlement or agreement therefore in respect of any or all of such property; (d) substitute or add, or take any action or omit to take any action that results in the release of, any one or more endorsers or guarantor of all or part of the Indebtedness, including without limitation one or more parties to this Guarantee, regardless of any destruction or impairment of any right of contribution or other right of Guarantor; (e) amend, alter or change in any respect whatsoever any term or provision of the Loan Documents relating to any or all of the Indebtedness, including the rate of interest thereon; (f) apply to the Indebtedness, any sums received from Borrower, any other guarantor, endorser, or cosigner, or from the disposition of any collateral or security to any indebtedness whatsoever owing from such person or secured by such collateral or security, in such manner and order as Lender determines in its sole discretion, and regardless of whether such indebtedness is part of the Indebtedness, is secured, or is due and payable; and (g) apply any sums received from Guarantor or from the disposition of any collateral or security securing the obligations of Guarantor, to any of the Indebtedness in such manner and order as Lender determines in its sole discretion, regardless of whether or not such Indebtedness is secured or is due and payable. Guarantor consents and agrees that Lender shall be under no obligation to marshal any assets in favor of Guarantor, or against or in payment of any or all of the Indebtedness. Guarantor further consents and agrees that Lender shall have no duties or responsibilities whatsoever with respect to any property securing any or all of the Indebtedness or any property securing Guarantor's obligations under this Guarantee. Without limiting the generality of the foregoing, Lender shall have no obligation to monitor, verify audit, examine, or obtain or maintain any insurance with respect to, any property securing any or all of the Indebtedness or any property securing Guarantor's obligations under this Guarantee.

4. Guarantee to be Absolute. Guarantor agrees that until the Indebtedness has been indefeasibly paid in full and any commitments of Lender or facilities provided by Lender with respect to the Indebtedness have been terminated, Guarantor shall not be released by or because of the taking, or failure to take, any action that might in any manner or to any extent vary the risks of Guarantor under this Guarantee or that, but for this paragraph, might discharge or otherwise reduce, limit, or modify Guarantor's obligations under this Guarantee. Guarantor waives and surrenders any defense to any liability under this Guarantee based upon any such action, including but not limited to any action of Lender described in the immediately preceding paragraph of this Guarantee. It is the express intent of Guarantor that Guarantor's obligations under this Guarantee are and shall be absolute and unconditional. In the event any payment with respect to any or all of the Indebtedness by any person is repaid or returned by Lender because of any claim that such payment constituted a preferential transfer or fraudulent conveyance or for any other reason whatsoever, or must otherwise be restored or returned by Lender upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Borrower, Guarantor, any other guarantor or any other person or entity, or upon or as a result of the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to Borrower, Guarantor, any other guarantor or any other person or entity, or any substantial part of their property, or otherwise, this Guarantee shall continue to be effective, or be automatically reinstated, as the case may be, all as though such payments had not been made. Lender shall have full authority in its sole discretion to compromise or settle any such claim, and any amounts received by Lender that are paid, repaid or returned as a part of such compromise or settlement, and the foregoing shall not discharge or reduce the liability of Guarantor under this Guarantee and Guarantor shall be and remain fully liable therefor. Notwithstanding anything to the contrary contained herein, in the event that a court of competent jurisdiction enters a final, non-appealable order or judgment to the effect that the execution and delivery or performance by Guarantor of this Guarantee would be voidable as a fraudulent conveyance or transfer under section 548 of the U.S. Bankruptcy Code or any applicable state statute (if Guarantor's obligations hereunder were not otherwise limited as provided in this section), then, in such event and only in such event, to the extent permitted by applicable law the obligations of Guarantor hereunder automatically shall be limited to the largest amount that would not render its obligations hereunder voidable under section 548 of the U.S. Bankruptcy Code or such state statute, as the case may be.

5. **Waiver of Subrogation.** Until the Indebtedness has been paid in full and any commitments of Lender or facilities provided by Lender with respect to the Indebtedness have been terminated, Guarantor waives any right of subrogation, reimbursement, indemnification, and contribution (contractual, statutory, or otherwise) including, without limitation, any claim or right of subrogation under the Bankruptcy Code (Title 11, United States Code) or any successor statute, arising from the existence or performance of this Guarantee, and Guarantor waives any right to enforce any remedy which Lender now has or may hereafter have against Borrower, and waives any benefit of, and any right to participate in, any security now or hereafter held by Lender.

6. **Waivers.** Guarantor hereby waives: (a) all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor, notices of intent to accelerate, notices of acceleration, notices of any suit or any other action against Borrower or any other person, any other notices to any party liable on any Loan Document (including Guarantor), notices of acceptance of this Guarantee, and notices of the existence, creation, or incurring of new or additional Indebtedness, promptness, diligence, and all other notices and demands to which Guarantor might be entitled, including without limitation, all of the following: (i) the amount of the Indebtedness from time to time outstanding; (ii) any foreclosure sale or other disposition of any property which secures any or all of the Indebtedness or which secures the obligations of any other guarantor of any or all of the Indebtedness; (iii) any adverse change in Borrower's financial position; (iv) any other fact that might increase Guarantor's risk; (v) any default, partial payment or non-payment of all or any part of the Indebtedness; (vi) the occurrence of any of the other Events of Default (as hereinafter defined); and (vii) any and all agreements and arrangements between Lender and Borrower and any changes, modifications, or extensions thereof, and any revocation, modification or release of any guaranty of any or all of the Indebtedness by any person; (b) any right to require Lender to institute suit against, or to exhaust its rights and remedies against or require the joinder in any action of, Borrower or any other person, or to proceed against any property of any kind that secures all or any part of the Indebtedness, or to exercise any right of offset or other right with respect to any reserves, credits or deposit accounts held by or maintained with Lender or any indebtedness of Lender to Borrower, or to exercise any other right or power, or pursue any other remedy Lender may have; (c) any defense arising by reason of any disability or other defense of Borrower or any other guarantor or any endorser, co-maker or other person, or by reason of the cessation from any cause whatsoever of any liability of Borrower or any other guarantor or any endorser, co-maker or other person, with respect to all or any part of the Indebtedness, or by reason of any act or omission of Lender or others that directly or indirectly results in the discharge or release of Borrower or any other guarantor or any other person or any Indebtedness or any security therefore, whether by operation of law or otherwise; (d) all rights of subrogation, reimbursement, and indemnity whatsoever, and all rights of recourse to or with respect to any assets or property of Borrower or any collateral or security for any or all of the Indebtedness; (e) any defense arising by reason of any failure of Lender to obtain, perfect, maintain or keep in force any security interest in, or lien or encumbrance upon, any property of Borrower or any other person; (f) any defense based upon failure of Lender to give Guarantor notice of any sale or other disposition of any property securing any or all of the Indebtedness or any property securing Guarantor's obligations under this Guarantee, or any defects in any such notice that may be given, or failure of Lender to comply with any provision of applicable law in enforcing any security interest in or lien upon any property securing any or all of the Indebtedness or any property securing Guarantor's obligations under this Guarantee, including, but not limited to, any failure by Lender to dispose of any property securing any or all of the Indebtedness or any property securing Guarantor's obligations under this Guarantee in a commercially reasonable manner; (g) any defense based upon arising out of any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, liquidation or dissolution proceeding commenced by or against Borrower or any other guarantor or any endorser, co-maker or other person, including without limitation any discharge of, or bar against collecting, any of the Indebtedness (including without limitation any interest thereon), in or as a result of any such proceeding; (h) any defense based upon impairment of the Collateral; and (i) any and all rights or defenses arising by reason of any "one action" or "anti-deficiency" law or any other law which may prevent Lender from bringing any action, including a claim for deficiency, against Guarantor, before or after Lender's commencement or completion of any foreclosure action.

7. Waiver of Other Rights and Defenses.

(a) Guarantor waives each and every right to which it may be entitled by virtue of any applicable suretyship laws or other similar laws regarding the obligations of guarantors or sureties, including, but not limited to, any and all rights it may have pursuant to Rule 31 or 43 of Texas Rules of Civil Procedure, section 17.001 of the Texas Civil Practice and Remedies Code, Chapter 43 of the Texas Civil Practice and Remedies Code, or Chapter 51 of the Texas Property Code (including, without limitation, any rights under sections 51.003, 51.004, and 51.005 of the Texas Property Code), or any similar successor statute, rule or regulation, in each case, as amended.

(b) Guarantor waives all rights and defenses that Guarantor may have because any of the Indebtedness is secured by real property. This means, among other things: (i) Lender may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Borrower; and (ii) if Lender forecloses on any real property collateral pledged by Borrower: (1) the amount of the Indebtedness may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (2) Lender may collect from Guarantor even if Lender, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Borrower. This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because any of the Indebtedness is secured by real property.

(c) Guarantor waives any right or defense it may have at law or equity to a fair market value hearing or action to determine a deficiency judgment after a foreclosure.

(d) Guarantor agrees to withhold the exercise of any and all subrogation and reimbursement rights against Borrower, against any other person, and against any collateral or security for the Indebtedness until the Indebtedness has been indefeasibly paid and satisfied in full, all obligations owed to Lender under the Loan Documents have been fully performed, and Lender has released, transferred or disposed of all of its right, title and interest in such collateral or security.

(e) Guarantor is fully aware of the financial condition of Borrower and is executing and delivering this Guarantee at Borrower's request and based solely upon its own independent investigation of all matters pertinent hereto and is not relying in any manner upon any representation or statement of Lender with respect thereto. Guarantor represents and warrants that it is in a position to obtain, and Guarantor hereby assumes full responsibility for obtaining, any additional information concerning Borrower's financial condition and any other matter pertinent hereto as Guarantor may desire, and Guarantor is not relying upon or expecting Lender to furnish to him any information now or hereafter in Lender's possession concerning the same or any other matter. By executing this Guarantee, Guarantor knowingly accepts the full range of risks encompassed within a contract of continuing guaranty, which risks Guarantor acknowledges include without limitation the possibility that Borrower will incur additional Indebtedness for which Guarantor will be liable hereunder after Borrower's financial condition or ability to pay such Indebtedness has deteriorated and/or after bankruptcy or insolvency proceedings have been commenced by or against Borrower. The Guarantor hereby agrees that the Lender shall have no duty to advise them of information known to the Lender regarding the foregoing conditions or circumstances of Borrower and acknowledges and expressly agrees that it is not relying on any such duty to disclose in executing this Guarantee.

8. Acceleration. The obligations of the Guarantor under this Guarantee to pay any or all of the Indebtedness shall, at the option of Lender, immediately become due and payable, without notice, and without regard to the expressed maturity of any of the Indebtedness, in the event: (a) a breach by Borrower of any term, covenant, condition, representation or warranty in any of the Loan Documents, or any statement, report, or certificate made or delivered to Lender by Borrower or Guarantor, or any of their respective officers, partners, employees, or agents, is incorrect, false, untrue, or misleading when given in any material respect; or (b) Borrower or Guarantor shall fail to pay when due all or any part of the Indebtedness; or (c) Guarantor shall fail to pay or perform when due any indebtedness or obligation of Guarantor to Lender, whether under this Guarantee or any other instrument, document, or agreement heretofore or hereafter entered into; or (d) any event shall occur which results in the acceleration of the maturity of any indebtedness of Borrower or Guarantor to others; or (e) Borrower or Guarantor shall fail promptly to perform or comply with any term or condition of any agreement with any third party which does or may result in a material adverse effect on the business of Borrower or Guarantor; or (f) there shall be made or exist any levy, assessment, attachment, seizure, lien, or encumbrance for any cause or reason whatsoever upon all or any part of the property of Borrower or Guarantor; or (g) there shall occur the liquidation, dissolution, termination of existence, insolvency, or business failure of Borrower or Guarantor, or the appointment of a receiver, trustee or custodian for Borrower, Guarantor or all or any part of the property of either of them, or the assignment for the benefit of creditors by Borrower or Guarantor, or the commencement of any proceeding by or against Borrower or Guarantor under any reorganization, insolvency, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, now or hereafter in effect; or (h) Borrower or Guarantor shall be deceased or declared incompetent by any court or a guardian or conservator shall be appointed for either of them or for the property of either of them, or (i) Borrower or Guarantor shall conceal, remove or permit to be concealed or removed any part of its property, with intent to hinder, delay or defraud its creditors, or make or suffer any transfer of any of its property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law, or shall make any transfer of its property to or for the benefit of any creditor at a time when other creditors similarly situated have not been paid; or (j) Guarantor shall revoke this Guarantee. All of the foregoing are hereinafter referred to as "Events of Default".

9. Right to Attachment Remedy. Guarantor agrees that, notwithstanding the existence of any property securing any or all of the Indebtedness or any property securing Guarantor's obligations under this Guarantee, Lender shall have all of the rights of a creditor of Guarantor, including without limitation the right to obtain a temporary protective order and writ of attachment against Guarantor with respect to any sums due under this Guarantee. Guarantor further agrees that in the event any property secures the obligations of Guarantor under this Guarantee, to the extent that Lender, in its sole and absolute discretion, determines prior to the disposition of such property that the amount to be realized by Lender therefrom may be less than the indebtedness of Guarantor under this Guarantee, Lender shall have all the rights of an unsecured creditor against Guarantor, including without limitation the right of Lender, prior to the disposition of said property, to obtain a temporary protective order and writ of attachment against Guarantor. Guarantor waives the benefit of any and all statutes and rules of law now or hereafter in effect requiring Lender to first resort to or exhaust all such collateral before seeking or obtaining any attachment remedy against Guarantor. Lender shall have no liability to Guarantor as a result thereof, whether or not the actual deficiency realized by Lender is less than the anticipated deficiency on the basis, which Lender obtains a temporary protective order or writ of attachment.

10. Subordination. Any and all rights of Guarantor under any and all debts, liabilities and obligations owing from Borrower to Guarantor, including any security for and guaranties of any such obligations, whether now existing or hereafter arising, are hereby subordinated in right of payment to the prior payment in full of all of the Indebtedness. No payment in respect of any such subordinated obligations shall at any time be made to or accepted by Guarantor if at any time such payment any Indebtedness is outstanding. Borrower and any assignee, trustee in bankruptcy, receiver, or any other person having custody or control over any or all of Borrower's property are hereby authorized and directed to pay to Lender the entire balance of the Indebtedness before making any payments whatsoever to Guarantor, whether as a creditor, shareholder, or otherwise; and insofar as may be necessary for that purpose, Guarantor hereby assigns and transfers to Lender all rights to any and all debts, liabilities and obligations owing from Borrower to Guarantor, including any security for any guaranties of any such obligations, whether now existing or hereafter arising, including without limitation any payments, dividends or distributions out of the business or assets of Borrower. Any amounts received by Guarantor in violation of the foregoing provisions shall be received and held in trust for the benefit of Lender and shall forthwith be paid over to Lender to be applied to the Indebtedness in such order and sequence as Lender shall in its sole discretion determine. Guarantor hereby expressly waives any right to set-off or assert against Lender any counterclaim that Guarantor may have against Borrower.

11. Revocation. This is a continuing guaranty relating to all of the Indebtedness, including Indebtedness arising under successive transactions that from time to time continue the Indebtedness or renew it after it has been satisfied. The obligations of Guarantor under this Guarantee may be terminated only as to future transactions and only by giving written notice thereof to Lender in accordance with Paragraph 22 herein. No such revocation shall be effective until the third business day following the date of actual receipt thereof by Lender. Notwithstanding such revocation, this Guarantee and all consents, waivers and other provision hereof shall continue in full force and effect as to any and all Indebtedness that is outstanding on the effective date of revocation and all extensions, renewals and modifications of said Indebtedness including without limitation amendments, extensions, renewals and modifications that are evidenced by new or additional instruments, documents or agreements executed after revocation.

12. Independent Liability. Guarantor hereby agrees that one or more successive or concurrent actions may be brought hereon against Guarantor, in the same action in which Borrower may be sued or in separate actions, as often as deemed advisable by Lender. The liability of Guarantor under this Guarantee is exclusive and independent of any other guaranty of any or all of the Indebtedness whether executed by Guarantor or by any other guarantor. The liability of Guarantor under this Guarantee shall not be affected, revoked, impaired, or reduced by any one or more of the following: (a) the fact that the Indebtedness exceeds the maximum amount of Guarantor's liability, if any, specified herein or elsewhere (and no agreement specifying a maximum amount of Guarantor's liability shall be enforceable unless set forth in a writing signed by Lender or set forth in this Guarantee); or (b) any direction as to the application of payment by Borrower or by any other party; or (c) any other continuing or restrictive guaranty or undertaking or any limitation on the liability of any other guarantor (whether under this Guarantee or under any other guaranty agreement); or (d) any payment on or reduction of any other guaranty or undertaking; or (e) any revocation, amendment, modification or release of any such other guaranty or undertaking; or (f) any dissolution or termination of, or increase, decrease, or change in membership or stock ownership of Guarantor. Guarantor hereby expressly represents that it was not induced to give this Guarantee by the fact that there are or may be other guarantors either under this Guarantee or otherwise, and Guarantor agrees that any release of any one or more of such other guarantors shall not release Guarantor from its obligations under this Guarantee either in full or to any lesser extent. If Guarantor is a married person, Guarantor hereby expressly agrees that recourse may be had against his or her separate property for all of his or her obligations under this Guarantee.

13. Remedies Cumulative; No Waiver. Lender shall have the right to seek recourse against Guarantor to the full extent provided for herein or in any other instrument or agreement evidencing obligations of Guarantor to Lender. No election in one form of action or proceeding, or against any party, or on any obligation, shall constitute a waiver of Lender's right to proceed in any other form of action or proceeding or against any other party. The failure of Lender to enforce any of the provisions of this Guarantee at any time or for any period of time shall not be construed to be a waiver of any such provision or the right thereafter to enforce the same. All remedies under this Guarantee shall be cumulative and shall be in addition to all rights, powers and remedies given to Lender by law or under other instrument or agreement.

14. Financial Condition of Borrower. Guarantor is fully aware of the financial condition of Borrower and is executing and delivering this Guarantee at Borrower's request and based solely upon its own independent investigation of all matters pertinent hereto and is not relying in any manner upon any representation or statement of Lender with respect thereto. Guarantor represents and warrants that it is in a position to obtain, and Guarantor hereby assumes full responsibility for obtaining, any additional information concerning Borrower's financial condition and any other matter pertinent hereto as Guarantor may desire, and Guarantor is not relying upon or expecting Lender to furnish to him any information now or hereafter in Lender's possession concerning the same or any other matter. By executing this Guarantee, Guarantor knowingly accepts the full range of risks encompassed within a contract of continuing guaranty, which risks Guarantor acknowledges include without limitation the possibility that Borrower will incur additional Indebtedness for which Guarantor will be liable under this Guarantee after Borrower's financial condition or ability to pay such Indebtedness has deteriorated and/or after bankruptcy or insolvency proceedings have been commenced by or against Borrower.

15. Reports and Financial Statements of Guarantor. Guarantor shall, at its sole cost and expense, at any time and from time to time, prepare or cause to be prepared, and provide to Lender upon Lender's request: (a) such financial statements and reports concerning Guarantor for such periods of time as Lender may designate (which financial statements shall, if requested by Lender, be audited by certified public accountants acceptable to Lender); (b) any other information concerning Guarantor's business, financial condition or affairs as Lender may request; and (c) copies of any and all foreign, federal, state and local tax returns and reports of or relating to Guarantor as Lender may from time to time request. Guarantor hereby intentionally and knowingly waives any and all rights and privileges it may have not to divulge or deliver said tax returns, reports and other information that are requested by Lender under this Guarantee or in any litigation in which Lender may be involved relating directly or indirectly to Borrower or to Guarantor. Guarantor further agrees immediately to give written notice to Lender of any adverse change in Guarantor's financial condition and of any condition or event that constitutes any Events of Default under this Guarantee.

16. Representations and Warranties. Guarantor hereby represents and warrants that: (a) it is in Guarantor's direct interest to assist Borrower in procuring credit, because Borrower (i) is fully or partially owned by Guarantor, (ii) is an affiliate of Guarantor, furnishes goods or services to Guarantor, (iii) purchases or acquires goods or services from Guarantor, and/or (iv) otherwise has a direct or indirect corporate or business relationship with Guarantor; (b) this Guarantee has been duly and validly authorized, executed and delivered and constitutes the binding obligation of Guarantor, enforceable in accordance with its terms; and (c) the execution and delivery of this Guarantee does not violate or constitute a default under any order, judgment, decree, instrument or agreement to which Guarantor is a party or by which its property is affected or bound.

17. Integration. THIS GUARANTEE IS A "LOAN AGREEMENT" UNDER SECTION 26.02 OF THE TEXAS BUSINESS AND COMMERCE CODE. THIS WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

18. Amendment. The terms and provisions hereof may not be waived, altered, modified, or amended except in a writing executed by Guarantor and a duly authorized officer of Lender.

19. Costs. Whether or not suit be instituted, Guarantor agrees to reimburse Lender on demand for all attorneys' fees and all other costs and expenses incurred by Lender in enforcing this Guarantee, or arising out of or relating in any way to this Guarantee, or in enforcing any of the Indebtedness against Borrower, Guarantor, or any other person, or in connection with any property of any kind securing all or any part of the Indebtedness. Without limiting the generality of the foregoing, and in addition thereto, Guarantor shall reimburse Lender on demand for all attorneys' fees and costs Lender incurs in any way relating to Guarantor, Borrower or the Indebtedness, in order to: (i) obtain legal advice; (ii) enforce or seek to enforce any of its rights; (iii) commence, intervene in, respond to, or defend any action or proceeding; (iv) file, prosecute or defend any claim or cause of action in any action or proceeding (including without limitation any probate claim, bankruptcy claim, third-party claim, secured creditor claim, reclamation complaint, and complaint for relief from any stay under the Bankruptcy Code (Title 11, United States Code) or otherwise); (v) protect, obtain possession of, sell, lease, dispose of or otherwise enforce any security interest in or lien on any property of any kind securing any or all of the Indebtedness or any property securing Guarantor's obligations under this Guarantee; or (vi) represent Lender in any litigation with respect to Borrower's or Guarantor's affairs. In the event either Lender or Guarantor files any lawsuit against the other predicated on a breach of this Guarantee, the prevailing party in such action shall be entitled to recover its attorneys' fees and costs of suit from the non-prevailing party.

20. Successors and Assigns. All rights, benefits and privileges under this Guarantee shall inure to the benefit of and be enforceable by Lender and its successors and assigns and shall be binding upon Guarantor and its heirs, executors, administrators, personal representatives, successors and permitted assigns, provided that none of the obligations of Guarantor under this Guarantee shall be assigned without the prior written consent of Lender. Neither the death of Guarantor nor notice thereof to Lender shall terminate this Guarantee as to its estate, and notwithstanding the death of Guarantor or notice thereof to Lender, this Guarantee shall continue in full force and effect with respect to all Indebtedness, including without limitation, Indebtedness incurred or created after the death of Guarantor and notice thereof to Lender.

21. Security for Guarantee.

(a) To secure the prompt and timely payment and performance of Guarantor's obligations hereunder, (I) Guarantor hereby grants and conveys to Lender a first priority continuing security interest in and lien upon all now owned and hereafter acquired (i) Accounts and all rights of Borrower to receive payment or any other consideration including, without limitation, pursuant to invoices, contract rights, leases, accounts receivable, general intangibles, choses-in-action, notes, drafts, acceptances, instruments, and all other debts, obligations and liabilities in whatever form owing to Borrower from any Person, and all of Borrower's rights to receive payments for goods sold (whether delivered, undelivered, in transit or returned) or assets leased or services rendered (whether or not earned by performance), which may be represented thereby, or with respect thereto, and all property pledged as collateral security for any of the foregoing, and all rights as an unpaid vendor (including stoppage in transit, replevin or reclamation), and all additional amounts due from any Account Debtor, whether or not invoiced, (ii) Chattel Paper, (iii) Commercial Tort Claims, (iv) Deposit Accounts and Securities Accounts, (v) Documents, (vi) Electronic Chattel Paper, (vii) Equipment and all other equipment, machinery, furniture, computer equipment, telephone equipment, molds, tools, dies, partitions, tooling, transportation equipment, rolling stock, all other tangible assets used in connection with the manufacture, sale or lease of goods or rendition of services, and Borrower's interests in any leased equipment, and all repairs, modifications, alterations, additions, controls and operating accessories, attachments and parts thereof or thereto, and all substitutions and replacements therefor, (viii) Farm Products, (ix) General Intangibles, (x) Fixtures, (xi) Goods, (xii) Instruments, (xiii) Inventory, (xiv) Investment Property, (xv) letters of credit and Letter-of-Credit Rights, (xvi) money, (xvii) Payment Intangibles, (xviii) Promissory Notes, (xix) Securities, (xx) Software, (xxi) Tangible Chattel Paper, and all products and Proceeds of the foregoing, including but not limited to, all insurance proceeds (which property, assets and Proceeds as described in (I) of this Section 21 are referred to herein collectively as the "Guarantor Personal Property Collateral"), and (II) pursuant to the Mortgages, Guarantor has granted a first priority continuing lien and security interest in the Real Properties, the Fixtures and such other assets described in the Mortgages (the "Guarantor Real Property Collateral" and together with the Guarantor Personal Property Collateral, collectively the "Guarantor Collateral"). Capitalized terms used but not defined in this Section 21 have the meanings given to them in the Uniform Commercial Code as presently enacted in the State of Texas (or any successor legislation thereto), and as the same may be amended from time to time ("UCC"). Guarantor hereby authorizes Lender to prepare and file UCC Financing Statements and UCC Financing Statement Amendments with respect to the Guarantor Personal Property Collateral in form acceptable to Lender and its counsel, and hereby ratifies any actions taken by Lender prior to or after the date hereof in respect of the preparation and filing of UCC Financing Statements and UCC Financing Statement Amendments. Upon the exercise by Lender of Lender's rights under this Guarantee, Lender shall have all rights and remedies under the Mortgages, the Loan Documents as well as all rights and remedies available to a secured party under the UCC or other applicable law with respect to the Guarantor Personal Property Collateral, all of which rights and remedies may be exercised without notice to Guarantor, all such notices being hereby waived, except such notice as is not waivable under applicable law. All such rights and remedies of Lender are cumulative and not exclusive and are enforceable, in Lender's discretion, alternatively, successively, or concurrently on any one or more occasions and in any order Lender may determine. Lender shall release its security interest in the Guarantor Collateral when the Indebtedness has been indefeasibly paid in full.

(b) Guarantor agrees that it will, at its sole cost and expense, maintain the security interest created by this Guarantee as a perfected security interest and take such further actions, and execute and/or deliver to Lender such financing statements, amendments, assignments, agreements, supplements, powers and instruments, as Lender may deem necessary or appropriate in order to create and/or maintain the validity, perfection or priority of and protect any security interest granted or purported to be granted in the Guarantor Collateral as provided herein and the rights and interests granted to Lender hereunder, and enable Lender to exercise and enforce its rights, powers and remedies hereunder with respect to any Guarantor Collateral, including the filing of any financing statements, continuation statements and other documents under the UCC (or other similar laws) in effect in any jurisdiction with respect to the security interest created hereby, the execution and filing of any intellectual property security agreement with the United States Patent and Trademark Office and the United States Copyright Office and the execution and delivery of deposit account control agreements with respect to securities accounts, commodities accounts and deposit accounts, all in form satisfactory to Lender and in such offices wherever required by law to perfect, continue and maintain the validity, enforceability and priority of the security interest in the Guarantor Collateral as provided herein and to preserve the other rights and interests granted to Lender hereunder, as against third parties, with respect to the Guarantor Collateral. Without limiting the generality of the foregoing, but subject to applicable law, Guarantor shall make, execute, endorse, acknowledge, file or refile and/or deliver to Lender from time to time upon request by Lender such lists, schedules, descriptions and designations of the Guarantor Collateral, statements, copies of warehouse receipts, bills of lading, documents of title, vouchers, invoices, schedules, confirmatory assignments, supplements, additional security agreements, conveyances, financing statements, transfer endorsements, powers of attorney, certificates, reports and other assurances or instruments as Lender shall request. If an Event of Default has occurred and is continuing, Lender may institute and maintain, in its own name or in the name of Guarantor, such suits and proceedings as Lender may deem necessary or expedient to prevent any impairment of the security interest in or the perfection thereof in the Guarantor Collateral. Without limitation upon the generality of the foregoing, Guarantor will immediately give notice to Lender of any Commercial Tort Claim that is commenced in the future and will immediately execute or otherwise authenticate a supplement to this Guarantee, and otherwise take all necessary action, to subject such Commercial Tort Claim to the security interest created under this Guarantee.

(c) Upon the occurrence of an Event of Default, Lender is hereby irrevocably made, constituted and appointed the true and lawful attorney for Guarantor (without requiring it to act as such) with full power of substitution to do the following: (a) endorse the name of Guarantor upon any and all checks, drafts, money orders, and other instruments for the payment of money that are payable to Guarantor and constitute collections on Guarantor's Accounts; (b) take any action Guarantor is required to take under this Guarantee; and (c) do such other and further acts and deeds in the name of Guarantor that Lender may deem necessary or desirable to enforce any rights with respect to any Guarantor Collateral or perfect Lender's security interest or lien in any Guarantor Collateral. This power of attorney shall be irrevocable and coupled with an interest.

22. Notices. Any notice that a party shall be required or shall desire to give to the other under this Guarantee shall be in writing and either (a) delivered by registered or certified mail, (b) delivered by hand, or (c) delivered by national overnight courier service with next business day delivery, and shall be deemed to have been duly given or made (i) three (3) business days after deposit in the United States Mail, registered or certified mail, return receipt requested, with proper postage prepaid, (ii) one (1) business day after deposit with a national overnight courier with next business day delivery with all charges prepaid, or (iii) when hand-delivered. All notices, requests and demands are to be given or made to the respective parties at the following addresses (or to such other addresses as either party may designate by notice in accordance with the provisions of this paragraph):

If to Guarantor: Stephen and Michelle Wallach
2400 Boswell Road
Chula Vista, CA 91914

With a copy to: _____

Attention: _____

If to Lender: GEMCAP SOLUTIONS, LLC
9901 I.H. 10 West, Suite 800
San Antonio, TX 78230
Attention: David Ellis

23. Construction; Severability; Headings. The parties hereto have participated jointly in the negotiation and drafting of this Guarantee. In the event an ambiguity or question of intent or interpretation arises, this Guarantee shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Guarantee. To the fullest extent permitted by law, Guarantor waives the benefit of any statute, rule, regulation, judicial precedent, or canon of construction that requires or provides for a guaranty agreement to be strictly construed in favor of a guarantor. If more than one person has executed this Guarantee or such other person has executed a separate guaranty document in favor of Lender in respect of the Indebtedness, the term "Guarantor" as used herein and in such other guaranty document shall be deemed to refer to all and any one or more of such persons and their obligations under this Guarantee or under such other guaranty document shall be joint and several. Without limiting the generality of the foregoing, if more than one person has executed this Guarantee or such other person has executed a separate guaranty document in favor of Lender, this Guarantee and such other guaranty document shall in all respects be interpreted as though each person signing this Guarantee or such other guaranty document had signed a separate guaranty document, and reference herein to "other guarantors" or words of similar effect shall include without limitation other persons signing this Guarantee or such other guaranty document. As used in this Guarantee, the term "property" is used in its most comprehensive sense and shall mean all property of every kind and nature whatsoever, including without limitation real property, personal property, mixed property, tangible property and intangible property. Words used herein in the masculine gender shall include the neuter and feminine gender, words used herein in the neuter gender shall include the masculine and feminine gender, words used herein in the singular shall include the plural and words used in the plural shall include the singular, wherever the context so reasonably requires. If any provisions of this Guarantee or the application thereof to any party or circumstance are held invalid, void, inoperative or unenforceable, the remainder of this Guarantee and the application of such provision to other parties or circumstances shall not be affected thereby, the provisions of this Guarantee being severable in any such instance. The headings in this Guarantee are inserted for convenience only and shall not be considered for the purpose of determining the meaning or of any provision hereof.

24. APPLICABLE LAW. THIS GUARANTEE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS) AND APPLICABLE FEDERAL LAW. THE PARTIES AGREE AND ACKNOWLEDGE THAT THIS GUARANTEE WAS NEGOTIATED IN THE STATE OF TEXAS AND WAS MADE BY GUARANTOR IN THE STATE OF TEXAS, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY. TO THE FULLEST EXTENT PERMITTED BY LAW, GUARANTOR HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY RIGHT TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS GUARANTEE.

25. CONSENT TO JURISDICTION. GUARANTOR HEREBY (a) IRREVOCABLY SUBMITS AND CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY TEXAS STATE OR FEDERAL COURT SITTING IN BEXAR COUNTY, TEXAS WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF THIS GUARANTEE OR ANY MATTER ARISING THEREFROM OR RELATING THERETO, (b) AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH SUIT, ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH TEXAS STATE OR FEDERAL COURT, (c) WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE OR FORUM NON CONVENIENS WITH RESPECT THERETO, AND (d) AGREES THAT A FINAL JUDGMENT IN ANY SUCH SUIT, ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. IN ANY SUCH ACTION OR PROCEEDING, GUARANTOR WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT OR OTHER PROCESS AND PAPERS THEREIN AND AGREES THAT THE SERVICE THEREOF MAY BE MADE BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO GUARANTOR AT ITS NOTICE ADDRESS AS SET FORTH HEREIN OR OTHER ADDRESS THEREOF OF WHICH LENDER HAS RECEIVED NOTICE AS PROVIDED IN THIS GUARANTEE. NOTWITHSTANDING THE FOREGOING, GUARANTOR CONSENTS TO THE COMMENCEMENT BY LENDER OF ANY SUIT, ACTION OR PROCEEDING IN ANY OTHER JURISDICTION TO ENFORCE LENDER'S RIGHTS AND GUARANTOR WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING.

26. **WAIVER OF JURY TRIAL.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, GUARANTOR HEREBY WAIVES ANY AND ALL RIGHTS IT MAY HAVE NOW OR HEREAFTER UNDER THE LAWS OF THE UNITED STATES OF AMERICA OR ANY STATE TO A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING EITHER DIRECTLY OR INDIRECTLY IN ANY ACTION OR PROCEEDING BETWEEN GUARANTOR, LENDER OR ITS SUCCESSORS AND ASSIGNS, OUT OF OR IN ANY WAY CONNECTED WITH THE LOAN DOCUMENTS, THE OBLIGATIONS AND/OR THE COLLATERAL. IT IS INTENDED THAT SAID WAIVER SHALL APPLY TO ANY AND ALL DEFENSES, RIGHTS, AND/OR COUNTERCLAIMS IN ANY ACTION OR PROCEEDINGS BETWEEN GUARANTOR AND LENDER. GUARANTOR WAIVES ALL RIGHTS TO INTERPOSE ANY CLAIMS, DEDUCTIONS, SETOFFS OR COUNTERCLAIMS OF ANY KIND, NATURE OR DESCRIPTION IN ANY ACTION OR PROCEEDING INSTITUTED BY BUYER WITH RESPECT TO THE LOAN DOCUMENTS, THE OBLIGATIONS, THE COLLATERAL OR ANY MATTER ARISING THEREFROM OR RELATING THERETO, EXCEPT COMPULSORY COUNTERCLAIMS. THE PARTIES ACKNOWLEDGE THAT A RIGHT TO A JURY TRIAL IS A CONSTITUTIONAL RIGHT, THAT THEY HAVE HAD AN OPPORTUNITY TO CONSULT WITH INDEPENDENT COUNSEL, AND THAT THIS JURY WAIVER HAS BEEN ENTERED INTO KNOWINGLY AND VOLUNTARILY BY ALL PARTIES TO THIS GUARANTEE AND THE OTHER LOAN DOCUMENTS. IN THE EVENT OF LITIGATION, THIS GUARANTEE MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned has executed this Guarantee on July 1, 2022.

GUARANTOR:

By: /s/ Stephan Rhodes Wallach
Print Name: Stephan Rhodes Wallach
Last four digits of SSN:

By: /s/ Michelle Grace Wallach
Print Name: Michelle Grace Wallach
Last four digits of SSN:

STATE OF _____)
_____) ss.
COUNTY OF _____)

On the ____ day of _____ 2022 before me, _____, a Notary Public in and for said State, personally appeared Stephan Rhodes Wallach and Michelle Grace Wallach, each personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that he/she executed the same as his/her free and voluntary act.

WITNESS my hand and official seal.

Signature _____
Notary Public in and for said County and State

[Signature Page – Secured Continuing Guarantee (CLR Roasters LLC)]

**Document And Entity
Information**

Jul. 06, 2022

Document Information [Line Items]

<u>Entity, Registrant Name</u>	YOUNGEVITY INTERNATIONAL, INC.
<u>Document, Type</u>	8-K
<u>Document, Period End Date</u>	Jul. 06, 2022
<u>Entity, Incorporation, State or Country Code</u>	DE
<u>Entity, File Number</u>	001-38116
<u>Entity, Tax Identification Number</u>	90-0890517
<u>Entity, Address, Address Line One</u>	2400 Boswell Road
<u>Entity, Address, City or Town</u>	Chula Vista
<u>Entity, Address, State or Province</u>	CA
<u>Entity, Address, Postal Zip Code</u>	91914
<u>City Area Code</u>	619
<u>Local Phone Number</u>	934-3980
<u>Written Communications</u>	false
<u>Soliciting Material</u>	false
<u>Pre-commencement Tender Offer</u>	false
<u>Pre-commencement Issuer Tender Offer</u>	false
<u>Entity, Emerging Growth Company</u>	false
<u>Amendment Flag</u>	false
<u>Entity, Central Index Key</u>	0001569329


```
"Name": "Exchange Act",
"Number": "1933",
"Title": "Title",
"Section": "11",
},
{
  "Name": "Securities Act",
  "Number": "1933",
  "Title": "Title",
  "Section": "402"
},
{
  "Section": "11"
}
```