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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 8-K**

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**CURRENT REPORT  
Pursuant to Section 13 or 15(d) of  
The Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): **June 8, 2022**

**Innovative Food Holdings, Inc.**  
(Exact name of registrant as specified in its charter)

**Florida**  
(State or other jurisdiction  
of incorporation)

**0-9376**  
(Commission  
File Number)

**20-1167761**  
(IRS Employer  
Identification No.)

**28411 Race Track Road, Bonita Springs, Florida**  
(Address of principal executive offices)

**34135**  
(Zip Code)

Registrant's telephone number, including area code: **(239) 596-0204**

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 (see General Instruction A.2. below):

- 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))

Indicate by check mark whether the registrant is an emerging growth company as defined 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 check mark 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.

Securities registered pursuant to Section 12(b) of the Act: None

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**Item 1.01. Entry into a Material Definitive Agreement.**

***Term Loan***

The Company and its subsidiary, Innovative Food Properties, LLC (“IFP”), as borrowers, entered into two similar Loan Agreements, dated as of the Closing Date (the “Term Loan Agreements”), with the Lender for an aggregate of \$10,455,680, before fees, first-lien secured term loans (the “Term Loans”). The Term Loan Agreements provide for the Term Loans to be disbursed in two tranches. On the Closing Date, an initial loan in the amount of \$5,695,052.11 was disbursed by the Lender with such proceeds used to repay the Company’s existing term loans with Fifth Third Bank. The initial loan tranche of the Term Loans mature on November 28, 2022 (the “Maturity Date”), however, upon receipt of the USDA Guarantee, the bridge loan will convert into long term financing and the second tranche of the Term Loans, in the aggregate amount of \$4,760,627.89, will be disbursed and the Company will have the option of extending the term of the Term Loans to June 6, 2052. A portion of the second tranche, in the amount of \$2,314,629.58, will be disbursed by the Lender to an account maintained with the Lender (the “Debt Service Reserve”) to be utilized by the Company, at the discretion of the Lender, only for specific uses through June 1, 2024, as detailed in the Loan Agreements. Any unutilized amount remaining in the Debt Service Reserve after June 1, 2024, shall be applied to the Indebtedness, and any amount remaining in the Debt Service Reserve after the Indebtedness has been paid in full shall be returned to the Company.

Amounts outstanding under the Term Loans will bear interest at the rate equal to the lesser of (a) the Maximum Lawful Rate, or (b) the greater of (i) WSJP (the “Prime Rate” as published by The Wall Street Journal) plus 1.25% per annum or (ii) 4.50% per annum.

The Term Loan Agreements contain negative covenants that, subject to certain exceptions, limits the ability of the Company and its subsidiaries to, among other things, incur additional indebtedness, make restricted payments, pledge their assets as security, make investments, loans, advances, guarantees and acquisitions, undergo fundamental changes and enter into transactions with affiliates.

The Term Loan Agreements also provides that the Company and its subsidiaries on a consolidated basis, must have a Fixed Charge Coverage Ratio of not less than 1.25 to 1.00, as described in detail in the Loan Agreements.

The Term Loan Agreements contain events of default that are customary for a facility of this nature, including (subject in certain cases to grace periods and thresholds) nonpayment of principal, nonpayment of interest, fees or other amounts, material inaccuracy of representations and warranties, violation of covenants, cross-default to certain other existing indebtedness, bankruptcy or insolvency events, and certain judgment defaults as specified in the Term Loan Agreements. If an event of default occurs, the maturity of the amounts owed under the Term Loan Agreements may be accelerated.

The obligations under the Term Loan Agreements are guaranteed by the Company and IFP and are secured by mortgages on their real estate located in Florida, Illinois and Pennsylvania and substantially all of their assets, in each case, subject to certain exceptions and permitted liens.

***Revolving Credit Facility***

The Company entered into a Loan Agreement (the “Revolver Loan Agreement”), dated as of June 6, 2022 (the “Closing Date”), with MapleMark Bank (the “Lender”) for a \$2,014,333.34 senior secured revolving credit facility (the “Revolver Loan”). The Revolver Loan Agreement replaces, and pays off, the Company’s existing asset-based revolving credit agreement with Fifth Third Bank. Any amounts borrowed under the Revolver Loan will bear interest at the greater of (a) the Base Rate (the rate of interest per annum quoted in the “Money Rates” section of The Wall Street Journal from time to time and designated as the “Prime Rate”) plus 0.25% per annum and (b) 3.50% per annum. As detailed in the Revolver Loan Agreement, the Revolver Loan matures on November 28, 2022 and in the event United States Department of Agriculture issues a guarantee of repayment of the Revolver Loan in favor of the Lender pursuant to its Business and Industry Loan Guarantee Program (the “USDA Guarantee”), at the Company’s option, the amount of the Revolver Loan can be expanded to \$3,000,000 and its term extended to November 28, 2023.

The Revolver Loan Agreement contains negative covenants that, subject to certain exceptions, limit the ability of the Company and its subsidiaries to, among other things, incur additional indebtedness, make restricted payments, pledge their assets as security, make investments, loans, advances, guarantees and acquisitions, undergo fundamental changes and enter into transactions with affiliates. The Company is also subject to a fixed charge coverage ratio covenant for the Revolver Loan as described in more detail in the Revolver Loan Agreement.

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The Revolver Loan Agreement contains events of default that are customary for a facility of this nature, including (subject in certain cases to grace periods and thresholds) nonpayment of principal, interest, fees or other amounts, material inaccuracy of representations and warranties, violation of covenants, cross-default to certain other existing indebtedness, bankruptcy or insolvency events, certain judgment defaults, and loss of liens or guarantees as specified in the Revolver Loan Agreement. If an event of default occurs, the commitments of the Lender to lend under the Revolver Loan Agreement may be terminated and the maturity of the amounts owed may be accelerated.

The obligations under the Revolver Loan Agreement are guaranteed by the Company and each of its subsidiaries and are secured by substantially all of the assets of the Company and its subsidiaries, in each case, subject to certain exceptions and permitted liens.

The foregoing descriptions of the Revolver Loan Agreement and the Term Loan Agreements (collectively, the “Loan Agreements”), as well as their respective material ancillary documents (e.g., mortgages, security agreements, notes) are qualified in their respective entireties by reference to the respective agreements attached as exhibits to this Form 8-K and incorporated by reference in this Item 1.01. Defined terms used in this 8-K and not defined herein shall have the meanings assigned them in the respective Loan Agreements. No assurance can be given that any event described herein as occurring after the date hereof will in fact occur on a timely basis or at all.

**Item 1.02. Termination of a Material Definitive Agreement.**

On the Closing Date, the Company repaid in full and terminated all existing loans and related documents with Fifth Third Bank.

**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 of this Form 8-K with respect to the Loan Documents is incorporated by reference into this Item 2.03.

**Item 9.01. Financial Statements and Exhibits**

(d) Exhibits

Exhibit*	Description
10.1	<a href="#">Loan Agreement dated as of June 6, 2022 between the Registrant, Innovative Food Properties, LLC and MapleMark Bank (FL, IL).</a>
10.2	<a href="#">Loan Agreement dated as of June 6, 2022 between the Registrant, Innovative Food Properties, LLC and MapleMark Bank (PA).</a>
10.3	<a href="#">Mortgage, Security Agreement, Assignment of Rents And Leases and Fixture Filing dated as of June 6, 2022 between registrant and MapleMark Bank (FL).</a>
10.4	<a href="#">Mortgage, Security Agreement, Assignment of Rents And Leases and Fixture Filing dated as of June 6, 2022 between registrant and MapleMark Bank (IL).</a>
10.5	<a href="#">Mortgage, Security Agreement, Assignment of Rents And Leases and Fixture Filing dated as of June 6, 2022 between registrant and MapleMark Bank (PA).</a>
10.6	<a href="#">Promissory Note by the Registrant and Innovative Food Properties, LLC, as borrower, in favor of MapleMark Bank, as lender, dated as of June 6, 2022 (FL, IL).</a>
10.7	<a href="#">Promissory Note by the Registrant, as borrower, in favor of MapleMark Bank, as lender, dated as of June 6, 2022 (PA).</a>
10.8	<a href="#">Pledge and Security Agreement dated as of June 6, 2022 by the Registrant, Innovative Food properties, LLC and the Registrant’s subsidiaries signatory thereto in favor of MapleMark Bank (FL, IL).</a>
10.9	<a href="#">Pledge and Security Agreement dated as of June 6, 2022 by the Registrant, Innovative Food properties, LLC and the Registrant’s subsidiaries signatory thereto in favor of MapleMark Bank (PA).</a>
10.10	<a href="#">Guaranty Agreement dated as of June 6, 2022 between the Registrant’s subsidiaries parties thereto and MapleMark Bank.</a>
10.11	<a href="#">Loan Agreement dated as of June 6, 2022 between the Registrant and MapleMark Bank.</a>
10.12	<a href="#">Promissory Note by the Registrant, as borrower, in favor of MapleMark Bank, as lender, dated as of June 6, 2022</a>
10.13	<a href="#">Pledge and Security Agreement dated as of June 6, 2022 by the Registrant and the Registrant’s subsidiaries signatory thereto in favor of MapleMark Bank.</a>
104	Cover Page Interactive Data File (formatted as Inline XBRL)

\* Certain schedules have been omitted pursuant to Item 601(a)(5) of Regulation S-K under the Securities Act. The Company agrees to furnish supplementally any omitted schedules to the Securities and Exchange Commission upon request.

**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.

**INNOVATIVE FOOD HOLDINGS, INC.**

Dated: June 14, 2022

By: /s/ SAM KLEPFISH  
Sam Klepfish, CEO

**LOAN AGREEMENT**

THIS LOAN AGREEMENT is made and entered into as of June 6, 2022 (the “Effective Date”) between MAPLEMARK BANK (together with its successors and assigns, the “Bank”), INNOVATIVE FOOD HOLDINGS, INC., a Florida corporation (“IVFH”), and INNOVATIVE FOOD PROPERTIES, LLC, a Delaware limited liability company (“IVFP” and, collectively with IVFH, the “Borrower”).

**RECITALS:**

A. Borrower desires to refinance indebtedness secured by real property owned by IVFH at 28411 Race Track Road, Bonita Springs, FL 34135 and 2528 South 27<sup>th</sup> Avenue, Broadview, IL 60155.

B. Borrower desires to obtain a term loan from the Bank to effect such refinance, and Bank is willing to provide such term loan to Borrower subject to the terms and conditions set forth herein

**AGREEMENT:**

NOW, THEREFORE, in consideration of the premises, the covenants, representations, warranties and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

**ARTICLE ONE  
DEFINITIONS AND USE OF TERMS**

1.1. Definitions. As used in this Agreement, all exhibits and schedules hereto and in any note, certificate, report or other Loan Documents made or delivered pursuant to this Agreement, the following terms will have the meanings given such terms in Article One.

“Advance” means a disbursement by Bank, whether by journal entry, deposit to a Borrower’s account, check to third party or otherwise of any of the proceeds of the Loan.

“Affiliate” means, as to any Person, any other Person (a) that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such Person, (b) that directly or indirectly beneficially owns or holds ten percent (10%) or more any class of voting stock of such Person, or (c) that controls ten percent (10%) or more of the voting stock of which is directly or indirectly beneficially owned or held by the Person in question. The term “control” means the possession, directly or indirectly, of the power to direct or cause direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise; provided, however, in no event shall Bank be deemed an Affiliate of Borrower or any Borrower.

“Agreement” means this Loan Agreement, as the same may from time to time be amended, supplemented, replaced or restated.

“Bank” means MapleMark Bank and its successors and assigns, in whole or in part.

“Borrower” has the meaning set forth in the introductory paragraph hereof and its successors and assigns.

“Business Day” means a day other than a Saturday, Sunday or a day on which Bank is authorized to be closed. Unless otherwise provided, the term “days” means calendar days.

LOAN AGREEMENT

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“Capitalized Lease Obligation” means, for any Person, the amount of Debt under a lease of Property by such Person that would be shown as a liability on a balance sheet of such Person prepared for financial reporting purposes in accordance with GAAP.

“Change” means (a) any change after the date of any Note in the risk-based capital guidelines applicable to Bank, or (b) any adoption of or change in any other law, governmental or quasi-governmental rule, regulation, policy, guideline, interpretation, or directive (whether or not having the force of law) after the date of any Note that affects capital adequacy or the amount of capital required or expected to be maintained by Bank or any entity controlling Bank.

“Closing Date” means the Effective Date.

“Code” means the Uniform Commercial Code of the State of Texas or other applicable jurisdiction as it may be amended and in effect from time to time.

“Compliance Certificate” means a certificate in form and substance satisfactory to Bank prepared by and executed by a responsible officer of the Borrower reasonably acceptable to Bank.

“Consolidated Interest Charges” means the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, and (b) the portion of rent expense under Capitalized Lease Obligations that is treated as interest in accordance with GAAP, in each case, of or by Borrower and its Subsidiaries on a consolidated basis for the most recently completed measurement period.

“Consolidated Net Income” means the net income (or loss) of Borrower and its Subsidiaries in accordance with GAAP on a consolidated basis for the most recently completed measurement period; provided that Consolidated Net Income shall exclude (a) extraordinary gains and extraordinary losses for such measurement period, (b) the net income of any Subsidiary during such measurement period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such income is not permitted by operation of the terms of its Constituent Documents or any agreement, instrument or Law applicable to such Subsidiary during such measurement period, and (c) any income (or loss) for such measurement period of any Person if such Person is not a Subsidiary.

“Current Maturities of Long-Term Debt” means, on any date of determination, that portion of the long term Debt of Borrower and its Subsidiaries, and that portion of the Capital Lease Obligations of Borrower and its Subsidiaries.

“Debt” means, with respect to any Person and as of any applicable date of determination, all indebtedness, obligations and liabilities of such Person, whether matured or unmatured, due or to become due, liquidated or unliquidated, direct or indirect, absolute or contingent, joint or several, including all items that should be classified as liabilities in accordance with Recognized Accounting Principles.

“Debtor Relief Laws” means Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts, or similar laws affecting the rights of creditors generally from time to time in effect.

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

“Default Interest Rate” means a rate per annum equal to the Note Rate plus five percent (5%) but in no event in excess of the Maximum Lawful Rate.

“Disposition” means any sale, Lease (except as permitted in the Loan Documents), exchange, assignment, conveyance, transfer, trade, or other disposition of all or any portion of the Property (or any interest therein) other than sales of personal property assets of the Borrower in the ordinary course of business that do not to exceed, individually or in the aggregate during any fiscal year, \$100,000.

“Effective Date” means the date set forth in the introductory paragraph hereof.

“Event of Default” has the meaning set forth in Article Six hereof and in the other Loan Documents.

“Financial Statements” means all balance sheets, income statements, statements of profit and loss, statements of cash flow, statements of sources and uses of funds, and other financial data, statements and reports (whether of any Borrower, Guarantor, or any other Person or otherwise) which are required to, have been, or may from time to time hereafter, be furnished to Bank, for the purposes of, or in connection with, this Agreement.

“Financing Statements” means the financing statement or financing statements (on Standard Form UCC 1 or otherwise) utilized in connection with the Loan Documents.

“Fixed Charge Coverage Ratio” means, at any date of determination, the ratio of (a) Consolidated Net Income, *plus* (to the extent any of the following reduce Consolidated Net Income in the calculation thereof) the sum of (i) Consolidated Interest Charges, (ii) depreciation, (iii) amortization, and (iv) non-cash expenses deemed reasonably by Bank, to (b) the sum of (i) Current Maturities of Long-Term Debt and (ii) Consolidated Interest Charges paid in cash, in each case for the twelve (12) months preceding the date of determination paid by Borrower and its Subsidiaries.

“GAAP” means generally accepted accounting principles, applied on a consistent basis, set forth in Opinions of the Accounting Principles Board of the American Institute of Certified Public Accountants and/or in statements of the Financial Accounting Standards Board which are applicable in the circumstances as of the date in question; and the requisite that such principles be applied on a consistent basis means that the accounting principles observed in a current period are comparable in all material respects to those applied in a preceding period, except to the extent that a deviation therefrom is expressly permitted by this Agreement.

“Governmental Authority” means the United States, the state, the county, the city or any other political subdivision in which the Property is located, and any court or political subdivision, agency, or instrumentality having jurisdiction over Borrower, Guarantor or any of the Property.

“Guarantor” means each Person who, from time to time guarantees all or any portion of the Indebtedness and Obligations.

“Guaranty” means the guaranty agreement executed by Guarantor or any other Person, guaranteeing all of the Indebtedness and the Obligations, as such may be amended, restated, supplemented or otherwise modified from time to time.

“Hedge Agreement” means (a) any and all interest rate swap transactions, forward rate transactions, interest rate options, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, or any other swap, forward, futures,

option or other similar agreements or transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., or any other master agreement (any such master agreement, together with any related schedules and annexes, a “Master Agreement”) and (c) any and all Master Agreements and any and all related confirmations.

“Hedge Obligations” means, at any time with respect to any Person, all indebtedness, liabilities, and obligations of such Person under or in connection with any Hedge Agreement, whether actual or contingent, due or to become due and existing or arising from time to time.

“Impositions” means: (i) all real estate and personal property taxes, charges, assessments, standby fees, excises, and levies and any interest, costs, or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied, or imposed upon the Property or the ownership, use, occupancy, or enjoyment thereof, or any portion thereof, or the sidewalks, streets, or alleyways adjacent thereto; (ii) any charges, fees, license payments, or other sums payable for or under any easement, license, or agreement maintained for the benefit of the Property; (iii) water, gas, sewer, electricity, and other utility charges and fees relating to the Property; and (iv) assessments and charges arising under any subdivision, condominium, planned unit development, or other declarations, restrictions, regimes, or agreements affecting the Property.

“Improvements” means all improvements on the Land of any kind or nature, and any and all additions, alterations, betterments or appurtenances thereto, now or at any time hereafter situated, placed, or constructed upon the Land or any part thereof.

“Indebtedness” means all present and future indebtedness, obligations, and liabilities, including all direct and contingent obligations arising under letters of credit, banker’s acceptances, bank guaranties and similar instruments, Hedge Obligations under any Secured Hedge Agreement, net obligations under any swap contract, overdrafts, Automated Clearing House obligations, and other financial accommodations which could be considered a liability under Recognized Accounting Principles, and all renewals, extensions, and modifications thereof, or any part thereof, in each case now owed or hereafter owing to Bank by Borrower or any other Obligated Party, and all interest accruing thereon and costs, expenses, and all attorneys’ fees paid or incurred by Bank in the enforcement or collection thereof, regardless of whether such indebtedness, obligations, and liabilities are direct, indirect, fixed, contingent, liquidated, unliquidated, joint, several, due or to become due, or joint and several, including, but not limited to, all indebtedness, obligations, and liabilities evidenced, secured, or arising from time to time under or pursuant to any of the Loan Documents, and all renewals and extensions thereof, or any part thereof, and all present and future amendments thereto. “Indebtedness,” however, does not include any Debt which is covered by the federal Truth-in-Lending Act.

“Knowledge” means, with respect to a particular subject, area, or aspect of the Borrower or Guarantor, the actual knowledge of Sam Klepfish, or an officer of the Borrower or Guarantor, or an employee or person with the primary responsibility for a particular matter, or, with respect to each such Person, the knowledge a prudent person could be expected to discover or otherwise acquire in the course of conducting a reasonably comprehensive investigations concerning the existence of facts or other matters.



“Land” means the real property owned by IVFH located at 28411 Race Track Road, Bonita Springs, FL 34135 and 2528 South 27<sup>th</sup> Avenue, Broadview, IL 60155.

“Lease” means a lease or other agreement for occupancy of the Land and Improvements.

“Legal Requirements” means (a) any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates, or ordinances of any Governmental Authority in any way applicable to any Borrower, Guarantor or the Property, including, without limiting the generality of the foregoing, the ownership, use, occupancy, possession, construction, operation, maintenance, alteration, repair, or reconstruction thereof, (b) any and all covenants, conditions, and restrictions contained in any deeds, other forms of conveyance, or in any other instruments of any nature that relate in anyway or are applicable to the Property or the ownership, use, or occupancy thereof, (c) any Borrower’s or Guarantor’s present or subsequently effective bylaws and articles of incorporation, operating agreement or regulations and articles of organization or partnership, limited partnership, joint venture, trust, or other form of business association agreement, and (d) any and all Leases and other contracts (written or oral), of any nature that relate in any way to the Property and to which any Borrower or Guarantor may be bound.

“Lien” means any valid and enforceable interest in any property, whether real, personal or mixed, securing an indebtedness, obligation or liability owed to or claimed by any Person other than the owner of such property, whether such indebtedness is based on the common law or any statute, ordinance or contract and including, but not limited to, liens created by or pursuant to a security interest, pledge, mortgage, assignment, conditional sale, trust receipt, lease, consignment or bailment for security purposes.

“Loan” means the Advance made by Bank to Borrower pursuant to this Agreement as evidenced by the Note.

“Loan Documents” means this Agreement, the Note, the Security Instruments, each Guaranty, any Secured Hedge Agreements, and any other agreements, instruments and documents evidencing, securing, guaranteeing or pertaining to the Loan as shall from time to time be executed and delivered to Bank by Borrower or any other party pursuant to this Agreement, including, without limitation, any future amendments hereto, or restatements hereof, or pursuant to the terms of any of the other loan documents, together with any and all renewals, extensions, and restatements of, and amendments and modifications to, any such agreements, documents, and instruments.

“Material Adverse Effect” means any set of circumstances or events which with respect to any Person (a) could reasonably be expected to have any material adverse effect whatsoever upon the validity, performance, or enforceability of any Loan Document against such Person, (b) is or could reasonably be expected to have a material adverse effect upon the condition (financial or otherwise), properties, liabilities (actual or contingent), or business operations of such Person, or (c) could reasonably be expected to materially impair the ability of such Person to fulfill its obligations under the terms and conditions of the Loan Documents.

“Material Contract” means any agreement or contract of Borrower which is material (or together with related agreements and contracts, is material) to the business, operations, financial condition, performance or properties of Borrower or the Property, taken as a whole.

“Maturity Date” means November 28, 2022, subject to extension specified below in Section 2.4.

“Maximum Lawful Rate” means the maximum non-usurious rate of interest (or, if the context so requires, an amount calculated at such rate) which Bank is allowed to contract for, charge, take, reserve,

or receive in this transaction under applicable federal or state (whichever is higher) law from time to time in effect after taking into account, to the extent required by applicable federal or state (whichever is higher) law from time to time in effect, any and all relevant payments or charges under the Loan Documents.

“Note” means the promissory note dated on or about even date herewith executed by the Borrower and payable to the Bank in the original principal amount of \$2,680,000.00, as such may be amended, increased, replaced, restated, renewed and extended from time to time.

Note Rate: The rate equal to the lesser of (a) the Maximum Lawful Rate, or (b) the greater of (i) WSJP plus 1.25% per annum or (ii) 4.50% per annum.

“Obligated Party” means Borrower, Guarantor and any other Person who is or becomes party to or makes any agreement, instrument or document that guarantees or secures payment and performance of any of the Indebtedness, and/or the Obligations or any part thereof.

“Obligations” means any and all of the covenants, conditions, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Borrower or any other Obligated Party to Bank as set forth in the Loan Documents, or any other agreement as to which any Borrower is granted a possessory interest in the Property.

“Permitted Encumbrances” has the meaning given in the Security Instrument.

“Person” means any individual, firm, corporation, limited liability company, association, partnership, joint venture, trust, other entity, unincorporated organization or Governmental Authority.

“Property” means the Land, the Improvements and all other property, real and personal of the Borrower, including as described in the Security Instrument or in any of the other Loan Documents.

“Recognized Accounting Principles” means GAAP, tax, cash basis or other accounting principles acceptable to Bank and applied on a consistent basis from one period to another.

“Related Indebtedness” has the meaning set forth in Section 8.5.

“Rights” means any rights, remedies, powers, and privileges exercisable by Bank under any of the Loan Documents, in each case whether at law, in equity, or otherwise.

“Secured Hedge Agreement” means any Hedge Agreement entered into by and between the Borrower, or any other Obligated Party, and Bank.

“Security Instrument” means the deed of trust or mortgage encumbering the Property to secure payment and performance of the Indebtedness and the Obligations, as such may be amended, restated, supplemented or otherwise modified from time to time and the term “Security Instruments” shall mean all such deeds of trust or mortgages.

“Subordinated Debt” means all Debt of Borrower, whether now existing or hereafter incurred, which is subordinate in right of payment to the Indebtedness, pursuant to a written agreement executed by such parties required by, and in form and content reasonably satisfactory to, Bank.

“Survey” means an ALTA survey of the Land consisting of a plat and field notes, prepared by a licensed surveyor acceptable to Bank and the Title Company which survey shall: (a) reflect the actual

dimensions of the Land, the gross and net area of the Land, the location of any easements, rights-of-way, setback lines, encroachments or overlaps thereof or thereover and the outside boundary lines of any improvements located thereon; (b) identify by recording reference any easements, setback lines or other matters referred to in the title commitment issued by the Title Company; (c) include the surveyor's registration number and seal and the date of the Survey; (d) include a surveyor's certificate acceptable to Bank within its reasonable discretion; (e) reflect that the Land has access to and from a publicly dedicated street, roadway or highway; (f) be sufficient to cause the Title Company to delete the "survey exception" in Schedule B of the Title Policy to the extent permitted by the rules of the State Board of Insurance; and (g) reflect the area, including the boundaries thereof, within the Land that has been designated by the Federal Insurance Administration, the Army Corps of Engineers or any other Governmental Authority as being subject to special or increased flood hazards; or any other survey reasonably acceptable to Bank.

"Taxes" means all taxes (including withholding), assessments, fees, levies, impositions, imposts, duties, deductions, withholdings, or other charges of any nature whatsoever from time to time or at any time imposed by any laws or by any Governmental Authority, excluding state and local sales and use taxes.

"Title Company" means the title company or title companies acceptable to Bank, in its reasonable discretion, that is issuing the Title Policy.

"Title Policy" means a loan policy (or policies) of title insurance, and any reinsurance agreement (or agreements) issued by the Title Company in accordance with Exhibit B.

WSJP: The variable rate, as of any date of determination, equal to the "Prime Rate" as published by *The Wall Street Journal*. If WSJP becomes unavailable, Bank may designate a substitute rate of interest after notifying Borrower. Any change in the WSJP will become effective as of the date the rate of interest is different from that on the preceding Business Day.

1.2. Headings. The headings, captions, and arrangements used in any of the Loan Documents are, unless specified otherwise, for convenience only and shall not be deemed to limit, amplify, or modify the terms of the Loan Documents, nor to affect the meaning thereof.

1.3. Number and Gender of Words. Whenever herein the singular number is used, the same shall include the plural where appropriate, and words of any gender shall include each other gender where appropriate. Reference herein to Borrower shall mean, jointly and severally, each Person comprising same.

1.4. Articles, Sections and Exhibits. All references herein to "Articles" and "Sections" are, unless specified otherwise, references to articles and sections of this Agreement. All references herein to an "Exhibit" or "Schedule" are references to exhibits or schedules attached hereto, all of which are made a part hereof for all purposes, the same as if set forth herein verbatim, it being understood that if any exhibit or schedule attached hereto, which is to be executed and delivered, contains blanks, the same shall be completed correctly and in accordance with the terms and provisions contained and as contemplated herein prior to or at the time of the execution and delivery thereof. The words "herein," "hereof," "hereunder" and other similar compounds of the word "here" when used in this Agreement shall refer to the entire Agreement and not to any particular provision or section; and the word "including," as used herein, shall mean "including, without limitation."

**ARTICLE TWO**  
**LOAN**

2.1. Loan. Subject to and upon the terms, covenants, and conditions hereof, Bank agrees to make an initial Advance to Borrower in an aggregate principal amount of \$365,370.42. No principal amount repaid may be reborrowed.

(a) Conditions Precedent to the Loan. As a condition precedent to the Loan, Borrower must satisfy the conditions required hereby and Bank must have received and approved all of the documents, certificates and other items specified in Exhibit A, together with such other documents, certificates and items as Bank may require from time to time. Bank, at Bank's option, may, but shall not be obligated to, waive any of the preceding or elect not to require any of the preceding. All conditions precedent to the obligation of Bank to make the Loan are imposed solely for the benefit of Bank.

(b) Note. The obligation of Borrower to repay the unpaid principal of the Loan, and interest thereon, shall be evidenced by the Note.

2.2. Change. If Bank determines that the amount of capital required or expected to be maintained by Bank or any entity controlling Bank, is increased as a result of a Change, then, within thirty (30) days of demand by Bank, Borrower shall pay to Bank the amount necessary to compensate Bank for any shortfall in the rate of return on the portion of such increased capital that Bank determines is directly attributable to each Note or the principal amount outstanding hereunder (after taking into account Bank's policies as to capital adequacy); provided that, Borrower shall not be required to compensate Bank for any shortfall in the rate of return suffered more than six (6) months prior to the date Bank notifies Borrower of the Change giving rise to such shortfall in the rate of return. Bank's method of determining any amount payable to Bank under this Section shall be substantially similar to the method used by Bank in implementing similar provisions for similarly situated borrowers and extensions of credit. Bank shall provide Borrower a statement of the amount and the calculations, in reasonably detail, reflecting any such increased cost, reduction in return and/or revenue.

2.3. Method of Payment. All payments of principal, interest and other amounts to be made by Borrower under this Agreement and the other Loan Documents shall be made to Bank in immediately available funds, without setoff, deduction, or counterclaim, and free and clear of all taxes at the time and in the manner provided in the Note. The Bank may, at the Bank's option, but without any obligation to do so, automatically and without notice to Borrower, sweep or debit from any account of Borrower maintained with Bank, to the extent funds are available, an amount equal to the principal, interest and other amounts due.

2.4. Maturity Date Extension. Borrower and Bank acknowledge and agree that Bank has submitted an application to the United States Department of Agriculture ("USDA") to have the USDA guarantee repayment of this Loan pursuant to its Business and Industry Loan Guarantee Program. Borrower may extend the Maturity Date from November 28, 2022 to June 6, 2052 if:

(a) Borrower requests in writing an extension to the Maturity Date no later than thirty (30) days prior to the Maturity Date (the "Extension Request");

(b) No Default or Event of Default has occurred;

(c) USDA executes a guarantee in favor of Bank (in form and substance reasonably satisfactory Bank);

(d) Borrower shall have delivered to Bank together with the Extension Request, a certificate in form reasonably acceptable to the Bank certifying that (a) each of the representations and warranties of Borrower contained in the Loan Documents is true, complete and correct in all material respects as of the date of such certificate except to the extent such representations and warranties are matters which by their nature can no longer be true and correct as a result of the passage of time, (b) no Default or Event of Default has occurred;

(e) Borrower shall have paid all reasonable expenses, including (without limitation) reasonable attorneys' fees and legal expenses, incurred by Bank in connection with the extension no later than the day prior to the first day of the extension;

(f) Borrower shall have paid to Bank a non-refundable origination fee of \$26,800.80; and

(g) Borrower shall have delivered to Bank such information, documentation, agreements, and instruments as Bank shall require, including such legal opinions as may be requested by Bank.

If the USDA does not execute a guaranty in favor of Bank (in form and substance reasonably satisfactory to Bank), Bank may, but shall not be obligated to, extend the Loan in cooperation with the Borrower, in form and substance reasonably satisfactory to Bank.

2.5. Subsequent Advances. Borrower may, from time-to-time, request from Bank additional Advances in an aggregate amount not to exceed \$2,314,629.58 (the "Additional Loan Amount") for (a) business acquisitions or expansions of operations in order to expand the client or market base in the Borrower's Direct-to-Chef Distribution Platform or current branded products offered in the Borrower's E-Commerce Platform; (b) planned/budgeted property improvements and any upgrades to the Artisan building, including its fully functional commercial test kitchen and training center to meet or exceed FDA, FSMA and SQF food safety standards; (c) planned/budgeted property improvements and any upgrades to the Borrower's primary logistic and fulfillment centers; (d) continuous upgrades to the facilities to allow for new product testing and development as well as expansion of product lines; and (e) other purposes approved by Bank. Borrower acknowledges and agrees that, notwithstanding anything to the contrary contained herein or in any other Loan Document, any Advance of the Additional Loan Amount is subject to the sole and absolute discretion of Bank, and Bank has no obligation or commitment whatsoever to make any Advance of the Additional Loan Amount.

### **ARTICLE THREE REPRESENTATIONS AND WARRANTIES**

Borrower represents and warrants to Bank as follows:

3.1. Financial Statements. The Financial Statements are true, correct and complete as of the dates specified therein and fully and fairly present the financial condition of Borrower as of the dates specified therein. Since the date of the Financial Statements most recently submitted to Bank by Borrower, no material adverse change has occurred in the financial condition of Borrower nor, except as heretofore disclosed in writing to Bank, has Borrower incurred any material liability, direct or indirect, fixed or contingent. Borrower, as of the date of the Advance, is solvent. Neither Borrower nor any other Obligated Party has any material Debt, other contingent liabilities, liabilities for taxes, any long-term lease obligations or unusual forward or long-term commitments, or any Hedge Agreement or other transaction or obligation in respect of derivatives, that are not reflected in the most recent financial statements referred to in this paragraph.

3.2. Suits, Actions, Etc. There are no actions, suits or proceedings pending or to the best of Borrower's Knowledge threatened in writing before or by any Governmental Authority against or affecting Borrower, any other Obligated Party or the Property, or involving the validity, enforceability or priority of any of the Loan Documents except as has been disclosed or shall be disclosed in writing to Bank. To the best of its Knowledge, Borrower is not, and the execution and delivery of the Loan Documents and consummation of the transactions contemplated hereby and the performance or satisfaction of any of the terms or conditions hereof and of the other Loan Documents will not cause Borrower to be, in violation of or in default with respect to any Legal Requirement or in default (or provide cause for acceleration of indebtedness) under any Material Contract to which Borrower is a party or by which Borrower or the Property may be bound.

3.3. Status of Borrower; Valid and Binding Obligations. If Borrower is a corporation, limited liability company, partnership or other entity, Borrower is and shall until the Indebtedness is fully discharged continue to (a) be duly organized and validly existing and in good standing under the laws of the state of its organization, (b) be in compliance with all conditions prerequisite to its lawfully doing business in Texas and any other state in which it conducts business, and (c) possess all power and authority necessary to own and operate each Property. All of the Loan Documents, upon execution and delivery, will constitute valid and binding obligations of Borrower and each Obligated Party, enforceable against Borrower and each Obligated Party in accordance with their terms except as the enforcement thereof may be limited by Debtor Relief Laws.

3.4. Title to the Property. IVFH holds good and indefeasible fee simple title (or the equivalent thereof pursuant to applicable law) to the Land and all Improvements thereon, free and clear of any Liens and subject only to the Permitted Encumbrances.

3.5. Purpose of Loan. The proceeds of the Loan shall be used by Borrower to pay in full Debt to Fifth Third Bank.

3.6. No Failure To Disclose. No representation or warranty made by Borrower or any other Obligated Party under this Agreement or any other Loan Document, and no document, instrument or certificate furnished, to be furnished or caused or to be furnished by Borrower or any other Obligated Party to Bank in anticipation of or pursuant to this Agreement or any other Loan Document, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained therein not misleading.

3.7. Taxes. All federal, state, foreign, and other Tax returns of Borrower and each Obligated Party required to be filed have been filed, or an extension has been timely filed in connection therewith, all federal, state, foreign, and other Taxes imposed upon Borrower and each Obligated Party which are due and payable have been paid, and no material amounts of Taxes not reflected on such returns are payable by Borrower and each Obligated Party, other than Taxes being contested in good faith by appropriate legal proceedings.

3.8. Consents, Approvals and Filings, Etc. Except as have been previously obtained or as otherwise expressly provided in this Agreement, no authorization, license, or formal exemption from, any Governmental Authority or other Person, is required in connection with the execution and performance by Borrower or any other Obligated Party of any Loan Document.

3.9. Contracts, Agreements and Leases. To the best of Borrower's Knowledge, Borrower is not in default (nor has any event occurred which, with the passing of time or the giving of notice, or both, would cause a default) under any Lease or Material Contract to which it is a party or by which it or any of its properties or assets are bound, where such default would have a Material Adverse Effect.

3.10. Relationship. The relationship between Borrower and Bank established under this Agreement and the other Loan Documents is solely that of borrower and lender, and Bank has no fiduciary or other special relationship with Borrower arising out of this Agreement and the other Loan Documents, and no term or condition of any of the Loan Documents shall be construed so as to deem the relationship between Borrower and Bank to be other than that of borrower and lender.

3.11. No Assignment. Borrower has made no previous assignment of its rights to or interests in the Leases or the rents due thereunder.

3.12. Compliance with Legal Requirements. The Improvements comply with all applicable Legal Requirements for which the failure to do so could reasonably be expected to have a Material Adverse Effect, and the use to which Borrower is using and intends to use the Land and Improvements complies with or will comply with such Legal Requirements.

3.13. Disclaimer of Permanent Financing. Borrower acknowledges and agrees that Bank has not made any commitments, either express or implied, to extend the term of the Loan past its applicable maturity date, except to the extent, if any, that the same is expressly stated in this Agreement or in the other Loan Documents.

3.14. Leases. A true, complete and correct copy of the Leases affecting the Property have been delivered to Bank.

#### **ARTICLE FOUR AFFIRMATIVE COVENANTS**

Borrower covenants and agrees with Bank that, so long as any of the Indebtedness or Obligations remains outstanding, or Bank has any commitment to make Advances hereunder or any other obligation under any of the Loan Documents:

4.1. Hazard and Other Insurance.

(a) Borrower shall obtain and maintain the insurance coverage required by Exhibit C and any other Loan Documents and shall furnish to Bank promptly upon request a certificate or certificates from the respective insurer(s) setting forth the nature and extent of all such insurance maintained by Borrower, and a certified copy of the original policy, including all endorsements thereto, and a satisfactory certificate of insurance with premiums fully paid. Any such insurance may be evidenced by blanket insurance policies covering the Property and other property and assets, provided that each policy otherwise complies with the requirements of the Loan Documents and specifies the amount (if less than all) of the total coverage that is allocated to the Property. Borrower shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Bank is included thereon under a standard mortgagee clause (without contribution) acceptable to Bank, with loss payable as provided herein. All insurance shall be primary without right of contribution from any other insurance that may be carried by Borrower or Bank and all of the provisions thereof shall operate in the manner as if there were a separate policy covering each insured. Borrower shall immediately notify Bank whenever any such separate insurance is taken out and shall promptly deliver to Bank any policy or certificate of such separate insurance.

(b) Not later than ten (10) days before the expiration date of any such insurance policy, Borrower shall deliver to Bank a binder or certificate of the insurer evidencing the renewal or replacement of that policy, with premiums fully paid, together with (in the case of a renewal) a copy of all endorsements to the policy affecting the Property and not previously delivered to Bank, or (in the case of

a replacement) an original or certified copy of the replacement policy. Borrower shall pay all premiums on policies required hereunder as they become due and payable and promptly deliver to Bank evidence satisfactory to Bank, in Bank's reasonable discretion, of the timely payment thereof. Borrower shall at all times comply with the requirements of the insurance policies required hereunder and of the issuers of such policies and of any board of fire underwriters or similar body as applicable to or affecting the Property.

(c) If Borrower fails to obtain and/or maintain the insurance required under the Loan Documents, (i) Borrower shall indemnify and hold Bank harmless from and against any damage, loss, liability, claim, cost and expense resulting from all risks that would have been covered by the required insurance if so maintained, (ii) if any loss occurs, Bank shall nevertheless be entitled to the benefit of all insurance covering the loss and held by or for Borrower, to the same extent as if it had been made payable to Bank, and (iii) Bank has the Right (but not the obligation), after thirty (30) days prior notice to the Borrower, to obtain such insurance at Borrower's expense, which may, at Bank's election, be coverage for Bank's interest in the Property only (excluding Borrower's equity in the Property, if any), or such other amount as Bank may determine in Bank's sole discretion, and the costs and expenses so expended by Bank shall be due and payable by Borrower on demand, as part of the Indebtedness, even if in excess of the amount set forth in Section 2.1, and secured by the Loan Documents. **TEXAS FINANCE CODE SECTION 307.052 COLLATERAL PROTECTION INSURANCE NOTICE: (A) BORROWER IS REQUIRED TO (i) KEEP THE PROPERTY INSURED AGAINST DAMAGE IN THE AMOUNT SPECIFIED HEREIN; (ii) PURCHASE THE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE OF TEXAS OR AN ELIGIBLE SURPLUS LINES INSURER OR OTHERWISE AS PROVIDED HEREIN; AND (iii) NAME BANK AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF A LOSS AS PROVIDED HEREIN; (B) SUBJECT TO THE PROVISIONS HEREOF, BORROWER MUST, IF REQUIRED BY BANK, DELIVER TO BANK A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF PREMIUMS; AND (C) SUBJECT TO THE PROVISIONS HEREOF, IF BORROWER FAILS TO MEET ANY REQUIREMENT LISTED IN THE FOREGOING SUBPARTS (A) OR (B), BANK MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF BORROWER AT BORROWER'S EXPENSE.**

(d) Upon the foreclosure of any Security Instrument or transfer of title to the Property in lieu of foreclosure, all of Borrower's Right, title and interest in and to the insurance policies referred to in this Section (including unearned premiums) and all proceeds payable thereunder shall thereupon vest in the purchaser at foreclosure or other such transferee to the extent permissible under such policies.

(e) Bank has the Right (but not the obligation) to make proof of loss for, settle and adjust any claim under, and receive the proceeds of, all insurance for loss of or damage to the Property, and the costs and expenses (including reasonable attorneys' fees of outside counsel), appraisal costs, and consultant fees incurred by Bank in the adjustment and collection of insurance proceeds shall be due and payable by Borrower on demand, as part of the Indebtedness, even if in excess of the amount set forth in Section 2.1, and secured by the Loan Documents. Bank shall not be, under any circumstances, liable or responsible for failure to collect or exercise diligence in the collection of any of such proceeds or for the obtaining, maintaining or adequacy of any insurance or for failure to see to the proper application of any amount paid over to Borrower.

(f) Borrower shall take all action necessary or desirable or requested by Bank to obtain the benefit of any insurance proceeds lawfully or equitably payable to Borrower or Bank in connection with any loss of or damage to the Property and shall apply such insurance proceeds to the



payment of the Indebtedness, unless otherwise consented to in writing by Bank. The unpaid portion of the Indebtedness shall remain in full force and effect and the payment thereof shall not be excused.

4.2. Compliance with Legal Requirements. Borrower shall timely comply with all Legal Requirements (except where the failure to so comply would not have a Material Adverse Effect) and shall deliver evidence thereof to Bank, if reasonably requested by Bank. Borrower shall assume full responsibility for the compliance of the Property with all Legal Requirements and with sound building and engineering practices, notwithstanding any approvals by Bank.

4.3. Construction Contracts. Borrower shall become party to no contracts in excess of, in the aggregate, \$500,000 for the performance of any work on the Property or for the supplying of any labor, materials, or services for the alteration of the Improvements, except upon such terms and with such parties as shall be approved in writing by Bank.

4.4. Correction of Defects. Borrower shall correct or cause to be corrected (a) any material defect in the Improvements, (b) any material departure of the Improvements from the Legal Requirements or the requirements of any Lease, and (c) any encroachment by any part of the Improvements or any structure located on the Land on any building line, easement, property line, or restricted area.

4.5. Inspection of the Property. Upon reasonable prior written notice, Borrower shall permit Bank and its agents and representatives to enter upon the Property for the purpose of inspecting the Property.

4.6. Notices by Governmental Authority; Fire and Casualty Losses, Etc. Borrower shall timely comply with and promptly furnish to Bank true and complete copies of any material notice or claim by any Governmental Authority pertaining to the Property. Borrower shall promptly notify Bank of any fire or other casualty or any notice of taking or eminent domain action or proceeding affecting the Property.

4.7. Utilities; Access. All utility services necessary for the operation of the Improvements for their intended purposes are available and connected to the Improvements and all roads necessary for access to and from the Property have been completed.

4.8. Additional Documents. Borrower shall, and shall cause the Guarantors to, execute and deliver to Bank, from time to time as required by Bank, such other agreements, instruments and documents as shall reasonably be necessary or requested by Bank to provide the Rights and remedies to Bank granted or provided for by the Loan Documents.

4.9. Financial Statements; Other Reports. For so long as any Indebtedness remains outstanding, Borrower shall, unless Bank otherwise consents in writing, furnish to Bank the following:

(a) *Annual Financial Statements.* As soon as available, and in any event within the earlier of sixty days after filing with the SEC or 180 days after the end of each fiscal year of Borrower, beginning with the fiscal year ending December 31, 2022, a copy of the audited financial report of the Borrower for such fiscal year containing, on a consolidated basis, balance sheets and statements of income, retained earnings, and cash flow as at the end of such fiscal year and for the 12-month period then ended, in each case setting forth in comparative form the figures for the preceding fiscal year, all in reasonable detail and audited and certified by independent certified public accountants of recognized standing acceptable to Bank to the effect that such report has been prepared in accordance with GAAP and containing no material qualifications or limitations on scope.

(b) *Semi-Annual Financial Statements.* As soon as available, and in any event within the earlier of thirty days after filing with the SEC or forty-five days after the end of each June and December, commencing June 30, 2023, a copy of the financial report of the Borrower for such period containing, on a consolidated basis, balance sheets and statements of income, retained earnings, and cash flow as at the end of such fiscal period and for the 12-month period then ended, in each case setting forth in comparative form the figures for the preceding fiscal year, all in reasonable detail and certified by the chief financial officer of the Borrower to the effect that such report has been prepared in accordance with GAAP and containing no material qualifications or limitations on scope.

(c) *Semi-Annual Compliance Certificate.* As soon as available, and in any event within the earlier of thirty days after filing with the SEC or forty-five days after the end of each June and December, commencing June 30, 2023, a compliance certificate certified by a responsible officer of the Borrower reasonably acceptable to Bank.

(d) *Proceedings.* Promptly after the commencement thereof, notice of all actions, suits, and proceedings before any Governmental Authority or arbitrator affecting Borrower, any Guarantor, or any Property;

(e) *Events of Default.* As soon as possible and in any event within five (5) Business Days after Borrower has Knowledge of the occurrence of each Event of Default, a written notice setting forth the details of such Event of Default and the action that Borrower has taken and proposes to take with respect thereto;

(f) *Material Adverse Effect.* As soon as possible and in any event within five (5) Business Days after the occurrence thereof, written notice of any matter that could have a Material Adverse Effect; and

(g) *Additional Information.* Such additional financial information and other information as Bank may reasonably request in writing from time to time.

4.10. Financial Information. All representations and warranties set forth in the Loan Documents with respect to any Financial Statements or other financial information concerning Borrower, any other Obligated Party, the Property or otherwise, shall apply to all such information delivered to Bank by Borrower, any other Obligated Party, or any Person purporting to be an officer, director, or controller thereof, regardless of the method of transmission to Bank.

4.11. Compliance with Leases and Material Contracts. Subject to the provisions contained in the Security Instrument, Borrower shall comply with all material terms and conditions of the Leases, Material Contracts, and all other lease or rental agreements covering any premises or property (real or personal) wherein any of the Property is or may be located, and any Legal Requirement, except where the failure to so comply could not cause a Material Adverse Effect.

4.12. No Liability of Bank. Bank shall have no liability, obligation or responsibility with respect to the alteration, if any, of the Improvements or any Property. Bank shall not be obligated to inspect the Property or the alteration of the Improvements, and any inspection conducted by Bank is solely for the benefit of Bank and does not give rise to any duty of Bank to report or relay the results of any such inspections to Borrower or otherwise create any liability of Bank to Borrower; provided that Bank shall deliver a copy of any third-party inspection report to the Borrower. Bank shall not be liable for the performance or default of Borrower, or any other party, or for any failure to construct, complete, protect or insure the Improvements, or for the payment of costs of labor, materials or services supplied for the alteration of the Improvements, or for the performance of any obligation of Borrower or any other

Obligated Party. Nothing herein or in any other Loan Document, nor any other action taken by Bank, including, without limitation, any Advance made by Bank or acceptance of any document or instrument by Bank, shall be construed as a representation or warranty, express or implied, to any party by Bank. Further, Bank shall not have, and has not assumed, and by its execution and delivery of this Agreement hereby expressly disclaims, any liability or responsibility for the payment or performance of any indebtedness or obligations of Borrower, and no term or condition hereof, or of any of the Loan Documents, shall be construed otherwise. Bank has no liability or obligation in connection with the Property.

4.13. Defense of Third Party Actions. Bank may (but shall not be obligated to) commence, appear in or defend any action or proceeding purporting to affect the Loan, the Property or the respective Rights and obligations of Bank or Borrower pursuant to this Agreement. Bank may (but shall not be obligated to) pay all necessary expenses, including reasonable attorneys' fees of outside counsel and out-of-pocket expenses incurred in connection with any such proceedings or actions, which Borrower agrees to repay to Bank upon demand other than any action brought by Bank against Borrower and/or Guarantor in which the Borrower and/or Guarantor are determined to be the prevailing parties.

4.14. Restrictions and Annexation. Borrower shall not impose any restrictive covenants or encumbrances upon the Property, execute or file any subdivision plat affecting the Property or consent to the annexation of the Property to any city without the prior written consent of Bank, such consent not to be unreasonably withheld, conditioned or delayed, and Bank hereby agrees that upon reasonable request by Borrower it shall evidence such consent in a written instrument reasonably satisfactory to both Bank and Borrower.

4.15. Maintenance of Entity Existence, Assets and Business; Continuance of Present Business. Borrower shall preserve and maintain its existence and all of its leases, licenses, permits, franchises, qualifications, and rights that are necessary or desirable in the ordinary conduct of its business. Borrower will conduct its business in an orderly and efficient manner in accordance with good business practices. Borrower shall keep or cause to be kept all of Borrower's assets which are useful and necessary in their respective businesses in good repair, working order and condition, and will make or cause to be made all necessary repairs, renewals and replacements as may be reasonably required. Borrower will keep the Property in good order, repair, operating condition and appearance, causing all necessary repairs, renewals, replacements, additions and improvements to be promptly made, and will not allow any of the Property to be misused, abused or wasted or to deteriorate. Borrower will not, without the prior written consent of Bank (such consent not to be unreasonably withheld, conditioned or delayed), (i) remove from the Property any fixtures or personal property covered by the Security Instrument except those replaced by Borrower by an article of equal suitability and value, owned by Borrower, free and clear of any lien or security interest (except that created by the Security Instrument); (ii) make any structural alteration to the Property which impairs the use or value thereof or any other alterations thereto which impair the value thereof; or (iii) make any alteration to the Property involving an estimated expenditure exceeding \$250,000.

4.16. Tax Receipts. Borrower shall pay all Taxes levied on the Property before the date on which such taxes become delinquent; provided no such Taxes need to be paid to the extent such Taxes are being contested in good faith by appropriate proceedings, Borrower has established adequate reserves in accordance with Recognized Accounting Principles, and the taxing authority has not filed any action to foreclose any tax lien it may have with respect to such Taxes.

4.17. Incumbency. Borrower shall, from time to time, at the reasonable request of Bank, certify to Bank the names, signatures and positions of all persons authorized to execute and deliver any of the Loan Documents.

4.18. Depository Relationship. To induce Bank to establish the interest rates provided for in the Note, and if and to the extent permitted by applicable laws, Borrower shall use and maintain Bank as its principal depository bank, including for the maintenance of business, cash management, operating and administrative deposit accounts, commencing no later than sixty (60) days after the Effective Date. If Borrower maintains a bank account with any financial institution other than Bank, it shall cause, within sixty days of the date such account is opened with any such financial institution, such financial institution to execute a control agreement in form and substance satisfactory to Bank.

4.19. Operation of Property. Borrower will operate the Property in accordance with all Legal Requirements (except where the failure to comply would not have a Material Adverse Effect) and will pay all fees or charges of any kind in connection therewith. Borrower will not knowingly or through its negligence use, or allow the use of, the Property in any manner which violates any Legal Requirement or which constitutes a public or private nuisance or which makes void, voidable or cancelable, any insurance then in force with respect thereto. Borrower will not initiate or permit any zoning reclassification of the Property which is unacceptable to Bank in its reasonable discretion or seek any variance under existing zoning ordinances applicable to the Property which is unacceptable to Bank in its reasonable discretion or use or permit the use of the Property in such a manner which would result in such use becoming a nonconforming use under applicable zoning ordinances or other applicable laws. Borrower will not impose any restrictive covenants or encumbrances upon the Property nor execute or file any subdivision plat or replat affecting the Property, without the prior written consent of Bank (such consent not to be unreasonably withheld, conditioned or delayed). Borrower will not agree or consent to any drilling or exploration for, or extraction, removal or production of Minerals from the surface or subsurface of the Property regardless of the depth thereof or the method of mining or extraction thereof. Borrower will not do or suffer to be done any act whereby the value of any part of the Property may be materially lessened. Borrower will allow Bank or its authorized representatives to enter the Property at any reasonable time during business hours to inspect the Property and Borrower will use commercially reasonable efforts to assist Bank or said representative in making such inspection. If Borrower receives a material notice or claim from any federal, state or other governmental entity pertaining to the Property, including, without limitation, a notice that the Property is not in compliance with any Legal Requirement, Borrower will promptly furnish a copy of such notice or claim to Bank.

4.20. Debts; Payment of Impositions. Borrower will cause all debts and liabilities of any character, including, without limitation, all debts and liabilities for labor, material and equipment and all debts and charges for utilities servicing the Property, to be promptly paid. Borrower will duly pay and discharge, or cause to be paid and discharged, the Impositions not later than the earlier to occur of (i) the due date thereof, (ii) the date any fine, penalty, interest, or cost may be added thereto or imposed, or (iii) the date prior to any date any lien may be filed for the nonpayment thereof (if such date is used to determine the due date of the respective item), and Borrower shall deliver to Bank a written receipt evidencing the payment of the respective Imposition.

4.21. Condemnation. Immediately upon obtaining Knowledge of the institution of any proceedings for the condemnation of the Property or any portion thereof, or any other proceedings arising out of injury or damage to the Property, or any portion thereof, Borrower will notify Bank of the pendency of such proceedings. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Bank, its attorneys and experts, and cooperate with them in carrying on a defense of any such proceedings. All proceeds of condemnation awards or proceeds of sale in lieu of condemnation with respect to the Property and all judgments, decrees and awards for injury or damage to the Property shall be paid to Bank and shall be applied, first, to reimburse Bank for all reasonable costs and out-of-pocket expenses, including, without limitation, reasonable attorneys' fees of outside counsel, incurred in connection with collection of such proceeds and, second, the remainder of said proceeds shall be applied, at the sole discretion of Bank, to the payment of the Indebtedness (without premium or

penalty) in the order determined by Bank in its sole discretion or paid out to repair or restore the Property so affected by such condemnation, injury or damage. In any event the unpaid portion of the Indebtedness shall remain in full force and effect and Borrower shall not be excused in the payment thereof. Borrower hereby assigns and transfers all such proceeds, judgments, decrees and awards to Bank and agrees to execute such further assignments of all such proceeds, judgments, decrees and awards as Bank may request. Bank shall not be, in any event or circumstance, liable or responsible for the failure to collect, or the failure to exercise diligence in the collection of, any such proceeds, judgments, decrees or awards.

4.22. Further Assurances. Borrower will, on request of Bank, promptly (i) correct any defect, error or omission which may be discovered in the contents of this Agreement or in any other instrument now or hereafter executed in connection herewith or in the execution or acknowledgment thereof; and (ii) execute, acknowledge, authorize, deliver and record or file such further instruments and do such further acts as may be reasonably necessary, desirable or proper to carry out more effectively the purposes of this Agreement.

4.23. Fees and Expenses. Subject to any applicable limitations provided in the other Loan Documents, Borrower will pay all appraisal fees, filing and recording fees, inspection fees, survey fees, taxes, brokerage fees and commissions, abstract fees, title policy fees, uniform commercial code search fees, escrow fees, reasonable attorneys' fees of outside counsel, and all other documented costs and out-of-pocket expenses of every character incurred by Borrower or Bank in connection with the Indebtedness, either at the closing thereof or at any time during the term thereof, or otherwise attributable or chargeable to Borrower as owner of the Property, and will reimburse Bank for all such reasonable costs and expenses incurred by Bank. Borrower shall pay all expenses and reimburse Bank for any expenditures, including, without limitation, reasonable attorneys' fees of outside counsel and legal expenses, incurred or expended in connection with (i) the breach by Borrower of any covenant herein or in any other Loan Document; (ii) Bank's exercise of any of its rights and remedies hereunder or under the Note or any other Loan Document or Bank's protection of the Property and its lien and security interest therein; or (iii) any amendments to this Agreement, the Security Instrument, the Note or any other Loan Document or any matter requested by Borrower or any approval required hereunder. Borrower will indemnify and hold harmless Bank (for purposes of this Subsection, the term "Bank" shall include the directors, officers, partners, employees, representatives, attorneys and agents of the trustee under the Security Instrument and Bank, respectively, and any persons or entities owned or controlled by, owning or controlling, or under common control or affiliated with the trustee under the Security Instrument and Bank, respectively) from and against, and reimburse them for, all claims, demands, liabilities, losses, damages, causes of action, judgments, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees of outside counsel) which may be imposed upon, asserted against or incurred or paid by them by reason of, on account of or in connection with any bodily injury or death or property damage occurring in or upon or in the vicinity of the Property through any cause whatsoever or asserted against them on account of any act performed or omitted to be performed hereunder or on account of any transaction arising out of or in any way connected with the Property or with this Agreement, the Note or any other Loan Document other than any liability, damage or expense arising out of the gross negligence or willful misconduct of the Bank or applicable indemnified party as determined by a court of competent jurisdiction by final and non-appealable judgment. **WITHOUT LIMITATION OF THE FOREGOING, IT IS THE INTENTION OF BORROWER, AND BORROWER AGREES, THAT THE FOREGOING INDEMNITIES SHALL APPLY TO EACH INDEMNIFIED PARTY WITH RESPECT TO CLAIMS, DEMANDS, LIABILITIES, LOSSES, DAMAGES, CAUSES OF ACTION, JUDGMENTS, PENALTIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES OF OUTSIDE COUNSEL) WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF THE NEGLIGENCE (WHETHER SOLE, COMPARATIVE OR CONTRIBUTORY) OR STRICT LIABILITY OF SUCH (AND/OR ANY OTHER) INDEMNIFIED PARTY.** The foregoing indemnities shall not terminate upon release or other

termination of this Agreement but will survive the repayment of the Indebtedness and the discharge and release of this Agreement and the other Loan Documents.

4.24. Appraisal. If Bank, in good faith, deems it necessary to have the Land and Improvements appraised, Borrower agrees to such and acknowledges that Borrower will bear the cost of the new appraisal which shall be performed by an appraiser acceptable to Bank; provided, however, Borrower shall not be liable for the cost of more than one (1) appraisal per Property during any one (1) year period unless the requirement of an appraisal is caused, in whole or in part, by the occurrence of an Event of Default or is required by a Governmental Authority.

4.25. Financial Covenants.

(a) Minimum Fixed Charge Coverage Ratio. Borrower will not permit, for Borrower and its Subsidiaries on a consolidated basis, the Fixed Charge Coverage Ratio to be less than 1.25 to 1.00, measured quarterly on the last day of each quarter commencing June 30, 2023.

(b) Equity Cure. For purposes of determining compliance with Section 4.25(a), an equity contribution (in the form of cash paid or contributed in respect of common equity of a Borrower) made to a Borrower after the date of this Agreement and on or prior to the day that is 15 calendar days after the day on which the Compliance Certificate is required to be delivered pursuant to Section 4.1(c) will be included in the calculation of Consolidated Net Income for the most recently ended period solely for the purpose of determining compliance with Section 4.25(a) as of the end of such period (any such equity contribution being a "Specified Equity Contribution") provided that:

(a) the Specified Equity Contribution will be delivered to Bank for application to the principal outstanding under the Loan;

(b) no more than three Specified Equity Contributions will be permitted during the term of this Agreement, and only one Specified Equity Contribution may be made in any six-month period;

(c) the Specified Equity Contribution will be disregarded for all purposes other than the calculation of compliance with Section 4.25(a), and

(d) written notice of any Borrower's intent to include a Specified Equity Contribution shall be delivered to Bank no later than the day on which the Compliance Certificate is required to be delivered under this Agreement for the applicable period.

Notwithstanding anything to the contrary contained herein, from the date of any Borrower's election to apply a Specified Equity Contribution as set forth herein, and for a period of 12 months thereafter, Borrowers will not declare or pay any distribution to the holders of its equity interests.

**ARTICLE FIVE  
NEGATIVE COVENANTS**

Borrower covenants and agrees that, so long as any of the Indebtedness or Obligations remain outstanding, or Bank has any commitment to make Advances hereunder or any other obligation under the Loan Documents:

5.1. Debt. Borrower will not, directly or indirectly, incur, create, assume, or permit to exist, any Debt in connection with the Property, except:

(a) Debt to Bank;

(b) Trade Debt incurred in the ordinary course of business not to exceed, in the aggregate, \$250,000 at any one time outstanding, provided that all such obligations are paid within sixty (60) days of the date when due;

(c) Subordinated Debt;

(d) Purchase money Debt or capital leases not to exceed, in the aggregate, \$1,000,000 at any one time outstanding;

(e) Hedge Obligations existing or arising under Hedge Agreements permitted under Section 5.10; and

(f) unsecured guarantees incurred in the ordinary course of business with respect to surety and appeal bonds, performance bonds, and similar obligations in an amount not to exceed, in the aggregate, \$250,000 at any one time outstanding.

5.2. Contingent Liabilities. Borrower will not, directly or indirectly, assume, guarantee, endorse, contingently agree to purchase or otherwise become liable upon the obligation of any Person (other than Borrower) in connection with the Property except by the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business.

5.3. Limitation on Liens. Borrower will not, directly or indirectly, incur, create, assume, or permit to exist any Lien upon any of the Property, whether now owned or hereafter acquired, except:

(a) The Permitted Encumbrances;

(b) Encumbrances consisting of minor easements, zoning restrictions, or other restrictions on the use of real property that do not (individually or in the aggregate) materially affect the value of the assets encumbered thereby or materially impair the ability of Borrower to use such assets in their respective businesses, and none of which is violated in any material respect by existing or proposed structures or land use;

(c) Liens for taxes, assessments, or other governmental charges which are being contested in good faith and for which adequate reserves have been established;

(d) Liens resulting from good faith deposits to secure payments of workmen's compensation or other social security programs or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, or contracts (other than for payment of Debt), or Leases made in the ordinary course of business; and

(e) Purchase money Liens on specific personal property to secure Debt used to acquire such property to the extent permitted in Section 5.1.

5.4. Mergers, Etc. Borrower will not, directly or indirectly, (a) become a party to a merger or consolidation, (b) purchase or otherwise acquire all or substantially all of the assets of any Person or any shares, or other evidence of beneficial ownership of any Person, or (c) wind-up, dissolve, liquidate, or terminate. Borrower shall not amend, modify or otherwise change the organizational or trust documents of the Borrower without the prior written consent of Bank which shall not be unreasonably withheld.

5.5. Restricted Payments. Borrower will not, without the approval of Bank, directly or indirectly, declare or pay any dividends or make any other payment or distribution (in cash, property, or obligations) on account of its equity interests, or redeem, purchase, retire, or otherwise acquire any of its equity interests, or set apart any money for a sinking or other analogous fund for any dividend or other distribution on its equity interests or for any redemption, purchase, retirement, or other acquisition of any of its equity interests, or incur any obligation (contingent or otherwise) to do any of the foregoing.

5.6. Loans and Investments. Borrower will not, directly or indirectly, make any advance, loan, extension of credit, or capital contribution to or investment in, or purchase, any stock, bonds, notes, debentures, or other securities of, any Person in connection with the Property, except:

(a) readily marketable direct obligations of the United States of America or any agency thereof with maturities of one year or less from the date of acquisition; and

(b) fully insured depository accounts maintained at a commercial bank operating in the United States of America having capital and surplus in excess of \$50,000,000.00.

5.7. Transactions With Affiliates. Borrower will not, directly or indirectly, enter into any transaction, including, without limitation, the purchase, sale, or exchange of property or the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate of Borrower, except in the ordinary course of and pursuant to the reasonable requirements of Borrower's business, or pursuant to a transaction which is otherwise expressly permitted under this Agreement and upon fair and reasonable terms no less favorable to Borrower than would be obtained in a comparable arm's-length transaction with a Person not an Affiliate of Borrower. Borrower shall not enter into an agreement for the development or management of any Property without the prior written consent of, and the subordination of any fees related thereto in form and substance satisfactory to, the Bank.

5.8. No Negative Pledge. Borrower will not enter into or permit to exist any arrangement or agreement, other than pursuant to this Agreement or any Loan Document, which directly or indirectly prohibits or limits Borrower from creating or incurring a Lien on its Property, whether now owned or hereafter acquired.

5.9. Judgments. Borrower will not allow any judgment in excess of \$250,000 rendered against it to remain undischarged or unsuperseded for a period of thirty (30) consecutive days during which execution shall not be effectively stayed.

5.10. Hedge Agreements. Borrower will not enter into any Hedge Agreement unless it receives the prior written consent of Bank.

5.11. Change in Organization. Borrower shall not (a) change the state of Borrower's organization as it exists on the Effective Date, or (b) change Borrower's name as it exists on the Effective Date, unless Borrower shall have notified Bank in writing of such change at least thirty (30) days prior to the effective date or such shorter period as Bank may agree of such change, and shall have first taken all action required by Bank for the purpose of further perfecting or protecting the security interest in favor of Bank in the Property. In any written notice furnished pursuant to this Section, Borrower will expressly state that the notice is required by this Agreement and contains facts that may require additional filings of financing statements or other notices for the purpose of continuing perfection of Bank's security interest in the Property.

5.12. No Disposition. Except for Leases in the ordinary course of business of the Borrower, Borrower will not make a Disposition without obtaining Bank's prior written consent to the Disposition,



other than a final Disposition if the proceeds are sufficient to pay off the Loan in full and the Loan is in fact paid in full.

## **ARTICLE SIX EVENT OF DEFAULT**

The term “Event of Default,” as used herein, shall include the occurrence of any one or more of the following events (after giving effect to any grace or cure periods provided for herein):

6.1. Payment of Indebtedness. Borrower fails to pay any principal, interest or any other Indebtedness, or any part thereof, within five (5) days of the date on which such payment is due.

6.2. Covenants. Borrower or any other Obligated Party shall fail to provide to Bank timely any financial statement, report or notice required by Section 4.9 of this Agreement; or shall otherwise breach any provision of Article Four or Article Five of this Agreement.

6.3. Voluntary Debtor Relief. Borrower or any other Obligated Party shall (a) execute an assignment for the benefit of creditors or take any action in furtherance thereof, or be or become adjudicated as bankrupt or insolvent, or (b) generally not, or be unable to, or admit in writing its inability to, or fail to, pay its debts generally as they become due, or (c) file a voluntary petition, or commence any other case, proceeding or other action pursuant to, or voluntarily seek the benefit or benefits of or relief under, any Debtor Relief Law or take any action in furtherance thereof, or (d) apply for or seek, acquiesce in, consent to or suffer the appointment of a receiver, trustee, custodian, liquidator or other similar official of it or of the Property or any part thereof or of any significant portion of its other property, or (e) institute or voluntarily be or become a party to any other proceeding seeking to effect a suspension or having the effect of suspending any of the Rights of Bank granted or referred to in the Loan Documents or of the trustee under the Security Instrument or take any action in furtherance thereof or (f) file an answer admitting the material allegations of or consenting to, or default in, a petition filed against it in any liquidation, conservatorship, bankruptcy, reorganization, rearrangement, or other insolvency proceedings.

6.4. Involuntary Proceedings. The filing of a petition, case, proceeding or other action against Borrower or any other Obligated Party as a debtor under any Debtor Relief Law or seeking appointment of a receiver, trustee, custodian or liquidator of it or of the Property or any part thereof or of any significant portion of its other property or seeking to effect a suspension or having the effect of suspending any of the Rights of Bank granted or referred to in the Loan Documents or of the trustee under the Security Instrument and (a) Borrower or any other Obligated Party admits, acquiesces in or fails to contest diligently the material allegations thereof, or (b) the petition, case, proceeding or other action results in entry of an order for relief or order granting the relief sought against it, or (c) the petition, case, proceeding or other action is not permanently dismissed or discharged on or before the earlier of trial thereon or sixty (60) days next following the date of its filing.

6.5. Default Under Other Security Instruments. An event of default under, or the acceleration of any indebtedness secured by, any other mortgage, security interest or assignment which covers or affects any part of the Property (but this provision does not grant or imply consent to any such deed of trust, security interest or assignment).

6.6. Levy. The levy against the Property or any part thereof, or against any significant portion of Borrower’s or any other Obligated Party’s other property, of any execution, garnishment, attachment, sequestration or other writ or similar proceeding which is not permanently dismissed or discharged within sixty (60) days after the levy.

6.7. Misrepresentation. Any statement, representation or warranty heretofore or hereafter made by Borrower or any other Obligated Party in this Agreement or any other Loan Document or in any other document or any statement or representation made in any certificate, report, or opinion delivered to Bank pursuant to or in connection with the Loan Documents, is false, misleading, or erroneous in any material respect at the time made.

6.8. Abandonment. Abandonment of any portion of any Property.

6.9. Judgment. Borrower or any other Obligated Party shall allow any judgment for the payment of money in excess of \$250,000.00 rendered against it to remain undischarged or unsuperseded for a period of sixty (60) days during which execution shall not be effectively stayed.

6.10. Dissolution. The dissolution, liquidation, termination or forfeiture of the Right to do business of Borrower or any other Obligated Party for any reason whatsoever.

6.11. Non-Compliance with Legal Requirements. A determination by Bank of any failure of the alteration of any part of the Improvements, or of any of the materials, articles or fixtures supplied for incorporation into the alteration of the Improvements, to comply with any Legal Requirement, or the requirements of any Lease, in any material respect, and such failure continues for a period of thirty (30) days after the date any officer of Borrower obtains Knowledge of such failure or Bank sends notice to Borrower of such failure; provided, that, if the subject of such failure is, by its nature, not readily susceptible to cure within such thirty (30) day period, Borrower has provided to Bank written notice of the occurrence of such failure within thirty (30) days after the date such failure first occurred, and Borrower shall have commenced to cure the same within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, then such failure shall not constitute an "Event of Default" unless such failure is not cured prior to a date that is ninety (90) days from the date such failure first occurred; provided that any such notice and/or cure period shall not relieve Borrower of its obligations under Section 4.4 hereof.

6.12. Fraudulent Transfer. Borrower or any other Obligated Party shall have (i) concealed, removed, or permitted to be concealed or removed any part of its property with the intent to hinder, delay or defraud any of its creditors, or (ii) made or suffered a transfer of any of its property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law, or (iii) suffered or permitted while insolvent (under any applicable definition of the term) any creditor to obtain a Lien upon any of its property through legal proceedings or distraint, which Lien is not permanently vacated within thirty (30) days from the date thereof.

6.13. Destruction or Condemnation of Improvements. If any portion of the Property is demolished, destroyed, or substantially damaged, or any portion of the Property is taken or threatened to be taken by eminent domain, so that in any event, in Bank's reasonable judgment, the same cannot be restored or rebuilt with available funds to the condition existing immediately prior to such demolition, destruction, or damage within a reasonable period of time.

6.14. Defaults on Other Debt or Agreements. Borrower or any other Obligated Party shall fail to make any payment when due on or in respect of any Debt owing to any Person (other than Bank) or to perform, observe or comply with any covenant, agreement or other obligation to be performed, observed or complied with by Borrower in any agreement between Borrower and any other Person (subject to any grace and/or cure periods provided therein), which failure could reasonably be expected to have a Material Adverse Effect.

6.15. Other Agreements with Bank. A default or event of default shall occur and be continuing after the expiration of any applicable grace, notice, and cure periods under any other Loan Document.

6.16. Tax Lien Loan. (a) Borrower or any other Obligated Party shall obtain a loan to pay all or any portion of the ad valorem taxes accrued and/or accruing against the Property or any portion thereof (a "Tax Lien Loan"), (b) Borrower or any other Obligated Party shall execute a deed of trust or other lien instrument encumbering the Property or any portion thereof to secure a Tax Lien Loan, or (c) any taxing authority shall assign its lien securing the payment of ad valorem taxes accrued and/or accruing against the Property or any portion thereof to a third party to secure or collateralize a Tax Lien Loan.

6.17. Full Force and Effect. If any Loan Document shall cease to be in full force and effect or shall be declared null and void or the validity or enforceability thereof shall be contested or challenged by the Borrower or any other Obligated Party or any of their respective partners, members, shareholders or other equity holders, or the Borrower or any other Obligated Party shall deny that it has any further liability or obligation under any of the Loan Documents, or any lien or security interest created by the Loan Documents shall for any reason cease to be a valid, first priority perfected security interest in and lien upon any Property.

6.18. Cross Default. The occurrence of any event of default, after applicable notice and cure periods, under (a) that certain Loan Agreement dated on or about June 6, 2022 between Innovative Food Holdings, Inc. and Bank or any other document, agreement, and instrument executed in connection therewith or (b) any other documents, agreement, and instruments executed by Borrower with or in favor of Bank (other than the Loan Documents).

## ARTICLE SEVEN CERTAIN RIGHTS AND REMEDIES OF BANK

7.1. Rights Upon Event of Default. If any Default or Event of Default shall occur and be continuing, Bank may, without notice, declare the Indebtedness or any party thereof to be immediately due and payable, and the same shall thereupon become immediately due and payable, without notice, demand, presentment, notice of dishonor, notice of acceleration, notice of intent to accelerate, notice of intent to demand, protest, or other formalities of any kind, all of which are hereby expressly waived by Borrower; provided, however, that upon the occurrence of an Event of Default under Sections 6.3 or 6.4, the Indebtedness shall become immediately due and payable without notice, demand, presentment, notice of dishonor, notice of acceleration, notice of intent to accelerate, notice of intent to demand, protest, or other formalities of any kind, all of which are hereby expressly waived by Borrower. If any Event of Default shall occur and be continuing, Bank may exercise all Rights and remedies available to it in law or in equity, under the Loan Documents, or otherwise.

7.2. Performance by Bank. Should any covenant, duty, or agreement of Borrower fail to be performed in accordance with the terms of the Loan Documents, Bank may, at its option, perform, or attempt to perform, such covenant, duty or agreement on behalf of Borrower. In such event, Borrower shall pay to Bank on demand any amount expended by Bank in such performance or attempted performance, together with interest thereon at the Default Interest Rate from the date of such expenditure by Bank until paid. Notwithstanding the foregoing, it is expressly understood that Bank does not assume and shall never have any liability or responsibility for the performance of any duties of Borrower hereunder. Without limiting the generality of the foregoing, upon the occurrence of an Event of Default, Bank shall have the Right, in addition to any other Right of Bank, but not the obligation, in its own name or in the name of Borrower, to enter into possession of the Property; and to employ security personnel and other safeguards to protect the Property. Borrower hereby appoints Bank as the attorney-in-fact of Borrower with full power of substitution, and in the name of Borrower if Bank elects to do so, upon the

occurrence of an Event of Default, to (a) use such sums as are necessary, including any proceeds of the Loan, (b) endorse the name of Borrower on any checks or drafts representing proceeds of the insurance policies required hereunder, or other checks or instruments payable to Borrower with respect to the Property, (c) do every act with respect to the alteration of the Improvements which Borrower may do, and (d) prosecute or defend any action or proceeding incident to the Property. The power-of-attorney granted hereby is a power coupled with an interest, is irrevocable and shall not terminate upon disability of the principal. Bank shall have no obligation to undertake any of the foregoing actions, and if Bank should do so, it shall have no liability to Borrower for the sufficiency or adequacy of any such actions taken by Bank.

7.3. Bank Not in Control. None of the covenants or other provisions contained in this Agreement shall, or shall be deemed to, give Bank the Right or power to exercise control over the affairs and/or management of Borrower, or the completion of the tenant improvements, the power of Bank being limited to the Rights to exercise the remedies referred to in the other Sections of this Article; provided that if Bank becomes the owner of any stock of any entity, whether through foreclosure or otherwise, Bank shall be entitled to exercise such legal Rights as it may have by being a shareholder of such entity.

7.4. Waivers. The acceptance by Bank at any time and from time to time of part payment on the Indebtedness shall not be deemed to be a waiver of any Event of Default then existing. No waiver by Bank of any Event of Default shall be deemed to be a waiver of any other then existing or subsequent Event of Default. No waiver by Bank of any of its Rights hereunder, in the other Loan Documents or otherwise shall be considered a waiver of any other or subsequent Right of Bank. No delay or omission by Bank in exercising any Right under the Loan Documents or otherwise shall impair such Right or be construed as a waiver thereof or any acquiescence therein, nor shall any single or partial exercise of any such Right exhaust the same or preclude other or further exercise thereof or the exercise of any other Right under the Loan Documents or otherwise.

7.5. Cumulative Rights. All Rights available to Bank under the Loan Documents shall be cumulative of and in addition to all other Rights of Bank at law, in equity or otherwise whether or not the Indebtedness is due and payable and whether or not Bank shall have instituted any suit for collection, foreclosure or other action in connection with the Loan Documents.

7.6. Setoff. At any time an Event of Default exists, Bank shall be entitled to exercise the Rights of setoff and/or banker's lien against the interest of Borrower and each other Obligated Party in and to each and every account and other property of Borrower and each other Obligated Party which are in the possession of Bank to the extent of the full amount of the Indebtedness. The rights and remedies of Bank hereunder are in addition to other rights and remedies (including, without limitation, other rights of setoff) which Bank may have.

7.7. Receiver. At any time an Event of Default exists, Bank, as a matter of right and without regard to the sufficiency of the security for repayment of the Indebtedness and performance and discharge of the Obligations, without notice to Borrower or other Obligated Party, and without any showing of insolvency, fraud, or mismanagement on the part of Borrower or other Obligated Party, and further without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, shall be entitled to the appointment of a receiver or receivers of or for Borrower or the Property or any part thereof, including the rents therefrom, and Borrower and Obligated Party hereby irrevocably consents to the appointment of a receiver or receivers and agrees not to oppose, directly or indirectly, Bank's efforts to obtain same. Any receiver appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters.

7.8. BORROWER'S INDEMNITY. BORROWER SHALL INDEMNIFY, DEFEND, PROTECT AND HOLD HARMLESS BANK, EACH AFFILIATE OF BANK, AND EACH OF ITS AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, ATTORNEYS, SUCCESSORS, AND ASSIGNS AND THE TRUSTEE UNDER THE SECURITY INSTRUMENT (COLLECTIVELY, THE "INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, CLAIMS, PENALTIES, JUDGMENTS, DISBURSEMENTS, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES OF OUTSIDE COUNSEL AND OUT-OF-POCKET EXPENSES), ACTIONS, PROCEEDINGS, OR DISPUTES INCURRED OR SUFFERED OR TO WHICH ANY OF THEM MAY BECOME SUBJECT WHICH DIRECTLY OR INDIRECTLY ARISE FROM OR RELATE TO:

(a) THE NEGOTIATION, EXECUTION, DELIVERY, PERFORMANCE, ADMINISTRATION, OR ENFORCEMENT OF ANY OF THE LOAN DOCUMENTS;

(b) ANY OF THE TRANSACTIONS CONTEMPLATED BY THE LOAN DOCUMENTS;

(c) ANY BREACH BY BORROWER OR ANY OTHER OBLIGATED PARTY OF ANY REPRESENTATION, WARRANTY, COVENANT, OR OTHER AGREEMENT CONTAINED IN ANY OF THE LOAN DOCUMENTS;

THE PRESENCE, RELEASE, THREATENED RELEASE, DISPOSAL, REMOVAL, OR CLEANUP OF ANY HAZARDOUS MATERIAL LOCATED ON, ABOUT, WITHIN OR AFFECTING ANY OF THE PROPERTIES OR ASSETS OF THE BORROWER OR ANY OTHER OBLIGATED PARTY;

ANY LITIGATION CONCERNING THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE PROPERTY, OR ANY INTEREST OF BORROWER OR BANK THEREIN, OR THE RIGHT OF OCCUPANCY THEREOF BY BORROWER OR BANK, WHETHER OR NOT ANY SUCH LITIGATION IS PROSECUTED TO A FINAL, NON-APPEALABLE JUDGMENT;

(d) ANY DISPUTE, INCLUDING DISPUTES AS TO THE DISBURSEMENT OF PROCEEDS OF ANY NOTE NOT YET DISBURSED, AMONG OR BETWEEN BORROWER OR OTHER PARTNERS OR VENTURERS OF BORROWER IF BORROWER IS A GENERAL OR LIMITED PARTNERSHIP, OR AMONG OR BETWEEN ANY EMPLOYEES, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS OR MANAGERS OF BORROWER IF BORROWER IS A CORPORATION OR LIMITED LIABILITY COMPANY OR PARTNERSHIP, OR AMONG OR BETWEEN ANY MEMBERS, TRUSTEES OR OTHER RESPONSIBLE PARTIES IF BORROWER IS AN ASSOCIATION, TRUST OR OTHER ENTITY;

(e) ANY ACTION TAKEN OR NOT TAKEN BY BANK OR TRUSTEE WHICH IS ALLOWED OR PERMITTED UNDER THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS RELATING TO BORROWER, THE PROPERTY, OR OTHERWISE IN CONNECTION WITH THE LOAN DOCUMENTS, INCLUDING, WITHOUT LIMITATION, THE PROTECTION OR ENFORCEMENT OF ANY LIEN, SECURITY INTEREST OR OTHER RIGHT, REMEDY OR RECOURSE CREATED OR AFFORDED BY THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS; AND

(f) ANY ACTION BROUGHT BY BANK AGAINST BORROWER UNDER THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS, WHETHER OR NOT SUCH ACTION IS PROSECUTED TO A FINAL, NON-APPEALABLE JUDGMENT;

LOAN AGREEMENT

**IN EACH SUCH CASE OTHER THAN ANY LIABILITY, DAMAGE OR EXPENSE ARISING OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE BANK OR APPLICABLE INDEMNITEE AS DETERMINED BY A COURT OF COMPETENT JURISDICTION BY FINAL AND NON-APPEALABLE JUDGMENT.**

**WITHOUT LIMITING ANY PROVISION OF THIS AGREEMENT OR OF ANY OTHER LOAN DOCUMENT, IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT EACH PERSON TO BE INDEMNIFIED UNDER THIS SECTION SHALL BE INDEMNIFIED FROM AND HELD HARMLESS AGAINST ANY AND ALL LOSSES, LIABILITIES, CLAIMS, DAMAGES, PENALTIES, JUDGMENTS, DISBURSEMENTS, COSTS, AND OUT-OF-POCKET EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES OF OUTSIDE COUNSEL) ARISING OUT OF OR RESULTING FROM THE SOLE CONTRIBUTORY OR ORDINARY NEGLIGENCE OF SUCH PERSON.**

**BANK MAY EMPLOY AN ATTORNEY OR ATTORNEYS TO PROTECT OR ENFORCE ITS RIGHTS, REMEDIES AND RECOURSES UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AND TO ADVISE AND DEFEND BANK WITH RESPECT TO ANY SUCH ACTIONS AND OTHER MATTERS. BORROWER SHALL REIMBURSE BANK FOR ITS REASONABLE ATTORNEYS' FEES OF OUTSIDE COUNSEL AND OUT-OF-POCKET EXPENSES (INCLUDING EXPENSES AND COSTS FOR EXPERTS) IMMEDIATELY UPON RECEIPT OF A WRITTEN DEMAND THEREFOR, WHETHER ON A MONTHLY OR OTHER TIME INTERVAL, AND WHETHER OR NOT AN ACTION IS ACTUALLY COMMENCED OR CONCLUDED. ALL OTHER REIMBURSEMENT AND INDEMNITY OBLIGATIONS HEREUNDER SHALL BECOME DUE AND PAYABLE WHEN ACTUALLY INCURRED BY BANK. ANY PAYMENTS NOT MADE WITHIN TEN (10) DAYS AFTER WRITTEN DEMAND THEREFOR SHALL BEAR INTEREST AT THE DEFAULT INTEREST RATE FROM THE DATE OF SUCH DEMAND UNTIL FULLY PAID. THE PROVISIONS OF THIS SECTION 7.8 SHALL SURVIVE REPAYMENT OF THE INDEBTEDNESS AND PERFORMANCE OF THE OBLIGATIONS, THE RELEASE OF THE LIEN OF THE SECURITY INSTRUMENT, ANY FORECLOSURE (OR ACTION IN LIEU OF FORECLOSURE), THE TRANSFER BY BORROWER OF ANY OR ALL OF ITS RIGHT, TITLE AND INTEREST IN OR TO THE PROPERTY AND THE EXERCISE BY BANK OF ANY AND ALL REMEDIES SET FORTH HEREIN OR IN ANY OTHER LOAN DOCUMENT.**

7.9. Limitation of Liability. Neither Bank nor any Affiliate, officer, director, employee, attorney, or agent of Bank shall have any liability with respect to, and Borrower hereby waives, releases, and agrees not to sue any of them upon, any claim for any special, indirect, incidental, or consequential damages suffered or incurred by Borrower in connection with, arising out of, or in any way related to, this Agreement or any of the other Loan Documents, the construction or completion of tenant improvements or the payment of leasing commissions, or any of the transactions contemplated by this Agreement or any of the other Loan Documents, other than such liability arising out of the gross negligence or willful misconduct of the Bank as determined by a court of competent jurisdiction by final and non-appealable judgment. Borrower hereby waives, releases, and agrees not to sue Bank or any of Bank's Affiliates, officers, directors, employees, attorneys, or agents for punitive damages in respect of any claim in connection with, arising out of, or in any way related to, this Agreement or any of the other Loan Documents, the construction or completion of tenant improvements or the payment of leasing commissions, or any of the transactions contemplated by this Agreement or any of the other Loan Documents, other than in connection with the gross negligence or willful misconduct of the Bank as determined by a court of competent jurisdiction by final and non-appealable judgment.

**ARTICLE EIGHT  
MISCELLANEOUS**

8.1. Notices. Unless otherwise expressly provided herein, all notices and other communications provided for hereunder shall be in writing (including by facsimile transmission) and mailed, faxed, or delivered, to the address or facsimile number specified for notices on the signature page below or to such other address as shall be designated by such party in a notice to the other parties. The address set forth below for Borrower shall be used for all communication to Borrower. All such other notices and other communications shall be deemed to have been given or made upon the earliest to occur of (a) actual receipt by the intended recipient, or (b) (i) if delivered by hand or courier, when signed for by the designated recipient, (ii) if delivered by mail, upon deposit in the mail, postage prepaid, and (iii) if delivered by facsimile, when sent and receipt has been confirmed by telephone. Electronic mail and internet websites may be used only to distribute routine communications, such as Financial Statements and other information, and to distribute Loan Documents for execution by the parties thereto, and may not be used for any other purpose.

8.2. Form and Number of Documents. Each agreement, document, instrument, or other writing to be furnished to Bank under any provision of this Agreement must be in form and substance and in such number of counterparts as may be satisfactory to Bank and its counsel.

8.3. Survival. All covenants, agreements, undertakings, representations, and warranties made in any of the Loan Documents shall survive all closings under the Loan Documents and shall continue in full force and effect so long as any part of the Indebtedness remains and, except as otherwise indicated, shall not be affected by any investigation made by any party. Notwithstanding anything contained herein to the contrary, the covenants, agreements, undertakings, representations, and warranties made in Section 4.12, Section 7.8 and Section 7.9 shall survive the expiration or termination of this Agreement, regardless of the means of such expiration or termination.

8.4. GOVERNING LAW; PLACE OF PERFORMANCE. THE LOAN DOCUMENTS ARE BEING EXECUTED AND DELIVERED, AND ARE INTENDED TO BE PERFORMED, IN THE STATE OF TEXAS, AND THE LAWS OF SUCH STATE AND OF THE UNITED STATES SHALL GOVERN THE RIGHTS AND DUTIES OF THE PARTIES HERETO AND THE VALIDITY, CONSTRUCTION, ENFORCEMENT, AND INTERPRETATION OF THE LOAN DOCUMENTS, EXCEPT TO THE EXTENT OTHERWISE SPECIFIED IN ANY OF THE LOAN DOCUMENTS. THIS AGREEMENT, ALL OF THE OTHER LOAN DOCUMENTS (EXCEPT AS MAY BE EXPRESSLY SET FORTH IN ANY LOAN DOCUMENT), AND ALL OF THE OBLIGATIONS OF BORROWER UNDER ANY OF THE LOAN DOCUMENTS ARE PERFORMABLE IN DALLAS COUNTY, TEXAS. VENUE OF ANY LITIGATION INVOLVING THIS AGREEMENT OR ANY LOAN DOCUMENT SHALL BE MAINTAINED IN AN APPROPRIATE STATE OR FEDERAL COURT LOCATED IN DALLAS COUNTY, TEXAS, TO THE EXCLUSION OF ALL OTHER VENUES. BORROWER AGREES THAT SERVICE OF PROCESS UPON IT MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, AT ITS ADDRESS SPECIFIED HEREIN. NOTHING HEREIN SHALL AFFECT THE RIGHT OF BANK TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT OF BANK TO BRING ANY ACTION OR PROCEEDING AGAINST BORROWER OR WITH RESPECT TO ANY OF BORROWER'S PROPERTY IN COURTS IN OTHER JURISDICTIONS. THE SCOPE OF EACH OF THE FOREGOING WAIVERS IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. BORROWER ACKNOWLEDGES THAT THESE

WAIVERS ARE A MATERIAL INDUCEMENT TO BANK'S AGREEMENT TO ENTER INTO AGREEMENTS AND OBLIGATIONS EVIDENCED BY THE LOAN DOCUMENTS, THAT BANK HAS ALREADY RELIED ON THESE WAIVERS AND WILL CONTINUE TO RELY ON EACH OF THESE WAIVERS IN RELATED FUTURE DEALINGS. THE WAIVERS IN THIS SECTION ARE IRREVOCABLE, MEANING THAT THEY MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THESE WAIVERS APPLY TO ANY FUTURE RENEWALS, EXTENSIONS, AMENDMENTS, MODIFICATIONS, OR REPLACEMENTS IN RESPECT OF THE APPLICABLE LOAN DOCUMENT. IN CONNECTION WITH ANY LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

8.5. Maximum Interest. It is expressly stipulated and agreed to be the intent of Borrower and Bank at all times to comply strictly with the applicable Texas law governing the maximum rate or amount of interest payable on the indebtedness evidenced by the Note or any Loan Document, and the Related Indebtedness (or applicable United States federal law to the extent that it permits Bank to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If the applicable law is ever judicially interpreted so as to render usurious any amount (a) contracted for, charged, taken, reserved or received pursuant to any Note, any of the other Loan Documents or any other communication or writing by or between Borrower and Bank related to the transaction or transactions that are the subject matter of the Loan Documents, (b) contracted for, charged, taken, reserved or received by reason of Bank's exercise of the option to accelerate the maturity of any Note and/or any and all indebtedness paid or payable by Borrower to Bank pursuant to any Loan Document other than such Note (such other indebtedness being referred to in this Section as the "Related Indebtedness"), or (c) Borrower will have paid or Bank will have received by reason of any prepayment by Borrower of any Note and/or the Related Indebtedness, then it is Borrower's and Bank's express intent that all amounts charged in excess of the Maximum Lawful Rate shall be automatically canceled, ab initio, and all amounts in excess of the Maximum Lawful Rate theretofore collected by Bank shall be credited on the principal balance of such Note and/or the Related Indebtedness (or, if such Note and the Related Indebtedness have been or would thereby be paid in full, refunded to Borrower), and the provisions of such Note and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder; provided, however, if such Note has been paid in full before the end of the stated term of such Note, then Borrower and Bank agree that Bank shall, with reasonable promptness after Bank discovers or is advised by Borrower that interest was received in an amount in excess of the Maximum Lawful Rate, either refund such excess interest to Borrower and/or credit such excess interest against such Note and/or any Related Indebtedness then owing by Borrower to Bank. Borrower hereby agrees that as a condition precedent to any claim or counterclaim (in which event such proceeding shall be abated for such time period) seeking usury penalties against Bank, Borrower will provide written notice to Bank, advising Bank in reasonable detail of the nature and amount of the violation, and Bank shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Borrower or crediting such excess interest against such Note to which the alleged violation relates and/or the Related Indebtedness then owing by Borrower to Bank. All sums contracted for, charged, taken, reserved or received by Bank for the use, forbearance or detention of any debt evidenced by such Note and/or the Related Indebtedness shall, to the extent permitted by applicable law, be amortized or spread, using the actuarial method, throughout the stated term of such Note and/or the Related Indebtedness (including any and all renewal and extension periods) until payment in full so that the rate or amount of interest on account of such Note and/or the Related Indebtedness does not exceed the Maximum Lawful Rate from time to time in effect and applicable to such Note and/or the Related Indebtedness for so long as debt is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code which regulates certain revolving credit loan accounts and revolving triparty accounts apply to such Note and/or any of the Related Indebtedness. Notwithstanding anything to the



contrary contained herein or in any of the other Loan Documents, it is not the intention of Bank to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

8.6. Ceiling Election. To the extent that Bank is relying on Chapter 303 of the Texas Finance Code to determine the Maximum Lawful Rate payable on any Note and/or any other portion of the Indebtedness, Bank will utilize the weekly ceiling from time to time in effect as provided in such Chapter 303, as amended. To the extent federal law permits Bank to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law, Bank will rely on federal law instead of such Chapter 303 for the purpose of determining the Maximum Lawful Rate. Additionally, to the extent permitted by applicable law now or hereafter in effective, Bank may, at its option and from time to time, utilize any other method of establishing the Maximum Lawful Rate under such Chapter 303 or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect.

8.7. Invalid Provisions. If any provision of any of the Loan Documents is held to be illegal, invalid, or unenforceable under present or future laws effective during the term thereof, such provision shall be fully severable, the appropriate Loan Document shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part thereof; and the remaining provisions thereof shall remain in full force and effect and shall not be effected by the illegal, invalid, or unenforceable provision or by its severance therefrom. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of such Loan Document a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

8.8. Costs and Expenses. Borrower shall pay Bank, on demand, all reasonable costs and expenses of Bank, including, without limitation, reasonable attorneys' fees and legal expenses, incurred by Bank in perfecting, revising, protecting or enforcing any of its rights or remedies against any Obligated Party or any Property, or otherwise incurred by Bank in connection with any Default or Event of Default or the enforcement of the Loan Documents or the Indebtedness. Following Bank's demand upon Borrower for the payment of any such costs and expenses, and until the same are paid in full, the unpaid amount of such costs and expenses shall constitute Indebtedness and shall bear interest at the default rate of interest provided for in the Note.

8.9. Entirety and Amendments. This instrument embodies the entire agreement between the parties relating to the subject matter hereof (except documents, agreements and instruments delivered or to be delivered in accordance with the express terms hereof), supersedes all prior agreements and understandings, if any, relating to the subject matter hereof, and may be amended only by an instrument in writing executed jointly by Borrower and Bank and supplemented only by documents delivered or to be delivered in accordance with the express terms hereof.

8.10. Multiple Counterparts; Facsimiles. This Agreement has been executed in a number of identical counterparts, each of which constitutes an original and all of which constitute, collectively, one agreement; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart. Delivery of an executed counterpart of this Agreement by facsimile transmission or other electronic mail transmission (e.g., ".pdf" or ".tif") shall be effective as delivery of an executed original counterpart and shall constitute a covenant to deliver an executed original counterpart, but the failure to do so shall not affect the validity, enforceability and binding effect of this Agreement. This provision shall apply to all of the Loan Documents as if fully set forth therein.

8.11. Parties Bound. This Agreement shall be binding upon and inure to the benefit of Borrower, Bank and their respective successors and assigns; provided that neither Borrower nor Borrower may, without the prior written consent of Bank, assign any of its Rights, duties, or obligations hereunder. No term or provision of this Agreement shall inure to the benefit of any Person other than Borrower, Borrower and Bank and their respective successors and assigns; consequently, no Person other than Borrower, Borrower and Bank and their respective successors and assigns, shall be entitled to rely upon, or to raise as a defense, in any manner whatsoever, the failure of Borrower, Borrower or Bank to perform, observe, or comply with any such term or provision.

8.12. Bank's Consent or Approval. Except where otherwise expressly provided in the Loan Documents, in any instance where the approval, consent or the exercise of judgment of Bank is required, the granting or denial of such approval or consent and the exercise of such judgment shall be (a) within the sole discretion of Bank, and (b) deemed to have been given only by a specific writing intended for that purpose and executed by Bank. Each provision for consent, approval, inspection, review, or verification by Bank is for Bank's own purposes and benefit only.

8.13. Sale of Participations. Bank may, from time to time and without notice to Borrower, sell or offer to sell the Indebtedness, or interests therein, to one or more assignees or participants and Bank is hereby authorized to disseminate and disclose any information (whether or not confidential or proprietary in nature) Bank now has or may hereafter obtain pertaining to Borrower, the Indebtedness or the Loan Documents (including, without limitation, any credit or other information regarding Borrower, any of its principals, or any other person or entity liable, directly or indirectly, for any part of the Loan, to (a) any such assignee or participant or any prospective assignee or prospective participant, (b) any regulatory body having jurisdiction over Bank or the Indebtedness, and (c) any other persons or entities as may be necessary or appropriate in Bank's reasonable judgment). Bank, as a courtesy to Borrower, will endeavor to notify Borrower of any such assignees or participants, or prospective assignees or participants, to which Bank disseminates any of the information described above.

8.14. Loan Agreement Governs. In the event of any conflict between the terms of this Agreement and any terms of any other Loan Document, the terms of this Agreement shall govern. All of the Loan Documents are by this reference incorporated into this Agreement.

8.15. WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY IRREVOCABLY AND EXPRESSLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO ANY OF THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY OR THE ACTIONS OF BANK IN THE NEGOTIATION, ADMINISTRATION, OR ENFORCEMENT THEREOF.

8.16. Waiver of Fraudulent Inducement. Neither Bank nor any affiliate of Bank has made any representation, warranty or statement to Borrower in order to induce Borrower to execute this Agreement or the other Loan Documents. Borrower hereby expressly waives any claim of fraudulent inducement to execute this agreement or the other Loan Documents and further disclaims any reliance or statements on or representations of Bank in waiving such claim.

8.17. Waiver of Consequential, Punitive and Speculative Damages. Borrower and bank agree that, in connection with any action, suit or proceeding relating to or arising out of this agreement or any of the other Loan Documents, each mutually waives to the fullest extent permitted by applicable law any claim for consequential, punitive or speculative damages.

8.18. STATUTE OF FRAUDS NOTICE. THIS WRITTEN LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT 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.

EFFECTIVE as of the Effective Date.

**BANK:**

MAPLEMARK BANK

By: \_\_\_\_\_  
Elizabeth Nebergall, Vice President

*Address for Notices:*

MapleMark Bank  
4143 Maple Ave., Suite 100  
Dallas, Texas 75219  
Telephone No.: (972) 698-5706  
Attention: Kendall Scott  
e-mail: Kendall.Scott@MapleMarkBank.com

LOAN AGREEMENT

Signature Page

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**BORROWER:**

INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

INNOVATIVE FOOD PROPERTIES, LLC,  
a Delaware limited liability company

By INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation,  
its sole member

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

*Address for Notices:*  
28411 Race Track Road  
Bonita Springs, FL 34135  
Attention: Samuel Klepfish

**LIST OF EXHIBITS AND SCHEDULES**

- EXHIBIT A - Conditions Precedent
- EXHIBIT B - Title Policy Requirements
- EXHIBIT C - Insurance Requirements

LOAN AGREEMENT

List of Exhibits– Page 1

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**EXHIBIT A**

**TO**

**LOAN AGREEMENT**

**Conditions Precedent**

Promissory Note.

Security Instrument.

Environmental Indemnity.

Title Policy.

Leases.

Flood Certificate.

Payment of all fees and expenses of Bank.

An appraisal of the Property by a qualified MAI appraiser approved by Bank, in form, scope and substance reasonably satisfactory to Bank.

ESA Phase I Assessment approved by Bank.

Insurance Policies, certificates and binders required pursuant to Section 4.1 and Exhibit C to this Agreement, together with a schedule of insurance in form and substance satisfactory to Bank.

Settlement Statement.

Satisfactory evidence that all zoning ordinances or restrictive covenants affecting the Property permit the present and intended uses of the Property and have been and will be complied with.

Satisfactory evidence of the Property's compliance with the requirements of all applicable environmental protection laws, rules and regulations, whether federal, state or municipal.

Satisfactory evidence that all utility and sanitary sewage services and facilities necessary for the use of the Improvements are available, or will be available, to the Land.

Satisfactory evidence that all of the streets providing access to the Property have been either dedicated to public use or established by private easement, duly recorded in the records of the county in which the Property is located, and have been fully installed and accepted by Governmental Authority, that all costs and expenses of the installation and acceptance thereof have been paid in full and that there are no restrictions on the use and enjoyment of such streets that adversely affect, limit or impair the Property to Bank.

Other documents, instruments and information reasonably requested by Bank.

LOAN AGREEMENT

**EXHIBIT B**

**TO**

**LOAN AGREEMENT**

**Title Policy Requirements**

Borrower shall deliver to Bank, at Borrower's expense, a standard loan policy of title insurance in accordance with the laws and practices of the applicable state. The Title Policy shall (a) show "MapleMark Bank" as the insured mortgagee, (b) insure the Lien of the Security Instrument as a first lien against the Land and Improvements in the full amount of the Loan, (c) delete the exception for matters which a current survey would show, and all "standard" exceptions which can be deleted, to the fullest extent authorized under applicable title insurance rules and Borrower shall satisfy all requirements therefor, (d) contain (i) no exception for standby fees or real estate taxes other than standby fees and real estate taxes for the year in which the Closing Date occurs to the extent the same are not then due and payable in which case the same shall be endorsed "not yet due and payable" and (ii) no exception for subsequent assessments for prior years, (e) provide full coverage against mechanic's liens to the extent authorized by applicable title insurance rules and Borrower shall satisfy all requirements therefor, (f) contain only such exceptions (regardless of rank or priority) Bank approves, and Borrower shall cause to be delivered to Bank true, complete and fully legible copies of all recorded instruments shown as exceptions, including the subdivision plat (if any) and any restrictive covenants, (g) insure that no restrictive covenants shown in the Title Policy have been violated, and that no violation of the restrictions will result in a reversion or forfeiture of title, (h) insure that the lands shown in the required Survey are one and the same as the lands encumbered by the Security Instrument, and that all recorded easements and other exceptions locatable on the ground are located as shown on the Survey, (i) insure that indefeasible or marketable (or the equivalent thereof pursuant to applicable law) (as coverage is available) fee simple title to the Land and Improvements is vested in Borrower, (j) contain such endorsements as Bank requires and are available under applicable title insurance rules and Borrower shall satisfy all requirements therefor, (k) insure any easements, leasehold estates or other matters appurtenant to or benefiting the Land and/or the Improvements as part of the insured estate and not show the same as exceptions, (l) provide the recording information for the UCC financing statement (if any) filed in the real estate records of the county where the Land is located, and (m) insure the zoning of, and the Right of access to, the Land to the extent authorized under applicable title insurance rules and Borrower shall satisfy all requirements therefor.

The conditions to Bank's obligation to make the Loan will not be satisfied if the Title Policy required by this Agreement is not, or cannot be, issued, whether caused by Borrower's failure to satisfy the underwriter's requirements or otherwise.

LOAN AGREEMENT



**EXHIBIT C**

**TO**

**LOAN AGREEMENT**

**Insurance Requirements**

Borrower shall maintain with responsible insurance companies having at least an A Policyholder's Rating and a Financial Size Rating of XII by Alfred M. Best Company (or another company approved by Bank) the following:

**Hazard Insurance.** Insurance with respect to all insurable Property against loss or damage by fire, lightning, windstorm, explosion, hail, tornado, collapse, riot, riot attending a strike, sprinkler leakage, civil commotion, damage from aircraft and vehicles, and smoke damage and loss or damage from such hazards as are presently included in so called "extended coverage" and against vandalism and malicious mischief and against such other insurable hazards as may be required by Bank for the benefit of Borrower and Bank as named insured and/or loss payees. The amount of such insurance shall be the full actual cash value of the buildings, improvements, furniture, furnishings, fixtures, equipment and other items (whether personalty or fixtures) included in the Property. Full actual cash value, as used herein, means (1) the cost to repair or replace the damaged property, minus depreciation; (2) the damaged property's "fair market value"; or (3) using the "broad evidence rule," which calls for considering all relevant evidence of the value of the damaged property. Each such policy shall contain an actual cash value endorsement and such other endorsements as are sufficient to prevent Borrower and Bank from becoming a coinsurer with respect to such buildings and improvements. Such insurance shall be "Basic Causes of Loss" form.

**Builder's Risk.** All-Risk Builder's Risk insurance (which may be provided by the Contractor during the alteration, if any, of the Improvements, although the responsibility to provide such insurance shall remain Borrower's responsibility) in an amount equal to 100% of the replacement cost of the Improvements, providing all-risk coverage on the Improvements and materials stored on the Property and elsewhere, and including collapse, damage resulting from error in design or faulty workmanship or materials, water damage, and permission to occupy, for the benefit of Borrower and Bank as named insured and/or loss payees.

**Flood Insurance.** If and to the extent any of the Property is located in a flood hazard area, a federal flood insurance policy in an amount equal to the lesser of the amount of the Loan or the maximum amount available.

**Other.** Such other insurance on the Property, or any replacements or substitutions thereof, or additions thereto, and in such amounts as may from time to time be required by Bank against other insurable hazards or casualties which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height and type of the buildings and improvements, or any replacements or substitutions therefor, or additions thereto, and their construction, location, use and occupancy. Bank may also require Borrower to maintain commercial general liability insurance for owners and contractors in amounts and form acceptable to Bank.

**Contracts.** With respect to any Contractor performing work in connection with the Improvements, such insurance as Bank shall reasonably require, including, but not limited to, Worker's Compensation Insurance for statutory limits.

LOAN AGREEMENT

All insurance policies shall be “*occurrence*” based policies, issued and maintained by insurers, in amounts, with deductibles, and in form satisfactory to Bank, shall require not less than thirty (30) days’ prior written notice to Bank of any cancellation lapse, expiration, reduction or other change of coverage, and shall provide, if possible, for payment of all costs and expenses incurred by Bank in the event of any contested claim. Without limiting the discretion of Bank with respect to required endorsements to insurance policies, all such policies for loss or damage to the Property shall contain a standard mortgagee clause (without contribution) naming Bank as mortgagee with loss proceeds payable to Bank. All such policies also shall provide that the validity and enforceability of such policies will not be affected by, and the proceeds of such policies will be payable to Bank notwithstanding any (i) act, failure to act, or negligence of the insured, (ii) any violation of any warranty, declaration or condition contained in any such policy by the insured, (iii) the occupancy or use of the Property for purposes more hazardous than permitted by the terms of the policy, (iv) the exercise of the power of sale or any foreclosure or other action or proceeding taken by Bank pursuant to the Loan Documents, or (v) any change in title to or ownership of the Property. In the case of policies of “*extended coverage*” insurance carried by a lessee of the Property for the benefit of Borrower, Borrower will upon request of Bank cause such policies to be endorsed to provide for payment of proceeds to Bank as its interests may appear.

LOAN AGREEMENT

Exhibit C – Page 2

**LOAN AGREEMENT**

THIS LOAN AGREEMENT is made and entered into as of June 6, 2022 (the “Effective Date”) between MAPLEMARK BANK (together with its successors and assigns, the “Bank”), INNOVATIVE FOOD HOLDINGS, INC., a Florida corporation (“IVFH”), and INNOVATIVE FOOD PROPERTIES, LLC, a Delaware limited liability company (“IVFP” and, collectively with IVFH, the “Borrower”).

**RECITALS:**

- A. Borrower desires to refinance indebtedness secured by real property owned by IVFP at 220 Oak Hill Road, Mountain Top, Pennsylvania 18518.
- B. Borrower desires to obtain a term loan from the Bank to effect such refinance, and Bank is willing to provide such term loan to Borrower subject to the terms and conditions set forth herein

**AGREEMENT:**

NOW, THEREFORE, in consideration of the premises, the covenants, representations, warranties and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

**ARTICLE ONE  
DEFINITIONS AND USE OF TERMS**

1.1. Definitions. As used in this Agreement, all exhibits and schedules hereto and in any note, certificate, report or other Loan Documents made or delivered pursuant to this Agreement, the following terms will have the meanings given such terms in Article One.

“Advance” means a disbursement by Bank, whether by journal entry, deposit to a Borrower’s account, check to third party or otherwise of any of the proceeds of the Loan.

“Affiliate” means, as to any Person, any other Person (a) that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such Person, (b) that directly or indirectly beneficially owns or holds ten percent (10%) or more any class of voting stock of such Person, or (c) that controls ten percent (10%) or more of the voting stock of which is directly or indirectly beneficially owned or held by the Person in question. The term “control” means the possession, directly or indirectly, of the power to direct or cause direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise; provided, however, in no event shall Bank be deemed an Affiliate of Borrower or any Borrower.

“Agreement” means this Loan Agreement, as the same may from time to time be amended, supplemented, replaced or restated.

“Bank” means MapleMark Bank and its successors and assigns, in whole or in part.

“Borrower” has the meaning set forth in the introductory paragraph hereof and its successors and assigns.

“Business Day” means a day other than a Saturday, Sunday or a day on which Bank is authorized to be closed. Unless otherwise provided, the term “days” means calendar days.

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“Capitalized Lease Obligation” means, for any Person, the amount of Debt under a lease of Property by such Person that would be shown as a liability on a balance sheet of such Person prepared for financial reporting purposes in accordance with GAAP.

“Change” means (a) any change after the date of any Note in the risk-based capital guidelines applicable to Bank, or (b) any adoption of or change in any other law, governmental or quasi-governmental rule, regulation, policy, guideline, interpretation, or directive (whether or not having the force of law) after the date of any Note that affects capital adequacy or the amount of capital required or expected to be maintained by Bank or any entity controlling Bank.

“Closing Date” means the Effective Date.

“Code” means the Uniform Commercial Code of the State of Texas or other applicable jurisdiction as it may be amended and in effect from time to time.

“Compliance Certificate” means a certificate in form and substance satisfactory to Bank prepared by and executed by a responsible officer of the Borrower reasonably acceptable to Bank.

“Consolidated Interest Charges” means the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, and (b) the portion of rent expense under Capitalized Lease Obligations that is treated as interest in accordance with GAAP, in each case, of or by Borrower and its Subsidiaries on a consolidated basis for the most recently completed measurement period.

“Consolidated Net Income” means the net income (or loss) of Borrower and its Subsidiaries in accordance with GAAP on a consolidated basis for the most recently completed measurement period; provided that Consolidated Net Income shall exclude (a) extraordinary gains and extraordinary losses for such measurement period, (b) the net income of any Subsidiary during such measurement period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such income is not permitted by operation of the terms of its Constituent Documents or any agreement, instrument or Law applicable to such Subsidiary during such measurement period, and (c) any income (or loss) for such measurement period of any Person if such Person is not a Subsidiary.

“Current Maturities of Long-Term Debt” means, on any date of determination, that portion of the long term Debt of Borrower and its Subsidiaries, and that portion of the Capital Lease Obligations of Borrower and its Subsidiaries.

“Debt” means, with respect to any Person and as of any applicable date of determination, all indebtedness, obligations and liabilities of such Person, whether matured or unmatured, due or to become due, liquidated or unliquidated, direct or indirect, absolute or contingent, joint or several, including all items that should be classified as liabilities in accordance with Recognized Accounting Principles.

“Debtor Relief Laws” means Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts, or similar laws affecting the rights of creditors generally from time to time in effect.

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

“Default Interest Rate” means a rate per annum equal to the Note Rate plus five percent (5%) but in no event in excess of the Maximum Lawful Rate.

“Disposition” means any sale, Lease (except as permitted in the Loan Documents), exchange, assignment, conveyance, transfer, trade, or other disposition of all or any portion of the Property (or any interest therein) other than sales of personal property assets of the Borrower in the ordinary course of business that do not to exceed, individually or in the aggregate during any fiscal year, \$100,000.

“Effective Date” means the date set forth in the introductory paragraph hereof.

“Event of Default” has the meaning set forth in Article Six hereof and in the other Loan Documents.

“Financial Statements” means all balance sheets, income statements, statements of profit and loss, statements of cash flow, statements of sources and uses of funds, and other financial data, statements and reports (whether of any Borrower, Guarantor, or any other Person or otherwise) which are required to, have been, or may from time to time hereafter, be furnished to Bank, for the purposes of, or in connection with, this Agreement.

“Financing Statements” means the financing statement or financing statements (on Standard Form UCC 1 or otherwise) utilized in connection with the Loan Documents.

“Fixed Charge Coverage Ratio” means, at any date of determination, the ratio of (a) Consolidated Net Income, *plus* (to the extent any of the following reduce Consolidated Net Income in the calculation thereof) the sum of (i) Consolidated Interest Charges, (ii) depreciation, (iii) amortization, and (iv) non-cash expenses deemed reasonably by Bank, to (b) the sum of (i) Current Maturities of Long-Term Debt and (ii) Consolidated Interest Charges paid in cash, in each case for the twelve (12) months preceding the date of determination paid by Borrower and its Subsidiaries.

“GAAP” means generally accepted accounting principles, applied on a consistent basis, set forth in Opinions of the Accounting Principles Board of the American Institute of Certified Public Accountants and/or in statements of the Financial Accounting Standards Board which are applicable in the circumstances as of the date in question; and the requisite that such principles be applied on a consistent basis means that the accounting principles observed in a current period are comparable in all material respects to those applied in a preceding period, except to the extent that a deviation therefrom is expressly permitted by this Agreement.

“Governmental Authority” means the United States, the state, the county, the city or any other political subdivision in which the Property is located, and any court or political subdivision, agency, or instrumentality having jurisdiction over Borrower, Guarantor or any of the Property.

“Guarantor” means each Person who, from time to time guarantees all or any portion of the Indebtedness and Obligations.

“Guaranty” means the guaranty agreement executed by Guarantor or any other Person, guaranteeing all of the Indebtedness and the Obligations, as such may be amended, restated, supplemented or otherwise modified from time to time.

“Hedge Agreement” means (a) any and all interest rate swap transactions, forward rate transactions, interest rate options, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, or any other swap, forward, futures,

option or other similar agreements or transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., or any other master agreement (any such master agreement, together with any related schedules and annexes, a “Master Agreement”) and (c) any and all Master Agreements and any and all related confirmations.

“Hedge Obligations” means, at any time with respect to any Person, all indebtedness, liabilities, and obligations of such Person under or in connection with any Hedge Agreement, whether actual or contingent, due or to become due and existing or arising from time to time.

“Impositions” means: (i) all real estate and personal property taxes, charges, assessments, standby fees, excises, and levies and any interest, costs, or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied, or imposed upon the Property or the ownership, use, occupancy, or enjoyment thereof, or any portion thereof, or the sidewalks, streets, or alleyways adjacent thereto; (ii) any charges, fees, license payments, or other sums payable for or under any easement, license, or agreement maintained for the benefit of the Property; (iii) water, gas, sewer, electricity, and other utility charges and fees relating to the Property; and (iv) assessments and charges arising under any subdivision, condominium, planned unit development, or other declarations, restrictions, regimes, or agreements affecting the Property.

“Improvements” means all improvements on the Land of any kind or nature, and any and all additions, alterations, betterments or appurtenances thereto, now or at any time hereafter situated, placed, or constructed upon the Land or any part thereof.

“Indebtedness” means all present and future indebtedness, obligations, and liabilities, including all direct and contingent obligations arising under letters of credit, banker’s acceptances, bank guaranties and similar instruments, Hedge Obligations under any Secured Hedge Agreement, net obligations under any swap contract, overdrafts, Automated Clearing House obligations, and other financial accommodations which could be considered a liability under Recognized Accounting Principles, and all renewals, extensions, and modifications thereof, or any part thereof, in each case now owed or hereafter owing to Bank by Borrower or any other Obligated Party, and all interest accruing thereon and costs, expenses, and all attorneys’ fees paid or incurred by Bank in the enforcement or collection thereof, regardless of whether such indebtedness, obligations, and liabilities are direct, indirect, fixed, contingent, liquidated, unliquidated, joint, several, due or to become due, or joint and several, including, but not limited to, all indebtedness, obligations, and liabilities evidenced, secured, or arising from time to time under or pursuant to any of the Loan Documents, and all renewals and extensions thereof, or any part thereof, and all present and future amendments thereto. “Indebtedness,” however, does not include any Debt which is covered by the federal Truth-in-Lending Act.

“Knowledge” means, with respect to a particular subject, area, or aspect of the Borrower or Guarantor, the actual knowledge of Sam Klepfish, or an officer of the Borrower or Guarantor, or an employee or person with the primary responsibility for a particular matter, or, with respect to each such Person, the knowledge a prudent person could be expected to discover or otherwise acquire in the course of conducting a reasonably comprehensive investigations concerning the existence of facts or other matters.

“Land” means the real property owned by IVFP located at 220 Oak Hill Road, Mountain Top, Pennsylvania 18518.

“Lease” means a lease or other agreement for occupancy of the Land and Improvements.

“Legal Requirements” means (a) any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates, or ordinances of any Governmental Authority in any way applicable to any Borrower, Guarantor or the Property, including, without limiting the generality of the foregoing, the ownership, use, occupancy, possession, construction, operation, maintenance, alteration, repair, or reconstruction thereof, (b) any and all covenants, conditions, and restrictions contained in any deeds, other forms of conveyance, or in any other instruments of any nature that relate in anyway or are applicable to the Property or the ownership, use, or occupancy thereof, (c) any Borrower’s or Guarantor’s present or subsequently effective bylaws and articles of incorporation, operating agreement or regulations and articles of organization or partnership, limited partnership, joint venture, trust, or other form of business association agreement, and (d) any and all Leases and other contracts (written or oral), of any nature that relate in any way to the Property and to which any Borrower or Guarantor may be bound.

“Lien” means any valid and enforceable interest in any property, whether real, personal or mixed, securing an indebtedness, obligation or liability owed to or claimed by any Person other than the owner of such property, whether such indebtedness is based on the common law or any statute, ordinance or contract and including, but not limited to, liens created by or pursuant to a security interest, pledge, mortgage, assignment, conditional sale, trust receipt, lease, consignment or bailment for security purposes.

“Loan” means the Advance made by Bank to Borrower pursuant to this Agreement as evidenced by the Note.

“Loan Documents” means this Agreement, the Note, the Security Instruments, each Guaranty, any Secured Hedge Agreements, and any other agreements, instruments and documents evidencing, securing, guaranteeing or pertaining to the Loan as shall from time to time be executed and delivered to Bank by Borrower or any other party pursuant to this Agreement, including, without limitation, any future amendments hereto, or restatements hereof, or pursuant to the terms of any of the other loan documents, together with any and all renewals, extensions, and restatements of, and amendments and modifications to, any such agreements, documents, and instruments.

“Material Adverse Effect” means any set of circumstances or events which with respect to any Person (a) could reasonably be expected to have any material adverse effect whatsoever upon the validity, performance, or enforceability of any Loan Document against such Person, (b) is or could reasonably be expected to have a material adverse effect upon the condition (financial or otherwise), properties, liabilities (actual or contingent), or business operations of such Person, or (c) could reasonably be expected to materially impair the ability of such Person to fulfill its obligations under the terms and conditions of the Loan Documents.

“Material Contract” means any agreement or contract of Borrower which is material (or together with related agreements and contracts, is material) to the business, operations, financial condition, performance or properties of Borrower or the Property, taken as a whole.

“Maturity Date” means November 28, 2022, subject to extension specified below in Section 2.4.

“Maximum Lawful Rate” means the maximum non-usurious rate of interest (or, if the context so requires, an amount calculated at such rate) which Bank is allowed to contract for, charge, take, reserve,

or receive in this transaction under applicable federal or state (whichever is higher) law from time to time in effect after taking into account, to the extent required by applicable federal or state (whichever is higher) law from time to time in effect, any and all relevant payments or charges under the Loan Documents.

“Note” means the promissory note dated on or about even date herewith executed by the Borrower and payable to the Bank in the original principal amount of \$7,775,680.00, as such may be amended, increased, replaced, restated, renewed and extended from time to time.

Note Rate: The rate equal to the lesser of (a) the Maximum Lawful Rate, or (b) the greater of (i) WSJP plus 1.25% per annum or (ii) 4.50% per annum.

“Obligated Party” means Borrower, Guarantor and any other Person who is or becomes party to or makes any agreement, instrument or document that guarantees or secures payment and performance of any of the Indebtedness, and/or the Obligations or any part thereof.

“Obligations” means any and all of the covenants, conditions, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Borrower or any other Obligated Party to Bank as set forth in the Loan Documents, or any other agreement as to which any Borrower is granted a possessory interest in the Property.

“Permitted Encumbrances” has the meaning given in the Security Instrument.

“Person” means any individual, firm, corporation, limited liability company, association, partnership, joint venture, trust, other entity, unincorporated organization or Governmental Authority.

“Property” means the Land, the Improvements and all other property, real and personal of the Borrower, including as described in the Security Instrument or in any of the other Loan Documents.

“Recognized Accounting Principles” means GAAP, tax, cash basis or other accounting principles acceptable to Bank and applied on a consistent basis from one period to another.

“Related Indebtedness” has the meaning set forth in Section 8.5.

“Rights” means any rights, remedies, powers, and privileges exercisable by Bank under any of the Loan Documents, in each case whether at law, in equity, or otherwise.

“Secured Hedge Agreement” means any Hedge Agreement entered into by and between the Borrower, or any other Obligated Party, and Bank.

“Security Instrument” means the deed of trust or mortgage encumbering the Property to secure payment and performance of the Indebtedness and the Obligations, as such may be amended, restated, supplemented or otherwise modified from time to time and the term “Security Instruments” shall mean all such deeds of trust or mortgages.

“Subordinated Debt” means all Debt of Borrower, whether now existing or hereafter incurred, which is subordinate in right of payment to the Indebtedness, pursuant to a written agreement executed by such parties required by, and in form and content reasonably satisfactory to, Bank.

“Survey” means an ALTA survey of the Land consisting of a plat and field notes, prepared by a licensed surveyor acceptable to Bank and the Title Company which survey shall: (a) reflect the actual



dimensions of the Land, the gross and net area of the Land, the location of any easements, rights-of-way, setback lines, encroachments or overlaps thereof or thereover and the outside boundary lines of any improvements located thereon; (b) identify by recording reference any easements, setback lines or other matters referred to in the title commitment issued by the Title Company; (c) include the surveyor's registration number and seal and the date of the Survey; (d) include a surveyor's certificate acceptable to Bank within its reasonable discretion; (e) reflect that the Land has access to and from a publicly dedicated street, roadway or highway; (f) be sufficient to cause the Title Company to delete the "survey exception" in Schedule B of the Title Policy to the extent permitted by the rules of the State Board of Insurance; and (g) reflect the area, including the boundaries thereof, within the Land that has been designated by the Federal Insurance Administration, the Army Corps of Engineers or any other Governmental Authority as being subject to special or increased flood hazards; or any other survey reasonably acceptable to Bank.

"Taxes" means all taxes (including withholding), assessments, fees, levies, impositions, imposts, duties, deductions, withholdings, or other charges of any nature whatsoever from time to time or at any time imposed by any laws or by any Governmental Authority, excluding state and local sales and use taxes.

"Title Company" means the title company or title companies acceptable to Bank, in its reasonable discretion, that is issuing the Title Policy.

"Title Policy" means a loan policy (or policies) of title insurance, and any reinsurance agreement (or agreements) issued by the Title Company in accordance with Exhibit B.

WSJP: The variable rate, as of any date of determination, equal to the "Prime Rate" as published by *The Wall Street Journal*. If WSJP becomes unavailable, Bank may designate a substitute rate of interest after notifying Borrower. Any change in the WSJP will become effective as of the date the rate of interest is different from that on the preceding Business Day.

1.2. Headings. The headings, captions, and arrangements used in any of the Loan Documents are, unless specified otherwise, for convenience only and shall not be deemed to limit, amplify, or modify the terms of the Loan Documents, nor to affect the meaning thereof.

1.3. Number and Gender of Words. Whenever herein the singular number is used, the same shall include the plural where appropriate, and words of any gender shall include each other gender where appropriate. Reference herein to Borrower shall mean, jointly and severally, each Person comprising same.

1.4. Articles, Sections and Exhibits. All references herein to "Articles" and "Sections" are, unless specified otherwise, references to articles and sections of this Agreement. All references herein to an "Exhibit" or "Schedule" are references to exhibits or schedules attached hereto, all of which are made a part hereof for all purposes, the same as if set forth herein verbatim, it being understood that if any exhibit or schedule attached hereto, which is to be executed and delivered, contains blanks, the same shall be completed correctly and in accordance with the terms and provisions contained and as contemplated herein prior to or at the time of the execution and delivery thereof. The words "herein," "hereof," "hereunder" and other similar compounds of the word "here" when used in this Agreement shall refer to the entire Agreement and not to any particular provision or section; and the word "including," as used herein, shall mean "including, without limitation."

**ARTICLE TWO**  
**LOAN**

2.1. Loan. Subject to and upon the terms, covenants, and conditions hereof, Bank agrees to make an initial Advance to Borrower in an aggregate principal amount of \$5,329,681.69. No principal amount repaid may be reborrowed.

(a) Conditions Precedent to the Loan. As a condition precedent to the Loan, Borrower must satisfy the conditions required hereby and Bank must have received and approved all of the documents, certificates and other items specified in Exhibit A, together with such other documents, certificates and items as Bank may require from time to time. Bank, at Bank's option, may, but shall not be obligated to, waive any of the preceding or elect not to require any of the preceding. All conditions precedent to the obligation of Bank to make the Loan are imposed solely for the benefit of Bank.

(b) Note. The obligation of Borrower to repay the unpaid principal of the Loan, and interest thereon, shall be evidenced by the Note.

2.2. Change. If Bank determines that the amount of capital required or expected to be maintained by Bank or any entity controlling Bank, is increased as a result of a Change, then, within thirty (30) days of demand by Bank, Borrower shall pay to Bank the amount necessary to compensate Bank for any shortfall in the rate of return on the portion of such increased capital that Bank determines is directly attributable to each Note or the principal amount outstanding hereunder (after taking into account Bank's policies as to capital adequacy); provided that, Borrower shall not be required to compensate Bank for any shortfall in the rate of return suffered more than six (6) months prior to the date Bank notifies Borrower of the Change giving rise to such shortfall in the rate of return. Bank's method of determining any amount payable to Bank under this Section shall be substantially similar to the method used by Bank in implementing similar provisions for similarly situated borrowers and extensions of credit. Bank shall provide Borrower a statement of the amount and the calculations, in reasonably detail, reflecting any such increased cost, reduction in return and/or revenue.

2.3. Method of Payment. All payments of principal, interest and other amounts to be made by Borrower under this Agreement and the other Loan Documents shall be made to Bank in immediately available funds, without setoff, deduction, or counterclaim, and free and clear of all taxes at the time and in the manner provided in the Note. The Bank may, at the Bank's option, but without any obligation to do so, automatically and without notice to Borrower, sweep or debit from any account of Borrower maintained with Bank, to the extent funds are available, an amount equal to the principal, interest and other amounts due.

2.4. Maturity Date Extension. Borrower and Bank acknowledge and agree that Bank has submitted an application to the United States Department of Agriculture ("USDA") to have the USDA guarantee repayment of this Loan pursuant to its Business and Industry Loan Guarantee Program. Borrower may extend the Maturity Date from November 28, 2022 to June 6, 2052 if:

(a) Borrower requests in writing an extension to the Maturity Date no later than thirty (30) days prior to the Maturity Date (the "Extension Request");

(b) No Default or Event of Default has occurred;

(c) USDA executes a guarantee in favor of Bank (in form and substance reasonably satisfactory Bank);

(d) Borrower shall have delivered to Bank together with the Extension Request, a certificate in form reasonably acceptable to the Bank certifying that (a) each of the representations and warranties of Borrower contained in the Loan Documents is true, complete and correct in all material respects as of the date of such certificate except to the extent such representations and warranties are matters which by their nature can no longer be true and correct as a result of the passage of time, (b) no Default or Event of Default has occurred;

(e) Borrower shall have paid all reasonable expenses, including (without limitation) reasonable attorneys' fees and legal expenses, incurred by Bank in connection with the extension no later than the day prior to the first day of the extension;

(f) Borrower shall have paid to Bank a non-refundable origination fee of \$77,756.80; and

(g) Borrower shall have delivered to Bank such information, documentation, agreements, and instruments as Bank shall require, including such legal opinions as may be requested by Bank.

If the USDA does not execute a guaranty in favor of Bank (in form and substance reasonably satisfactory to Bank), Bank may, but shall not be obligated to, extend the Loan in cooperation with the Borrower, in form and substance reasonably satisfactory to Bank.

2.5. Subsequent Advances. Borrower may, from time-to-time, request from Bank additional Advances in an aggregate amount not to exceed \$2,445,998.31 (the "Additional Loan Amount") for (a) business acquisitions or expansions of operations in order to expand the client or market base in the Borrower's Direct-to-Chef Distribution Platform or current branded products offered in the Borrower's E-Commerce Platform; (b) planned/budgeted property improvements and any upgrades to the Artisan building, including its fully functional commercial test kitchen and training center to meet or exceed FDA, FSMA and SQF food safety standards; (c) planned/budgeted property improvements and any upgrades to the Borrower's primary logistic and fulfillment centers; (d) continuous upgrades to the facilities to allow for new product testing and development as well as expansion of product lines; and (e) other purposes approved by Bank. Borrower acknowledges and agrees that, notwithstanding anything to the contrary contained herein or in any other Loan Document, any Advance of the Additional Loan Amount is subject to the sole and absolute discretion of Bank, and Bank has no obligation or commitment whatsoever to make any Advance of the Additional Loan Amount.

### **ARTICLE THREE REPRESENTATIONS AND WARRANTIES**

Borrower represents and warrants to Bank as follows:

3.1. Financial Statements. The Financial Statements are true, correct and complete as of the dates specified therein and fully and fairly present the financial condition of Borrower as of the dates specified therein. Since the date of the Financial Statements most recently submitted to Bank by Borrower, no material adverse change has occurred in the financial condition of Borrower nor, except as heretofore disclosed in writing to Bank, has Borrower incurred any material liability, direct or indirect, fixed or contingent. Borrower, as of the date of the Advance, is solvent. Neither Borrower nor any other Obligated Party has any material Debt, other contingent liabilities, liabilities for taxes, any long-term lease obligations or unusual forward or long-term commitments, or any Hedge Agreement or other transaction or obligation in respect of derivatives, that are not reflected in the most recent financial statements referred to in this paragraph.

3.2. Suits, Actions, Etc. There are no actions, suits or proceedings pending or to the best of Borrower's Knowledge threatened in writing before or by any Governmental Authority against or affecting Borrower, any other Obligated Party or the Property, or involving the validity, enforceability or priority of any of the Loan Documents except as has been disclosed or shall be disclosed in writing to Bank. To the best of its Knowledge, Borrower is not, and the execution and delivery of the Loan Documents and consummation of the transactions contemplated hereby and the performance or satisfaction of any of the terms or conditions hereof and of the other Loan Documents will not cause Borrower to be, in violation of or in default with respect to any Legal Requirement or in default (or provide cause for acceleration of indebtedness) under any Material Contract to which Borrower is a party or by which Borrower or the Property may be bound.

3.3. Status of Borrower; Valid and Binding Obligations. If Borrower is a corporation, limited liability company, partnership or other entity, Borrower is and shall until the Indebtedness is fully discharged continue to (a) be duly organized and validly existing and in good standing under the laws of the state of its organization, (b) be in compliance with all conditions prerequisite to its lawfully doing business in Texas and any other state in which it conducts business, and (c) possess all power and authority necessary to own and operate each Property. All of the Loan Documents, upon execution and delivery, will constitute valid and binding obligations of Borrower and each Obligated Party, enforceable against Borrower and each Obligated Party in accordance with their terms except as the enforcement thereof may be limited by Debtor Relief Laws.

3.4. Title to the Property. IVFP holds good and indefeasible fee simple title (or the equivalent thereof pursuant to applicable law) to the Land and all Improvements thereon, free and clear of any Liens and subject only to the Permitted Encumbrances.

3.5. Purpose of Loan. The proceeds of the Loan shall be used by Borrower to pay outstanding Debt of Borrower to Fifth Third Bank.

3.6. No Failure To Disclose. No representation or warranty made by Borrower or any other Obligated Party under this Agreement or any other Loan Document, and no document, instrument or certificate furnished, to be furnished or caused or to be furnished by Borrower or any other Obligated Party to Bank in anticipation of or pursuant to this Agreement or any other Loan Document, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained therein not misleading.

3.7. Taxes. All federal, state, foreign, and other Tax returns of Borrower and each Obligated Party required to be filed have been filed, or an extension has been timely filed in connection therewith, all federal, state, foreign, and other Taxes imposed upon Borrower and each Obligated Party which are due and payable have been paid, and no material amounts of Taxes not reflected on such returns are payable by Borrower and each Obligated Party, other than Taxes being contested in good faith by appropriate legal proceedings.

3.8. Consents, Approvals and Filings, Etc. Except as have been previously obtained or as otherwise expressly provided in this Agreement, no authorization, license, or formal exemption from, any Governmental Authority or other Person, is required in connection with the execution and performance by Borrower or any other Obligated Party of any Loan Document.

3.9. Contracts, Agreements and Leases. To the best of Borrower's Knowledge, Borrower is not in default (nor has any event occurred which, with the passing of time or the giving of notice, or both, would cause a default) under any Lease or Material Contract to which it is a party or by which it or any of its properties or assets are bound, where such default would have a Material Adverse Effect.

3.10. Relationship. The relationship between Borrower and Bank established under this Agreement and the other Loan Documents is solely that of borrower and lender, and Bank has no fiduciary or other special relationship with Borrower arising out of this Agreement and the other Loan Documents, and no term or condition of any of the Loan Documents shall be construed so as to deem the relationship between Borrower and Bank to be other than that of borrower and lender.

3.11. No Assignment. Borrower has made no previous assignment of its rights to or interests in the Leases or the rents due thereunder.

3.12. Compliance with Legal Requirements. The Improvements comply with all applicable Legal Requirements for which the failure to do so could reasonably be expected to have a Material Adverse Effect, and the use to which Borrower is using and intends to use the Land and Improvements complies with or will comply with such Legal Requirements.

3.13. Disclaimer of Permanent Financing. Borrower acknowledges and agrees that Bank has not made any commitments, either express or implied, to extend the term of the Loan past its applicable maturity date, except to the extent, if any, that the same is expressly stated in this Agreement or in the other Loan Documents.

3.14. Leases. A true, complete and correct copy of the Leases affecting the Property have been delivered to Bank.

#### **ARTICLE FOUR AFFIRMATIVE COVENANTS**

Borrower covenants and agrees with Bank that, so long as any of the Indebtedness or Obligations remains outstanding, or Bank has any commitment to make Advances hereunder or any other obligation under any of the Loan Documents:

4.1. Hazard and Other Insurance.

(a) Borrower shall obtain and maintain the insurance coverage required by Exhibit C and any other Loan Documents and shall furnish to Bank promptly upon request a certificate or certificates from the respective insurer(s) setting forth the nature and extent of all such insurance maintained by Borrower, and a certified copy of the original policy, including all endorsements thereto, and a satisfactory certificate of insurance with premiums fully paid. Any such insurance may be evidenced by blanket insurance policies covering the Property and other property and assets, provided that each policy otherwise complies with the requirements of the Loan Documents and specifies the amount (if less than all) of the total coverage that is allocated to the Property. Borrower shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Bank is included thereon under a standard mortgagee clause (without contribution) acceptable to Bank, with loss payable as provided herein. All insurance shall be primary without right of contribution from any other insurance that may be carried by Borrower or Bank and all of the provisions thereof shall operate in the manner as if there were a separate policy covering each insured. Borrower shall immediately notify Bank whenever any such separate insurance is taken out and shall promptly deliver to Bank any policy or certificate of such separate insurance.

(b) Not later than ten (10) days before the expiration date of any such insurance policy, Borrower shall deliver to Bank a binder or certificate of the insurer evidencing the renewal or replacement of that policy, with premiums fully paid, together with (in the case of a renewal) a copy of all endorsements to the policy affecting the Property and not previously delivered to Bank, or (in the case of

a replacement) an original or certified copy of the replacement policy. Borrower shall pay all premiums on policies required hereunder as they become due and payable and promptly deliver to Bank evidence satisfactory to Bank, in Bank's reasonable discretion, of the timely payment thereof. Borrower shall at all times comply with the requirements of the insurance policies required hereunder and of the issuers of such policies and of any board of fire underwriters or similar body as applicable to or affecting the Property.

(c) If Borrower fails to obtain and/or maintain the insurance required under the Loan Documents, (i) Borrower shall indemnify and hold Bank harmless from and against any damage, loss, liability, claim, cost and expense resulting from all risks that would have been covered by the required insurance if so maintained, (ii) if any loss occurs, Bank shall nevertheless be entitled to the benefit of all insurance covering the loss and held by or for Borrower, to the same extent as if it had been made payable to Bank, and (iii) Bank has the Right (but not the obligation), after thirty (30) days prior notice to the Borrower, to obtain such insurance at Borrower's expense, which may, at Bank's election, be coverage for Bank's interest in the Property only (excluding Borrower's equity in the Property, if any), or such other amount as Bank may determine in Bank's sole discretion, and the costs and expenses so expended by Bank shall be due and payable by Borrower on demand, as part of the Indebtedness, even if in excess of the amount set forth in Section 2.1, and secured by the Loan Documents. **TEXAS FINANCE CODE SECTION 307.052 COLLATERAL PROTECTION INSURANCE NOTICE: (A) BORROWER IS REQUIRED TO (i) KEEP THE PROPERTY INSURED AGAINST DAMAGE IN THE AMOUNT SPECIFIED HEREIN; (ii) PURCHASE THE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE OF TEXAS OR AN ELIGIBLE SURPLUS LINES INSURER OR OTHERWISE AS PROVIDED HEREIN; AND (iii) NAME BANK AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF A LOSS AS PROVIDED HEREIN; (B) SUBJECT TO THE PROVISIONS HEREOF, BORROWER MUST, IF REQUIRED BY BANK, DELIVER TO BANK A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF PREMIUMS; AND (C) SUBJECT TO THE PROVISIONS HEREOF, IF BORROWER FAILS TO MEET ANY REQUIREMENT LISTED IN THE FOREGOING SUBPARTS (A) OR (B), BANK MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF BORROWER AT BORROWER'S EXPENSE.**

(d) Upon the foreclosure of any Security Instrument or transfer of title to the Property in lieu of foreclosure, all of Borrower's Right, title and interest in and to the insurance policies referred to in this Section (including unearned premiums) and all proceeds payable thereunder shall thereupon vest in the purchaser at foreclosure or other such transferee to the extent permissible under such policies.

(e) Bank has the Right (but not the obligation) to make proof of loss for, settle and adjust any claim under, and receive the proceeds of, all insurance for loss of or damage to the Property, and the costs and expenses (including reasonable attorneys' fees of outside counsel), appraisal costs, and consultant fees incurred by Bank in the adjustment and collection of insurance proceeds shall be due and payable by Borrower on demand, as part of the Indebtedness, even if in excess of the amount set forth in Section 2.1, and secured by the Loan Documents. Bank shall not be, under any circumstances, liable or responsible for failure to collect or exercise diligence in the collection of any of such proceeds or for the obtaining, maintaining or adequacy of any insurance or for failure to see to the proper application of any amount paid over to Borrower.

(f) Borrower shall take all action necessary or desirable or requested by Bank to obtain the benefit of any insurance proceeds lawfully or equitably payable to Borrower or Bank in connection with any loss of or damage to the Property and shall apply such insurance proceeds to the

payment of the Indebtedness, unless otherwise consented to in writing by Bank. The unpaid portion of the Indebtedness shall remain in full force and effect and the payment thereof shall not be excused.

4.2. Compliance with Legal Requirements. Borrower shall timely comply with all Legal Requirements (except where the failure to so comply would not have a Material Adverse Effect) and shall deliver evidence thereof to Bank, if reasonably requested by Bank. Borrower shall assume full responsibility for the compliance of the Property with all Legal Requirements and with sound building and engineering practices, notwithstanding any approvals by Bank.

4.3. Construction Contracts. Borrower shall become party to no contracts in excess of, in the aggregate, \$500,000 for the performance of any work on the Property or for the supplying of any labor, materials, or services for the alteration of the Improvements, except upon such terms and with such parties as shall be approved in writing by Bank.

4.4. Correction of Defects. Borrower shall correct or cause to be corrected (a) any material defect in the Improvements, (b) any material departure of the Improvements from the Legal Requirements or the requirements of any Lease, and (c) any encroachment by any part of the Improvements or any structure located on the Land on any building line, easement, property line, or restricted area.

4.5. Inspection of the Property. Upon reasonable prior written notice, Borrower shall permit Bank and its agents and representatives to enter upon the Property for the purpose of inspecting the Property.

4.6. Notices by Governmental Authority; Fire and Casualty Losses, Etc. Borrower shall timely comply with and promptly furnish to Bank true and complete copies of any material notice or claim by any Governmental Authority pertaining to the Property. Borrower shall promptly notify Bank of any fire or other casualty or any notice of taking or eminent domain action or proceeding affecting the Property.

4.7. Utilities; Access. All utility services necessary for the operation of the Improvements for their intended purposes are available and connected to the Improvements and all roads necessary for access to and from the Property have been completed.

4.8. Additional Documents. Borrower shall, and shall cause the Guarantors to, execute and deliver to Bank, from time to time as required by Bank, such other agreements, instruments and documents as shall reasonably be necessary or requested by Bank to provide the Rights and remedies to Bank granted or provided for by the Loan Documents.

4.9. Financial Statements; Other Reports. For so long as any Indebtedness remains outstanding, Borrower shall, unless Bank otherwise consents in writing, furnish to Bank the following:

(a) *Annual Financial Statements.* As soon as available, and in any event within the earlier of sixty days after filing with the SEC or 180 days after the end of each fiscal year of Borrower, beginning with the fiscal year ending December 31, 2022, a copy of the audited financial report of the Borrower for such fiscal year containing, on a consolidated basis, balance sheets and statements of income, retained earnings, and cash flow as at the end of such fiscal year and for the 12-month period then ended, in each case setting forth in comparative form the figures for the preceding fiscal year, all in reasonable detail and audited and certified by independent certified public accountants of recognized standing acceptable to Bank to the effect that such report has been prepared in accordance with GAAP and containing no material qualifications or limitations on scope.

(b) *Semi-Annual Financial Statements.* As soon as available, and in any event within the earlier of thirty days after filing with the SEC or forty-five days after the end of each June and December, commencing June 30, 2023, a copy of the financial report of the Borrower for such period containing, on a consolidated basis, balance sheets and statements of income, retained earnings, and cash flow as at the end of such fiscal period and for the 12-month period then ended, in each case setting forth in comparative form the figures for the preceding fiscal year, all in reasonable detail and certified by the chief financial officer of the Borrower to the effect that such report has been prepared in accordance with GAAP and containing no material qualifications or limitations on scope.

(c) *Semi-Annual Compliance Certificate.* As soon as available, and in any event within the earlier of thirty days after filing with the SEC or forty-five days after the end of each June and December, commencing June 30, 2023, a compliance certificate certified by a responsible officer of the Borrower reasonably acceptable to Bank.

(d) *Proceedings.* Promptly after the commencement thereof, notice of all actions, suits, and proceedings before any Governmental Authority or arbitrator affecting Borrower, any Guarantor, or any Property;

(e) *Events of Default.* As soon as possible and in any event within five (5) Business Days after Borrower has Knowledge of the occurrence of each Event of Default, a written notice setting forth the details of such Event of Default and the action that Borrower has taken and proposes to take with respect thereto;

(f) *Material Adverse Effect.* As soon as possible and in any event within five (5) Business Days after the occurrence thereof, written notice of any matter that could have a Material Adverse Effect; and

(g) *Additional Information.* Such additional financial information and other information as Bank may reasonably request in writing from time to time.

4.10. Financial Information. All representations and warranties set forth in the Loan Documents with respect to any Financial Statements or other financial information concerning Borrower, any other Obligated Party, the Property or otherwise, shall apply to all such information delivered to Bank by Borrower, any other Obligated Party, or any Person purporting to be an officer, director, or controller thereof, regardless of the method of transmission to Bank.

4.11. Compliance with Leases and Material Contracts. Subject to the provisions contained in the Security Instrument, Borrower shall comply with all material terms and conditions of the Leases, Material Contracts, and all other lease or rental agreements covering any premises or property (real or personal) wherein any of the Property is or may be located, and any Legal Requirement, except where the failure to so comply could not cause a Material Adverse Effect.

4.12. No Liability of Bank. Bank shall have no liability, obligation or responsibility with respect to the alteration, if any, of the Improvements or any Property. Bank shall not be obligated to inspect the Property or the alteration of the Improvements, and any inspection conducted by Bank is solely for the benefit of Bank and does not give rise to any duty of Bank to report or relay the results of any such inspections to Borrower or otherwise create any liability of Bank to Borrower; provided that Bank shall deliver a copy of any third-party inspection report to the Borrower. Bank shall not be liable for the performance or default of Borrower, or any other party, or for any failure to construct, complete, protect or insure the Improvements, or for the payment of costs of labor, materials or services supplied for the alteration of the Improvements, or for the performance of any obligation of Borrower or any other



Obligated Party. Nothing herein or in any other Loan Document, nor any other action taken by Bank, including, without limitation, any Advance made by Bank or acceptance of any document or instrument by Bank, shall be construed as a representation or warranty, express or implied, to any party by Bank. Further, Bank shall not have, and has not assumed, and by its execution and delivery of this Agreement hereby expressly disclaims, any liability or responsibility for the payment or performance of any indebtedness or obligations of Borrower, and no term or condition hereof, or of any of the Loan Documents, shall be construed otherwise. Bank has no liability or obligation in connection with the Property.

4.13. Defense of Third Party Actions. Bank may (but shall not be obligated to) commence, appear in or defend any action or proceeding purporting to affect the Loan, the Property or the respective Rights and obligations of Bank or Borrower pursuant to this Agreement. Bank may (but shall not be obligated to) pay all necessary expenses, including reasonable attorneys' fees of outside counsel and out-of-pocket expenses incurred in connection with any such proceedings or actions, which Borrower agrees to repay to Bank upon demand other than any action brought by Bank against Borrower and/or Guarantor in which the Borrower and/or Guarantor are determined to be the prevailing parties.

4.14. Restrictions and Annexation. Borrower shall not impose any restrictive covenants or encumbrances upon the Property, execute or file any subdivision plat affecting the Property or consent to the annexation of the Property to any city without the prior written consent of Bank, such consent not to be unreasonably withheld, conditioned or delayed, and Bank hereby agrees that upon reasonable request by Borrower it shall evidence such consent in a written instrument reasonably satisfactory to both Bank and Borrower.

4.15. Maintenance of Entity Existence, Assets and Business; Continuance of Present Business. Borrower shall preserve and maintain its existence and all of its leases, licenses, permits, franchises, qualifications, and rights that are necessary or desirable in the ordinary conduct of its business. Borrower will conduct its business in an orderly and efficient manner in accordance with good business practices. Borrower shall keep or cause to be kept all of Borrower's assets which are useful and necessary in their respective businesses in good repair, working order and condition, and will make or cause to be made all necessary repairs, renewals and replacements as may be reasonably required. Borrower will keep the Property in good order, repair, operating condition and appearance, causing all necessary repairs, renewals, replacements, additions and improvements to be promptly made, and will not allow any of the Property to be misused, abused or wasted or to deteriorate. Borrower will not, without the prior written consent of Bank (such consent not to be unreasonably withheld, conditioned or delayed), (i) remove from the Property any fixtures or personal property covered by the Security Instrument except those replaced by Borrower by an article of equal suitability and value, owned by Borrower, free and clear of any lien or security interest (except that created by the Security Instrument); (ii) make any structural alteration to the Property which impairs the use or value thereof or any other alterations thereto which impair the value thereof; or (iii) make any alteration to the Property involving an estimated expenditure exceeding \$250,000.

4.16. Tax Receipts. Borrower shall pay all Taxes levied on the Property before the date on which such taxes become delinquent; provided no such Taxes need to be paid to the extent such Taxes are being contested in good faith by appropriate proceedings, Borrower has established adequate reserves in accordance with Recognized Accounting Principles, and the taxing authority has not filed any action to foreclose any tax lien it may have with respect to such Taxes.

4.17. Incumbency. Borrower shall, from time to time, at the reasonable request of Bank, certify to Bank the names, signatures and positions of all persons authorized to execute and deliver any of the Loan Documents.

4.18. Depository Relationship. To induce Bank to establish the interest rates provided for in the Note, and if and to the extent permitted by applicable laws, Borrower shall use and maintain Bank as its principal depository bank, including for the maintenance of business, cash management, operating and administrative deposit accounts, commencing no later than sixty (60) days after the Effective Date. If Borrower maintains a bank account with any financial institution other than Bank, it shall cause, within sixty days of the date such account is opened with any such financial institution, such financial institution to execute a control agreement in form and substance satisfactory to Bank.

4.19. Operation of Property. Borrower will operate the Property in accordance with all Legal Requirements (except where the failure to comply would not have a Material Adverse Effect) and will pay all fees or charges of any kind in connection therewith. Borrower will not knowingly or through its negligence use, or allow the use of, the Property in any manner which violates any Legal Requirement or which constitutes a public or private nuisance or which makes void, voidable or cancelable, any insurance then in force with respect thereto. Borrower will not initiate or permit any zoning reclassification of the Property which is unacceptable to Bank in its reasonable discretion or seek any variance under existing zoning ordinances applicable to the Property which is unacceptable to Bank in its reasonable discretion or use or permit the use of the Property in such a manner which would result in such use becoming a nonconforming use under applicable zoning ordinances or other applicable laws. Borrower will not impose any restrictive covenants or encumbrances upon the Property nor execute or file any subdivision plat or replat affecting the Property, without the prior written consent of Bank (such consent not to be unreasonably withheld, conditioned or delayed). Borrower will not agree or consent to any drilling or exploration for, or extraction, removal or production of Minerals from the surface or subsurface of the Property regardless of the depth thereof or the method of mining or extraction thereof. Borrower will not do or suffer to be done any act whereby the value of any part of the Property may be materially lessened. Borrower will allow Bank or its authorized representatives to enter the Property at any reasonable time during business hours to inspect the Property and Borrower will use commercially reasonable efforts to assist Bank or said representative in making such inspection. If Borrower receives a material notice or claim from any federal, state or other governmental entity pertaining to the Property, including, without limitation, a notice that the Property is not in compliance with any Legal Requirement, Borrower will promptly furnish a copy of such notice or claim to Bank.

4.20. Debts; Payment of Impositions. Borrower will cause all debts and liabilities of any character, including, without limitation, all debts and liabilities for labor, material and equipment and all debts and charges for utilities servicing the Property, to be promptly paid. Borrower will duly pay and discharge, or cause to be paid and discharged, the Impositions not later than the earlier to occur of (i) the due date thereof, (ii) the date any fine, penalty, interest, or cost may be added thereto or imposed, or (iii) the date prior to any date any lien may be filed for the nonpayment thereof (if such date is used to determine the due date of the respective item), and Borrower shall deliver to Bank a written receipt evidencing the payment of the respective Imposition.

4.21. Condemnation. Immediately upon obtaining Knowledge of the institution of any proceedings for the condemnation of the Property or any portion thereof, or any other proceedings arising out of injury or damage to the Property, or any portion thereof, Borrower will notify Bank of the pendency of such proceedings. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Bank, its attorneys and experts, and cooperate with them in carrying on a defense of any such proceedings. All proceeds of condemnation awards or proceeds of sale in lieu of condemnation with respect to the Property and all judgments, decrees and awards for injury or damage to the Property shall be paid to Bank and shall be applied, first, to reimburse Bank for all reasonable costs and out-of-pocket expenses, including, without limitation, reasonable attorneys' fees of outside counsel, incurred in connection with collection of such proceeds and, second, the remainder of said proceeds shall be applied, at the sole discretion of Bank, to the payment of the Indebtedness (without premium or

penalty) in the order determined by Bank in its sole discretion or paid out to repair or restore the Property so affected by such condemnation, injury or damage. In any event the unpaid portion of the Indebtedness shall remain in full force and effect and Borrower shall not be excused in the payment thereof. Borrower hereby assigns and transfers all such proceeds, judgments, decrees and awards to Bank and agrees to execute such further assignments of all such proceeds, judgments, decrees and awards as Bank may request. Bank shall not be, in any event or circumstance, liable or responsible for the failure to collect, or the failure to exercise diligence in the collection of, any such proceeds, judgments, decrees or awards.

4.22. Further Assurances. Borrower will, on request of Bank, promptly (i) correct any defect, error or omission which may be discovered in the contents of this Agreement or in any other instrument now or hereafter executed in connection herewith or in the execution or acknowledgment thereof; and (ii) execute, acknowledge, authorize, deliver and record or file such further instruments and do such further acts as may be reasonably necessary, desirable or proper to carry out more effectively the purposes of this Agreement.

4.23. Fees and Expenses. Subject to any applicable limitations provided in the other Loan Documents, Borrower will pay all appraisal fees, filing and recording fees, inspection fees, survey fees, taxes, brokerage fees and commissions, abstract fees, title policy fees, uniform commercial code search fees, escrow fees, reasonable attorneys' fees of outside counsel, and all other documented costs and out-of-pocket expenses of every character incurred by Borrower or Bank in connection with the Indebtedness, either at the closing thereof or at any time during the term thereof, or otherwise attributable or chargeable to Borrower as owner of the Property, and will reimburse Bank for all such reasonable costs and expenses incurred by Bank. Borrower shall pay all expenses and reimburse Bank for any expenditures, including, without limitation, reasonable attorneys' fees of outside counsel and legal expenses, incurred or expended in connection with (i) the breach by Borrower of any covenant herein or in any other Loan Document; (ii) Bank's exercise of any of its rights and remedies hereunder or under the Note or any other Loan Document or Bank's protection of the Property and its lien and security interest therein; or (iii) any amendments to this Agreement, the Security Instrument, the Note or any other Loan Document or any matter requested by Borrower or any approval required hereunder. Borrower will indemnify and hold harmless Bank (for purposes of this Subsection, the term "Bank" shall include the directors, officers, partners, employees, representatives, attorneys and agents of the trustee under the Security Instrument and Bank, respectively, and any persons or entities owned or controlled by, owning or controlling, or under common control or affiliated with the trustee under the Security Instrument and Bank, respectively) from and against, and reimburse them for, all claims, demands, liabilities, losses, damages, causes of action, judgments, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees of outside counsel) which may be imposed upon, asserted against or incurred or paid by them by reason of, on account of or in connection with any bodily injury or death or property damage occurring in or upon or in the vicinity of the Property through any cause whatsoever or asserted against them on account of any act performed or omitted to be performed hereunder or on account of any transaction arising out of or in any way connected with the Property or with this Agreement, the Note or any other Loan Document other than any liability, damage or expense arising out of the gross negligence or willful misconduct of the Bank or applicable indemnified party as determined by a court of competent jurisdiction by final and non-appealable judgment. **WITHOUT LIMITATION OF THE FOREGOING, IT IS THE INTENTION OF BORROWER, AND BORROWER AGREES, THAT THE FOREGOING INDEMNITIES SHALL APPLY TO EACH INDEMNIFIED PARTY WITH RESPECT TO CLAIMS, DEMANDS, LIABILITIES, LOSSES, DAMAGES, CAUSES OF ACTION, JUDGMENTS, PENALTIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES OF OUTSIDE COUNSEL) WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF THE NEGLIGENCE (WHETHER SOLE, COMPARATIVE OR CONTRIBUTORY) OR STRICT LIABILITY OF SUCH (AND/OR ANY OTHER) INDEMNIFIED PARTY.** The foregoing indemnities shall not terminate upon release or other

termination of this Agreement but will survive the repayment of the Indebtedness and the discharge and release of this Agreement and the other Loan Documents.

4.24. Appraisal. If Bank, in good faith, deems it necessary to have the Land and Improvements appraised, Borrower agrees to such and acknowledges that Borrower will bear the cost of the new appraisal which shall be performed by an appraiser acceptable to Bank; provided, however, Borrower shall not be liable for the cost of more than one (1) appraisal per Property during any one (1) year period unless the requirement of an appraisal is caused, in whole or in part, by the occurrence of an Event of Default or is required by a Governmental Authority.

4.25. Financial Covenants.

(a) Minimum Fixed Charge Coverage Ratio. Borrower will not permit, for Borrower and its Subsidiaries on a consolidated basis, the Fixed Charge Coverage Ratio to be less than 1.25 to 1.00, measured quarterly on the last day of each quarter commencing June 30, 2023.

(b) Equity Cure. For purposes of determining compliance with Section 4.25(a), an equity contribution (in the form of cash paid or contributed in respect of common equity of a Borrower) made to a Borrower after the date of this Agreement and on or prior to the day that is 15 calendar days after the day on which the Compliance Certificate is required to be delivered pursuant to Section 4.1(c) will be included in the calculation of Consolidated Net Income for the most recently ended period solely for the purpose of determining compliance with Section 4.25(a) as of the end of such period (any such equity contribution being a "Specified Equity Contribution") provided that:

(a) the Specified Equity Contribution will be delivered to Bank for application to the principal outstanding under the Loan;

(b) no more than three Specified Equity Contributions will be permitted during the term of this Agreement, and only one Specified Equity Contribution may be made in any six-month period;

(c) the Specified Equity Contribution will be disregarded for all purposes other than the calculation of compliance with Section 4.25(a), and

(d) written notice of any Borrower's intent to include a Specified Equity Contribution shall be delivered to Bank no later than the day on which the Compliance Certificate is required to be delivered under this Agreement for the applicable period.

Notwithstanding anything to the contrary contained herein, from the date of any Borrower's election to apply a Specified Equity Contribution as set forth herein, and for a period of 12 months thereafter, Borrowers will not declare or pay any distribution to the holders of its equity interests.

**ARTICLE FIVE  
NEGATIVE COVENANTS**

Borrower covenants and agrees that, so long as any of the Indebtedness or Obligations remain outstanding, or Bank has any commitment to make Advances hereunder or any other obligation under the Loan Documents:

5.1. Debt. Borrower will not, directly or indirectly, incur, create, assume, or permit to exist, any Debt in connection with the Property, except:

(a) Debt to Bank;

(b) Trade Debt incurred in the ordinary course of business not to exceed, in the aggregate, \$250,000 at any one time outstanding, provided that all such obligations are paid within sixty (60) days of the date when due;

(c) Subordinated Debt;

(d) Purchase money Debt or capital leases not to exceed, in the aggregate, \$1,000,000 at any one time outstanding;

(e) Hedge Obligations existing or arising under Hedge Agreements permitted under Section 5.10; and

(f) unsecured guarantees incurred in the ordinary course of business with respect to surety and appeal bonds, performance bonds, and similar obligations in an amount not to exceed, in the aggregate, \$250,000 at any one time outstanding.

5.2. Contingent Liabilities. Borrower will not, directly or indirectly, assume, guarantee, endorse, contingently agree to purchase or otherwise become liable upon the obligation of any Person (other than Borrower) in connection with the Property except by the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business.

5.3. Limitation on Liens. Borrower will not, directly or indirectly, incur, create, assume, or permit to exist any Lien upon any of the Property, whether now owned or hereafter acquired, except:

(a) The Permitted Encumbrances;

(b) Encumbrances consisting of minor easements, zoning restrictions, or other restrictions on the use of real property that do not (individually or in the aggregate) materially affect the value of the assets encumbered thereby or materially impair the ability of Borrower to use such assets in their respective businesses, and none of which is violated in any material respect by existing or proposed structures or land use;

(c) Liens for taxes, assessments, or other governmental charges which are being contested in good faith and for which adequate reserves have been established;

(d) Liens resulting from good faith deposits to secure payments of workmen's compensation or other social security programs or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, or contracts (other than for payment of Debt), or Leases made in the ordinary course of business; and

(e) Purchase money Liens on specific personal property to secure Debt used to acquire such property to the extent permitted in Section 5.1.

5.4. Mergers, Etc. Borrower will not, directly or indirectly, (a) become a party to a merger or consolidation, (b) purchase or otherwise acquire all or substantially all of the assets of any Person or any shares, or other evidence of beneficial ownership of any Person, or (c) wind-up, dissolve, liquidate, or terminate. Borrower shall not amend, modify or otherwise change the organizational or trust documents of the Borrower without the prior written consent of Bank which shall not be unreasonably withheld.

5.5. Restricted Payments. Borrower will not, without the approval of Bank, directly or indirectly, declare or pay any dividends or make any other payment or distribution (in cash, property, or obligations) on account of its equity interests, or redeem, purchase, retire, or otherwise acquire any of its equity interests, or set apart any money for a sinking or other analogous fund for any dividend or other distribution on its equity interests or for any redemption, purchase, retirement, or other acquisition of any of its equity interests, or incur any obligation (contingent or otherwise) to do any of the foregoing.

5.6. Loans and Investments. Borrower will not, directly or indirectly, make any advance, loan, extension of credit, or capital contribution to or investment in, or purchase, any stock, bonds, notes, debentures, or other securities of, any Person in connection with the Property, except:

(a) readily marketable direct obligations of the United States of America or any agency thereof with maturities of one year or less from the date of acquisition; and

(b) fully insured depository accounts maintained at a commercial bank operating in the United States of America having capital and surplus in excess of \$50,000,000.00.

5.7. Transactions With Affiliates. Borrower will not, directly or indirectly, enter into any transaction, including, without limitation, the purchase, sale, or exchange of property or the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate of Borrower, except in the ordinary course of and pursuant to the reasonable requirements of Borrower's business, or pursuant to a transaction which is otherwise expressly permitted under this Agreement and upon fair and reasonable terms no less favorable to Borrower than would be obtained in a comparable arm's-length transaction with a Person not an Affiliate of Borrower. Borrower shall not enter into an agreement for the development or management of any Property without the prior written consent of, and the subordination of any fees related thereto in form and substance satisfactory to, the Bank.

5.8. No Negative Pledge. Borrower will not enter into or permit to exist any arrangement or agreement, other than pursuant to this Agreement or any Loan Document, which directly or indirectly prohibits or limits Borrower from creating or incurring a Lien on its Property, whether now owned or hereafter acquired.

5.9. Judgments. Borrower will not allow any judgment in excess of \$250,000 rendered against it to remain undischarged or unsuperseded for a period of thirty (30) consecutive days during which execution shall not be effectively stayed.

5.10. Hedge Agreements. Borrower will not enter into any Hedge Agreement unless it receives the prior written consent of Bank.

5.11. Change in Organization. Borrower shall not (a) change the state of Borrower's organization as it exists on the Effective Date, or (b) change Borrower's name as it exists on the Effective Date, unless Borrower shall have notified Bank in writing of such change at least thirty (30) days prior to the effective date or such shorter period as Bank may agree of such change, and shall have first taken all action required by Bank for the purpose of further perfecting or protecting the security interest in favor of Bank in the Property. In any written notice furnished pursuant to this Section, Borrower will expressly state that the notice is required by this Agreement and contains facts that may require additional filings of financing statements or other notices for the purpose of continuing perfection of Bank's security interest in the Property.

5.12. No Disposition. Except for Leases in the ordinary course of business of the Borrower, Borrower will not make a Disposition without obtaining Bank's prior written consent to the Disposition,

other than a final Disposition if the proceeds are sufficient to pay off the Loan in full and the Loan is in fact paid in full.

## **ARTICLE SIX EVENT OF DEFAULT**

The term “Event of Default,” as used herein, shall include the occurrence of any one or more of the following events (after giving effect to any grace or cure periods provided for herein):

6.1. Payment of Indebtedness. Borrower fails to pay any principal, interest or any other Indebtedness, or any part thereof, within five (5) days of the date on which such payment is due.

6.2. Covenants. Borrower or any other Obligated Party shall fail to provide to Bank timely any financial statement, report or notice required by Section 4.9 of this Agreement; or shall otherwise breach any provision of Article Four or Article Five of this Agreement.

6.3. Voluntary Debtor Relief. Borrower or any other Obligated Party shall (a) execute an assignment for the benefit of creditors or take any action in furtherance thereof, or be or become adjudicated as bankrupt or insolvent, or (b) generally not, or be unable to, or admit in writing its inability to, or fail to, pay its debts generally as they become due, or (c) file a voluntary petition, or commence any other case, proceeding or other action pursuant to, or voluntarily seek the benefit or benefits of or relief under, any Debtor Relief Law or take any action in furtherance thereof, or (d) apply for or seek, acquiesce in, consent to or suffer the appointment of a receiver, trustee, custodian, liquidator or other similar official of it or of the Property or any part thereof or of any significant portion of its other property, or (e) institute or voluntarily be or become a party to any other proceeding seeking to effect a suspension or having the effect of suspending any of the Rights of Bank granted or referred to in the Loan Documents or of the trustee under the Security Instrument or take any action in furtherance thereof or (f) file an answer admitting the material allegations of or consenting to, or default in, a petition filed against it in any liquidation, conservatorship, bankruptcy, reorganization, rearrangement, or other insolvency proceedings.

6.4. Involuntary Proceedings. The filing of a petition, case, proceeding or other action against Borrower or any other Obligated Party as a debtor under any Debtor Relief Law or seeking appointment of a receiver, trustee, custodian or liquidator of it or of the Property or any part thereof or of any significant portion of its other property or seeking to effect a suspension or having the effect of suspending any of the Rights of Bank granted or referred to in the Loan Documents or of the trustee under the Security Instrument and (a) Borrower or any other Obligated Party admits, acquiesces in or fails to contest diligently the material allegations thereof, or (b) the petition, case, proceeding or other action results in entry of an order for relief or order granting the relief sought against it, or (c) the petition, case, proceeding or other action is not permanently dismissed or discharged on or before the earlier of trial thereon or sixty (60) days next following the date of its filing.

6.5. Default Under Other Security Instruments. An event of default under, or the acceleration of any indebtedness secured by, any other mortgage, security interest or assignment which covers or affects any part of the Property (but this provision does not grant or imply consent to any such deed of trust, security interest or assignment).

6.6. Levy. The levy against the Property or any part thereof, or against any significant portion of Borrower’s or any other Obligated Party’s other property, of any execution, garnishment, attachment, sequestration or other writ or similar proceeding which is not permanently dismissed or discharged within sixty (60) days after the levy.

6.7. Misrepresentation. Any statement, representation or warranty heretofore or hereafter made by Borrower or any other Obligated Party in this Agreement or any other Loan Document or in any other document or any statement or representation made in any certificate, report, or opinion delivered to Bank pursuant to or in connection with the Loan Documents, is false, misleading, or erroneous in any material respect at the time made.

6.8. Abandonment. Abandonment of any portion of any Property.

6.9. Judgment. Borrower or any other Obligated Party shall allow any judgment for the payment of money in excess of \$250,000.00 rendered against it to remain undischarged or unsuperseded for a period of sixty (60) days during which execution shall not be effectively stayed.

6.10. Dissolution. The dissolution, liquidation, termination or forfeiture of the Right to do business of Borrower or any other Obligated Party for any reason whatsoever.

6.11. Non-Compliance with Legal Requirements. A determination by Bank of any failure of the alteration of any part of the Improvements, or of any of the materials, articles or fixtures supplied for incorporation into the alteration of the Improvements, to comply with any Legal Requirement, or the requirements of any Lease, in any material respect, and such failure continues for a period of thirty (30) days after the date any officer of Borrower obtains Knowledge of such failure or Bank sends notice to Borrower of such failure; provided, that, if the subject of such failure is, by its nature, not readily susceptible to cure within such thirty (30) day period, Borrower has provided to Bank written notice of the occurrence of such failure within thirty (30) days after the date such failure first occurred, and Borrower shall have commenced to cure the same within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, then such failure shall not constitute an "Event of Default" unless such failure is not cured prior to a date that is ninety (90) days from the date such failure first occurred; provided that any such notice and/or cure period shall not relieve Borrower of its obligations under Section 4.4 hereof.

6.12. Fraudulent Transfer. Borrower or any other Obligated Party shall have (i) concealed, removed, or permitted to be concealed or removed any part of its property with the intent to hinder, delay or defraud any of its creditors, or (ii) made or suffered a transfer of any of its property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law, or (iii) suffered or permitted while insolvent (under any applicable definition of the term) any creditor to obtain a Lien upon any of its property through legal proceedings or distraint, which Lien is not permanently vacated within thirty (30) days from the date thereof.

6.13. Destruction or Condemnation of Improvements. If any portion of the Property is demolished, destroyed, or substantially damaged, or any portion of the Property is taken or threatened to be taken by eminent domain, so that in any event, in Bank's reasonable judgment, the same cannot be restored or rebuilt with available funds to the condition existing immediately prior to such demolition, destruction, or damage within a reasonable period of time.

6.14. Defaults on Other Debt or Agreements. Borrower or any other Obligated Party shall fail to make any payment when due on or in respect of any Debt owing to any Person (other than Bank) or to perform, observe or comply with any covenant, agreement or other obligation to be performed, observed or complied with by Borrower in any agreement between Borrower and any other Person (subject to any grace and/or cure periods provided therein), which failure could reasonably be expected to have a Material Adverse Effect.



6.15. Other Agreements with Bank. A default or event of default shall occur and be continuing after the expiration of any applicable grace, notice, and cure periods under any other Loan Document.

6.16. Tax Lien Loan. (a) Borrower or any other Obligated Party shall obtain a loan to pay all or any portion of the ad valorem taxes accrued and/or accruing against the Property or any portion thereof (a "Tax Lien Loan"), (b) Borrower or any other Obligated Party shall execute a deed of trust or other lien instrument encumbering the Property or any portion thereof to secure a Tax Lien Loan, or (c) any taxing authority shall assign its lien securing the payment of ad valorem taxes accrued and/or accruing against the Property or any portion thereof to a third party to secure or collateralize a Tax Lien Loan.

6.17. Full Force and Effect. If any Loan Document shall cease to be in full force and effect or shall be declared null and void or the validity or enforceability thereof shall be contested or challenged by the Borrower or any other Obligated Party or any of their respective partners, members, shareholders or other equity holders, or the Borrower or any other Obligated Party shall deny that it has any further liability or obligation under any of the Loan Documents, or any lien or security interest created by the Loan Documents shall for any reason cease to be a valid, first priority perfected security interest in and lien upon any Property.

6.18. Cross Default. The occurrence of any event of default, after applicable notice and cure periods, under (a) that certain Loan Agreement dated on or about June 6, 2022 between Innovative Food Holdings, Inc. and Bank or any other document, agreement, and instrument executed in connection therewith or (b) any other documents, agreement, and instruments executed by Borrower with or in favor of Bank (other than the Loan Documents).

## ARTICLE SEVEN CERTAIN RIGHTS AND REMEDIES OF BANK

7.1. Rights Upon Event of Default. If any Default or Event of Default shall occur and be continuing, Bank may, without notice, declare the Indebtedness or any party thereof to be immediately due and payable, and the same shall thereupon become immediately due and payable, without notice, demand, presentment, notice of dishonor, notice of acceleration, notice of intent to accelerate, notice of intent to demand, protest, or other formalities of any kind, all of which are hereby expressly waived by Borrower; provided, however, that upon the occurrence of an Event of Default under Sections 6.3 or 6.4, the Indebtedness shall become immediately due and payable without notice, demand, presentment, notice of dishonor, notice of acceleration, notice of intent to accelerate, notice of intent to demand, protest, or other formalities of any kind, all of which are hereby expressly waived by Borrower. If any Event of Default shall occur and be continuing, Bank may exercise all Rights and remedies available to it in law or in equity, under the Loan Documents, or otherwise.

7.2. Performance by Bank. Should any covenant, duty, or agreement of Borrower fail to be performed in accordance with the terms of the Loan Documents, Bank may, at its option, perform, or attempt to perform, such covenant, duty or agreement on behalf of Borrower. In such event, Borrower shall pay to Bank on demand any amount expended by Bank in such performance or attempted performance, together with interest thereon at the Default Interest Rate from the date of such expenditure by Bank until paid. Notwithstanding the foregoing, it is expressly understood that Bank does not assume and shall never have any liability or responsibility for the performance of any duties of Borrower hereunder. Without limiting the generality of the foregoing, upon the occurrence of an Event of Default, Bank shall have the Right, in addition to any other Right of Bank, but not the obligation, in its own name or in the name of Borrower, to enter into possession of the Property; and to employ security personnel and other safeguards to protect the Property. Borrower hereby appoints Bank as the attorney-in-fact of Borrower with full power of substitution, and in the name of Borrower if Bank elects to do so, upon the

occurrence of an Event of Default, to (a) use such sums as are necessary, including any proceeds of the Loan, (b) endorse the name of Borrower on any checks or drafts representing proceeds of the insurance policies required hereunder, or other checks or instruments payable to Borrower with respect to the Property, (c) do every act with respect to the alteration of the Improvements which Borrower may do, and (d) prosecute or defend any action or proceeding incident to the Property. The power-of-attorney granted hereby is a power coupled with an interest, is irrevocable and shall not terminate upon disability of the principal. Bank shall have no obligation to undertake any of the foregoing actions, and if Bank should do so, it shall have no liability to Borrower for the sufficiency or adequacy of any such actions taken by Bank.

7.3. Bank Not in Control. None of the covenants or other provisions contained in this Agreement shall, or shall be deemed to, give Bank the Right or power to exercise control over the affairs and/or management of Borrower, or the completion of the tenant improvements, the power of Bank being limited to the Rights to exercise the remedies referred to in the other Sections of this Article; provided that if Bank becomes the owner of any stock of any entity, whether through foreclosure or otherwise, Bank shall be entitled to exercise such legal Rights as it may have by being a shareholder of such entity.

7.4. Waivers. The acceptance by Bank at any time and from time to time of part payment on the Indebtedness shall not be deemed to be a waiver of any Event of Default then existing. No waiver by Bank of any Event of Default shall be deemed to be a waiver of any other then existing or subsequent Event of Default. No waiver by Bank of any of its Rights hereunder, in the other Loan Documents or otherwise shall be considered a waiver of any other or subsequent Right of Bank. No delay or omission by Bank in exercising any Right under the Loan Documents or otherwise shall impair such Right or be construed as a waiver thereof or any acquiescence therein, nor shall any single or partial exercise of any such Right exhaust the same or preclude other or further exercise thereof or the exercise of any other Right under the Loan Documents or otherwise.

7.5. Cumulative Rights. All Rights available to Bank under the Loan Documents shall be cumulative of and in addition to all other Rights of Bank at law, in equity or otherwise whether or not the Indebtedness is due and payable and whether or not Bank shall have instituted any suit for collection, foreclosure or other action in connection with the Loan Documents.

7.6. Setoff. At any time an Event of Default exists, Bank shall be entitled to exercise the Rights of setoff and/or banker's lien against the interest of Borrower and each other Obligated Party in and to each and every account and other property of Borrower and each other Obligated Party which are in the possession of Bank to the extent of the full amount of the Indebtedness. The rights and remedies of Bank hereunder are in addition to other rights and remedies (including, without limitation, other rights of setoff) which Bank may have.

7.7. Receiver. At any time an Event of Default exists, Bank, as a matter of right and without regard to the sufficiency of the security for repayment of the Indebtedness and performance and discharge of the Obligations, without notice to Borrower or other Obligated Party, and without any showing of insolvency, fraud, or mismanagement on the part of Borrower or other Obligated Party, and further without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, shall be entitled to the appointment of a receiver or receivers of or for Borrower or the Property or any part thereof, including the rents therefrom, and Borrower and Obligated Party hereby irrevocably consents to the appointment of a receiver or receivers and agrees not to oppose, directly or indirectly, Bank's efforts to obtain same. Any receiver appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters.

7.8. BORROWER'S INDEMNITY. BORROWER SHALL INDEMNIFY, DEFEND, PROTECT AND HOLD HARMLESS BANK, EACH AFFILIATE OF BANK, AND EACH OF ITS AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, ATTORNEYS, SUCCESSORS, AND ASSIGNS AND THE TRUSTEE UNDER THE SECURITY INSTRUMENT (COLLECTIVELY, THE "INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, CLAIMS, PENALTIES, JUDGMENTS, DISBURSEMENTS, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES OF OUTSIDE COUNSEL AND OUT-OF-POCKET EXPENSES), ACTIONS, PROCEEDINGS, OR DISPUTES INCURRED OR SUFFERED OR TO WHICH ANY OF THEM MAY BECOME SUBJECT WHICH DIRECTLY OR INDIRECTLY ARISE FROM OR RELATE TO:

(a) THE NEGOTIATION, EXECUTION, DELIVERY, PERFORMANCE, ADMINISTRATION, OR ENFORCEMENT OF ANY OF THE LOAN DOCUMENTS;

(b) ANY OF THE TRANSACTIONS CONTEMPLATED BY THE LOAN DOCUMENTS;

(c) ANY BREACH BY BORROWER OR ANY OTHER OBLIGATED PARTY OF ANY REPRESENTATION, WARRANTY, COVENANT, OR OTHER AGREEMENT CONTAINED IN ANY OF THE LOAN DOCUMENTS;

THE PRESENCE, RELEASE, THREATENED RELEASE, DISPOSAL, REMOVAL, OR CLEANUP OF ANY HAZARDOUS MATERIAL LOCATED ON, ABOUT, WITHIN OR AFFECTING ANY OF THE PROPERTIES OR ASSETS OF THE BORROWER OR ANY OTHER OBLIGATED PARTY;

ANY LITIGATION CONCERNING THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE PROPERTY, OR ANY INTEREST OF BORROWER OR BANK THEREIN, OR THE RIGHT OF OCCUPANCY THEREOF BY BORROWER OR BANK, WHETHER OR NOT ANY SUCH LITIGATION IS PROSECUTED TO A FINAL, NON-APPEALABLE JUDGMENT;

(d) ANY DISPUTE, INCLUDING DISPUTES AS TO THE DISBURSEMENT OF PROCEEDS OF ANY NOTE NOT YET DISBURSED, AMONG OR BETWEEN BORROWER OR OTHER PARTNERS OR VENTURERS OF BORROWER IF BORROWER IS A GENERAL OR LIMITED PARTNERSHIP, OR AMONG OR BETWEEN ANY EMPLOYEES, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS OR MANAGERS OF BORROWER IF BORROWER IS A CORPORATION OR LIMITED LIABILITY COMPANY OR PARTNERSHIP, OR AMONG OR BETWEEN ANY MEMBERS, TRUSTEES OR OTHER RESPONSIBLE PARTIES IF BORROWER IS AN ASSOCIATION, TRUST OR OTHER ENTITY;

(e) ANY ACTION TAKEN OR NOT TAKEN BY BANK OR TRUSTEE WHICH IS ALLOWED OR PERMITTED UNDER THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS RELATING TO BORROWER, THE PROPERTY, OR OTHERWISE IN CONNECTION WITH THE LOAN DOCUMENTS, INCLUDING, WITHOUT LIMITATION, THE PROTECTION OR ENFORCEMENT OF ANY LIEN, SECURITY INTEREST OR OTHER RIGHT, REMEDY OR RECOURSE CREATED OR AFFORDED BY THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS; AND

(f) ANY ACTION BROUGHT BY BANK AGAINST BORROWER UNDER THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS, WHETHER OR NOT SUCH ACTION IS PROSECUTED TO A FINAL, NON-APPEALABLE JUDGMENT;

IN EACH SUCH CASE OTHER THAN ANY LIABILITY, DAMAGE OR EXPENSE ARISING OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE BANK OR APPLICABLE INDEMNITEE AS DETERMINED BY A COURT OF COMPETENT JURISDICTION BY FINAL AND NON-APPEALABLE JUDGMENT.

WITHOUT LIMITING ANY PROVISION OF THIS AGREEMENT OR OF ANY OTHER LOAN DOCUMENT, IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT EACH PERSON TO BE INDEMNIFIED UNDER THIS SECTION SHALL BE INDEMNIFIED FROM AND HELD HARMLESS AGAINST ANY AND ALL LOSSES, LIABILITIES, CLAIMS, DAMAGES, PENALTIES, JUDGMENTS, DISBURSEMENTS, COSTS, AND OUT-OF-POCKET EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES OF OUTSIDE COUNSEL) ARISING OUT OF OR RESULTING FROM THE SOLE CONTRIBUTORY OR ORDINARY NEGLIGENCE OF SUCH PERSON.

BANK MAY EMPLOY AN ATTORNEY OR ATTORNEYS TO PROTECT OR ENFORCE ITS RIGHTS, REMEDIES AND RECOURSES UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AND TO ADVISE AND DEFEND BANK WITH RESPECT TO ANY SUCH ACTIONS AND OTHER MATTERS. BORROWER SHALL REIMBURSE BANK FOR ITS REASONABLE ATTORNEYS' FEES OF OUTSIDE COUNSEL AND OUT-OF-POCKET EXPENSES (INCLUDING EXPENSES AND COSTS FOR EXPERTS) IMMEDIATELY UPON RECEIPT OF A WRITTEN DEMAND THEREFOR, WHETHER ON A MONTHLY OR OTHER TIME INTERVAL, AND WHETHER OR NOT AN ACTION IS ACTUALLY COMMENCED OR CONCLUDED. ALL OTHER REIMBURSEMENT AND INDEMNITY OBLIGATIONS HEREUNDER SHALL BECOME DUE AND PAYABLE WHEN ACTUALLY INCURRED BY BANK. ANY PAYMENTS NOT MADE WITHIN TEN (10) DAYS AFTER WRITTEN DEMAND THEREFOR SHALL BEAR INTEREST AT THE DEFAULT INTEREST RATE FROM THE DATE OF SUCH DEMAND UNTIL FULLY PAID. THE PROVISIONS OF THIS SECTION 7.8 SHALL SURVIVE REPAYMENT OF THE INDEBTEDNESS AND PERFORMANCE OF THE OBLIGATIONS, THE RELEASE OF THE LIEN OF THE SECURITY INSTRUMENT, ANY FORECLOSURE (OR ACTION IN LIEU OF FORECLOSURE), THE TRANSFER BY BORROWER OF ANY OR ALL OF ITS RIGHT, TITLE AND INTEREST IN OR TO THE PROPERTY AND THE EXERCISE BY BANK OF ANY AND ALL REMEDIES SET FORTH HEREIN OR IN ANY OTHER LOAN DOCUMENT.

7.9. Limitation of Liability. Neither Bank nor any Affiliate, officer, director, employee, attorney, or agent of Bank shall have any liability with respect to, and Borrower hereby waives, releases, and agrees not to sue any of them upon, any claim for any special, indirect, incidental, or consequential damages suffered or incurred by Borrower in connection with, arising out of, or in any way related to, this Agreement or any of the other Loan Documents, the construction or completion of tenant improvements or the payment of leasing commissions, or any of the transactions contemplated by this Agreement or any of the other Loan Documents, other than such liability arising out of the gross negligence or willful misconduct of the Bank as determined by a court of competent jurisdiction by final and non-appealable judgment. Borrower hereby waives, releases, and agrees not to sue Bank or any of Bank's Affiliates, officers, directors, employees, attorneys, or agents for punitive damages in respect of any claim in connection with, arising out of, or in any way related to, this Agreement or any of the other Loan Documents, the construction or completion of tenant improvements or the payment of leasing commissions, or any of the transactions contemplated by this Agreement or any of the other Loan Documents, other than in connection with the gross negligence or willful misconduct of the Bank as determined by a court of competent jurisdiction by final and non-appealable judgment.

**ARTICLE EIGHT  
MISCELLANEOUS**

8.1. Notices. Unless otherwise expressly provided herein, all notices and other communications provided for hereunder shall be in writing (including by facsimile transmission) and mailed, faxed, or delivered, to the address or facsimile number specified for notices on the signature page below or to such other address as shall be designated by such party in a notice to the other parties. The address set forth below for Borrower shall be used for all communication to Borrower. All such other notices and other communications shall be deemed to have been given or made upon the earliest to occur of (a) actual receipt by the intended recipient, or (b) (i) if delivered by hand or courier, when signed for by the designated recipient, (ii) if delivered by mail, upon deposit in the mail, postage prepaid, and (iii) if delivered by facsimile, when sent and receipt has been confirmed by telephone. Electronic mail and internet websites may be used only to distribute routine communications, such as Financial Statements and other information, and to distribute Loan Documents for execution by the parties thereto, and may not be used for any other purpose.

8.2. Form and Number of Documents. Each agreement, document, instrument, or other writing to be furnished to Bank under any provision of this Agreement must be in form and substance and in such number of counterparts as may be satisfactory to Bank and its counsel.

8.3. Survival. All covenants, agreements, undertakings, representations, and warranties made in any of the Loan Documents shall survive all closings under the Loan Documents and shall continue in full force and effect so long as any part of the Indebtedness remains and, except as otherwise indicated, shall not be affected by any investigation made by any party. Notwithstanding anything contained herein to the contrary, the covenants, agreements, undertakings, representations, and warranties made in Section 4.12, Section 7.8 and Section 7.9 shall survive the expiration or termination of this Agreement, regardless of the means of such expiration or termination.

8.4. GOVERNING LAW; PLACE OF PERFORMANCE. THE LOAN DOCUMENTS ARE BEING EXECUTED AND DELIVERED, AND ARE INTENDED TO BE PERFORMED, IN THE STATE OF TEXAS, AND THE LAWS OF SUCH STATE AND OF THE UNITED STATES SHALL GOVERN THE RIGHTS AND DUTIES OF THE PARTIES HERETO AND THE VALIDITY, CONSTRUCTION, ENFORCEMENT, AND INTERPRETATION OF THE LOAN DOCUMENTS, EXCEPT TO THE EXTENT OTHERWISE SPECIFIED IN ANY OF THE LOAN DOCUMENTS. THIS AGREEMENT, ALL OF THE OTHER LOAN DOCUMENTS (EXCEPT AS MAY BE EXPRESSLY SET FORTH IN ANY LOAN DOCUMENT), AND ALL OF THE OBLIGATIONS OF BORROWER UNDER ANY OF THE LOAN DOCUMENTS ARE PERFORMABLE IN DALLAS COUNTY, TEXAS. VENUE OF ANY LITIGATION INVOLVING THIS AGREEMENT OR ANY LOAN DOCUMENT SHALL BE MAINTAINED IN AN APPROPRIATE STATE OR FEDERAL COURT LOCATED IN DALLAS COUNTY, TEXAS, TO THE EXCLUSION OF ALL OTHER VENUES. BORROWER AGREES THAT SERVICE OF PROCESS UPON IT MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, AT ITS ADDRESS SPECIFIED HEREIN. NOTHING HEREIN SHALL AFFECT THE RIGHT OF BANK TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT OF BANK TO BRING ANY ACTION OR PROCEEDING AGAINST BORROWER OR WITH RESPECT TO ANY OF BORROWER'S PROPERTY IN COURTS IN OTHER JURISDICTIONS. THE SCOPE OF EACH OF THE FOREGOING WAIVERS IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. BORROWER ACKNOWLEDGES THAT THESE

WAIVERS ARE A MATERIAL INDUCEMENT TO BANK'S AGREEMENT TO ENTER INTO AGREEMENTS AND OBLIGATIONS EVIDENCED BY THE LOAN DOCUMENTS, THAT BANK HAS ALREADY RELIED ON THESE WAIVERS AND WILL CONTINUE TO RELY ON EACH OF THESE WAIVERS IN RELATED FUTURE DEALINGS. THE WAIVERS IN THIS SECTION ARE IRREVOCABLE, MEANING THAT THEY MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THESE WAIVERS APPLY TO ANY FUTURE RENEWALS, EXTENSIONS, AMENDMENTS, MODIFICATIONS, OR REPLACEMENTS IN RESPECT OF THE APPLICABLE LOAN DOCUMENT. IN CONNECTION WITH ANY LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

8.5. Maximum Interest. It is expressly stipulated and agreed to be the intent of Borrower and Bank at all times to comply strictly with the applicable Texas law governing the maximum rate or amount of interest payable on the indebtedness evidenced by the Note or any Loan Document, and the Related Indebtedness (or applicable United States federal law to the extent that it permits Bank to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If the applicable law is ever judicially interpreted so as to render usurious any amount (a) contracted for, charged, taken, reserved or received pursuant to any Note, any of the other Loan Documents or any other communication or writing by or between Borrower and Bank related to the transaction or transactions that are the subject matter of the Loan Documents, (b) contracted for, charged, taken, reserved or received by reason of Bank's exercise of the option to accelerate the maturity of any Note and/or any and all indebtedness paid or payable by Borrower to Bank pursuant to any Loan Document other than such Note (such other indebtedness being referred to in this Section as the "Related Indebtedness"), or (c) Borrower will have paid or Bank will have received by reason of any prepayment by Borrower of any Note and/or the Related Indebtedness, then it is Borrower's and Bank's express intent that all amounts charged in excess of the Maximum Lawful Rate shall be automatically canceled, ab initio, and all amounts in excess of the Maximum Lawful Rate theretofore collected by Bank shall be credited on the principal balance of such Note and/or the Related Indebtedness (or, if such Note and the Related Indebtedness have been or would thereby be paid in full, refunded to Borrower), and the provisions of such Note and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder; provided, however, if such Note has been paid in full before the end of the stated term of such Note, then Borrower and Bank agree that Bank shall, with reasonable promptness after Bank discovers or is advised by Borrower that interest was received in an amount in excess of the Maximum Lawful Rate, either refund such excess interest to Borrower and/or credit such excess interest against such Note and/or any Related Indebtedness then owing by Borrower to Bank. Borrower hereby agrees that as a condition precedent to any claim or counterclaim (in which event such proceeding shall be abated for such time period) seeking usury penalties against Bank, Borrower will provide written notice to Bank, advising Bank in reasonable detail of the nature and amount of the violation, and Bank shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Borrower or crediting such excess interest against such Note to which the alleged violation relates and/or the Related Indebtedness then owing by Borrower to Bank. All sums contracted for, charged, taken, reserved or received by Bank for the use, forbearance or detention of any debt evidenced by such Note and/or the Related Indebtedness shall, to the extent permitted by applicable law, be amortized or spread, using the actuarial method, throughout the stated term of such Note and/or the Related Indebtedness (including any and all renewal and extension periods) until payment in full so that the rate or amount of interest on account of such Note and/or the Related Indebtedness does not exceed the Maximum Lawful Rate from time to time in effect and applicable to such Note and/or the Related Indebtedness for so long as debt is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code which regulates certain revolving credit loan accounts and revolving triparty accounts apply to such Note and/or any of the Related Indebtedness. Notwithstanding anything to the

contrary contained herein or in any of the other Loan Documents, it is not the intention of Bank to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

8.6. Ceiling Election. To the extent that Bank is relying on Chapter 303 of the Texas Finance Code to determine the Maximum Lawful Rate payable on any Note and/or any other portion of the Indebtedness, Bank will utilize the weekly ceiling from time to time in effect as provided in such Chapter 303, as amended. To the extent federal law permits Bank to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law, Bank will rely on federal law instead of such Chapter 303 for the purpose of determining the Maximum Lawful Rate. Additionally, to the extent permitted by applicable law now or hereafter in effective, Bank may, at its option and from time to time, utilize any other method of establishing the Maximum Lawful Rate under such Chapter 303 or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect.

8.7. Invalid Provisions. If any provision of any of the Loan Documents is held to be illegal, invalid, or unenforceable under present or future laws effective during the term thereof, such provision shall be fully severable, the appropriate Loan Document shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part thereof; and the remaining provisions thereof shall remain in full force and effect and shall not be effected by the illegal, invalid, or unenforceable provision or by its severance therefrom. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of such Loan Document a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

8.8. Costs and Expenses. Borrower shall pay Bank, on demand, all reasonable costs and expenses of Bank, including, without limitation, reasonable attorneys' fees and legal expenses, incurred by Bank in perfecting, revising, protecting or enforcing any of its rights or remedies against any Obligated Party or any Property, or otherwise incurred by Bank in connection with any Default or Event of Default or the enforcement of the Loan Documents or the Indebtedness. Following Bank's demand upon Borrower for the payment of any such costs and expenses, and until the same are paid in full, the unpaid amount of such costs and expenses shall constitute Indebtedness and shall bear interest at the default rate of interest provided for in the Note.

8.9. Entirety and Amendments. This instrument embodies the entire agreement between the parties relating to the subject matter hereof (except documents, agreements and instruments delivered or to be delivered in accordance with the express terms hereof), supersedes all prior agreements and understandings, if any, relating to the subject matter hereof, and may be amended only by an instrument in writing executed jointly by Borrower and Bank and supplemented only by documents delivered or to be delivered in accordance with the express terms hereof.

8.10. Multiple Counterparts; Facsimiles. This Agreement has been executed in a number of identical counterparts, each of which constitutes an original and all of which constitute, collectively, one agreement; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart. Delivery of an executed counterpart of this Agreement by facsimile transmission or other electronic mail transmission (e.g., ".pdf" or ".tif") shall be effective as delivery of an executed original counterpart and shall constitute a covenant to deliver an executed original counterpart, but the failure to do so shall not affect the validity, enforceability and binding effect of this Agreement. This provision shall apply to all of the Loan Documents as if fully set forth therein.

8.11. Parties Bound. This Agreement shall be binding upon and inure to the benefit of Borrower, Bank and their respective successors and assigns; provided that neither Borrower nor Borrower may, without the prior written consent of Bank, assign any of its Rights, duties, or obligations hereunder. No term or provision of this Agreement shall inure to the benefit of any Person other than Borrower, Borrower and Bank and their respective successors and assigns; consequently, no Person other than Borrower, Borrower and Bank and their respective successors and assigns, shall be entitled to rely upon, or to raise as a defense, in any manner whatsoever, the failure of Borrower, Borrower or Bank to perform, observe, or comply with any such term or provision.

8.12. Bank's Consent or Approval. Except where otherwise expressly provided in the Loan Documents, in any instance where the approval, consent or the exercise of judgment of Bank is required, the granting or denial of such approval or consent and the exercise of such judgment shall be (a) within the sole discretion of Bank, and (b) deemed to have been given only by a specific writing intended for that purpose and executed by Bank. Each provision for consent, approval, inspection, review, or verification by Bank is for Bank's own purposes and benefit only.

8.13. Sale of Participations. Bank may, from time to time and without notice to Borrower, sell or offer to sell the Indebtedness, or interests therein, to one or more assignees or participants and Bank is hereby authorized to disseminate and disclose any information (whether or not confidential or proprietary in nature) Bank now has or may hereafter obtain pertaining to Borrower, the Indebtedness or the Loan Documents (including, without limitation, any credit or other information regarding Borrower, any of its principals, or any other person or entity liable, directly or indirectly, for any part of the Loan, to (a) any such assignee or participant or any prospective assignee or prospective participant, (b) any regulatory body having jurisdiction over Bank or the Indebtedness, and (c) any other persons or entities as may be necessary or appropriate in Bank's reasonable judgment). Bank, as a courtesy to Borrower, will endeavor to notify Borrower of any such assignees or participants, or prospective assignees or participants, to which Bank disseminates any of the information described above.

8.14. Loan Agreement Governs. In the event of any conflict between the terms of this Agreement and any terms of any other Loan Document, the terms of this Agreement shall govern. All of the Loan Documents are by this reference incorporated into this Agreement.

8.15. WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY IRREVOCABLY AND EXPRESSLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO ANY OF THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY OR THE ACTIONS OF BANK IN THE NEGOTIATION, ADMINISTRATION, OR ENFORCEMENT THEREOF.

8.16. Waiver of Fraudulent Inducement. Neither Bank nor any affiliate of Bank has made any representation, warranty or statement to Borrower in order to induce Borrower to execute this Agreement or the other Loan Documents. Borrower hereby expressly waives any claim of fraudulent inducement to execute this agreement or the other Loan Documents and further disclaims any reliance or statements on or representations of Bank in waiving such claim.

8.17. Waiver of Consequential, Punitive and Speculative Damages. Borrower and bank agree that, in connection with any action, suit or proceeding relating to or arising out of this agreement or any of the other Loan Documents, each mutually waives to the fullest extent permitted by applicable law any claim for consequential, punitive or speculative damages.



8.18. STATUTE OF FRAUDS NOTICE. THIS WRITTEN LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT 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.

EFFECTIVE as of the Effective Date.

**BANK:**

MAPLEMARK BANK

By: \_\_\_\_\_  
Elizabeth Nebergall, Vice President

*Address for Notices:*

MapleMark Bank

4143 Maple Ave., Suite 100

Dallas, Texas 75219

Telephone No.: (972) 698-5706

Attention: Kendall Scott

e-mail: Kendall.Scott@MapleMarkBank.com

**BORROWER:**

INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

INNOVATIVE FOOD PROPERTIES, LLC,  
a Delaware limited liability company

By INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation,  
its sole member

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

*Address for Notices:*  
28411 Race Track Road  
Bonita Springs, FL 34135  
Attention: Samuel Klepfish

**LIST OF EXHIBITS AND SCHEDULES**

- EXHIBIT A - Conditions Precedent
- EXHIBIT B - Title Policy Requirements
- EXHIBIT C - Insurance Requirements

LOAN AGREEMENT

List of Exhibits - Page 1

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**EXHIBIT A**  
**TO**  
**LOAN AGREEMENT**  
**Conditions Precedent**

Promissory Note.

Security Instrument.

Environmental Indemnity.

Title Policy.

Leases.

Flood Certificate.

Payment of all fees and expenses of Bank.

An appraisal of the Property by a qualified MAI appraiser approved by Bank, in form, scope and substance reasonably satisfactory to Bank.

ESA Phase I Assessment approved by Bank.

Insurance Policies, certificates and binders required pursuant to Section 4.1 and Exhibit C to this Agreement, together with a schedule of insurance in form and substance satisfactory to Bank.

Settlement Statement.

Satisfactory evidence that all zoning ordinances or restrictive covenants affecting the Property permit the present and intended uses of the Property and have been and will be complied with.

Satisfactory evidence of the Property's compliance with the requirements of all applicable environmental protection laws, rules and regulations, whether federal, state or municipal.

Satisfactory evidence that all utility and sanitary sewage services and facilities necessary for the use of the Improvements are available, or will be available, to the Land.

Satisfactory evidence that all of the streets providing access to the Property have been either dedicated to public use or established by private easement, duly recorded in the records of the county in which the Property is located, and have been fully installed and accepted by Governmental Authority, that all costs and expenses of the installation and acceptance thereof have been paid in full and that there are no restrictions on the use and enjoyment of such streets that adversely affect, limit or impair the Property to Bank.

Other documents, instruments and information reasonably requested by Bank.

**EXHIBIT B**

**TO**

**LOAN AGREEMENT**

**Title Policy Requirements**

Borrower shall deliver to Bank, at Borrower's expense, a standard loan policy of title insurance in accordance with the laws and practices of the applicable state. The Title Policy shall (a) show "MapleMark Bank" as the insured mortgagee, (b) insure the Lien of the Security Instrument as a first lien against the Land and Improvements in the full amount of the Loan, (c) delete the exception for matters which a current survey would show, and all "standard" exceptions which can be deleted, to the fullest extent authorized under applicable title insurance rules and Borrower shall satisfy all requirements therefor, (d) contain (i) no exception for standby fees or real estate taxes other than standby fees and real estate taxes for the year in which the Closing Date occurs to the extent the same are not then due and payable in which case the same shall be endorsed "not yet due and payable" and (ii) no exception for subsequent assessments for prior years, (e) provide full coverage against mechanic's liens to the extent authorized by applicable title insurance rules and Borrower shall satisfy all requirements therefor, (f) contain only such exceptions (regardless of rank or priority) Bank approves, and Borrower shall cause to be delivered to Bank true, complete and fully legible copies of all recorded instruments shown as exceptions, including the subdivision plat (if any) and any restrictive covenants, (g) insure that no restrictive covenants shown in the Title Policy have been violated, and that no violation of the restrictions will result in a reversion or forfeiture of title, (h) insure that the lands shown in the required Survey are one and the same as the lands encumbered by the Security Instrument, and that all recorded easements and other exceptions locatable on the ground are located as shown on the Survey, (i) insure that indefeasible or marketable (or the equivalent thereof pursuant to applicable law) (as coverage is available) fee simple title to the Land and Improvements is vested in Borrower, (j) contain such endorsements as Bank requires and are available under applicable title insurance rules and Borrower shall satisfy all requirements therefor, (k) insure any easements, leasehold estates or other matters appurtenant to or benefiting the Land and/or the Improvements as part of the insured estate and not show the same as exceptions, (l) provide the recording information for the UCC financing statement (if any) filed in the real estate records of the county where the Land is located, and (m) insure the zoning of, and the Right of access to, the Land to the extent authorized under applicable title insurance rules and Borrower shall satisfy all requirements therefor.

The conditions to Bank's obligation to make the Loan will not be satisfied if the Title Policy required by this Agreement is not, or cannot be, issued, whether caused by Borrower's failure to satisfy the underwriter's requirements or otherwise.

**EXHIBIT C**

**TO**

**LOAN AGREEMENT**

**Insurance Requirements**

Borrower shall maintain with responsible insurance companies having at least an A Policyholder's Rating and a Financial Size Rating of XII by Alfred M. Best Company (or another company approved by Bank) the following:

**Hazard Insurance.** Insurance with respect to all insurable Property against loss or damage by fire, lightning, windstorm, explosion, hail, tornado, collapse, riot, riot attending a strike, sprinkler leakage, civil commotion, damage from aircraft and vehicles, and smoke damage and loss or damage from such hazards as are presently included in so called "extended coverage" and against vandalism and malicious mischief and against such other insurable hazards as may be required by Bank for the benefit of Borrower and Bank as named insured and/or loss payees. The amount of such insurance shall be the full actual cash value of the buildings, improvements, furniture, furnishings, fixtures, equipment and other items (whether personalty or fixtures) included in the Property. Full actual cash value, as used herein, means (1) the cost to repair or replace the damaged property, minus depreciation; (2) the damaged property's "fair market value"; or (3) using the "broad evidence rule," which calls for considering all relevant evidence of the value of the damaged property. Each such policy shall contain an actual cash value endorsement and such other endorsements as are sufficient to prevent Borrower and Bank from becoming a coinsurer with respect to such buildings and improvements. Such insurance shall be "Basic Causes of Loss" form.

**Builder's Risk.** All-Risk Builder's Risk insurance (which may be provided by the Contractor during the alteration, if any, of the Improvements, although the responsibility to provide such insurance shall remain Borrower's responsibility) in an amount equal to 100% of the replacement cost of the Improvements, providing all-risk coverage on the Improvements and materials stored on the Property and elsewhere, and including collapse, damage resulting from error in design or faulty workmanship or materials, water damage, and permission to occupy, for the benefit of Borrower and Bank as named insured and/or loss payees.

**Flood Insurance.** If and to the extent any of the Property is located in a flood hazard area, a federal flood insurance policy in an amount equal to the lesser of the amount of the Loan or the maximum amount available.

**Other.** Such other insurance on the Property, or any replacements or substitutions thereof, or additions thereto, and in such amounts as may from time to time be required by Bank against other insurable hazards or casualties which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height and type of the buildings and improvements, or any replacements or substitutions therefor, or additions thereto, and their construction, location, use and occupancy. Bank may also require Borrower to maintain commercial general liability insurance for owners and contractors in amounts and form acceptable to Bank.

**Contracts.** With respect to any Contractor performing work in connection with the Improvements, such insurance as Bank shall reasonably require, including, but not limited to, Worker's Compensation Insurance for statutory limits.

All insurance policies shall be “*occurrence*” based policies, issued and maintained by insurers, in amounts, with deductibles, and in form satisfactory to Bank, shall require not less than thirty (30) days’ prior written notice to Bank of any cancellation lapse, expiration, reduction or other change of coverage, and shall provide, if possible, for payment of all costs and expenses incurred by Bank in the event of any contested claim. Without limiting the discretion of Bank with respect to required endorsements to insurance policies, all such policies for loss or damage to the Property shall contain a standard mortgagee clause (without contribution) naming Bank as mortgagee with loss proceeds payable to Bank. All such policies also shall provide that the validity and enforceability of such policies will not be affected by, and the proceeds of such policies will be payable to Bank notwithstanding any (i) act, failure to act, or negligence of the insured, (ii) any violation of any warranty, declaration or condition contained in any such policy by the insured, (iii) the occupancy or use of the Property for purposes more hazardous than permitted by the terms of the policy, (iv) the exercise of the power of sale or any foreclosure or other action or proceeding taken by Bank pursuant to the Loan Documents, or (v) any change in title to or ownership of the Property. In the case of policies of “*extended coverage*” insurance carried by a lessee of the Property for the benefit of Borrower, Borrower will upon request of Bank cause such policies to be endorsed to provide for payment of proceeds to Bank as its interests may appear.



Prepared by and  
after recording return to:

Frost Brown Todd LLC  
2101 Cedar Springs Road, Suite 900  
Dallas, Texas 75201  
Attention: Ed McQueen

**MORTGAGE, SECURITY AGREEMENT,  
ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING**

**By**

**INNOVATIVE FOOD HOLDINGS, INC., a Florida corporation  
(“MORTGAGOR”)**

**to**

**MAPLEMARK BANK  
(“LENDER”)**

**Property Address: 28411 Race Track Road, Bonita Springs, FL 34135  
Property County: Lee**

**DOCUMENTARY STAMP TAX IN THE AMOUNT OF \$\_\_\_\_\_.00 AND INTANGIBLES TAX IN THE AMOUNT OF \$\_\_\_\_\_.00  
HAVE BEEN PAID UPON RECORDATION OF THIS MORTGAGE BASED ON THE MAXIMUM PRINCIPAL AMOUNT OF  
\$\_\_\_\_\_.00.**

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**MORTGAGE, SECURITY AGREEMENT,  
ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING**

This MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING made effective as of June 6, 2022 (the "**Mortgage**"), is executed by INNOVATIVE FOOD HOLDINGS, INC., a Florida corporation (the "**Mortgagor**"), to and for the benefit of MAPLEMARK BANK, its designee, successors and assigns (the "**Lender**").

**RECITALS:**

A. Pursuant to the terms and conditions contained in that certain Promissory Note dated as of even date herewith evidencing the Loan, executed by Mortgagor and made payable to the order of the Lender (as amended, restated or replaced from time to time, the "**Note**"), the Lender has agreed to loan to the Mortgagor the aggregate principal amount of \$2,680,000 (the "**Loan**") being due on the maturity date set forth in the Note (the "**Maturity Date**"), except as may be accelerated or extended pursuant to the terms hereof, of the Note or of any other document or instrument now or hereafter given to evidence or secure the payment of the Note or delivered to induce the Lender to disburse the proceeds of the Loan (the Note together with the Loan Agreement (as hereinafter defined) and such other documents delivered in connection with the Loan, as amended, restated or replaced from time to time, being collectively referred to herein as the "**Loan Documents**").

B. Capitalized words and phrases not otherwise defined herein shall have the meanings assigned thereto in that certain Loan Agreement dated of even date herewith executed by Mortgagor and Lender (the "**Loan Agreement**"), which is one of the Loan Documents.

C. A condition precedent to the Lender's extension of the Loan to the Mortgagor is the execution and delivery by the Mortgagor of this Mortgage.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Mortgagor agrees as follows:

**AGREEMENTS:**

The Mortgagor hereby mortgages, grants, assigns, remises, releases, warrants and conveys to the Lender, its successors and assigns, and grants a security interest in, the following described property, rights and interests (referred to collectively herein as the "**Property**"), all of which property, rights and interests are hereby pledged primarily and on a parity with the Real Estate (as defined below) and not secondarily:

(a) All of Mortgagor's right, title and interest in and to the real estate in which Mortgagor has a fee simple interest, situated in Lee County, State of Florida and legally described on **Exhibit A** attached hereto and made a part hereof (the "**Real Estate**");

(b) All improvements of every nature whatsoever now situated on the Real Estate or hereafter constructed (including, without limitation, all improvements contemplated by the Loan Documents), and all fixtures and personal property of every

nature whatsoever now or hereafter owned by the Mortgagor and located on, or used in connection with the Real Estate or the improvements thereon, or in connection with any construction thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing and all of the right, title and interest of the Mortgagor in and to any such personal property or fixtures together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by the Mortgagor or on its behalf (collectively, the "**Improvements**");

(c) All easements, rights of way, gores of real estate, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Real Estate, and the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of the Mortgagor of, in and to the same;

(d) All rents, revenues, issues, profits, proceeds, income, royalties, Letter of Credit Rights (as defined in the Uniform Commercial Code in effect in Florida from time to time (the "**Code**") in effect from time to time), escrows, deposits (including, without limitation, purchase deposits and security deposits), impounds, reserves, tax refunds and other rights to monies from the Property and/or the businesses and operations conducted by the Mortgagor thereon, to be applied against the Obligations (as hereinafter defined); provided, however, that the Mortgagor, so long as no Event of Default (as hereinafter defined) has occurred hereunder, may collect rent as it becomes due, but not more than one (1) month in advance thereof (excluding last month's rent and any security deposits expressly required under such Lease);

(e) All interest of the Mortgagor in all leases now or hereafter on the Property, whether written or oral (each, a "**Lease**", and collectively, the "**Leases**"), together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to the Mortgagor to collect the rentals under any such Lease;

(f) All fixtures and articles of personal property now or hereafter owned by the Mortgagor and forming a part of or used in connection with the Real Estate or the Improvements or the business operations conducted thereon, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, computer hardware and software used in the operation of the Property, coolers, credit card processing equipment, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, electronic point of sale systems, elevators, engines, equipment, escalators, exercise equipment, fans, fittings, floor coverings, furnaces, furnishings, furniture, gasoline dispensers, tank monitoring equipment, leak detection systems, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings,

wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Real Estate or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by the Mortgagor and placed on the Real Estate or the Improvements, so far as permitted by law, shall be deemed to be fixtures, a part of the realty, and security for the Obligations; notwithstanding the agreement hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute Goods (as defined in the Code), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in the Lender, as a Secured Party, and the Mortgagor, as Debtor, all in accordance with the Code;

(g) All of the Mortgagor's interests in General Intangibles (as defined in the Code), including Payment Intangibles and Software (each as defined in the Code) now owned or hereafter acquired and related to the Property, including, without limitation, all of the Mortgagor's right, title and interest in and to: (i) all agreements, licenses, permits and contracts, including, but without limitation, any and all dealer lease and supply agreements, commission marketing agreements, retail contract operation agreements and any riders and related agreements, leases, licenses and/or other agreements in favor of third party ATM service providers, all licenses and permits for any underground storage tanks, any conditional use permits, liquor and beverage licenses and any vendor service agreements, to which the Mortgagor is or may become a party and which relate to the Property; (ii) all obligations and indebtedness owed to the Mortgagor thereunder; (iii) all intellectual property related to the Property; and (iv) all choses in action and causes of action relating to the Property;

(h) All of the Mortgagor's accounts now owned or hereafter created or acquired as relate to the Property and/or the businesses and operations conducted thereon, including, without limitation, all of the following now owned or hereafter created or acquired by the Mortgagor: (i) Accounts (as defined in the Code), contract rights, book debts, notes, drafts, and other obligations or indebtedness owing to the Mortgagor arising from the sale, lease or exchange of goods or other property and/or the performance of services; (ii) the Mortgagor's rights in, to and under all purchase orders for goods, services or other property; (iii) the Mortgagor's rights to any goods, services or other property represented by any of the foregoing; (iv) monies due or to become due to the Mortgagor under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect thereto (whether or not yet earned by performance on the part of the Mortgagor); (v) Securities, Investment Property, Financial Assets and Securities Entitlements (each as defined in the Code); (vi) proceeds of any of the foregoing and all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing; and (vii) all warranties, guarantees, permits and licenses in favor of the Mortgagor with respect to the Property, including without limitation, any liquor license; and (viii) all documents, permits, plans and specifications in favor of the Mortgagor related to the construction on the Property; and

(i) All proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Property or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Property or proceeds of any sale, option or contract to sell the Property or any portion thereof.

TO HAVE AND TO HOLD the Property, unto the Lender, its successors and assigns, forever, for the purposes and upon the uses herein set forth together with all right to possession of the Property after the occurrence of any Event of Default; the Mortgagor hereby RELEASING AND WAIVING all rights under and by virtue of the homestead or any other exemption laws of the State of Florida.

FOR THE PURPOSE OF SECURING: (i) the payment of the Loan and all interest, late charges, prepayment premium, if any, and other indebtedness evidenced by or owing under the Note, any of the other Loan Documents, together with any extensions, modifications, renewals or refinancings of any of the foregoing; (ii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of the Mortgagor or any other obligor to or benefiting the Lender which are evidenced or secured by or otherwise provided in the Note, this Mortgage or any of the other Loan Documents; and (iii) the reimbursement to the Lender of any and all sums incurred, expended or advanced by the Lender pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage or any of the other Loan Documents, with interest thereon as provided herein or therein (collectively, the "**Obligations**").

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. Title.

The Mortgagor represents, warrants and covenants that (a) the Mortgagor is indefeasibly seized of the Real Estate in fee simple, free and clear of all liens and encumbrances, except those liens and encumbrances in favor of the Lender and as otherwise described on **Exhibit B** attached hereto and made a part hereof (the "**Permitted Exceptions**"); (b) Mortgagor has the right at all times to peaceably and quietly enter upon, hold, occupy and enjoy the Property; (c) the Mortgagor has legal power and authority to mortgage and convey Mortgagor's interest in and to the Property; and (d) that this Mortgage constitutes a valid first priority mortgage and lien on the Property.

2. Maintenance, Repair, Restoration, Prior Liens, Parking.

The Mortgagor covenants that, so long as any portion of the Obligations remains unpaid, the Mortgagor will in accordance with the terms of the Loan Agreement:

(a) promptly repair, restore or rebuild any Improvements now or hereafter on the Property which may become damaged or be destroyed to a condition substantially similar to the condition immediately prior to such damage or destruction, whether or not proceeds of insurance are available or sufficient for the purpose;

(b) keep the Property in good condition and repair, without waste, and free from construction, mechanics', materialmen's or like liens or claims or other liens or claims for lien (subject to the Mortgagor's right to contest liens as permitted by the terms of Section 28 hereof);

(c) pay when due the Obligations in accordance with the terms of the Note and the other Loan Documents and duly perform and observe all of the terms, covenants and conditions to be observed and performed by the Mortgagor under the Note, this Mortgage and the other Loan Documents;

(d) pay when due any indebtedness which may be secured by a permitted lien or charge on the Property on a parity with, superior to or inferior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such lien to the Lender (subject to the Mortgagor's right to contest liens as permitted by the terms of Section 28 hereof);

(e) complete within a reasonable time, giving due consideration for acts of God, labor strikes or the unavailability of materials beyond the reasonable control of Mortgagor, any Improvements now or hereafter in the process of erection upon the Property as contemplated by the Loan Documents;

(f) comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Property and the use thereof;

(g) obtain and maintain in full force and effect, and abide by and satisfy the material terms and conditions of, all material permits, licenses, registrations and other authorizations with or granted by any governmental authorities that may be required from time to time with respect to the performance of its obligations under this Mortgage, including without limitation, the current and valid maintenance of any liquor license Mortgagor obtains from the Florida Division of Alcoholic Beverages and Tobacco;

(h) make no material alterations in the Property or demolish any portion of the Property without the Lender's prior written consent which shall not be unreasonably withheld, except as required by law or municipal ordinance and except as provided in the Loan Agreement;

(i) suffer or permit no change in the use or general nature of the occupancy of the Property, without the Lender's prior written consent which may be withheld in its sole discretion;

(j) pay when due all operating costs of the Property;

(k) not initiate or acquiesce in any zoning reclassification with respect to the Property, without the Lender's prior written consent which may be withheld in its sole discretion;

(l) provide and thereafter maintain adequate parking areas within the Property as may be required by law, ordinance or regulation (whichever may be greater), together

with any sidewalks, aisles, streets, driveways and sidewalk cuts and sufficient paved areas for ingress, egress and right-of-way to and from the adjacent public thoroughfares necessary or desirable for the use thereof;

(m) comply, and shall cause the Property at all times to be operated in compliance, with all applicable federal, state, local and municipal environmental, health and safety laws, statutes, ordinances, rules and regulations, including, without limitation, Mortgagor shall (i) ensure, and cause each of its subsidiaries to ensure, that no person who owns twenty percent (20.00%) or more of the equity interests in the Mortgagor, or otherwise controls the Mortgagor or any of its subsidiaries is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control (“OFAC”), the Department of the Treasury or included in any Executive Orders, (ii) not use or permit the use of the proceeds of the Loan to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (iii) comply, and cause each of its subsidiaries to comply, with all applicable Lender Secrecy Act (“BSA”) laws and regulations, as amended; and

(n) maintain or cause to be performed in all material respects all of the covenants, agreements, terms, conditions and provisions on its part to be kept, observed and performed under the Leases; shall require each tenant under the Leases to keep, observe and perform all of the covenants, agreements, terms, conditions and provisions on their part to be kept, observed or performed under the Leases; and shall not suffer or permit any breach or default to occur with respect to the foregoing. Mortgagor further covenants and agrees that Mortgagor will not, without the prior written consent of Lender, in each instance: (i) accept or collect the Rent (as defined in Section 38) under any Lease more than one month in advance of the due date thereof unless disclosed in writing to Lender in advance (excluding last month’s rent and any security deposits expressly required under such Lease); (ii) discount, forgive, encumber or assign the Rents or any part thereof or any Lease or any interest therein; (iii) amend or modify the terms of any Lease, provided, however, that Mortgagor may amend or modify the terms of any Lease so long as any modification does not shorten the term of any Lease, does not decrease the amount of Rent paid under any Lease and does not decrease the frequency of Rent payments under any Lease; (iv) subordinate any Lease to any mortgage or other encumbrance; (v) consent to any assignment of or subletting under any Lease; (vi) cancel or terminate any Lease or accept a surrender thereof; or (vii) release any guarantor or surety of any tenant’s obligations under any of the Leases. Any of the foregoing acts, if done without the prior written consent of Lender in each instance, shall be null and void. Mortgagor covenants and agrees to furnish to Lender: (i) a complete list, as of the date of such request, of all existing Leases and the Rents payable thereunder, and providing such further detail as Lender may request; (ii) executed or certified copies of all existing Leases and any modifications or amendments thereto; and (iii) specific, separate assignments of any future Leases duly executed and acknowledged by Lender.

3. Payment of Taxes and Assessments.

The Mortgagor will pay when due and before delinquent, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against the Mortgagor, if applicable to the Property or any interest therein, or the Obligations, or any obligation or agreement secured hereby, subject to the Mortgagor's right to contest the same, as provided by the terms hereof; and the Mortgagor will, upon written request, furnish to the Lender duplicate receipts therefor within ten (10) days after the Lender's request.

4. Loan Agreement. The parties acknowledge that the Note will be funded pursuant to the Loan Agreement, the terms of which are incorporated herein by reference. All sums advanced pursuant to the terms of the Loan Agreement shall be secured by this Mortgage with the same priority as if advanced on the date hereof. Notwithstanding anything to the contrary contained in this Mortgage or in the Note secured hereby, or in any other instrument securing the loan evidenced by the Note, Lender may, at its option, declare the entire indebtedness secured hereby, and all interest thereon and all advances made by Lender hereunder, immediately due and payable in the event of a breach by Mortgagor of any covenant contained in the Loan Agreement (subject to all applicable grace, notice and cure periods), and such breach shall constitute an Event of Default pursuant to Section 16 hereof.

5. Reserved.

6. Insurance.

(a) The Mortgagor shall at all times keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Property insured against loss or damage by fire, in accordance with the terms, coverages and provisions set forth in the Loan Agreement, and such other insurance as the Lender may from time to time reasonably require. Unless the Mortgagor provides the Lender evidence of the insurance coverages required hereunder, the Lender may purchase insurance at the Mortgagor's expense to cover the Lender's interest in the Property. The insurance may, but need not, protect the Mortgagor's interest. The coverages that the Lender purchases may not pay any claim that the Mortgagor makes or any claim that is made against the Mortgagor in connection with the Property. The Mortgagor may later cancel any insurance purchased by the Lender, but only after providing the Lender with evidence that the Mortgagor has obtained insurance as required by this Mortgage. If the Lender purchases insurance for the Property in accordance with the terms, coverages and provisions set forth in the Loan Agreement, the Mortgagor will be responsible for the costs of such insurance, including, without limitation, interest and any other charges which the Lender may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations. The cost of the insurance may be more than the cost of insurance the Mortgagor may be able to obtain on its own.

(b) The Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless the



Lender is included thereon as the loss payee or an additional insured as applicable, under a standard mortgage clause acceptable to the Lender and such separate insurance is otherwise acceptable to the Lender.

(c) In the event of any casualty of the Property, the provisions of Article 15 of the Loan Agreement shall govern. If insurance proceeds are made available to the Mortgagor by the Lender as provided, the Mortgagor shall repair, restore or rebuild the damaged or destroyed portion of the Property so that the condition and value of the Property are substantially the same as the condition and value of the Property prior to being damaged or destroyed. In the event of foreclosure of this Mortgage, all right, title and interest of the Mortgagor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale.

7. Condemnation.

If all or any part of the Property are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid Obligations, are hereby assigned to the Lender, who is empowered to collect and receive the same and to give proper receipts therefor in the name of the Mortgagor and the same shall be paid forthwith to the Lender. Lender may elect to collect, retain and apply to the Obligations all proceeds of insurance or condemnation (individually and collectively referred to as "Proceeds") after deduction of all expenses of collection and settlement, including reasonable out-of-pocket attorneys' and adjusters' fees and charges. Any proceeds remaining after repayment of the Obligations shall be paid by Lender to Mortgagor. Notwithstanding anything in this section to the contrary, in the event of any casualty to, or any condemnation of, all or part of the Property, Lender agrees to make available the Proceeds to restoration of the Property if (i) no Event of Default exists, (ii) all Proceeds are initially deposited with Lender, (iii) in Lender's judgment, the amount of Proceeds available for restoration of the Property (together with any sums or other security acceptable to Lender deposited with Lender by Mortgagor for such purpose) is sufficient to pay the full and complete costs of such restoration, (iv) in Lender's determination, the Property can be restored to economic viability in compliance with applicable laws, and (vi) in Lender's determination, such restoration is likely to be completed not later than six (6) months prior to the maturity of the Secured Obligations.

8. Stamp Tax.

If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over the Mortgagor and this Mortgage, any tax, State of Florida documentary stamp tax or non-recurring intangible tax, is due or becomes due in respect of the execution and delivery and/or recording of this Mortgage, the Note or any of the other Loan Documents, the Mortgagor shall pay such tax in the manner required by any such law. The Mortgagor further agrees to reimburse the Lender for any sums which the Lender may expend by reason of the imposition of any such tax. Notwithstanding the foregoing, the Mortgagor shall not be required to pay any income or franchise taxes of the Lender.

9. Intentionally Deleted.

10. Effect of Extensions of Time and Other Changes. If the payment of the Obligations or any part thereof are extended or varied, if any part of any security for the payment of the Obligations are released, if the rate of interest charged under the Note is changed or if the time for payment thereof is extended or varied, all persons now or at any time hereafter liable therefor, or interested in the Property or having an interest in the Mortgagor, shall be held to assent to such extension, variation, release or change and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by the Lender, notwithstanding such extension, variation, release or change.

11. Effect of Changes in Laws Regarding Taxation.

If any law is enacted after the date hereof requiring (a) the deduction of any lien on the Property from the value thereof for the purpose of taxation or (b) the imposition upon the Lender of the payment of the whole or any part of the Taxes, charges or liens herein required to be paid by the Mortgagor, or (c) a change in the method of taxation of mortgages or debts secured by mortgages or the Lender's interest in the Property, or the manner of collection of taxes, so as to affect this Mortgage or the Obligations or the holders thereof, then the Mortgagor, upon demand by the Lender, shall pay such Taxes or charges, or reimburse the Lender therefor; provided, however, that the Mortgagor shall not be deemed to be required to pay any income or franchise taxes of the Lender. Notwithstanding the foregoing, if in the opinion of counsel for the Lender it is or may be unlawful to require the Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then the Lender may declare all of the Obligations to be immediately due and payable.

12. Lender's Performance of Defaulted Acts and Expenses Incurred by Lender.

If an Event of Default has occurred, the Lender may, but is not obligated to, do any or all of the following:

- (a) make any payment or perform any act herein required of the Mortgagor in any form and manner deemed expedient by the Lender;
- (b) make full or partial payments of principal or interest on prior encumbrances, if any;
- (c) purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof;
- (d) redeem from any tax sale or forfeiture affecting the Property or consent to any tax or assessment;
- (e) cure any default of the Mortgagor in any lease of the Property; or
- (f) exercise any or all remedies provided for under the Loan Agreement.

All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by the Lender in regard to any tax referred to in Section 8 above or to protect the Property or the lien hereof, shall be additional Obligations, and shall become immediately due and payable by the Mortgagor to the Lender, upon demand, and with interest thereon accruing at the Default Interest Rate from the date of such demand until paid. In addition to the foregoing, any costs, expenses and fees, including reasonable attorneys' fees, incurred by the Lender in connection with:

- (v) sustaining the lien of this Mortgage or its priority;
- (w) protecting or enforcing any of the Lender's rights hereunder;
- (x) recovering any Obligations;
- (y) any litigation or proceedings affecting the Note, this Mortgage, any of the other Loan Documents or the Property, including without limitation, appellate, bankruptcy and probate proceedings; or
- (z) preparing for the commencement, defense or participation in any threatened (in writing) litigation or proceedings affecting the Note, this Mortgage, any of the other Loan Documents or the Property

shall be additional Obligations, and shall become immediately due and payable by the Mortgagor to the Lender upon demand, and with interest thereon accruing at the Default Interest Rate from the date of such demand until paid. The interest accruing under this section shall be immediately due and payable by the Mortgagor to the Lender, and shall be additional Obligations evidenced by the Note and secured by this Mortgage. The Lender's failure to act shall not be considered as a waiver of any right accruing to the Lender on account of any Event of Default. If any amount (i) is paid out or advanced by the Lender hereunder, or (ii) is used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Property or any part thereof pursuant to any agreement executed by the Mortgagor in connection with the Loan, then the Lender shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

### 13. Security Agreement

The Mortgagor and the Lender agree that this Mortgage shall constitute a Security Agreement within the meaning of the Code) with respect to (a) all sums at any time on deposit for the benefit of the Mortgagor or held by the Lender (whether deposited by or on behalf of the Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage or the other Loan Documents, (b) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Property or may not constitute a "**Fixture**" (within the meaning of Section 679.1021 (1)(oo) of the Code and which property is hereinafter referred to as "**Personal Property**"), and (c) with respect to any personal property included in the granting clauses of this Mortgage constituting a "**General Intangible**"

within the meaning of Section 679.1021 (l)(pp) of the Code, and all replacements of, substitutions for, additions to, and the proceeds thereof, and the “**Supporting Indebtedness**” (as defined in the Code) (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as “**Collateral**”), and that a security interest in and to the Collateral is hereby granted to the Lender, and the Collateral and all of the Mortgagor’s right, title and interest therein are hereby assigned to the Lender, all to secure payment of the Obligations. All of the provisions contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Property; and the following provisions of this section shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

(a) The Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefiting the Lender and no other party, and liens and encumbrances, if any, expressly permitted by the other Loan Documents.

(b) The Collateral is to be used by the Mortgagor solely for business purposes.

(c) The Collateral will be kept at the Real Estate and will not be removed therefrom without the consent of the Lender (being the Secured Party as that term is used in the Code), which consent shall not be unreasonably withheld. The Collateral may be affixed to the Real Estate but will not be affixed to any other real estate.

(d) The only persons having any interest in the Property are the Mortgagor, the Lender and holders of interests, if any, expressly permitted hereby.

(e) No Financing Statement (other than Financing Statements showing the Lender as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and the Mortgagor, at its own cost and expense, upon demand, will furnish to the Lender such further information and will execute and deliver to the Lender such financing statements and other documents in form satisfactory to the Lender and will do all such acts as the Lender may request at any time or from time to time or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Obligations, subject to no other liens or encumbrances, other than liens or encumbrances benefiting the Lender and no other party, and liens and encumbrances (if any) expressly permitted hereby; and the Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by- the Lender to be necessary. The Mortgagor hereby irrevocably authorizes the Lender at any time, and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto, without the signature of the Mortgagor that (i) indicate the Collateral (A) is comprised of all assets of the Mortgagor or words of similar effect, regardless of whether any particular asset comprising a part of the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed, or (B) as being of an equal or

lesser scope or within greater detail as the grant of the security interest set forth herein, and (ii) contain any other information required by Section 5 of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including (A) whether the Mortgagor is an organization, the type of organization and any organizational identification number issued to the Mortgagor, and (B) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of the real property to which the Collateral relates. The Mortgagor agrees to furnish any such information to the Lender promptly upon request. The Mortgagor further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by the Lender in any jurisdiction prior to the date of this Mortgage. In addition, the Mortgagor shall make appropriate entries on its books and records disclosing the Lender's security interests in the Collateral.

(f) Upon an Event of Default hereunder, the Lender shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as the Mortgagor can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and the Lender shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to the Mortgagor's right of redemption in satisfaction of the Mortgagor's obligations, as provided in the Code. The Lender may render the Collateral unusable without removal and may dispose of the Collateral on the Property. The Lender may require the Mortgagor to assemble the Collateral and make it available to the Lender for its possession at a place to be designated by the Lender which is reasonably convenient to both parties. The Lender will give the Mortgagor at least ten (10) days' notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of the Mortgagor hereinafter set forth at least ten (10) days before the time of the sale or disposition. The Lender may buy at any public sale. The Lender may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Property. If the Lender so elects, the Property and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by the Lender, shall be applied against the Obligations in such order or manner as the Lender shall select. The Lender will account to the Mortgagor for any surplus realized on such disposition.

(g) The terms and provisions contained in this section, unless the context otherwise requires, shall have the meanings and be construed as provided in the Code.

(h) This Mortgage is intended to be a financing statement within the purview of Section 679.5021(1) of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Property. The addresses of the Mortgagor (Debtor) and the Lender (Secured Party) are hereinbelow set forth. This Mortgage is to be filed for recording with the Clerk of the Circuit Court of the county or counties where the Property is located. The Mortgagor is the record owner of the Property.

(i) To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Leases between the Mortgagor or its agents as lessor, and various tenants named therein, as lessee, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of said Leases, together with all of the right, title and interest of the Mortgagor, as lessor thereunder.

(j) The Mortgagor represents and warrants that: (i) the Mortgagor is the record owner of the fee simple interest in the Property; (ii) the Mortgagor's state of organization is the State of Florida; (iii) the Mortgagor's exact legal name is as set forth on Page 1 of this Mortgage; and (iv) the Mortgagor's organizational identification number is as set forth on the signature pages to this Mortgage.

(k) The Mortgagor hereby agrees that: (i) where Collateral is in possession of a third party, the Mortgagor will cooperate with the Lender in notifying the third party of the Lender's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of the Lender; (ii) the Mortgagor will cooperate with the Lender in obtaining control with respect to Collateral consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and (iii) until the Obligations are paid in full, Mortgagor will not change the state where it is located or change its name or form of organization without giving the Lender at least thirty (30) days prior written notice in each instance.

#### 14. Restrictions on Transfer.

(a) The Mortgagor, without the prior written consent of the Lender, shall not effect, suffer or permit any Disposition (as defined in the Loan Agreement), except as expressly permitted under the Loan Agreement.

(b) In determining whether or not to make the Loan, the Lender evaluated the background and experience of the Mortgagor and its officers in owning and operating property such as the Property, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Property which is the Lender's security for the Note. The Mortgagor and its officers are well experienced in borrowing money and owning and operating property such as the Property, were ably represented by a licensed attorney at law in the negotiation and documentation of the Loan and bargained at arm's length and without duress of any kind for all of the terms and conditions of the Loan, including this provision. The Mortgagor recognizes that the Lender is entitled to keep its loan portfolio at current interest rates by either making new

loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Mortgagor. The Mortgagor further recognizes that any secondary junior financing placed upon the Property (i) may divert funds which would otherwise be used to pay the Note; (ii) could result in acceleration and foreclosure by the party placing such secondary junior encumbrance upon the Property which would force the Lender to take measures and incur expenses to protect its security; (iii) would detract from the value of the Property should the Lender come into possession thereof with the intention of selling same; and (iv) would impair the Lender's right to accept a deed in lieu of foreclosure, as a foreclosure by the Lender would be necessary to clear the title to the Property. In accordance with the foregoing and for the purposes of (a) protecting the Lender's security, both of repayment and of value of the Property; (b) giving the Lender the full benefit of its bargain and contract with the Mortgagor; (c) allowing the Lender to raise the interest rate and collect assumption fees; and (d) keeping the Property free of subordinate financing liens, the Mortgagor agrees that if this section is deemed a restraint on alienation, that it is a reasonable one.

15. Intentionally Deleted.

16. Events of Default; Acceleration.

An "Event of Default" under the Loan Agreement or any other Loan Documents shall constitute an "**Event of Default**" for purposes of this Mortgage. If an Event of Default occurs, Lender may, at its option, declare the whole of the Obligations to be immediately due and payable without further notice to the Mortgagor, with interest thereon accruing from the date of such Event of Default until paid at the Default Interest Rate.

17. Foreclosure: Expense of Litigation.

(a) When all or any part of the Obligations shall become due, whether by acceleration or otherwise and have not been paid after the expiration of any applicable grace period, if any, contained in the Loan Documents, the Lender shall have the right to foreclose the lien hereof for such Obligations or part thereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents in accordance with the law of the State of Florida.

(b) In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of the Lender for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as the Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Property. All expenditures and expenses of the nature mentioned in this section and such other expenses and fees as may be incurred in

the enforcement of the Mortgagor's obligations hereunder, the protection of the Property and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by the Lender in any litigation or proceeding affecting this Mortgage, the Note, or the Property, including appellate, probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by the Mortgagor, with interest thereon until paid at the Default Interest Rate and shall be secured by this Mortgage.

18. Application of Proceeds of Foreclosure Sale.

The proceeds of any foreclosure sale of the Property shall be distributed and applied in accordance with the statutory and case law of the State of Florida ("**Florida Law**") and, unless otherwise specified therein, in such order as the Lender may determine in its sole and absolute discretion.

19. Appointment of Receiver.

Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall, upon petition by the Lender, appoint a receiver for the Property in accordance with the law. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of the Mortgagor at the time of application for such receiver and without regard to the value of the Property or whether the same shall be then occupied as a homestead or not and the Lender hereunder or any other holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Property (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times when the Mortgagor, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during said period, including, to the extent permitted by law, the right to lease all or any portion of the Property for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of (a) the Obligations, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (b) any deficiency upon a foreclosure sale.

20. Lender's Right of Possession in Case of Default.

At any time after an Event of Default has occurred, the Mortgagor shall, upon demand of the Lender, surrender to the Lender possession of the Property. The Lender, in its discretion, may, with process of law, enter upon and take and maintain possession of all or any part of the Property, together with all documents, books, records, papers and accounts relating thereto, and may exclude the Mortgagor and its employees, agents or servants therefrom, and the Lender may then hold, operate, manage and control the Property, either personally or by its agents. The Lender shall have full power to use such measures, legal or equitable, as in its discretion may be



deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Property, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent. Without limiting the generality of the foregoing, the Lender shall have full power to:

- (a) cancel or terminate any lease or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same;
- (b) to the extent allowed under such lease or sublease, elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;
- (c) extend or modify any then existing leases and to enter into new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon the Mortgagor and all persons whose interests in the Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Obligations, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;
- (d) make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Property as the Lender deems are reasonably necessary;
- (e) insure and reinsure the Property and all risks incidental to the Lender's possession, operation and management thereof (in accordance with such terms, coverages and provisions set forth in the Loan Agreement); and
- (f) receive all of such avails, rents, issues and profits.

21. Application of Income Received by Lender.

The Lender, in the exercise of the rights and powers conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Property to the payment of or on account of the following, in such order as the Lender may determine:

- (a) to the payment of the operating expenses of the Property, including cost of management and leasing thereof (which shall include compensation to the Lender and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other reasonable compensation, and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;
- (b) to the payment of taxes and special assessments now due or which may hereafter become due on the Property; and

(c) to the payment of any Obligations, including any deficiency which may result from any foreclosure sale.

22. Compliance with Florida Mortgage Foreclosure Law.

(a) If any provision in this Mortgage shall be inconsistent with any provision of Florida Law, the provisions of Florida Law shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with Florida Law.

(b) If any provision of this Mortgage shall grant to the Lender (including the Lender acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Section 19 of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in the Lender or in such receiver under Florida Law in the absence of said provision, the Lender and such receiver shall be vested with the powers, rights and remedies granted by Florida Law.

(c) Without limiting the generality of the foregoing, all expenses incurred by the Lender, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Sections 12,17 or 29 of this Mortgage, shall be added to the Obligations and/or by the judgment of foreclosure.

23. Rights Cumulative.

Each right, power and remedy herein conferred upon the Lender is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Lender, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of the Lender in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

24. Lender's Right of Inspection.

The Lender and its representatives shall have the right to inspect the Property and the books and records with respect thereto at all reasonable times upon not less than twenty-four (24) hours prior notice to the Mortgagor, and access thereto, subject to the rights of Mortgagor in possession, shall be permitted for that purpose.

25. Release upon Payment and Discharge of Mortgagor's Obligations.

The Lender shall release this Mortgage and the lien hereof by proper instrument upon payment and discharge of all Obligations, including payment of all reasonable expenses incurred by the Lender in connection with the execution of such release.

26. Notices.

Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given if given in accordance with the notice provisions in the Loan Agreement.

27. Waiver of Rights.

The Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force providing for the valuation or appraisal of the Property, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshaling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:

(a) The Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of the Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of applicable law;

(b) The Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power remedy herein or otherwise granted or delegated to the Lender but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted; and

(c) If the Mortgagor is a trustee, the Mortgagor represents that the provisions of this section (including the waiver of reinstatement and redemption rights) were made at the express direction of the Mortgagor's beneficiaries and the persons having the power of direction over the Mortgagor, and are made on behalf of the trust estate of the Mortgagor and all beneficiaries of the Mortgagor, as well as all other persons mentioned above.

28. Contests.

Notwithstanding anything to the contrary herein contained, the Mortgagor shall have the right to contest by appropriate legal proceedings diligently prosecuted any construction, mechanics', materialmen's or other liens or claims for lien upon the Property as provided in the Loan Agreement.

29. Expenses Relating to Note and Mortgage.

(a) The Mortgagor will pay all expenses, charges, costs and fees relating to the Loan or necessitated by the terms of the Note, this Mortgage or any of the other Loan

Documents, including without limitation, the Lender's reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Note, this Mortgage and the other Loan Documents, all filing, registration and recording fees, all other expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, documentary stamp taxes, intangible taxes, and other taxes (provided the Mortgagor shall not be required to pay any income or franchise taxes of the Lender), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note and this Mortgage. The Mortgagor recognizes that, during the term of this Mortgage, the Lender:

- i. May be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, appellate, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of any kind, to which the Lender shall be a party by reason of the Loan Documents or in which the Loan Documents or the Property are involved directly or indirectly;
- ii. May make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;
- iii. May make preparations following the occurrence of an Event of Default hereunder for, and do work in connection with, the Lender's taking possession of and managing the Property, which event may or may not actually occur;
- iv. May make preparations for and commence other private or public actions to remedy an Event of Default hereunder, which other actions may or may not be actually commenced;
- v. May enter into negotiations with the Mortgagor or any of its agents, employees or attorneys in connection with the existence or curing of any Event of Default hereunder, the sale of the Property, the assumption of liability for any of the Obligations or the transfer of the Property in lieu of foreclosure; or
- vi. May enter into negotiations with the Mortgagor or any of its agents, employees or attorneys pertaining to the Lender's approval of actions taken or proposed to be taken by the Mortgagor which approval is required by the terms of this Mortgage.

(b) All expenses, charges, costs and fees described in this section shall be so much additional Obligations, shall bear interest from the date so incurred until paid at the Default Interest Rate and shall be paid, together with said interest, by the Mortgagor forthwith upon demand.

30. Financial Statements.

The Mortgagor represents and warrants that the financial statements for the Mortgagor and the Property previously submitted to the Lender are true, complete and correct in all material respects, disclose all actual and contingent liabilities of the Mortgagor or relating to the Property and do not contain any untrue statement of a material fact or omit to state a fact material to such financial statements. No Material Adverse Change (as defined in the Loan Agreement) has occurred in the financial condition of the Mortgagor or the Property from the dates of said financial statements until the date hereof.

31. Statement of Obligations.

The Mortgagor, within seven (7) days after being so requested by the Lender, shall furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Mortgage, and the date to which interest has been paid and stating either that no offsets or defenses exist against such debt or, if such offsets or defenses are alleged to exist, the nature thereof.

32. Further Instruments.

Upon request of the Lender, the Mortgagor shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage and of the other Loan Documents.

33. Additional Obligations Secured.

All persons and entities with any interest in the Property or about to acquire any such interest should be aware that this Mortgage secures more than the stated principal amount of the Note and interest thereon; this Mortgage secures any and all other amounts which may become due under the Note, any of the other Loan Documents or any other document or instrument evidencing, securing or otherwise affecting the Obligations, including, without limitation, any and all amounts expended by the Lender to operate, manage or maintain the Property or to otherwise protect the Property or the lien of this Mortgage.

34. Indemnity.

The Mortgagor hereby covenants and agrees that no liability shall be asserted or enforced against the Lender in the exercise of the rights and powers granted to the Lender in this Mortgage, and the Mortgagor hereby expressly waives and releases any such liability, except to the extent resulting from the gross negligence or willful misconduct of the Lender or first arising after extinguishment of this Mortgage by foreclosure or action in lieu thereof (but only to the extent such losses, costs, liabilities or expenses were not caused by any act or omission of Mortgagor, Guarantor or any affiliate thereof). The Mortgagor shall indemnify, defend and save the Lender harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses, including reasonable attorneys' fees and court costs (collectively, "**Claims**"), of whatever kind or nature which may be imposed on, incurred by or asserted against the Lender (whether direct, indirect or consequential and whether based on any federal, state or

local laws or regulations, including, without limitation, securities, Environmental Laws and commercial laws and regulations, under common law or in equity, or based on contract or otherwise) at any time by any third party which relate to or arise from: (a) any suit or proceeding (including appellate, probate and bankruptcy proceedings), or the threat thereof, in or to which the Lender may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; (b) the offer for sale or sale of all or any portion of the Property; and (c) the ownership, leasing, use, operation or maintenance of the Property, if such Claims relate to or arise from actions taken prior to the surrender of possession of the Property to the Lender in accordance with the terms of this Mortgage; provided, however, that the Mortgagor shall not be obligated to indemnify or hold the Lender harmless from and against any Claims directly arising from the gross negligence or willful misconduct of the Lender. All costs provided for herein and paid for by the Lender shall be so much additional Obligations and shall become immediately due and payable upon demand by the Lender and with interest thereon from the date incurred by the Lender until paid at the Default Interest Rate.

35. Intentionally Deleted.

36. Compliance with Environmental Laws.

Concurrently herewith the Mortgagor has executed and delivered to the Lender the Loan Agreement dated as of the date hereof pursuant to which the Mortgagor has indemnified the Lender for environmental matters concerning the Property, as more particularly described therein. The provisions of the Loan Agreement are hereby incorporated herein and this Mortgage shall secure the obligations of the Mortgagor thereunder.

#### **STATE SPECIFIC PROVISIONS FLORIDA**

37. Inconsistencies. In the event of any inconsistencies between the terms and conditions of the foregoing provisions of this Mortgage and the following State-Specific Provisions (Sections 38-42), these State-Specific Provisions shall control and be binding.

38. Lease Assignment. Subject to the provisions of Section 697.07, Florida Statutes (as the same may be modified from time to time), Mortgagor hereby absolutely, presently and unconditionally conveys, transfers and assigns to Lender all of Mortgagor's right, title and interest, now existing or hereafter arising, in and to the Leases and all rents, income, receipts, revenues, security deposits, escrow accounts, reserves, issues, profits, awards and payments of any kind payable under the Leases or otherwise arising from the Property, Improvements, or all or any other portion of the Property including, without limitation, minimum rents, additional rents, percentage rents, parking, maintenance, deficiency rents and all awards and payments of any kind derived from or relating to any Lease including, but without limitation: (i) claims for the recovery of damages to the Property by proceeds of any policy of insurance or otherwise, or for the abatement of any nuisance existing thereon; (ii) claims for damages resulting from acts of insolvency or bankruptcy or otherwise; (iii) lump sum payments for the cancellation or termination of any Lease, the waiver of any term thereof, or the exercise of any right of first refusal or option to purchase; and (iv) the return of any insurance premiums or ad valorem tax

payments made in advance and subsequently refunded (the “Rents”). Notwithstanding that this assignment is effective immediately, so long as no Event of Default exists, Mortgagor shall have the privilege under a revocable license granted hereby to operate and manage the Property and to collect, as they become due, but not prior to accrual, the Rents. Mortgagor shall receive and hold such Rents in trust as a fund to be applied, and Mortgagor hereby covenants and agrees that such Rents shall be so applied, first to the operation, maintenance and repair of the Property and the payment of interest, principal and other sums becoming due under the Obligations, before retaining and/or disbursing any part of the Rents for any other purpose. The license herein granted to Mortgagor shall automatically, without notice or any other action by Lender, terminate upon the occurrence of an Event of Default, and all Rents subsequently collected or received by Mortgagor shall be held in trust by Mortgagor for the sole and exclusive benefit of Lender. Nothing contained in this Section, and no collection by Lender of Rents, shall be construed as imposing on Lender any of the obligations of the lessor under the Leases. Mortgagor acknowledges and agrees that Lender shall be entitled to all rights and remedies provided in Section 697.07, Florida Statutes (as the same may be modified from time to time), in addition to any and all other rights and remedies available to Lender, upon the occurrence of an Event of Default hereunder.

39. Lender’s Remedies. The following rights and remedies of the Lender shall apply:

(a) Upon the occurrence of any Event of Default, Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Property, including, without limitation, the following actions:

i. declare the entire Obligations to be immediately due and payable;

ii. institute an action to foreclose this Mortgage as to the total amount declared due and payable by Lender, together with all of the costs, expenses and disbursements of Lender, including, without limitation, a reasonable fee for Lender’s attorneys at all trial and appellate levels, as hereinafter set forth. The Property may be sold in one parcel, several parcels or groups of parcels, and Lender shall be entitled to bid at the sale and, if Lender is the highest bidder for the Property or any part or parts thereof, Lender shall be entitled to purchase the same. Lender shall have the right, after paying or accounting for all costs of said sale or sales, to credit the amount of the bid at the foreclosure sale upon the amount of the Obligations (in the order of priority set forth below) in lieu of cash payment. In case of a foreclosure and sale of the Property and of the application of the proceeds of said sale to the Obligations hereby secured, the Lender shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid upon the Obligations from any and all security for said amounts and from any and all persons or entities (including the Mortgagor) under any agreement, guaranty or collateral undertaking to pay any portion of said amount. The proceeds of any foreclosure sale of the Property, as well as any and all leases and rents realized therefrom, shall be distributed and applied in the following order of priority to the extent of the funds available therefrom:

A. First, to the payment of all costs and expenses of taking possession of the Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation, reasonable attorneys<sup>1</sup>, accountants' receivers' and brokers' fees, all taxes, insurance premiums and other charges and all liens, security interests and other rights and interests equal or superior to the lien and security interest of this Mortgage;

B. Second, to accrued but unpaid interest on the Note;

C. Third, to the payment of the outstanding principal balance of the Note, in the direct order of maturity and to the payment of any other sums owed to Lender; and

D. Fourth, to the Mortgagor.

Upon any such foreclosure sale pursuant to judicial proceedings, the Lender may bid for and purchase the Property and, upon compliance with the terms of said sale, may hold, retain and possess and dispose of the Property in its own absolute right without further accountability to the Mortgagor.

In any civil action to foreclose the lien hereof, there shall be allowed and included as part of the Obligations in the order of judgment for foreclosure and sale all expenditures and expenses which may be paid or incurred by or on behalf of the Lender for (without limitation) reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of said order or judgment) of procuring all such abstracts of title, title searches and examinations, title insurance policies and similar data and insurance with respect to the title as the Lender may deem reasonably necessary either to prosecute such civil action or to evidence to bidders at any sale which may be had pursuant to such order or judgment the true condition of the title to, or the value of, the Property.

iii. with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Obligations then due and payable, subject to the continuing lien of this Mortgage for the balance of the Obligations not then due;

iv. institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or the Loan Documents;

v. recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage;

vi. apply for the appointment of a trustee, receiver, liquidator or conservator of the Property, without notice and without regard for the adequacy of



the security for the Obligations or the solvency of Mortgagor, any Guarantor or of any person, firm or other entity liable for the payment of the Obligations;

vii. enforce Lender's interest in the leases and rents and enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, and thereupon Lender may: (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (B) complete any construction on the Property in such manner and form as Lender deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Property to the extent required by applicable Governmental Authority (as defined in the Loan Agreement); (D) exercise all rights and powers of Mortgagor with respect to the Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Property and every part thereof in accordance with the terms of such Leases; and (E) apply the receipts from the Property to the payment of the Obligations, after deducting therefrom all expenses (including reasonable attorney fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments, insurance premiums and other charges in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees; or

viii. pursue such other rights and remedies as may then be available at law and in equity. To the extent permitted presently or in the future by laws of the state in which the Property and Improvements are located, Lender may institute a proceeding or proceedings, judicial, or nonjudicial, by advertisement or otherwise, for the complete or partial foreclosure of this Mortgage or the complete or partial sale of the Property under a power of sale which power is hereby granted to Lender.

In the event of a sale, by foreclosure or otherwise, of less than all of the Property, this Mortgage shall continue as a lien on the remaining portion of the Property.

(b) No recovery of any judgment by Lender and no levy of an execution under any judgment upon the Property or upon any other property of Mortgagor shall affect in any manner or to any extent the lien of this Lender upon the Property or any part thereof, or any liens, rights, powers or remedies of Lender hereunder, but such liens, rights, powers and remedies of Lender shall continue unimpaired as before.

(c) In the event the Note is placed in the hands of an attorney for collection (whether suit be brought or not), or in case Lender shall become a party, either as plaintiff or as defendant, in any suit or legal proceeding in relation to the Property or the liens created in this Mortgage or the other Loan Documents, or for the recovery or protection of the Obligations, Mortgagor and any successor in title to the Property shall repay on demand all costs and expenses incurred by Lender arising therefrom, including

reasonable attorneys' and paralegals' fees (whether incurred on the trial or at any appellate level), with interest on such costs and expenses at the Default Interest Rate until paid, together with all costs and expenses, including attorneys' and paralegals' fees, incurred by Lender in connection with any bankruptcy proceeding involving any person liable under or on account of the Note, or any person who might now have or hereafter acquire a record interest or other interest in the Property, whether or not there exists any default hereunder, including, by way of example but not by way of limitation, all costs and expenses, including reasonable attorneys' and paralegals' fees, incurred in connection with motions for relief from the automatic stay and adequate protection, proofs of claim and objections thereto, motions to dismiss or convert bankruptcy cases, approval of disclosure statements and any objections thereto, confirmation of plans of reorganization and any objections thereto, litigation involving preference and other avoidance powers, motions to value collateral, objections to the sale or use of collateral, and any and all other matters pertaining to any bankruptcy cases affecting the Property, the Note, this Mortgage or any other Loan Documents, or the enforcement of any of the same, together with interest on such costs and expenses at the Default Interest Rate until paid.

(d) Lender may release, regardless of consideration and without the necessity for any notice to or a consent by any person or entity, any part of the Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by this Mortgage or the other Loan Documents or their stature as a first and prior liens and security interests in and to the Property. For payment of the Obligations, Lender may resort to any security in such order and manner as Lender may elect.

(e) Lender shall have all rights, remedies and recourses granted in this Mortgage and the other Loan Documents or available at law or equity (including the Uniform Commercial Code), which rights: (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively or concurrently against any Mortgagor or others obligated under the Note, this Mortgage and the other Loan Documents, or against the Property, or against any one or more of them, at the sole discretion of Lender; (iii) may be exercised as often as occasion therefore shall arise and exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse; and (iv) are intended to be, and shall be, nonexclusive. No enforcement of any rights, remedies or recourse under the Note, this Mortgage and the other Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default. The remedies provided for in this Mortgage may be exercised in any order.

40. Attorneys' Fees. Whenever attorneys' fees are provided to be paid, the term shall include any and all reasonable attorneys' fees, attorney's accountant fees, paralegal and law clerk (and similar person's) fees, including but not limited to, fees at the pretrial, trial and appellate levels, and in collection proceedings (including proceeding to enforce any judgments), incurred or paid by Lender in protecting its interest in the collateral and enforcing its rights hereunder.

41. Future Advances. This Mortgage secures such future or additional advances as may be made by Lender or the holder hereof, at its exclusive option, to Mortgagor or its

successors or assigns in title, for any purpose, provided that all such advances are made within twenty (20) years from the date of this Mortgage or within such lesser period of time as may be provided by law as a prerequisite for the sufficiency of actual notice or record notice of such optional future or additional advances as against the rights of creditors or subsequent purchasers for valuable consideration to the same extent as if such future or additional advances were made on the date of the execution of this Mortgage. The total amount of indebtedness secured by this Mortgage may be increased or decreased from time to time, but the total unpaid balance so secured at any one time shall not exceed twice the face amount of the Note, plus interest thereon and any disbursements made under this Mortgage for the payment of impositions, taxes, assessments, levies, insurance, or otherwise with interest on such disbursements, plus any increase in the principal balance as the result of negative amortization or deferred interest, if any. All such future advances shall be secured to the same extent as if made on the date of the execution of this Mortgage and this Mortgage shall secure the payment of the Note and any additional advances made from time to time pursuant thereto, all of said indebtedness being equally secured hereby and having the same priority as any amounts advanced as of the date of this Mortgage. It is agreed that any additional sum or sums advanced by Lender shall be equally secured with and have the same priority as the original indebtedness and shall be subject to all of the terms, provisions and conditions of this Mortgage, whether or not such additional loans or advances are evidenced by other notes or other guaranties of Mortgagor and whether or not identified by a recital that it or they are secured by this Mortgage. It is further agreed that any additional note or guaranty or notes or guaranties executed and delivered pursuant to this paragraph shall automatically be deemed to be included in the term "Note" wherever it appears in the context of this Mortgage. Without the prior written consent of Lender, which Lender may grant or withhold in its sole discretion, Mortgagor shall not file for record any notice limiting the maximum principal amount that may be secured by this Mortgage to a sum less than the maximum principal amount set forth in this paragraph.

42. Recording of Security Instrument Etc. Except where otherwise prohibited by law, Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment, and subsequent release or reconveyance of this Mortgage and the Note, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property, any instrument of further assurance and all federal, state, county and municipal, taxes, duties, imposts, assessments and charges arising out of or in connection with the same (including, but not limited to, State of Florida documentary stamp and non-recurring intangible tax). MORTGAGOR SHALL HOLD HARMLESS, DEFEND AND INDEMNIFY LENDER, ITS SUCCESSORS AND ASSIGNS, AGAINST ANY LIABILITY INCURRED BY REASON OF THE IMPOSITION OF ANY TAX ON THE MAKING AND RECORDING OF THIS MORTGAGE.

43. INTEREST ON JUDGMENTS. Any foreclosure or other judgment entered in favor of Lender on account of this Mortgage and/or the other Loan Documents shall accrue interest at the Default Interest Rate from the date the judgment is entered until all amounts specified in the judgment are paid in full.

44. LIENS FOR LESSEE IMPROVEMENTS. Mortgagor shall take such actions pursuant to Section 713.10, Florida Statutes, as may be necessary to ensure that Mortgagor's

interest in the Property will not be subjected to liens or improvements made by any lessee of space upon the Property.

45. INDEMNITY FOR ERRORS. Mortgagor hereby indemnifies, defends and holds Lender and Lender's attorneys and law firms harmless, from any and all loss, cost, expense, damage or claim, whether or not valid, including attorneys' fees and disbursements, arising under or in any way connected with Section 697.10, Florida Statutes or any similar law. Mortgagor hereby verifies and confirms all factual information in this Mortgage, including the accuracy and correctness of the legal description set forth herein. In the event any factual errors are found in this Mortgage or in the legal description, Mortgagor shall, at its own cost and expense, promptly correct or cause to be corrected subsequent to the date hereof any and all such errors with no further liability incurred by counsel for either Mortgagor or Lender. Mortgagor shall promptly pay or cause to be paid all damages, claims or any other costs whatsoever arising out of any impairment of title due to or caused by any inaccuracy or incorrectness of the legal description set forth herein. Notwithstanding the foregoing, all rights are preserved against Lender's title insurer, the surveyor, the engineer, if any, and the appraiser, if any, and after payment is made by Mortgagor, Mortgagor shall be subrogated to such rights.

46. Miscellaneous.

(a) Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon and enforceable against the Mortgagor and its assigns and other successors. This Mortgage and all provisions hereof shall inure to the benefit of the Lender, its successors and assigns and any holder or holders, from time to time, of the Note.

(b) Municipal Requirements. Mortgagor agrees to observe, conform and comply, and to cause its tenants to observe, conform and comply with all federal, state, county, municipal and other governmental or quasi-governmental laws, rules, regulations, ordinances, codes, requirements, covenants, conditions, orders, licenses, permits, approvals and restrictions, including without limitation, Environmental Laws and the Americans with Disabilities Act of 1990 (collectively, the "Legal Requirements"), now or hereafter affecting all or any part of the Property, its occupancy or the business or operations now or hereafter conducted thereon and the personalty contained therein, within such time as required by such Legal Requirements. Mortgagor represents and warrants that the Property currently is in compliance with all Legal Requirements applicable to the Property.

(c) Rights of Tenants. The Lender shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a decree of foreclosure and sale subject to the rights of any tenant or tenants of the Property having an interest in the Property prior to that of the Lender. The failure to join any such tenant or tenants of the Property as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by the Mortgagor as a defense in any civil action instituted to collect the Obligations, or any" part thereof or any deficiency remaining unpaid after foreclosure and sale of the Property, any statute or rule of law at any time existing to the contrary notwithstanding.

(d) Option of Lender to Subordinate. At the option of the Lender, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to any and all leases of all or any part of the Property upon the execution by the Lender of a unilateral declaration to that effect and the recording thereof in the Office of the Clerk of the Circuit Court in and for the county wherein the Property are situated.

(e) Mortgagee-in-Possession. Nothing herein contained shall be construed as constituting the Lender a mortgagee-in-possession in the absence of the actual taking of possession of the Property by the Lender pursuant to this Mortgage.

(f) Relationship of Lender and Mortgagor. The Lender shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of the Mortgagor or of any lessee, operator, concessionaire or licensee of the Mortgagor in the conduct of their respective businesses, and, without limiting the foregoing, the Lender shall not be deemed to be such partner, joint venturer, agent or associate on account of the Lender becoming a mortgagee-in-possession or exercising any rights pursuant to this Mortgage, any of the other Loan Documents, or otherwise. The relationship of the Mortgagor and the Lender hereunder is solely that of debtor/creditor.

(g) Time of the Essence. Time is of the essence of the payment by the Mortgagor of all amounts due and owing to the Lender under the Note and the other Loan Documents and the performance and observance by the Mortgagor of all terms, conditions, obligations and agreements contained in this Mortgage and the other Loan Documents.

(h) No Merger. The parties hereto intend that the Mortgage and the lien hereof shall not merge in fee simple title to the Property, and if the Lender acquires any additional or other interest in or to the Property or the ownership thereof, then, unless a contrary intent is manifested by the Lender as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

(i) Invalidity of Provisions: Governing Law. In the event that any provision of this Mortgage is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, the Mortgagor and the Lender shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Mortgage and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect. IRRESPECTIVE OF THE PLACE OF EXECUTION AND/OR DELIVERY, THIS MORTGAGE SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAWS OF THE STATE OF TEXAS AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS), PROVIDED HOWEVER,

THAT WITH RESPECT TO THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED BY THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS, THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED SHALL APPLY.

(j) **CONSENT TO JURISDICTION.** EXCEPT FOR THOSE ACTIONS OR PROCEEDINGS RELATED TO THE FORECLOSURE OF THIS MORTGAGE, IN WHICH EVENT VENUE AND JURISDICTION SHALL BE PROPER IN THE COURTS OF THE COUNTY IN WHICH THE REAL ESTATE IS LOCATED, TO INDUCE THE LENDER TO ACCEPT THE NOTE, THE MORTGAGOR IRREVOCABLY AGREES THAT, SUBJECT TO THE LENDER'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THE NOTE AND THIS MORTGAGE WILL BE LITIGATED IN COURTS HAVING SITUS IN DALLAS COUNTY, TEXAS. THE MORTGAGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN SUCH COUNTY. EACH PARTY HEREBY WAIVES ANY RIGHT IT MAY HAVE TO REMOVE, TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AS REQUIRED IN ACCORDANCE WITH THIS SECTION.

(k) **WAIVER OF JURY TRIAL.** THE MORTGAGOR AND THE LENDER (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS MORTGAGE OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS MORTGAGE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THE MORTGAGOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST THE LENDER OR ANY OTHER PERSON INDEMNIFIED UNDER THIS MORTGAGE ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES. THE FOREGOING IS A MATERIAL INDUCEMENT TO LENDER TO MAKE THE LOAN.

(l) **Complete Agreement.** This Mortgage, the Note and the other Loan Documents constitute the complete agreement between the parties with respect to the subject matter hereof and the Loan Documents may not be modified, altered or amended except by an agreement in writing signed by both the Mortgagor and the Lender.

(m) **Joint and Several Liability.** If Mortgagor consists of more than one person or entity, the word "Mortgagor" shall mean each of them and their liability shall be joint and several.

(n) THIS MORTGAGE SECURES A CONSTRUCTION LOAN AND DISBURSEMENTS OF THE LOAN SECURED HEREBY SHALL BE MADE PURSUANT TO A CONSTRUCTION LOAN AGREEMENT OF EVEN DATE HEREWITH.

*[Remainder of page intentionally left blank; signature pages follow.]*

IN WITNESS WHEREOF, the Mortgagor has executed and delivered this Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing the day and year first above written.

**MORTGAGOR:**

INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

Address: 28411 Race Track Road  
Bonita Springs, FL 34135  
Attention: Samuel Klepfish

Organizational identification number: PO4000017728

STATE OF \_\_\_\_\_ §  
                                                  §  
COUNTY OF \_\_\_\_\_ §

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by Samuel Klepfish, the Chief Executive Officer of INNOVATIVE FOOD HOLDINGS, INC., a Florida corporation, on behalf of such entity.

(SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires:  
  
\_\_\_\_\_

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**EXHIBIT A**

**LEGAL DESCRIPTION OP REAL ESTATE**

Lot 3, GREYHOUND COMMERCE PARK, a subdivision according to the map or plat thereof, as recorded in Plat Book 66, Pages 21 & 22, of the Public Records of Lee County, Florida.

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**EXHIBITS**

**PERMITTED EXCEPTIONS**

As described on that certain title commitment issued by Chicago Title Insurance Company on or about 4/27/2022, as amended.

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**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

made by

**INNOVATIVE FOOD HOLDINGS, INC.,**  
a Florida corporation,

as Mortgagor

to

**MAPLEMARK BANK**

as Mortgagee

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Dated as of: June 6, 2022

LOCATION OF PROPERTY:

2528 South 27<sup>th</sup> Avenue  
Broadview, IL 60155

Permanent Index Number (PIN): 15-21-202-066-0000  
Mortgagor Tax ID: 20-1167761

PREPARED BY AND AFTER  
RECORDING RETURN TO:

Frost Brown Todd LLC  
2101 Cedar Springs Road, Suite 900  
Dallas, Texas 75201  
Attention: Ed McQueen

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**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT, AND FIXTURE FILING**

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, AND FIXTURE FILING (this "**Mortgage**") is made as of June 6, 2022, by INNOVATIVE FOOD HOLDINGS, INC., a Florida corporation, whose mailing address is 28411 Race Track Road, Bonita Springs, FL 34135 ("**Mortgagor**"), to and for the benefit of MAPLEMARK BANK, whose mailing address is 4143 Maple Ave., Suite 100, Dallas, Texas 75219, together with its successors and assigns (collectively, "**Mortgagee**").

**1. Grant and Secured Obligations.**

1.1 **Grant.** For the purpose of securing payment and performance of the Secured Obligations defined and described in Section 1.2 below, Mortgagor hereby irrevocably and unconditionally grants, bargains, sells, assigns, mortgages, warrants, transfers, pledges and conveys to Mortgagee a mortgage lien on, pledge of, and security interest in and to the following property, rights, interests, and estates now owned or hereafter acquired by Mortgagor to the full extent of Mortgagor's right, title, and interest therein, including hereafter acquired rights, interests, and properties, and all products and proceeds thereof and additions and accessions thereto (all or any part of such property, or any interest in all or any part of it, as the context may require, collectively, the "**Property**"):

(a) The real property located in Cook County, State of Illinois, as described in Exhibit A attached hereto and made a part hereof, together with all existing and future easements and rights affording access to it (the "**Premises**"); together with

(b) All buildings, structures and improvements now located or later to be constructed on the Premises (the "**Improvements**"); together with

(c) All existing and future appurtenances, privileges, easements, franchises and tenements of the Premises, including all minerals, oil, gas, other hydrocarbons and associated substances, sulfur, nitrogen, carbon dioxide, helium and other commercially valuable substances which may be in, under or produced from any part of the Premises, all development rights and credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, and any Premises lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Premises and Improvements; together with

(d) All existing and future leases, subleases, subtenancies, licenses, occupancy agreements and concessions ("**Leases**") relating to the use and enjoyment of all or any part of the Premises and Improvements, and any and all guaranties and other agreements relating to or made in connection with any of such Leases; together with

(e) All real property and improvements on it, and all appurtenances and other property and interests of any kind or character, whether described in Exhibit A or not, which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises and Improvements; together with

(f) All goods, materials, supplies, chattels, furniture, fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Premises and Improvements, whether stored on the Premises or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting,

refrigeration and plumbing fixtures and equipment, all of which shall be considered to the fullest extent of the law to be real property for purposes of this Mortgage; together with

(g) All building materials, equipment, work in process or other personal property of any kind, whether stored on the Premises or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Premises or Improvements; together with

(h) All of Mortgagor's interest in and to all operating accounts, the Loan funds, whether disbursed or not, all reserves set forth in the Budget, and any other bank accounts of Mortgagor; together with

(i) All rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Mortgagor with third parties (including all utility deposits), contract rights, development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of Mortgagee), which arise from or relate to construction on the Premises or to any business now or later to be conducted on it, or to the Premises and Improvements generally and any builder's or manufacturer's warranties with respect thereto; together with

(j) All insurance policies pertaining to the Premises and all proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Premises, Improvements or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Premises, Improvements or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact; together with

(k) All books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory ("**Books and Records**"); together with

(l) All other personal property of any kind or character as defined in and subject to the provisions of the Code (Article 9 - Secured Transactions) (the "**Personalty**"); together with

(m) Any and all of the foregoing which are now owned or hereafter acquired by Mortgagor, including any which is now or hereafter situated in, on, or about the Premises; together with

(n) All proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

WITH RESPECT to any portion of the Property which is not real estate under the laws of the State in which the Property is located, Mortgagor hereby grants, bargains, sells, and conveys the same

to Mortgagee for the purposes set forth hereunder and Mortgagee shall be vested with all rights, power, and authority granted hereunder or by law to Mortgagee with respect thereto.

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Mortgagee and its successors and assigns forever.

PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor shall well and truly pay to Mortgagee the Secured Obligations at the time and in the manner provided in the Loan Documents, and shall abide by and comply with each and every covenant and condition set forth in the Loan Documents, these presents and the estate hereby granted shall terminate.

Capitalized terms used above and elsewhere in this Mortgage without definition have the meanings given them in the Loan Agreement referred to in Subsection 1.2(a)(iii) below. Definitions contained in this Mortgage which identify documents, including, but not limited to, the Loan Documents, shall be deemed to include all amendments and supplements to such documents from the date hereof, and all future amendments, modifications, and supplements thereto entered into from time to time to satisfy the requirements of this Agreement or otherwise with the consent of Lender. Reference to this Mortgage contained in any of the foregoing documents shall be deemed to include all amendments and supplements to this Mortgage.

## 1.2 Secured Obligations.

(a) Mortgagor makes the grant, conveyance, and mortgage set forth in Section 1.1 above, and grants the security interest set forth in Section 3 below for the purpose of securing the following obligations (the "**Secured Obligations**") in any order of priority that Mortgagee may choose:

(i) Payment of all obligations at any time owing under the promissory note (collectively with any other promissory note executed by Mortgagor in favor of Mortgagee, as may be amended from time to time, the "**Notes**") bearing even date herewith, payable by Mortgagor as maker in the aggregate stated principal amount of \$2,680,000.00 to the order of Mortgagee; and

(ii) Payment and performance of all obligations of Mortgagor under this Mortgage, as may be amended from time to time; and

(iii) Payment and performance of all obligations of Mortgagor under a Loan Agreement bearing even date herewith between Mortgagor as "Borrower" and Mortgagee as "Bank" (as may be amended from time to time, the "**Loan Agreement**"); and

(iv) Payment and performance of any obligations of Mortgagor under any Loan Documents which are executed by Mortgagor; and

(v) Payment and performance of all future advances and other obligations that Mortgagor or any successor in ownership of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when a writing evidences the parties' agreement that the advance or obligation be secured by this Mortgage; and

(vi) Payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the Secured Obligations.

(b) All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Secured Obligations and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. Such terms include any provisions in the Note or the Loan Agreement which permit borrowing and repayment, or which provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

(c) Some of the Secured Obligations may bear interest at a variable rate.

## 2. Assignment of Leases and Rents.

2.1 Assignment. For Ten Dollars (\$10.00) and other good and valuable consideration, including the indebtedness evidenced by the Note, the receipt and sufficiency of which are hereby acknowledged and confessed, Mortgagor does hereby absolutely and unconditionally assign to Mortgagee all of its right, title and interest in and to all current and future Leases, and Mortgagor hereby grants unto Mortgagee a first lien security interest in and to any and all rents, revenues, income, profits, or other deposits in connection with the Leases and/or the Property, without deductions or offsets of any kind (collectively, the "**Rents**"), and all proceeds from the sale, cancellation, surrender or other disposition of the Leases, it being intended by Mortgagor that this assignment constitutes a present, absolute assignment, and not an assignment for additional security only. Such assignment to Mortgagee shall not be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise to impose any obligation upon Mortgagee. Mortgagor agrees to execute and deliver to Mortgagee such additional instruments, in form and substance satisfactory to Mortgagee, as may hereafter be requested by Mortgagee to further evidence and confirm such assignment. Nevertheless, subject to the terms of this Subsection 2.1, Mortgagee grants to Mortgagor a revocable license to operate and manage the Property and to collect the Rents. Mortgagor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due with respect to the Secured Obligations, in trust for the benefit of Mortgagee for use in the payment of such sums. Upon the occurrence of an Event of Default, the license granted to Mortgagor herein shall be automatically revoked and Mortgagee shall immediately be entitled to possession of all Rents, whether or not Mortgagee enters upon or takes control of the Property. Mortgagee is hereby granted and assigned by Mortgagor the right, at its option, upon the revocation of the license granted herein, to enter upon the Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license herein granted may be applied toward payment of the Secured Obligations in such priority and proportion as Mortgagee in its discretion shall deem proper. It is further the intent of Mortgagor and Mortgagee that the Rents hereby absolutely assigned are no longer, during the term of this Mortgage, property of Mortgagor or property of any estate of Mortgagor as defined in Section 541 of the Bankruptcy Code and shall not constitute collateral, cash or otherwise, of Mortgagor.

2.2 Lease Restrictions. All Leases executed after the date of this Mortgage shall provide that such Leases are subordinate to this Mortgage and that the lessees thereunder agree to attorn to Mortgagee; provided, however, that nothing herein shall affect Mortgagee's right to designate from time to time any one or more Leases as being superior to this Mortgage, and Mortgagor shall execute and deliver to Mortgagee, and shall cause to be executed and delivered to Mortgagee from each tenant under such Lease, any instrument or agreement as Mortgagee may deem necessary to make such Lease superior to this Mortgage. Upon request, Mortgagor shall promptly furnish Mortgagee with executed copies of all Leases. Mortgagor shall not, without the prior consent of Mortgagee, (i) lease all or any part of the Property, (ii) alter or change the terms of any Lease or cancel or terminate, abridge or otherwise modify the terms of any Lease, (iii) consent to any assignment of or subletting under any Lease not in accordance with its terms, (iv) cancel, terminate, abridge or otherwise modify any guaranty of any Lease or the terms thereof, (v) collect or accept prepayments of installments of Rents for a period of more than one (1)

month in advance, or (vi) further assign the whole or any part of the Leases or the Rents. With respect to each Lease, Mortgagor shall (a) observe and perform each and every provision thereof on the lessor's part to be fulfilled or performed under each Lease and not do or permit to be done anything to impair the value of the Lease as security for the Loan, including surrender or voluntary termination of any Lease, (b) promptly send to Mortgagee copies of all notices of default which Mortgagor shall send or receive thereunder, (c) enforce all of the terms, covenants and conditions contained in such Lease upon the lessee's part to be performed, short of termination thereof, (d) execute and deliver, at the request of Mortgagee, all such further assurances, confirmations and assignments in connection with the Property as Mortgagee shall, from time to time, require, and (e) upon request, furnish Mortgagee with executed copies of all Leases. Upon the occurrence of any Event of Default under this Mortgage, Mortgagor shall remit monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, any and all Rents collected under any Lease, plus the fair and reasonable rental value for the use and occupation of the Property or part of the Property as may be occupied by Mortgagor or any one Mortgagor and, upon default in any such payment, Mortgagor shall vacate and surrender possession of the Property to Mortgagee or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise. All security deposits of tenants, whether held in cash or any other form, shall not be commingled with any other funds of Mortgagor and, if cash, shall be deposited by Mortgagor at such commercial or savings bank or banks as may be reasonably satisfactory to Mortgagee. Any bond or other instrument which Mortgagor is permitted to hold in lieu of cash security deposits under any applicable legal requirements shall be maintained in full force and effect in the full amount of such deposits unless replaced by cash deposits as hereinabove described, shall be issued by an institution reasonably satisfactory to Mortgagee, shall, if permitted pursuant to any legal requirements, name Mortgagee as payee or Mortgagee thereunder (or at Mortgagee's option, be fully assignable to Mortgagee) and shall, in all respects, comply with any applicable legal requirements and otherwise be reasonably satisfactory to Mortgagee. Mortgagor shall, upon request, provide Mortgagee with evidence reasonably satisfactory to Mortgagee of Mortgagor's compliance with the foregoing. Following the occurrence and during the continuance of any Event of Default, Mortgagor shall, upon Mortgagee's request, if permitted by any applicable legal requirements, turn over to Mortgagee the security deposits (and any interest theretofore earned thereon) with respect to all or any portion of the Property, to be held by Mortgagee subject to the terms of the Leases. Notwithstanding the license granted to Mortgagee in this Subsection 2.2, if any Lease is terminated (including, without limitation, a voluntary termination of the Lease approved by Mortgagee and a termination or rejection of a Lease in a bankruptcy or other similar proceeding) and in connection with such termination or rejection there is the payment of (1) a lump sum settlement, (2) a termination fee, premium or penalty, or (3) any other amount or amounts paid in conjunction with such termination, including retention by Mortgagee of any security deposit or the proceeds of any letter of credit given as a security deposit (collectively and singly, the "**Termination Amount**"), then, in such event, whether or not Mortgagor is in default under the Note, the Mortgage, any other loan document, or any Lease, the Termination Amount shall be payable directly to Mortgagee and, at Mortgagee's option, may be (x) applied to outstanding Secured Obligations, or (y) held by Mortgagee as additional collateral securing the Note until a new Lease or other collateral acceptable to Mortgagee in its reasonable discretion is substituted for the terminated Lease. Nothing herein shall be deemed approval by Mortgagee of the termination of any Lease or the payment of any Termination Amount.

2.3 Receipt of Rents. Neither this grant nor the receipt of Rents by Mortgagee (except to the extent, if any, that Mortgagee actually receives and applies such Rents to the indebtedness) shall effect a *pro tanto* payment of the Secured Obligations. Rents actually received by Mortgagee shall be applied by Mortgagee as provided in Section 2.4 below. Mortgagee shall not be deemed to have received Rents or to have applied Rents to the Secured Obligations until the money is actually received by Mortgagee at its principal office in Dallas, Texas, or at such other place as Mortgagee shall designate in writing. Mortgagee shall not apply Rents to the Secured Obligations after foreclosure or any other transfer of all or any part of the Property to Mortgagee or any other third party.



2.4 Collection and Application of Rents. Rents received by Mortgagee for any period prior to foreclosure under this Mortgage or acceptance of a deed in lieu of foreclosure shall be applied by Mortgagee to the payment of the following (in the order and priority as Mortgagee determines): (a) all operating expenses; (b) all expenses incident to taking and retaining possession of the Property and/or collecting Rent as it becomes due and payable; and (c) the Secured Obligations. The Secured Obligations will not be reduced under this Section 2.4 except to the extent, if any, that Mortgagee actually receives and applies any Rents to the Secured Obligations in accordance with the preceding sentence. Without impairing its rights hereunder, Mortgagee may, at its option, at any time and from time to time, release to Mortgagor any Rents so received by Mortgagee. At any time during which Mortgagor is receiving Rents directly from any of the lessees under the Leases, Mortgagor shall, upon receipt of written direction from Mortgagee, make demand and sue for all Rents due and payable under any Leases, as directed by Mortgagee, as it becomes due and payable, including Rents which are past due and unpaid. If Mortgagor fails to take such action, or at any time during which Mortgagor is not receiving Rents directly from lessees under the Leases, Mortgagee shall have the right (but shall be under no duty) to demand, collect and sue for, in its own name or in the name of Mortgagor, all Rents due and payable under the Leases, as it becomes due and payable, including Rents which are past due and unpaid.

2.5 Mortgagee Not Responsible. Under no circumstances shall Mortgagee have any duty to produce Rents from the Property. Regardless of whether or not Mortgagee, in person or by agent, takes actual possession of the Premises and Improvements, unless Mortgagee agrees in writing to the contrary, Mortgagee is not and shall not be deemed to be:

- (a) A "Mortgagee in possession" for any purpose; or
- (b) Responsible for performing any of the obligations of the lessor under any Lease; or
- (c) Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property; or
- (d) Liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it.

### 3. Grant of Security Interest.

3.1 Security Agreement. This Mortgage (a) shall be construed as a Mortgage on real property, and (b) shall also constitute and serve as a "Security Agreement" on personal property within the meaning of, and shall constitute until the grant of this Mortgage shall terminate as provided herein, a first and prior security interest under the Uniform Commercial Code, as amended from time to time, and in effect in the State of Illinois ("UCC") as to property within the scope thereof and in the state where the Property is located with respect to Personalty, fixtures, contracts, and Leases. To this end, Mortgagor grants to, has granted, bargained, conveyed, assigned, transferred, and set over, and by these presents does grant, bargain, convey, assign, transfer and set over, unto Mortgagee, a first and prior security interest and all of Mortgagor's right, title and interest in, to, under and with respect to personalty, fixtures, contracts, and Leases to secure the full and timely payment of the indebtedness and the full and timely performance and discharge of the Secured Obligations. It is the intent of Mortgagor and Mortgagee that this Mortgage encumber all Leases and that all items contained in the definition of "Leases" which are included within the UCC be covered by the security interest granted in this Article 3; and all items contained in the definition of "Leases" which are excluded from the UCC be covered by the provisions of Article 1.

3.2 Financing Statements. Mortgagor authorizes Mortgagee to file one or more financing statements and such other documents as Mortgagee may from time to time require to perfect or continue the perfection of Mortgagee's security interest in any Property or Rents. As provided in Section 5.9 below, Mortgagor shall pay all fees and costs that Mortgagee may incur in filing such documents in public offices and in obtaining such record searches as Mortgagee may reasonably require. In case Mortgagor fails to execute any financing statements or other documents for the perfection or continuation of any security interest, Mortgagor hereby appoints Mortgagee as its true and lawful attorney-in-fact to execute any such documents on its behalf. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Mortgage or the rights or obligations of the parties under it.

4. **Fixture Filing.**

This Mortgage constitutes a financing statement filed as a fixture filing under Article 9 of the UCC, covering any Property which now is or later may become fixtures attached to the Premises or Improvements. For this purpose, the respective addresses of Mortgagor, as debtor, and Mortgagee, as secured party, are as set forth in the preambles of this Mortgage.

5. **Rights and Duties of the Parties.**

5.1 Representations and Warranties. Mortgagor represents and warrants that:

- (a) Mortgagor lawfully possesses and holds fee simple title to all of the Premises and Improvements;
- (b) Mortgagor has or will have good title to all Property other than the Premises and Improvements;
- (c) Mortgagor has the full and unlimited power, right and authority to encumber the Property and assign the Leases and the Rents;
- (d) This Mortgage creates a first and prior lien on the Property;

(e) The Property includes all property and rights which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises and Improvements;

(f) Mortgagor owns any Property which is personal property free and clear of any security agreements, reservations of title or conditional sales contracts, and there is no financing statement affecting such personal property on file in any public office except as expressly permitted in the Loan Agreement; and

(g) Mortgagor's place of business, or its chief executive office if it has more than one place of business, is located at the address specified in the introductory paragraph hereof.

5.2 Taxes, and Assessments. Mortgagor shall pay prior to delinquency all taxes, levies, charges and assessments as set forth in the Loan Agreement.

5.3 Performance of Secured Obligations. Mortgagor shall promptly pay and perform each Secured Obligation in accordance with its terms.

5.4 Liens, Charges and Encumbrances. Mortgagor shall immediately discharge any lien on the Property which Mortgagee has not consented to in writing.

5.5 Damages and Insurance and Condemnation Proceeds. Mortgagee may elect to collect, retain and apply to the Secured Obligations all proceeds of insurance or condemnation (individually and collectively referred to as "Proceeds") after deduction of all expenses of collection and settlement, including reasonable out-of-pocket attorneys' and adjusters' fees and charges. Any proceeds remaining after repayment of the Secured Obligations shall be paid by Mortgagee to Mortgagor. Notwithstanding anything in this section to the contrary, in the event of any casualty to, or any condemnation of, all or part of the Property, Mortgagee agrees to make available the Proceeds to restoration of the Property if (i) no Event of Default exists, (ii) all Proceeds are initially deposited with Mortgagee, (iii) in Mortgagee's judgment, the amount of Proceeds available for restoration of the Property (together with any sums or other security acceptable to Mortgagee deposited with Mortgagee by Mortgagor for such purpose) is sufficient to pay the full and complete costs of such restoration, (iv) in Mortgagee's determination, the Property can be restored to economic viability in compliance with applicable laws, and (v) in Mortgagee's determination, such restoration is likely to be completed not later than six (6) months prior to the maturity of the Secured Obligations.

5.6 Maintenance and Preservation of Property.

(a) Mortgagor shall insure the Property as required by the Loan Agreement and keep the Property in good condition and repair.

(b) Mortgagor shall not remove or demolish the Property or any part of it, or alter, restore or add to the Property, or initiate or allow any change or variance in any zoning or other Premises use classification which affects the Property or any part of it, except as permitted or required by the Loan Agreement or with Mortgagee's express prior written consent in each instance.

(c) If all or part of the Property becomes damaged or destroyed, Mortgagor shall promptly and completely repair and/or restore the Property in a good and workmanlike manner in accordance with sound building practices, regardless of whether or not Mortgagee agrees to disburse Proceeds or other sums to pay costs of the work of repair or reconstruction.

(d) Mortgagor shall not commit or allow any act upon or use of the Property which would violate: (i) any applicable Legal Requirements or order of any Governmental Authority, whether now existing or later to be enacted and whether foreseen or unforeseen; or (ii) any public or private covenant, condition, restriction or equitable servitude affecting the Property. Mortgagor shall not bring or keep any article on the Property or cause or allow any condition to exist on it, if that could invalidate or would be prohibited by any insurance coverage required to be maintained by Mortgagor on the Property or any part of it under the Loan Agreement.

(e) Mortgagor shall not commit or allow waste of the Property, including those acts or omissions characterized under the Loan Agreement as waste which arises out of Hazardous Material.

(f) Mortgagor shall perform all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value.

5.7 Releases, Extensions, Modifications and Additional Security. From time to time, Mortgagee may perform any of the following acts without incurring any liability or giving notice to any person:

- (a) Release any person liable for payment of any Secured Obligation;
- (b) Extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation;
- (c) Accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security;
- (d) Alter, substitute or release any property securing the Secured Obligations;
- (e) Consent to the making of any plat or map of the Property or any part of it;
- (f) Join in granting any easement or creating any restriction affecting the Property; or
- (g) Join in any subordination or other agreement affecting this Mortgage or the lien of it; or
- (h) Release the Property or any part of it.

5.8 Release. When all of the Secured Obligations have been paid in full and all fees and other sums owed by Mortgagor under Section 5.9 of this Mortgage and the other Loan Documents have been received, Mortgagee shall release this Mortgage, the lien created thereby, and all notes and instruments evidencing the Secured Obligations. Mortgagor shall pay any costs of preparation and recordation of such release.

5.9 Compensation, Exculpation, Indemnification.

(a) Mortgagor agrees to pay fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Mortgagee when the law provides no maximum limit, for any services that Mortgagee may render in connection with this Mortgage, including providing a statement of the Secured Obligations or providing the release pursuant to Section 5.8 above. Mortgagor shall also pay or reimburse all of Mortgagee's costs and expenses which may be incurred in rendering any such services. Mortgagor further agrees to pay or reimburse Mortgagee for all costs, expenses and other advances which may be incurred or made by Mortgagee in any efforts to enforce any terms of this Mortgage, including any rights or remedies afforded to Mortgagee under Section 6.3, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Mortgage, including attorneys' fees and other legal costs, costs of foreclosure hereunder) and any cost of evidence of title. If Mortgagee, as required by applicable law, chooses to dispose of Property through more than one foreclosure sale, Mortgagor shall pay all costs, expenses, or other advances that may be incurred or made by Mortgagee in each of such foreclosure sales. In any suit to foreclose the lien hereof or enforce any other remedy of Mortgagee under this Mortgage or the Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' costs and fees (including the costs and fees of paralegals), survey charges,

appraiser's fees, inspecting engineer's and/or architect's fees, fees for environmental studies and assessments and all additional expenses incurred by Mortgagee with respect to environmental matters (including as necessary to be consistent with ASTM Standard E1527-05 (or any successor thereto)), outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to, the value of or the environmental condition of the Property. All expenditures and expenses of the nature in this Subsection 5.9 mentioned, and such expenses and fees as may be incurred in the protection of the Property and maintenance of the lien of this Mortgage, including the reasonable fees of any attorney (including the costs and fees of paralegals) employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Property, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate and shall be secured by this Mortgage.

(b) Mortgagee shall not be directly or indirectly liable to Mortgagor or any other person as a consequence of any of the following:

(i) Mortgagee's exercise of or failure to exercise any rights, remedies or powers granted to Mortgagee in this Mortgage;

(ii) Mortgagee's failure or refusal to perform or discharge any obligation or liability of Mortgagor under any agreement related to the Property or under this Mortgage; or

(iii) Any loss sustained by Mortgagor or any third party resulting from Mortgagee's failure to lease the Property, or from any other act or omission of Mortgagee in managing the Property, after an Event of Default, unless the loss is caused by the willful misconduct and bad faith of Mortgagee.

Mortgagor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Mortgagee.

(c) Mortgagor agrees to indemnify Mortgagee from and against, and hold Mortgagee harmless from and against, all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses which Mortgagee may suffer or incur (excluding any of the foregoing damages, claims or expenses caused by Mortgagee's gross negligence or willful misconduct):

(i) In performing any act required or permitted by this Mortgage or any of the other Loan Documents or by law;

(ii) Because of any failure of Mortgagor to perform any of its obligations; or

(iii) Because of any alleged obligation of or undertaking by Mortgagee to perform or discharge any of the representations, warranties, conditions, covenants or

other obligations in any document relating to the Property other than the Loan Documents.

This agreement by Mortgagor to indemnify Mortgagee shall survive the release and cancellation of any or all of the Secured Obligations and the full or partial release of this Mortgage.

(d) Mortgagor shall pay all obligations to pay money arising under this Section 5.9 immediately upon demand by Mortgagee. Each such obligation shall be added to, and considered to be part of, the principal of the Note, and shall bear interest from the date the obligation arises at the Default Rate.

5.10 Defense and Notice of Claims and Actions. At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Mortgage and the rights and powers of Mortgagee created under it, against all adverse claims. Mortgagor shall give Mortgagee prompt notice in writing if any claim is asserted which does or could affect any such matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

5.11 Subrogation. Mortgagee shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Mortgagee in accordance with this Mortgage or with the proceeds of any loan secured by this Mortgage.

5.12 Site Visits, Observation and Testing. Mortgagee and its agents and representatives shall have the right at any reasonable time to enter and visit the Property for the purpose of performing appraisals, observing the Property, taking and removing soil or groundwater samples, and conducting tests on any part of the Property. Mortgagee has no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation or testing by Mortgagee, its agents or representatives shall impose any liability on any of Mortgagee, its agents or representatives. In no event shall any site visit, observation or testing by Mortgagee, its agents or representatives be a representation that Hazardous Material are or are not present in, on or under the Property, or that there has been or shall be compliance with any law, regulation or ordinance pertaining to Hazardous Material or any other applicable governmental law. Neither Mortgagor nor any other party is entitled to rely on any site visit, observation or testing by any of Mortgagee, its agents or representatives. Neither Mortgagee, its agents or representatives owe any duty of care to protect Mortgagor or any other party against, or to inform Mortgagor or any other party of, any Hazardous Material or any other adverse condition affecting the Property. Mortgagee shall give Mortgagor reasonable notice before entering the Property. Mortgagee shall make reasonable efforts to avoid interfering with Mortgagor's use of the Property in exercising any rights provided in this Section 5.12.

5.13 Notice of Change. Mortgagor shall give Mortgagee prior written notice of any change in: (a) the location of its place of business or its chief executive office if it has more than one place of business; (b) the location of any of the Property, including the Books and Records; and (c) Mortgagor's name or business structure. Unless otherwise approved by Mortgagee in writing, all Property that consists of personal property (other than the Books and Records) will be located on the Premises and all Books and Records will be located at Mortgagor's place of business or chief executive office if Mortgagor has more than one place of business.

## 6. Accelerating Transfers, Default and Remedies.

### 6.1 Accelerating Transfers.

(a) "**Accelerating Transfer**" means any Transfer not expressly permitted under Section 5.12 of the Loan Agreement.

(b) Mortgagor acknowledges that Mortgagee is making one or more advances under the Loan Agreement in reliance on the expertise, skill and experience of Mortgagor; thus, the Secured Obligations include material elements similar in nature to a personal service contract. In consideration of Mortgagee's reliance, Mortgagor agrees that Mortgagor shall not make any Accelerating Transfer, unless the transfer is preceded by Mortgagee's express written consent to the particular transaction and transferee. Mortgagee may withhold such consent in its sole discretion. If any Accelerating Transfer occurs, Mortgagee in its sole discretion may declare all of the Secured Obligations to be immediately due and payable, and Mortgagee may invoke any rights and remedies provided by Section 6.3 of this Mortgage.

6.2 Events of Default. Mortgagor will be in default under this Mortgage upon the occurrence of any one or more of the following events (some or all, collectively, "**Events of Default**"; any one singly, an "**Event of Default**"): an "Event of Default" occurs under the Loan Agreement or any other Loan Document.

6.3 Mortgagee's Remedies Upon Default. Upon the occurrence of an Event of Default, Mortgagee may, at Mortgagee's option, do any one or more of the following:

(a) Right to Perform Mortgagor's Covenants. If Mortgagor has failed to keep or perform any covenant whatsoever contained in this Mortgage or the other Loan Documents, Mortgagee may, but shall not be obligated to any person to do so, perform or attempt to perform said covenant, and any payment made or expense incurred in the performance or attempted performance of any such covenant shall be and become a part of the Secured Obligations, and Mortgagor promises, upon demand, to pay to Mortgagee, at the place where the Note is payable, all sums so advanced or paid by Mortgagee, with interest from the date when paid or incurred by Mortgagee at the Default Rate. No such payment by Mortgagee shall constitute a waiver of any Event of Default. In addition to the liens and security interests hereof, Mortgagee shall be subrogated to all rights, titles, liens, and security interests securing the payment of any debt, claim, tax, or assessment for the payment of which Mortgagee may make an advance, or which Mortgagee may pay.

(b) Right of Entry. Mortgagee may, prior or subsequent to the institution of any foreclosure proceedings, enter upon the Property, or any part thereof, and take exclusive possession of the Property and of all books, records, and accounts relating thereto and to exercise without interference from Mortgagor any and all rights which Mortgagor has with respect to the management, possession, operation, protection, or preservation of the Property, including without limitation the right to rent the same for the account of Mortgagor and to apply such Rents as provided in Section 6.8 hereof. All such costs, expenses, and liabilities incurred by Mortgagee in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Property, if not paid out of Rents as hereinabove provided, shall constitute a demand obligation owing by Mortgagor and shall bear interest from the date of expenditure until paid at the Default Rate, all of which shall constitute a portion of the Secured Obligations. If necessary to obtain the possession provided for above, Mortgagee may invoke any and all legal remedies to dispossess Mortgagor, including specifically one or more actions for forcible entry and detainer, trespass to try title, and restitution. In connection with any action taken by Mortgagee pursuant to this subsection, Mortgagee shall not be liable for any loss sustained by Mortgagor resulting from any failure to let the Property, or any part thereof, or from any other act or omission of Mortgagee in managing the Property unless such loss is caused by the willful misconduct of Mortgagee, nor

shall Mortgagee be obligated to perform or discharge any obligation, duty, or liability under any Lease or under or by reason hereof or the exercise of rights or remedies hereunder. **MORTGAGOR SHALL AND DOES HEREBY AGREE TO INDEMNIFY MORTGAGEE FOR, AND TO HOLD MORTGAGEE HARMLESS FROM, ANY AND ALL LIABILITY, LOSS, OR DAMAGE, WHICH MAY OR MIGHT BE INCURRED BY MORTGAGEE UNDER ANY SUCH LEASE OR UNDER OR BY REASON HEREOF OR THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER, AND FROM ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST MORTGAGEE BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS, OR AGREEMENTS CONTAINED IN ANY SUCH LEASE (EXCLUDING ANY LIABILITY, LOSS OR DAMAGE CAUSED BY MORTGAGEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT).** Should Mortgagee incur any such liability, the amount thereof, including without limitation costs, expenses, and reasonable attorneys' fees, together with interest thereon from the date of expenditure until paid at the Default Rate, shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefor immediately upon demand. Nothing in this subsection shall impose any duty, obligation, or responsibility upon Mortgagee for the control, care, management, leasing, or repair of the Property, nor for the carrying out of any of the terms and conditions of any such Lease; nor shall it operate to make Mortgagee responsible or liable for any waste committed on the Property by the tenants or by any other parties, or for any dangerous or defective condition of the Property or for any negligence in the management, leasing, upkeep, repair, or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, or stranger. Mortgagor hereby assents to, ratifies, and confirms any and all actions of Mortgagee with respect to the Property taken under this subsection.

(c) Right to Accelerate. Mortgagee may, without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Mortgagor and all other parties obligated in any manner whatsoever on the Secured Obligations, declare the entire unpaid balance of the Secured Obligations immediately due and payable, and upon such declaration, the entire unpaid balance of the Secured Obligations shall be immediately due and payable. The failure to exercise any remedy available to Mortgagee shall not be deemed to be a waiver of any rights or remedies of Mortgagee under the Loan Documents, at law or in equity.

(d) Foreclosure-Power of Sale. Mortgagee may proceed with foreclosure under the power of sale which is hereby conferred, such foreclosure to be accomplished in accordance with the following provisions:

(i) Public Sale. Mortgagee is hereby authorized and empowered to sell or cause to be sold the Property, or any part thereof, at public auction to the highest bidder for cash, with or without having taken possession of same. Any such sale (including notice thereof) shall comply with the applicable requirements, at the time of the sale, of the statute or statutes, if any, governing sales of Illinois real property under powers of sale conferred by mortgages. If there is no statute in force at the time of the sale governing sales of Illinois real property under powers of sale conferred by mortgages, such sale shall comply with applicable law, at the time of the sale, governing sales of Illinois real property under powers of sale conferred by mortgages.



(ii) Right to Require Proof of Financial Ability and/or Cash Bid. At any time during the bidding, Mortgagee may require a bidding party (A) to disclose its full name, state and city of residence, occupation, and specific business office location, and the name and address of the principal the bidding party is representing (if applicable), and (B) to demonstrate reasonable evidence of the bidding party's financial ability (or, if applicable, the financial ability of the principal of such bidding party), as a condition to the bidding party submitting bids at the foreclosure sale. If any such bidding party (the "**Questioned Bidder**") declines to comply with Mortgagee's requirement in this regard, or if such Questioned Bidder does respond but Mortgagee, in Mortgagee's sole and absolute discretion, deems the information or the evidence of the financial ability of the Questioned Bidder (or, if applicable, the principal of such bidding party) to be inadequate, then Mortgagee may continue the bidding with reservation; and in such event (1) shall be authorized to caution the Questioned Bidder concerning the legal obligations to be incurred in submitting bids, and (2) if the Questioned Bidder is not the highest bidder at the sale, or if having been the highest bidder the Questioned Bidder fails to deliver the cash purchase price payment promptly to Mortgagee, all bids by the Questioned Bidder shall be null and void. Mortgagee may, in Mortgagee's sole and absolute discretion, determine that a credit bid may be in the best interest of Mortgagor and Mortgagee, and elect to sell the Property for credit or for a combination of cash and credit; provided, however, that Mortgagee shall have no obligation to accept any bid except an all cash bid. In the event that Mortgagee requires a cash bid and cash is not delivered within a reasonable time after conclusion of the bidding process, as specified by Mortgagee, but in no event later than 3:45 p.m. local time on the day of sale, then said contingent sale shall be null and void, the bidding process may be recommenced, and any subsequent bids or sale shall be made as if no prior bids were made or accepted.

(iii) Sale Subject to Unmatured Secured Obligations. In addition to the rights and powers of sale granted under the preceding provisions of this subsection, if default is made in the payment of any installment of the Secured Obligations, Mortgagee may, at Mortgagee's option, at once or at any time thereafter while any matured installment remains unpaid, without declaring the entire Secured Obligations to be due and payable, sell the Property subject to such unmatured Secured Obligations and to the rights, powers, liens, security interests, and assignments securing or providing recourse for payment of such unmatured Secured Obligations, in the same manner, all as provided in the preceding provisions of this subsection. Sales made without maturing the Secured Obligations may be made hereunder whenever there is a default in the payment of any installment of the Secured Obligations, without exhausting the power of sale granted hereby, and without affecting in any way the power of sale granted under this subsection, the unmatured balance of the Secured Obligations or the rights, powers, liens, security interests, and assignments securing or providing recourse for payment of the Secured Obligations.

(iv) Partial Foreclosure. Sale of a part of the Property shall not exhaust the power of sale, but sales may be made from time to time until the Secured Obligations are paid and performed and discharged in full. It is intended by each of the foregoing provisions of this subsection that Mortgagee may sell not only the Premises and the Improvements, but also the other interests constituting a part of the Property or any part thereof, along with the Premises and the Improvements or any part thereof, as a unit and as a part of a single sale, or may sell at any time or from time to time any part or parts of the Property separately from the remainder of the Property. It shall not be necessary to have present or to exhibit at any sale any of the Property.

(v) Mortgagee's Deeds. After any sale under this subsection, Mortgagee shall make good and sufficient deeds, assignments, and other conveyances to the purchaser or purchasers thereunder in the name of Mortgagor, conveying the Property or any part thereof so sold to the purchaser or purchasers with general warranty of title by Mortgagor. It is agreed that in any deeds, assignments or other conveyances given by Mortgagee, any and all statements of fact or other recitals therein made as to the identity of Mortgagee, the occurrence or existence of any Event of Default, the notice of intention to accelerate, or acceleration of, the maturity of the Secured Obligations, the request to sell, notice of sale, time, place, terms and manner of sale, and receipt, distribution, and application of the money realized therefrom, the due and proper appointment of a receiver, and without being limited by the foregoing, any other act or thing having been duly done by or on behalf of Mortgagee shall be taken by all courts of law and equity as *prima facie* evidence that such statements or recitals state true, correct, and complete facts and are without further question to be so accepted, and Mortgagor does hereby ratify and confirm any and all acts that Mortgagee may lawfully do in the premises by virtue hereof.

(e) Mortgagee's Judicial Remedies. Mortgagee may proceed by suit or suits, at law or in equity, to enforce the payment of the Secured Obligations in accordance with the terms hereof, of the Note, and the other Loan Documents, to foreclose the liens and security interests of this Mortgage as against all or any part of the Property, and to have all or any part of the Property sold under the judgment or decree of a court of competent jurisdiction. This remedy shall be cumulative of any other nonjudicial remedies available to Mortgagee with respect to the Loan Documents. Proceeding with a request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available nonjudicial remedy of Mortgagee.

(f) Mortgagee's Right to Appointment of Receiver. Mortgagee, as a matter of right and without regard to the sufficiency of the security for repayment of the Secured Obligations, without notice to Mortgagor and without any showing of insolvency, fraud, or mismanagement on the part of Mortgagor, and without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, shall be entitled to the appointment of a receiver or receivers of the Property or any part thereof, and of the Rents, and Mortgagor hereby irrevocably consents to the appointment of a receiver or receivers. Any receiver appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters.

(g) Mortgagee's Uniform Commercial Code Remedies. Mortgagee may exercise its rights of enforcement with respect to fixtures and Personalty, and in conjunction with, in addition to or in substitution for the rights and remedies under the UCC, Mortgagee may and Mortgagor agrees as follows:

(i) without demand or notice to Mortgagor, enter upon the Property to take possession of, assemble, receive, and collect the Personalty, or any part thereof, or to render it unusable; and

(ii) Mortgagee may require Mortgagor to assemble the Personalty and make it available at a place Mortgagee designates which is mutually convenient to allow Mortgagee to take possession or dispose of the Personalty; and

(iii) written notice mailed to Mortgagor as provided herein at least ten (10) days prior to the date of public sale of the Personalty or prior to the date after which private sale of the Personalty will be made shall constitute reasonable notice; and

(iv) any sale made pursuant to the provisions of this subsection shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of the other Property under power of sale as provided herein upon giving the same notice with respect to the sale of the Personalty hereunder as is required for such sale of the other Property under power of sale, and such sale shall be deemed to be pursuant to a security agreement covering both real and personal property under the UCC; and

(v) in the event of a foreclosure sale, whether made under the terms hereof, or under judgment of a court, the Personalty and the other Property may, at the option of Mortgagee, be sold as a whole; and

(vi) it shall not be necessary that Mortgagee take possession of the Personalty, or any part thereof, prior to the time that any sale pursuant to the provisions of this subsection is conducted, and it shall not be necessary that the Personalty or any part thereof be present at the location of such sale; and

(vii) prior to application of proceeds of disposition of the Personalty to the Secured Obligations, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like, and the reasonable attorneys' fees and legal expenses incurred by Mortgagee; and

(viii) after notification, Mortgagee may sell, lease, or otherwise dispose of the Personalty, or any part thereof, in one or more parcels at public or private sale or sales, at Mortgagee's offices or elsewhere, for cash, on credit, or for future delivery. Mortgagor shall be liable for all expenses of retaking, holding, preparing for sale, or the like, and all reasonable attorneys' fees, legal expenses, and all other costs and expenses incurred by Mortgagee in connection with the collection of the Secured Obligations and the enforcement of Mortgagee's rights under the Loan Documents. Mortgagee shall apply the proceeds of the sale of the Personalty against the Secured Obligations in accordance with the provisions of Section 6.7 of this Mortgage. Mortgagor shall remain liable for any deficiency if the proceeds of any sale or disposition of the Personalty are insufficient to pay the Secured Obligations in full. Mortgagor waives all rights of marshalling in respect of the Personalty; and

(ix) Mortgagee may dispose of the Personalty in its then present condition, has no duty to repair or clean the Personalty prior to sale and may disclaim warranties of title, possession, quiet enjoyment and the like with respect to the Personalty, all without affecting the commercial reasonableness of the sale; and

(x) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder, the nonpayment of the Secured Obligations, the occurrence of any Event of Default, Mortgagee having declared all or a portion of such Secured Obligations to be due and payable, the notice of time, place, and terms of sale and of the properties to be sold having been duly given, or any other act or thing having been duly done by Mortgagee, shall be taken as *prima facie* evidence of the truth of the facts so stated and recited; and

(xi) Mortgagee may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Mortgagee, including the sending of notices and the conduct of the sale, but in the name and on behalf of Mortgagee.

(h) Rights Relating to Rents. Mortgagor has, pursuant to Section 2 of this Mortgage, granted to Mortgagee a first lien security interest in and to any and all Rents under each of the Leases covering all or any portion of the Property. Mortgagee may at any time, and without notice, either in person, by agent, or by receiver to be appointed by a court, enter and take possession of the Property or any part thereof, and in its own name, sue for or otherwise collect the Rents. All Rents collected by Mortgagee shall be applied as provided for in Section 2.4 of this Mortgage; provided, however, that if the costs, expenses, and attorneys' fees shall exceed the amount of Rents collected, the excess shall be added to the Secured Obligations, shall bear interest at the Default Rate, and shall be immediately due and payable. The entering upon and taking possession of the Property, the collection of Rents, and the application thereof as aforesaid shall not cure or waive any Event of Default or notice of default, if any, hereunder nor invalidate any act done pursuant to such notice, except to the extent any such default is fully cured. Failure or discontinuance by Mortgagee, at any time or from time to time, to collect said Rents shall not in any manner impair the subsequent enforcement by Mortgagee of the right, power and authority herein conferred upon it. Nothing contained herein, nor the exercise of any right, power, or authority herein granted to Mortgagee shall be, or shall be construed to be, an affirmation by it of any tenancy, lease, or option, nor an assumption of liability under, nor the subordination of, the lien or charge of this Mortgage, to any such tenancy, lease, or option, nor an election of judicial relief, if any such relief is requested or obtained as to Leases or Rents, with respect to the Property or any collateral given by Mortgagor to Mortgagee.

(i) Mortgagee as Purchaser. Mortgagee may be the purchaser of the Property or any part thereof, at any sale thereof, whether such sale be under the power of sale herein vested in Mortgagee or upon any other foreclosure of the liens and security interests hereof, or otherwise, and Mortgagee shall, upon any such purchase, acquire good title to the Property so purchased, free of the liens and security interests hereof, unless the sale was made subject to an unmatured portion of the Secured Obligations. Mortgagee, as purchaser, shall be treated in the same manner as any third party purchaser and the proceeds of Mortgagee's purchase shall be applied in accordance with Section 6.7 of this Mortgage.

6.4 Other Rights of Mortgagee. Should any part of the Property come into the possession of Mortgagee, whether before or after default, Mortgagee may (for itself or by or through other persons, firms, or entities) hold, lease, manage, use, or operate the Property for such time and upon such terms as Mortgagee may deem prudent under the circumstances (making such repairs, alterations, additions, and improvements thereto and taking such other action as Mortgagee may from time to time deem necessary or desirable) for the purpose of preserving the Property or its value, pursuant to the order of a court of appropriate jurisdiction or in accordance with any other rights held by Mortgagee in respect of the Property. Mortgagor covenants to promptly reimburse and pay to Mortgagee on demand, at the place where the Note is payable, the amount of all reasonable expenses (including without limitation the cost of any insurance, Impositions, or other charges) incurred by Mortgagee in connection with Mortgagee's custody, preservation, use, or operation of the Property, together with interest thereon from the date incurred by Mortgagee at the Default Rate; and all such expenses, costs, taxes, interest, and other charges shall be and become a part of the Secured Obligations. It is agreed, however, that the risk of loss or damage to the Property is on Mortgagor, and Mortgagee shall have no liability whatsoever for decline in value of the Property, for failure to obtain or maintain insurance, or for failure to determine whether insurance in force is adequate as to amount or as to the risks insured. Possession by Mortgagee shall not

be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Mortgagee's possession.

6.5 Possession After Foreclosure. If the liens or security interests hereof shall be foreclosed by power of sale granted herein, by judicial action, or otherwise, the purchaser at any such sale shall receive, as an incident to purchaser's ownership, immediate possession of the property purchased, and if Mortgagor or Mortgagor's successors shall hold possession of said property or any part thereof subsequent to foreclosure, Mortgagor and Mortgagor's successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale (without limitation of other rights or remedies, at a reasonable rental per day, due and payable daily, based upon the value of the portion of the Property so occupied and sold to such purchaser), and anyone occupying such portion of the Property, after demand is made for possession thereof, shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.

6.6 Abandonment of Sale. If a foreclosure hereunder is commenced by Mortgagee in accordance with Subsection 6.3(d) hereof, at any time before the sale, Mortgagee may abandon the sale, and Mortgagee may then institute suit for the collection of the Secured Obligations and for the foreclosure of the liens and security interests hereof and of the Loan Documents. If Mortgagee should institute a suit for the collection of the Secured Obligations and for a foreclosure of the liens and security interests, Mortgagee may, at any time before the entry of a final judgment in said suit, dismiss the same and require the sale of the Property or any part thereof in accordance with the provisions of this Mortgage.

6.7 Application of Proceeds. Mortgagee shall apply the proceeds of any sale, lease, or other disposition made pursuant to Section 6 in the following manner:

- (a) First, to pay the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Mortgagee is obligated to reimburse Mortgagee under Section 5.9 of this Mortgage;
- (b) Second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Mortgagee under the terms of this Mortgage which then remain unpaid;
- (c) Third, to pay all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose; and
- (d) Fourth, to remit the remainder, if any, to the person or persons entitled to it.

6.8 Application of Rents and Other Sums. Mortgagee shall apply any and all Rents collected by it, and any and all sums other than proceeds of a sale, lease, or other disposition of the Property which Mortgagee may receive or collect under Section 6.7 above, in the following manner:

- (a) First, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation and collection that may be incurred by Mortgagee or any receiver;
- (b) Second, to pay all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose; and
- (c) Third, to remit the remainder, if any, to the person or persons entitled to it.

Mortgagee shall have no liability for any funds which it does not actually receive.

6.9 Miscellaneous.

(a) Discontinuance of Remedies. In case Mortgagee shall have proceeded to invoke any right, remedy, or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, Mortgagee shall have the unqualified right so to do and, in such event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Secured Obligations, the Loan Documents, the Property or otherwise, and the rights, remedies, recourses and powers of Mortgagee shall continue as if same had never been invoked.

(b) Other Remedies. In addition to the remedies set forth in this Article, upon the occurrence of an Event of Default, Mortgagee shall, in addition, have all other remedies available to it at law or in equity.

(c) Remedies Cumulative; Non-Exclusive; Etc. All rights, remedies, and recourses of Mortgagee granted in the Note, this Mortgage, the other Loan Documents, any other pledge of collateral, or otherwise available at law or equity: (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively, or concurrently against Mortgagor, the Property, or any one or more of them, at the sole discretion of Mortgagee; (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Mortgagor that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse; (iv) shall be nonexclusive; (v) shall not be conditioned upon Mortgagee exercising or pursuing any remedy in relation to the Property prior to Mortgagee bringing suit to recover the Secured Obligations; and (vi) in the event Mortgagee elects to bring suit on the Secured Obligations and obtains a judgment against Mortgagor prior to exercising any remedies in relation to the Property, all liens and security interests, including the lien of this Mortgage, shall remain in full force and effect and may be exercised at Mortgagee's option.

(d) Partial Release; Etc. Mortgagee may release, regardless of consideration, any part of the Property without, as to the remainder, in any way impairing, affecting, subordinating, or releasing the lien or security interests evidenced by this Mortgage or the other Loan Documents or affecting the obligations of Mortgagor or any other party to pay the Secured Obligations. For payment of the Secured Obligations, Mortgagee may resort to any of the collateral therefor in such order and manner as Mortgagee may elect. No collateral heretofore, herewith, or hereafter taken by Mortgagee shall in any manner impair or affect the collateral given pursuant to the Loan Documents, and all collateral shall be taken, considered, and held as cumulative.

(e) Waiver and Release by Mortgagor. Mortgagor hereby irrevocably and unconditionally waives and releases (to the extent permitted by applicable law): (i) all benefits that might accrue to Mortgagor by virtue of any present or future law exempting the Property from attachment, levy or sale on execution or providing for any appraisalment, valuation, stay of execution, exemption from civil process, redemption, or extension of time for payment; (ii) all notices of any Event of Default or of Mortgagee's exercise of any right, remedy, or recourse provided for under the Loan Documents; and (iii) any right to a marshaling of assets or a sale in inverse order of alienation.

(f) No Implied Covenants. Mortgagor and Mortgagee mutually agree that there are no, nor shall there be any, implied covenants of good faith and fair dealing or other similar covenants or agreements in this Mortgage and the other Loan Documents. All agreed contractual duties are set forth in this Mortgage, the Note, and the other Loan Documents.

## 6.10 Waiver of Deficiency Statute.

(a) Waiver. In the event an interest in any of the Property is foreclosed upon pursuant to a judicial or nonjudicial foreclosure sale, and to the extent permitted by law, Mortgagor agrees that Mortgagee shall be entitled to seek a deficiency judgment from Mortgagor and any other party obligated on the Note equal to the difference between the amount owing on the Note and the amount for which the Property was sold pursuant to judicial or nonjudicial foreclosure sale. Mortgagor expressly recognizes that this section constitutes a waiver of any contrary provisions of applicable law which would otherwise permit Mortgagor and other persons against whom recovery of deficiencies is sought or Guarantor independently (even absent the initiation of deficiency proceedings against them) to present competent evidence of the fair market value of the Property as of the date of the foreclosure sale and offset against any deficiency the amount by which the foreclosure sale price is determined to be less than such fair market value. Mortgagor further recognizes and agrees that this waiver creates an irrebuttable presumption that the foreclosure sale price is equal to the fair market value of the Property for purposes of calculating deficiencies owed by Mortgagor, Guarantor, and others against whom recovery of a deficiency is sought.

(b) Alternative to Waiver. Alternatively, in the event the waiver provided for in Subsection 6.10(a) above is either not permitted by applicable law or determined by a court of competent jurisdiction to be unenforceable, the following shall be the basis for the finder of fact's determination of the fair market value of the Property as of the date of the foreclosure sale: (i) the Property shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Property will be repaired or improved in any manner before a resale of the Property after foreclosure; (ii) the valuation shall be based upon an assumption that the foreclosure purchaser desires a resale of the Property for cash promptly (but no later than twelve (12) months) following the foreclosure sale; (iii) all reasonable closing costs customarily borne by the seller in commercial real estate transactions should be deducted from the gross fair market value of the Property, including, without limitation, brokerage commissions, title insurance, a survey of the Property, tax prorations, attorneys' fees, and marketing costs; (iv) the gross fair market value of the Property shall be further discounted to account for any estimated holding costs associated with maintaining the Property pending sale, including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in Clause (iii) above), and other maintenance, operational and ownership expenses; and (v) any expert opinion testimony given or considered in connection with a determination of the fair market value of the Property must be given by persons having at least five (5) years' experience in appraising property similar to the Property and who have conducted and prepared a complete written appraisal of the Property taking into consideration the factors set forth above.

## 7. The Mortgagee.

7.1 Certain Rights. Mortgagee shall have the right to take any and all of the following actions: (i) to select, employ and consult with counsel upon any matters arising hereunder, including the preparation, execution and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel; (ii) to execute any of the terms, provisions, and powers hereof and to perform any duty hereunder either directly or through his or her agents or attorneys; (iii) to select and employ, in and about the execution of his or her duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Mortgagee (and Mortgagee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Mortgagee in good faith, or be otherwise responsible or accountable

under any circumstances whatsoever, except for Mortgagee's gross negligence or bad faith); and (iv) any and all other lawful action that Mortgagee deem necessary or appropriate to protect or enforce Mortgagee's rights hereunder. Mortgagee shall not be personally liable in case of entry by Mortgagee, or anyone entering by virtue of the powers herein granted to Mortgagee, upon the Premises for debts contracted for or liability or damages incurred in the management or operation of the Premises. Mortgagee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Mortgagee hereunder, believed by Mortgagee in good faith to be genuine.

7.2 No Representation by Mortgagee. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Mortgagee pursuant to the Loan Documents, Mortgagee shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Mortgagee.

## 8. Miscellaneous Provisions.

8.1 Additional Provisions. The Loan Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Mortgage. The Loan Documents also grant further rights to Mortgagee and contain further agreements and affirmative and negative covenants by Mortgagor which apply to this Mortgage and to the Property.

### 8.2 No Waiver or Cure.

(a) Each waiver by Mortgagee must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Mortgagee to take action on account of any default of Mortgagor. Consent by Mortgagee to any act or omission by Mortgagor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Mortgagee's consent to be obtained in any future or other instance.

(b) If any of the events described below occurs, that event alone shall not cure or waive any breach, Event of Default or notice of default under this Mortgage or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and all other defaults under the Loan Documents have been cured); or impair the security of this Mortgage; or prejudice Mortgagee or any receiver in the exercise of any right or remedy afforded any of them under this Mortgage; or be construed as an affirmation by Mortgagee of any tenancy, lease or option, or a subordination of the lien of this Mortgage.

(i) Mortgagee, its agent or a receiver takes possession of all or any part of the Property in the manner provided in Subsection 6.3(b).

(ii) Mortgagee collects and applies Rents as permitted under Sections 2.3 and 6.8 above, either with or without taking possession of all or any part of the Property.

(iii) Mortgagee receives and applies to any Secured Obligation any proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Mortgagee under Section 5.5 above.



(iv) Mortgagee makes a site visit, observes the Property and/or conducts tests as permitted under Section 5.12 above.

(v) Mortgagee receives any sums under this Mortgage or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations.

(vi) Mortgagee or any receiver invokes any right or remedy provided under this Mortgage.

### 8.3 Powers of Mortgagee.

(a) If Mortgagee performs any act which it is empowered or authorized to perform under this Mortgage, including any act permitted by Section 5.7 or Subsection 6.3(a) of this Mortgage, that act alone shall not release or change the personal liability of any person for the payment and performance of the Secured Obligations then outstanding, or the lien of this Mortgage on all or the remainder of the Property for full payment and performance of all outstanding Secured Obligations. The liability of the original Mortgagor shall not be released or changed if Mortgagee grants any successor in interest to Mortgagor any extension of time for payment, or modification of the terms of payment, of any Secured Obligation. Mortgagee shall not be required to comply with any demand by the original Mortgagor that Mortgagee refuse to grant such an extension or modification to, or commence proceedings against, any such successor in interest.

(b) Mortgagee may take any of the actions permitted under Subsections 6.3(b) and/or 6.3(f) regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Mortgage.

(c) From time to time, Mortgagee may apply to any court of competent jurisdiction for aid and direction in executing and enforcing the rights and remedies created under this Mortgage. Mortgagee may from time to time obtain orders or decrees directing, confirming or approving acts in executing and enforcing these rights and remedies.

8.4 Merger. No merger shall occur as a result of Mortgagee's acquiring any other estate in or any other lien on the Property unless Mortgagee consents to a merger in writing.

8.5 Joint and Several Liability. If Mortgagor consists of more than one person, each shall be jointly and severally liable for the faithful performance of all of Mortgagor's obligations under this Mortgage.

8.6 Applicable Law. IRRESPECTIVE OF THE PLACE OF EXECUTION AND/OR DELIVERY, THIS MORTGAGE SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAWS OF THE STATE OF TEXAS AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS), PROVIDED HOWEVER, THAT WITH RESPECT TO THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED BY THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS, THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED SHALL APPLY.

8.7 Successors in Interest. The terms, covenants and conditions of this Mortgage shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. However, this Section 8.7 does not waive the provisions of Section 6.1 above.

8.8 Interpretation.

(a) Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Mortgage are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to."

(b) The word "obligations" is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed and contingent obligations. It further includes all principal, interest, prepayment charges, late charges, loan fees and any other fees and charges accruing or assessed at any time, as well as all obligations to perform acts or satisfy conditions.

(c) No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Mortgage. The Exhibits to this Mortgage are hereby incorporated in this Mortgage.

8.9 Reserved.

8.10 Waiver of Statutory Rights. To the extent permitted by law, Mortgagor hereby agrees that it shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. Mortgagor hereby waives any and all rights of redemption from sale under any judgment of foreclosure of this Mortgage on behalf of Mortgagor and on behalf of each and every person acquiring any interest in or title to the Property of any nature whatsoever, subsequent to the date of this Mortgage. The foregoing waiver of right of redemption is made pursuant to the provisions of applicable law.

8.11 Severability. If any provision of this Mortgage should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of this Mortgage except that if such provision relates to the payment of any monetary sum, then Mortgagee may, at its option, declare all Secured Obligations immediately due and payable.

8.12 Notices. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given if delivered in accordance with the terms of the Loan Agreement.

8.13 Future Advances. The total amount of indebtedness secured hereby may increase or decrease from time to time, but the total unpaid principal balance of indebtedness secured hereby (including disbursements that the Mortgagee may, but shall not be obligated to, make under this Mortgage, the Loan Documents or any other document with respect thereto) at any one time outstanding may be substantially less but shall not exceed \$5,000,000, plus interest thereon, and any disbursements made for the enforcement of this Mortgage and any remedies hereunder, payment of taxes, special

assessments, utilities or insurance on the Property and interest on such disbursements and all disbursements by Mortgagee pursuant to applicable law (all such indebtedness being hereinafter referred to as the maximum amount secured hereby). This Mortgage shall be valid and have priority to the extent of the maximum amount secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Property given priority by law. Mortgagor acknowledges and intends that all such advances, including future advances whenever hereafter made, shall be secured by the lien of this Mortgage, as provided in Section 15-1302(b)(1) of the Act. Mortgagor covenants and agrees that this Mortgage shall secure the payment of all loans and advances made as of the date hereof or at any time in the future, and whether such future advances are obligatory or are to be made at the option of Mortgagee or otherwise (but not advances or loans made more than 20 years after the date hereof), to the same extent as if such future advances were made on the date of the execution of this Mortgage and although there may be no advances made at the time of the execution of this Mortgage and although there may be no other indebtedness outstanding under the Loan Documents at the time any advance is made. The lien of this Mortgage shall be valid as to all such obligations, including future advances, from the time of its filing of record in the office of the Recorder of Deeds of the County in which the Property is located. The total amount of the obligations secured hereby may increase or decrease from time to time. This Mortgage shall be valid and shall have priority over all subsequent liens and encumbrances, including any statutory liens except taxes and assessments levied on the Property or such other liens that shall have priority by operation of law, to the extent of the maximum amount secured hereby.

8.14 Mortgagee's Lien for Service Charge and Expenses. At all times, regardless of whether any Loan proceeds have been disbursed, this Mortgage secures (in addition to any Loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by Mortgagee not to exceed the maximum amount secured hereby.

8.15 WAIVER OF TRIAL BY JURY. MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS MORTGAGE, THE NOTE, OR ANY OF THE OTHER LOAN DOCUMENTS, THE LOAN OR ANY OTHER STATEMENTS OR ACTIONS OF MORTGAGOR OR MORTGAGEE. MORTGAGOR ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS MORTGAGE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS DISCUSSED THIS WAIVER WITH SUCH LEGAL COUNSEL. MORTGAGOR FURTHER ACKNOWLEDGES THAT (i) IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER, (ii) THIS WAIVER IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO MAKE THE LOAN, ENTER INTO THIS MORTGAGE AND EACH OF THE OTHER LOAN DOCUMENTS, AND (iii) THIS WAIVER SHALL BE EFFECTIVE AS TO EACH OF SUCH OTHER LOAN DOCUMENTS AS IF FULLY INCORPORATED THEREIN.

8.16 Inconsistencies. In the event of any inconsistency between this Mortgage and the Loan Agreement, the terms hereof shall be controlling as necessary to create, preserve and/or maintain a valid security interest upon the Property, otherwise the provisions of the Loan Agreement shall be controlling.

8.17 UCC Financing Statements. Mortgagor hereby authorizes Mortgagee to file UCC financing statements to perfect Mortgagee's security interest in any part of the Property. In addition, Mortgagor agrees to sign any and all other documents that Mortgagee deems necessary in its sole discretion to perfect, protect, and continue Mortgagee's lien and security interest in the Property.

8.18 Negation of Partnership. Nothing contained in the Loan Documents is intended to create any partnership, limited partnership, joint venture or association between Mortgagor and Mortgagee, or in any way make Mortgagor a co-principal with Mortgagee with reference to the Property, and any inferences to the contrary are hereby expressly negated.

8.19 Entire Agreement. THE LOAN DOCUMENTS CONSTITUTE THE ENTIRE UNDERSTANDING AND AGREEMENT BETWEEN MORTGAGOR AND MORTGAGEE WITH RESPECT TO THE TRANSACTIONS ARISING IN CONNECTION WITH THE SECURED OBLIGATIONS AND SUPERSEDE ALL PRIOR WRITTEN OR ORAL UNDERSTANDINGS AND AGREEMENTS BETWEEN MORTGAGOR AND MORTGAGEE WITH RESPECT THERETO. MORTGAGOR HEREBY ACKNOWLEDGES THAT, EXCEPT AS INCORPORATED IN WRITING IN THE LOAN DOCUMENTS, THERE ARE NOT, AND WERE NOT, AND NO PERSONS ARE OR WERE AUTHORIZED BY MORTGAGEE TO MAKE, ANY REPRESENTATIONS, UNDERSTANDINGS, STIPULATIONS, AGREEMENTS OR PROMISES, ORAL OR WRITTEN, WITH RESPECT TO THE TRANSACTION WHICH IS THE SUBJECT OF THE LOAN DOCUMENTS.

8.20 Construction Mortgage. Intentionally deleted.

8.21 State of Illinois Provisions. The provisions of this Section 8.21 are an integral part of this Mortgage and to the extent of any conflict between the provisions of this Section 8.21 and any of the other provisions of this Mortgage, the provisions of this Section 8.21 shall control:

(a) Business Loan. The proceeds of the indebtedness secured hereby referred to herein shall be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire principal obligation secured by this Mortgage constitutes (i) a "business loan" as that term is defined in, and for all purposes of, 815 ILCS 205/4(1)(c), and (ii) a "loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4(1).

(c) Illinois Mortgage Foreclosure Law. It is the express intention of Mortgagor and Mortgagee that the enforcement of the terms and provisions of this Mortgage shall be accomplished in accordance with the Illinois Mortgage Foreclosure Law (the "**Act**"), 735 ILCS 5/15-1101 et seq., and with respect to such Act, Mortgagor agrees and covenants that:

(i) In the event any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provisions of this Mortgage that can be construed in a manner consistent with the Act;

(ii) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law;

(iii) Mortgagor and Mortgagee shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as

most recently existing prior to such repeal, as though the same were incorporated herein by express reference;

(iv) Wherever provision is made in this Mortgage for insurance policies to bear mortgagee clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of the Mortgagee shall continue in the Mortgagee as judgment creditor or mortgagee until confirmation of sale;

(v) In addition to any provision of this Mortgage authorizing the Mortgagee to take or be placed in possession of the Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Act, to be placed in the possession of the Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities, and duties as provided for in Sections 15-1701, 15-1702, and 15-1703 of the Act;

(vi) Mortgagor acknowledges that the Property does not constitute agricultural real estate, as said term is defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act;

(vii) Mortgagor hereby voluntarily and knowingly waives its statutory rights to reinstatement and redemption pursuant to 735 ILCS Section 5/15-1601(b);

(viii) All advances, disbursements and expenditures made or incurred by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by the Mortgage, or the Loan Agreement or by the Act (collectively "**Protective Advances**"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act hereinbelow referred to:

(1) all advances by Mortgagee in accordance with the terms of the Mortgage or the Loan Agreement to: (i) preserve, maintain, repair, restore or rebuild the improvements upon the Property; (ii) preserve the lien of the Mortgage or the priority thereof; or (iii) enforce the Mortgage, as referred to in Subsection (b)(5) of Section 5/15-1302 of the Act;

(2) payments by Mortgagee of: (i) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrances; (ii) real estate taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof; (iii) other obligations authorized by the Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the Act;

(3) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(4) reasonable attorneys' fees and other costs incurred: (i) in connection with the foreclosure of the Mortgage as referred to in Section 5/15-1504(d)(2) and 5/15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of the Mortgage or arising from the interest of the Mortgagee hereunder; or (iii) in preparation for or in connection with the commencement, prosecution or defense of any other action related to the Mortgage or the Property;

(5) Mortgagee's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearings as referred to in Section 5/15-1508(b)(1) of the Act;

(6) expenses deductible from proceeds of sale as referred to in Section 5/15-1512(a) and (b) of the Act; and

(7) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) if the Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if Mortgagor's interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Property imposed by Section 5/15-1704(c)(1) of the Act; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments deemed by Mortgagee to be required for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit or of affecting the Property; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member in any way affecting the Property; (vii) if the Loan secured hereby is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; (viii) payments required to be paid by Mortgagor or Mortgagee pursuant to any lease or other agreement for occupancy of the Property; and (ix) if the Mortgage is insured, payment of FHA or private mortgage insurance required to keep such insurance in force.

(ix) All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of interest payable after default under the terms of the Notes; and

(x) This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(5) of Section 5/15-1302 of the Act.

(d) Notes. The Note provides, among other things, for final payment of principal and interest under the Note, if not sooner paid or payable as provided therein, to be due no later than November 28, 2022 (subject, however, to extension as set forth in the Loan Agreement) and for an applicable interest rate of the greater of 4.50% per annum and the prime rate plus 1.25% per annum, compounded monthly, which Note is by this reference thereto being incorporated herein.

(e) Additional Advances. This Mortgage secures payment of such additional sums with interest thereon which may hereafter be loaned to Mortgagor by Mortgagee or advanced under the any of the Loan Documents securing or evidencing the Loan, even though the aggregate amount outstanding at any time may exceed the original principal balance stated herein and in the Notes (provided, however, that the indebtedness secured hereby shall in no event exceed an amount equal to \$5,000,000 plus interest thereon, and any disbursements made for the enforcement of this Mortgage and any remedies hereunder, payment of taxes, special assessments, utilities or insurance on the Property and interest on such disbursements and all disbursements by Mortgagee pursuant to applicable law..

(f) Collateral Protection Act. Pursuant to the terms of the Collateral Protection Act (815 ILCS 180/1 et seq.), Mortgagor is hereby notified that:

"UNLESS MORTGAGOR PROVIDES MORTGAGEE WITH EVIDENCE OF THE INSURANCE COVERAGE REQUIRED BY THIS MORTGAGE, MORTGAGEE MAY PURCHASE INSURANCE AT MORTGAGEE'S EXPENSE TO PROTECT MORTGAGEE'S INTERESTS IN THE PROPERTY, WHICH INSURANCE MAY, BUT NEED NOT, PROTECT THE INTERESTS OF MORTGAGOR. THE COVERAGE PURCHASED BY MORTGAGEE MAY NOT PAY ANY CLAIM MADE BY MORTGAGOR OR ANY CLAIM MADE AGAINST MORTGAGOR IN CONNECTION WITH THE PROPERTY. MORTGAGOR MAY LATER CANCEL ANY INSURANCE PURCHASED BY MORTGAGEE, BUT ONLY AFTER PROVIDING MORTGAGEE WITH EVIDENCE THAT MORTGAGOR HAS OBTAINED THE INSURANCE AS REQUIRED HEREUNDER. IF MORTGAGEE PURCHASES INSURANCE, THE MORTGAGOR WILL BE RESPONSIBLE FOR THE COSTS OF SUCH INSURANCE, INCLUDING INTEREST AND ANY OTHER CHARGES IMPOSED IN CONNECTION WITH THE PLACEMENT OF THE INSURANCE, UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR EXPIRATION OF THE INSURANCE. THE COSTS OF THE INSURANCE MAY BE ADDED TO THE TOTAL OBLIGATION SECURED HEREBY. THE COSTS OF SUCH INSURANCE MAY BE GREATER THAN THE COST OF INSURANCE MORTGAGOR MAY BE ABLE TO OBTAIN FOR ITSELF."

(g) Forbidden Entity. Mortgagor hereby certifies that it is not a "forbidden entity" as that term is defined in Section 22.6 of the Illinois Deposit of State Moneys Act, 15 ILCS 520/22.6; Public Act 094-0079.

(h) Application of Proceeds. Notwithstanding anything contained in this Mortgage to the contrary, the proceeds of any foreclosure sale of the Property shall be distributed and

applied in accordance with Section 15-1512 of the Act in the following order of priority: first, on account of all reasonable costs and expenses incident to the foreclosure proceedings or such other remedy, including all such items as are mentioned in Section 6.29(f) above; second, on account of all reasonable costs and expenses in connection with securing possession of the Property prior to such foreclosure sale, and the reasonable costs and expenses incurred by or on behalf of Mortgagee in connection with holding, maintaining and preparing the Property for sale, including all such items as are mentioned in Section 8.21(c)(viii) above; third, in satisfaction of all claims in the order of priority adjudicated in the foreclosure judgment or order confirming sale; and fourth, any remainder in accordance with the order of court adjudicating the foreclosure proceeding.

(i) Miscellaneous. Notwithstanding anything in this Mortgage or any of the other Loan Documents to the contrary: (i) any exercise by Mortgagee of a power of sale pursuant to this Mortgage or any other of the Loan Documents shall be subject to, and shall be available only to the extent then permitted by, applicable law; (ii) the Act shall govern in all respects the requirements for appointment of a receiver and whether or not any notice is required as a condition thereto; and (iii) any violation by Mortgagor of the covenants set forth in Article 6 of this Mortgage prohibiting Accelerating Transfers without the prior written consent of Mortgagee shall constitute an Event of Default hereunder pursuant to Section 6.2 of this Mortgage, and in such instance Mortgagee shall have available to it the remedies set forth in this instrument (including, without limitation, the provisions of Section 6.3 above).

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EXECUTED as of the date first set forth above.

MORTGAGOR:

INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

Mortgage, Assignment of Leases and Rents, Security Agreement, and Fixture Filing – Signature Page

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STATE OF \_\_\_\_\_ §  
                                                          §  
COUNTY OF \_\_\_\_\_ §

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2022, by Samuel Klepfish, the Chief Executive Officer of INNOVATIVE FOOD HOLDINGS, INC., a Florida corporation, on behalf of such entity.

(SEAL) \_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

Mortgage, Assignment of Leases and Rents, Security Agreement, and Fixture Filing – Signature Page  
\_\_\_\_\_

**EXHIBIT A**

**Legal Description of Premises**

THE NORTH 194.0 FEET OF THE SOUTH 630 FEET OF THE WEST 300 FEET OF THAT PART OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF AND ADJOINING THE EASTERLY RIGHT OF WAY LINE OF THE INDIANA HARBOR BELT RAILROAD COMPANY, IN COOK COUNTY, ILLINOIS.

Street Address of the Property: 2528 South 27<sup>th</sup> Avenue, Broadview, IL 60155

Permanent Index Number (PIN):

Mortgage, Assignment of Leases and Rents, Security Agreement, and Fixture Filing – Exhibit A

**WHEN RECORDED, MAIL TO:**

**MapleMark Bank  
4143 Maple Ave., Suite 100  
Dallas, TX 75219**

**Parcel Identification**

**Tax Parcel Number: 64-m9-00a-05d-00**

**FOR RECORDER'S USE ONLY**

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**MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING**  
**(This Mortgage Secures Future Advances)**

THIS INSTRUMENT IS TO BE INDEXED AS BOTH A MORTGAGE AND A  
FIXTURE FILING FILED AS A FINANCING STATEMENT

THIS IS AN OPEN-END MORTGAGE UNDER 42 Pa.C.S.A. §8143, WHICH SECURES FUTURE ADVANCES. THE MAXIMUM AMOUNT SECURED BY THIS MORTGAGE IS \$7,775,680, PLUS ACCRUED BUT UNPAID INTEREST, FEES, COSTS, EXPENSES AND ADVANCES AS PROVIDED HEREIN

This MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING (this "Mortgage") is made and entered into as of June 6, 2022, by **INNOVATIVE FOOD PROPERTIES, LLC**, a Delaware limited liability company, with an address at 220 Oak Hill Road, Mountaintop, PA 18518 ("Mortgagor"), in favor of **MAPLEMARK BANK**, 4143 Maple Ave., Suite 100, Dallas, Texas 75219 ("Mortgagee").

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**RECITALS**

This Mortgage covers property that is or may become so affixed to real property so as to become fixtures, and is also to be filed of record in the same office as real estate records as a fixture filing under applicable law. This Mortgage is for commercial purposes and secures not only existing indebtedness or advances made contemporaneously with the execution hereof, but also future advances, whether obligatory or optional, or both, to the same extent as if such future advances were made contemporaneously with the execution of this Mortgage, even if no advance is made at the time of execution of this Mortgage, and even if no indebtedness is outstanding at the time any advance is made. Mortgagor is the fee simple owner of the real property located at 220 Oak Hill Road, Mountain Top, Pennsylvania 18518. Mortgagor executed and delivered to Mortgagee that certain Promissory Note of even date herewith (as it may be supplemented, amended, extended, replaced, modified, renewed or restated from time to time, the "Note") in the maximum principal amount of \$7,775,680, bearing interest as provided therein, with principal and interest due monthly as provided therein. This Mortgage shall secure payment of all disbursements made by Mortgagee to Mortgagor under the Note, and all provisions of this Mortgage shall apply to each disbursement as well as to all other indebtedness secured hereby, including, without limitation, all indebtedness that arises under the Note and the other Loan Documents. Reference to the Note is hereby made to the same extent as if set forth in full herein. Capitalized terms used herein and not defined herein are used with the respective meanings set forth in the Note.

**NOW, THEREFORE**, in consideration of the premises, and in order to secure the full and timely payment of the Obligations (as hereinafter defined), and the performance and observance of all of the covenants and provisions hereof, the Note and the Loan Documents, and all renewals, amendments, substitutions, extensions and modifications thereof, Mortgagor MORTGAGES, GRANTS, BARGAINS, ASSIGNS, SELLS and CONVEYS to Mortgagee, the hereinafter defined and described Mortgaged Property, subject, however, to the Permitted Exceptions (as hereinafter defined), TO HAVE AND TO HOLD the Mortgaged Property to Mortgagee, and, subject to the Permitted Exceptions, Mortgagor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the following Mortgaged Property (the "Mortgaged Property") unto Mortgagee:

That certain real property located at 220 Oak Hill Road, Mountain Top, Pennsylvania 18518, and as more particularly described on Exhibit A attached hereto and made a part hereof (the "Property");

TOGETHER with all right, title and interest of Mortgagor, in and to all options to purchase or lease the Property or any portion thereof or interest therein, and any greater estate in the Property owned or hereafter acquired;

TOGETHER with all interest, estate or other claims, both at law and in equity, which Mortgagor now has or may hereafter acquire in the Property;

TOGETHER with all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto;

TOGETHER with all right, title and interest of Mortgagor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property,

and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Property;

TOGETHER with any and all buildings and improvements, now or hereafter erected thereon, including, without limitation, the fixtures, attachments, appliances, equipment, machinery and other articles attached to said buildings and improvements and owned by Mortgagor (the "Improvements");

TOGETHER with all "Equipment," as such term is defined in Article 9 of the Uniform Commercial Code, as adopted and enacted by the state or states where any of such Equipment is located (the "UCC"), now or hereafter owned by Mortgagor, which is used at or in connection with the improvements or the Property or any additional land or is located thereon or therein (including, without limitation, all machinery, equipment, furnishings and electronic data-processing and other office equipment now or hereafter owned by Mortgagor and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto. Notwithstanding the foregoing, the Equipment shall not include any equipment belonging to tenants under leases except to the extent that Mortgagor shall have any right or interest therein;

TOGETHER with all Equipment now or hereafter owned by Mortgagor which is so related to the Property, any additional land and improvements forming part of the Property that it is deemed Fixtures or real property under the law of the particular state in which the Equipment is located, including, without limitation, all building or construction materials and supplies intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in and used in connection with (temporarily or permanently) any of the improvements or the Property or any additional land, including, without limitation, engines, devices for the operation of pumps, pipes, plumbing, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, lighting, signs, incinerating and power equipment, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, elevators, escalators and shafts, disposals, dishwashers, refrigerators, microwaves and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Mortgagor's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the "Fixtures"). Notwithstanding the foregoing, "Fixtures" shall not include any fixtures which tenants are entitled to remove pursuant to leases except to the extent that Mortgagor shall have any right or interest therein;

TOGETHER with all furniture, furnishings, objects of art, appliances, machinery, goods, tools, supplies, appliances, general intangibles, inventory, contract rights, accounts, deposit accounts, accounts receivable, franchises, licenses, certificates and permits; partitions and screens; reservation system; computer and related equipment; generators, boilers, compressors and engines; fuel; water and other pumps and tanks; irrigation lines and sprinklers; refrigeration equipment; pipes and plumbing; elevators and escalators; sprinkler systems and other fire extinguishing machinery and

equipment; fire prevention systems; call systems; vacuum cleaning systems; security systems; heating, ventilating, air conditioning and air cooling ducts, machinery and equipment; gas and electric machinery and equipment; facilities used to provide utility services; laundry, drying, dishwashing and garbage disposal machinery or equipment; communication apparatus, including television, radio, music, and cable antennae and systems; guest room furnishings; attached floor coverings, rugs, carpets, window coverings, blinds, awnings, shades, curtains, drapes and rods; screens, storm doors and windows; stoves, refrigerators, dishwashers, ranges, microwaves and other installed appliances; attached cabinets; trees, plants and other items of landscaping; buses and vehicles of any nature whatsoever; visual and electronic surveillance systems; telecommunications equipment including telephones, switchboards, exchanges, wires and phone jacks; maintenance equipment, inventory, tables, chairs, mirrors, desks, wall coverings, clocks, lamps; linens; kitchen, restaurant and other operating equipment, including menus, dishes, glassware, cooking utensils, tables, refrigerating units, microwave equipment, ovens, timers; food and beverages; cleaning materials and other similar items; swimming pool heaters and equipment; recreational equipment and maintenance supplies; all equipment, manual, mechanical or motorized, for the construction, maintenance, repair and cleaning of parking areas, walks, underground ways, truck ways, driveways, common areas, roadways, highways and streets; snow removal and lawn care equipment; corporate and other business records, customer lists, trademarks, tradenames, ownership interest in any entity and any judgments; all drawings, plans, specifications, reports and analyses now existing or hereafter prepared by Mortgagor, its agents, contractors, architects, engineers and/or employees in connection with or related to all or any part of the Property; and all other personal property of any kind or character whatsoever as defined in and subject to the provisions of the UCC, whether tangible or intangible, other than the Fixtures, which are now or hereafter owned by Mortgagor and which are located within, or related to the Property and the improvements, together with all accessions, replacements and substitutions thereto or therefor and the proceeds and products thereof, (collectively, the "Personal Property"), and the right, title and interest of Mortgagor in and to any of the Personal Property which may be subject to any security interests, as defined in the UCC, superior in lien to the lien of this security instrument and all proceeds and products of the above;

TOGETHER with all leases, subleases or sub-subleases, lettings, licenses, concessions, OGM Agreements (as hereinafter defined) or other agreements (whether written or oral) pursuant to which any person is granted a possessory interest in, or right to use or occupy all or any portion of the Property and the improvements from time to time located thereon, and every modification, amendment or other agreement relating to such leases, subleases, sub-subleases or other agreements entered into in connection with such leases, subleases, sub-subleases or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, whether before or after the filing by or against Mortgagor of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "Bankruptcy Code") (collectively, the "Leases") and all revenue, all right, title and interest of Mortgagor, its successors and assigns in and under the leases, including, without limitation, cash or securities deposited thereunder to secure the performance by the tenants of their obligations thereunder (but subject to the terms thereof) and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses), from the Property, the additional land and the improvements whether paid or accruing before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code (collectively, together with all hotel revenue (if applicable), the "Rents"), and all

proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the obligations;

TOGETHER with all oil rights, gas rights, and mineral rights including, without limitation, the present, absolute and unconditional assignment of all of Mortgagor's right, title and interest in any oil, gas or other mineral lease or other conveyance thereof, pipeline agreement, surface use agreement or other instrument or agreement, express or implied, related to the exploration, production, transportation, processing, compression or sale of oil, gas or any other minerals extracted, arising or issuing from the Land now or hereafter entered into (collectively, "OGM Agreements" and each an "OGM Agreement"), together with the sole, present and perfected right to (1) execute and deliver any OGM Agreement, (2) subject to the terms of such OGM Agreements, to cancel, terminate, amend, restate, modify, assign or convey any OGM Agreement or any interest in any OGM Agreement, and (3) to enforce the terms of any OGM Agreement ((1) through (3) collectively, the "Executive Right");

TOGETHER with all awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including, without limitation, any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

TOGETHER with all proceeds of or for the benefit of Mortgagor in respect of the Property under any insurance policies covering the Property, including, without limitation, premium refunds, the right to receive and apply the proceeds or loss payments of any insurance, judgments or settlements made in lieu thereof, for damage to the Property;

TOGETHER with all proceeds of the conversion, voluntary or involuntary, of any of the foregoing (including, without limitation, proceeds of insurance and condemnation awards) into cash or liquidation claims;

TOGETHER with the right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Mortgagee in the Property. All refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

TOGETHER with to the extent assignable, all agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, development, service, management, equipping, furnishing, enjoyment, operation or disposition of the Property, the additional land and any part thereof and any improvements or any business or activity conducted on the Property, the additional land and any part thereof, and all right, title and interest of Mortgagor therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Mortgagor thereunder;



TOGETHER with all rights of Mortgagor to the use of any trade name, trademark, or service mark now or hereafter associated with the business or businesses conducted on the Property (subject, however, to any franchise or license agreements relating thereto);

TOGETHER with all rights of Mortgagor to any architectural drawings, plans, specifications, soil tests, feasibility studies, appraisals, engineering or environmental reports and similar materials relating to any or all of the Property; and all rights of Mortgagor to any payment and performance bonds or guarantees, and any and all modifications and extensions thereof relating to the Property or the Improvements;

TOGETHER with all rights of Mortgagor under any sales contracts and proceeds, escrow agreements and broker's agreements concerning the sale of any or all of the collateral;

TOGETHER with all rights of Mortgagor in accounts, accounts receivable, general intangibles and contract rights of every kind which are now or shall be hereinafter used or useful, either directly or indirectly, in connection with the complete and comfortable use, occupancy and operation of the Property or the Improvements, including, without limitation, any and all agreements, contracts or licenses relating to the renting of the Property, the maintenance or operation of elevators, fire protection systems, security systems, heating, ventilation and air conditioning systems, telephone or other communication systems or electrical systems; together with intellectual property rights (including, without limitation, copyright, trade secret and patent rights) of Mortgagor (whether by license, possession or ownership) in hardware, software, works of authorship, and inventions therefor, as well as the physical embodiment of or media containing, and maintenance and support agreements related to, any of the foregoing;

TOGETHER with any other collateral for the loan as identified in any loan agreement between Mortgagor and Mortgagee;

TOGETHER with all right, title and interest in and to the Personal Property (and to be included in such definition), and now or at any time hereafter located on or at the Property or used in connection therewith including, without limitation, all goods, machinery, tools, insurance proceeds and refunds of insurance premiums, equipment (including fire sprinklers and alarm systems, office air-conditioning, heating, refrigerating, electronic monitoring, entertainment, recreational, window or structural cleaning rigs, maintenance equipment, equipment for the exclusion of vermin or insects, removal of dust, refuse or garbage and all other equipment of every kind), lobby and all other indoor and outdoor furniture (including tables, chairs, planters, desks, sofas, shelves, lockers and cabinets), wall beds, wall safes, furnishings, appliances (including ice boxes, refrigerators, fans, heaters, stoves, water heaters and incinerators), inventory, rugs, carpets and other floor coverings, draperies and drapery rods and brackets, awnings, window shades, Venetian blinds, curtains, lamps, chandeliers, other lighting fixtures, office maintenance and other supplies; and

TOGETHER with all the estate, interest, right, title, other claim or demand including, without limitation, claims or demands with respect to the proceeds of, and refunds of premiums on, insurance in effect with respect thereto, which Mortgagor now has or may hereafter acquire in or with respect to the Property and the Mortgaged Property, and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Mortgaged Property including, without limitation, any awards resulting from a change of grade or streets and awards for severance damages.

**TO HAVE AND TO HOLD** the Mortgaged Property to Mortgagee and its successors and assigns forever.

Mortgagor further covenants and binds itself, its successors and assigns, to warrant and defend the title to the Mortgaged Property to Mortgagee, its successors and assigns, forever against the claims of any and all persons whomsoever.

This Mortgage is made to secure the following, to-wit (the "Obligations"):

(a) Note and other Loan Documents. All indebtedness, liabilities and obligations owing by Mortgagor to Mortgagee under the Note and the other Loan Documents;

(b) Renewals and Modifications. All amounts owed under any supplements, amendments, extensions, replacements, modifications, renewals or restatements of any of the foregoing;

(c) Expenditures for the Collateral. The payment of all sums advanced by Mortgagee under the Loan Documents, pursuant to 42 Pa.C.S. § 8144 or after the occurrence and continuation of any Event of Default, under this Mortgage and/or the other Loan Documents now or hereafter executed by Mortgagor in connection with the Note, to protect the Mortgaged Property, with interest thereon at the highest default rate set forth in the Note; and

(d) Other Liabilities and Obligations. All loans, advances, indebtedness and each and every other obligation or liability of Mortgagor owed to Mortgagee, however created, of every kind and description, whether now existing or hereinafter arising and whether direct or indirect, primary or as guarantor or surety, absolute or contingent, due or to become due, liquidated or unliquidated, matured or unmatured, participated in whole or in part, created by trust agreement, lease, overdraft, automated clearing house, agreement or otherwise, whether or not secured by additional collateral, whether originated with Mortgagee or owed to others and acquired by Mortgagee by purchase, assignment or otherwise, and including, without limitation, all loans, advances, indebtedness and every obligation arising under the Loan Documents, all obligations to perform or forbear from performing acts, all amounts represented by letters of credit now or hereinafter issued by Mortgagee for the benefit of or at the request of Mortgagor, all agreements, instruments and documents evidencing, guarantying, securing or otherwise executed in connection with any of the foregoing, together with any amendments, modifications and restatements thereof, and all expenses and attorneys' fees incurred or other sums disbursed by Mortgagee under this Mortgage or any other document, instrument or agreement related to any of the foregoing.

This Mortgage secures the Obligations and any extensions, supplements, amendments, replacements, restatements, renewals, modifications and/or extensions, and substitutions thereof, and any note or other obligations given in payment of principal or interest, and all reasonable attorneys' fees, court costs and reasonable expenses of whatever kind incident to the collection of said indebtedness and/or the enforcement and/or protection of the lien of this Mortgage.

This Mortgage shall have priority at all times over any and all mechanics', furnishers and materialmen's liens, and Mortgagee does not consent to any contract for or materials within the meaning of applicable law. No contract for labor or materials will be let by Mortgagor except with

the express stipulation that any mechanics' or materialmen's liens resulting therefrom shall at all times be subordinate to the lien of this Mortgage.

This Mortgage, the Note, and any other instrument, document and agreement given to evidence or further secure the payment and performance of the Obligations may be referred to individually, or collectively as the "Loan Documents".

As part of the consideration for the indebtedness secured hereby and to protect the security of this Mortgage, Mortgagor covenants and agrees as follows:

**TO HAVE AND TO HOLD** unto Mortgagee, its successors and assigns.

**PROVIDED, HOWEVER**, that if Mortgagor shall pay the Obligations according to the terms thereof and perform all of the covenants, conditions, stipulations and agreements set out in the same, and in this Mortgage, then this Mortgage shall be cancelled, and Mortgagee shall, at Mortgagor's cost and request, release the same.

**ARTICLE 1**  
**GENERAL COVENANTS OF MORTGAGOR**

Mortgagor covenants and agrees with Mortgagee as follows:

1.1 **Good Title.** Mortgagor warrants that it possesses good and marketable title to an indefeasible fee estate in the Mortgaged Property subject to no lien, charge or encumbrance, or exceptions except as are satisfactory to Mortgagee and listed as exceptions to title in a title policy which insures the lien of this Mortgage and which is issued by a title company or companies acceptable to Mortgagee (collectively, the "Permitted Exceptions" being those exceptions that are set forth in the Title Commitment No.: \_\_\_\_\_ issued by \_\_\_\_\_ Title Insurance Company); and that this Mortgage is and will remain a valid and enforceable lien on the Mortgaged Property subject only to the exceptions referred to above. Mortgagor possesses full power and lawful authority to mortgage the Mortgaged Property in the manner and form herein done or intended hereafter to be done. Mortgagor shall preserve such title, and shall forever warrant and defend the validity and priority of the lien hereof against the claims and demands of all persons and parties whomsoever.

1.2 **Payment of the Obligations and Observance of Covenants.** Mortgagor shall punctually pay the principal and interest and all other sums to become due in respect of the Obligations and this Mortgage at the time and place and in the manner therein specified, and shall duly and punctually perform and observe all of the covenants, agreements and provisions contained herein or any Loan Document given as security for payment of the Obligations.

1.3 **Taxes and Impositions.**

(a) Mortgagor shall pay, or cause to be paid, at least 10 days prior to delinquency, all real and personal property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including, without limitation, non-governmental levies or assessments such as maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions and restrictions affecting the

Mortgaged Property, which are assessed or imposed upon the Mortgaged Property, or become due and payable, and which create, or may reasonably create, a lien upon the Mortgaged Property, or any part thereof, or upon any Personal Property, equipment and other facility used in the operation or maintenance thereof (all of which taxes, assessments and other governmental and nongovernmental charges of like nature are collectively, “Impositions”); provided, however, that if, by law, any such Imposition is payable, or may at the option of the taxpayer be paid, in installments, then Mortgagor may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the non-payment of any such installment and interest.

(b) If at any time after the date hereof there shall be assessed or imposed (i) a tax or assessment on the Mortgaged Property in lieu of or in addition to the Impositions payable by Mortgagor pursuant hereto, or (ii) a license fee, tax or assessment imposed on Mortgagee and measured by or based in whole or in part upon the amount of the outstanding obligations secured hereby, then all such taxes, assessments or fees shall be deemed to be included within Impositions, and Mortgagor shall pay and discharge the same as provided herein with respect to the payment of Impositions failing which, at the option of Mortgagee, all obligations secured hereby together with all accrued interest thereon, shall immediately become due and payable.

(c) Reserved.

(d) Mortgagor shall have the right, before any delinquency occurs, to contest or object to the amount or validity of any such Impositions by appropriate legal proceedings; but this shall not be deemed or construed in any way as relieving, modifying or extending Mortgagor’s covenant to pay any such Imposition at the time and in the manner provided in this Section 1.3, unless Mortgagor has given prior written notice to Mortgagee of Mortgagor’s intent to so contest or object to an Imposition, and unless, at Mortgagee’s sole option, (i) Mortgagor shall demonstrate to Mortgagee’s satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Mortgaged Property, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; (ii) Mortgagor shall furnish a good and sufficient bond or surety as requested by and reasonably satisfactory to Mortgagee; or (iii) Mortgagor shall have provided a good and sufficient undertaking as may be required or permitted at law to accomplish a stay of such proceedings.

(e) Reserved.

#### 1.4 **Insurance**.

(a) Mortgagor shall keep or cause to be kept, the Mortgaged Property adequately insured at all times against such risks as are customarily insured against by persons engaged in similar businesses. Without limiting the foregoing, Mortgagor will maintain and/or cause to be kept in force at all times and provide proof of insurance as requested by Mortgagee with respect to such policies of insurance as Mortgagee shall from time to time require in such amounts and covering such risks as is industry norm in the same general area in which the Mortgaged Property is located, including, without limitation, the following (collectively and/or individually, as the context requires, the “Policies”):

(i) To the extent there are improvements on the Real Estate, insurance against loss or damage to any of the Mortgaged Property by fire and any of the risks covered by insurance commonly known as "fire and extended coverage" and, if consistent with industry norm in the general area in which the Mortgaged Property is located, against loss or damage by flood;

(ii) Comprehensive public liability insurance, including, without limitation, against claims for personal injury, bodily injury, death or property damage occurring on, in or about the Mortgaged Property and the adjoining streets, sidewalks and passageways; and

(iii) During the course of all construction or repair, (A) workers' compensation insurance (including employer's liability insurance) for all persons engaged on or with respect to the Mortgaged Property in such amounts as are reasonably satisfactory to Mortgagee or, if such limits are established by law, in such amounts, and (B) builder's completed value risk insurance (special coverage) against "all risks of physical loss" during construction, covering the total value of work performed and equipment, supplies and materials furnished.

(b) All Policies and renewals thereof shall be written by a company (i) with a current A.M. Best's Insurance Guide rating of at least B+, (ii) that is authorized to do business in the state where the Mortgaged Property is located, and (iii) that is otherwise acceptable to Mortgagee, in a form acceptable to Mortgagee, and shall have attached thereto the standard form of Mortgagee clause, without contribution, in favor of and in form acceptable to Mortgagee, and shall contain an endorsement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of set-off, counterclaim or deductions against Mortgagor. All Policies shall be delivered to and be held by Mortgagee, which Policies shall provide that no cancellation, modification, termination or lapse thereof shall be effective until at least 30 days after receipt by Mortgagee of written notice thereof.

(c) This Mortgage shall operate as an assignment to Mortgagee of Mortgagor's interest in said Policies, whether delivered or not. Upon the failure of Mortgagor to provide the Policies, Mortgagee shall have the option (but not the duty) to procure and maintain such insurance or a mortgagee interest policy without notice to Mortgagor. Any actual, reasonable sums so expended by Mortgagee shall at once become indebtedness owing from Mortgagor to Mortgagee and shall immediately become due and payable by Mortgagor with interest thereon, to the extent legally enforceable. If Mortgagee acquires title to the Mortgaged Property by foreclosure proceedings or otherwise, any unearned premiums on any hazard insurance covering the Mortgaged Property are hereby assigned to and shall belong to Mortgagee. If at any time during the term of this Mortgage any Policies shall be cancelled and returned premiums available, these returned premiums shall be retained by Mortgagee to the extent required to reimburse Mortgagee for any sums advanced by Mortgagee to purchase insurance required by this Section and the balance may be used by Mortgagee to satisfy any other defaults by Mortgagor hereunder. Any rights of Mortgagee to any insurance proceeds shall in no way be affected or impaired by reason of the fact that Mortgagee may have instituted foreclosure proceedings hereunder.

(d) Mortgagee shall have the right to hold the Policies, or binders thereof reasonably acceptable to Mortgagee, and Mortgagor shall promptly furnish to Mortgagee all renewal notices and all receipts of paid premiums. At least 30 days prior to the expiration date of any such policy, Mortgagor shall deliver to Mortgagee a renewal policy, or binder thereof, in form satisfactory to Mortgagee. Certificates issued to Mortgagee as evidence of Mortgagor's insurance Policies required hereunder must be issued on an ACORD 27 form for all builder's risk, property or casualty insurance, and on an ACORD 25 form for all liability insurance. All such certificates shall also identify the location of the Mortgaged Property, and list Mortgagee as "mortgagee and Mortgagee loss payee" for all builders' risk, property or casualty insurance and as "mortgagee and additional insured" for all liability insurance.

(e) Mortgagor shall give Mortgagee prompt written notice of any casualty and/or loss covered by the Policies, and Mortgagee may, but is not obligated to, make proof of loss if not made promptly by Mortgagor. In the event of any loss or casualty under the Policies, all of Mortgagor's interest in the proceeds and rights of action thereunder are hereby assigned to Mortgagee. At its option, in its own name, Mortgagee shall be entitled to commence, appear in and prosecute any action or proceedings or to make any compromise or settlement in connection with any such loss or casualty. Each insurance carrier is hereby authorized and directed to make any payments for monies due to Mortgagor under the Policies as a result of any loss or casualty directly to Mortgagee. The payment to Mortgagee of such insurance proceeds shall not cure or waive any default or notice of default hereunder. Mortgagee's right to payment of such insurance proceeds shall exist whether or not any loss or casualty results in any impairment to the security of Mortgagee. In the event of a loss or casualty, Mortgagee may elect to use insurance proceeds to restore the Mortgaged Property and the Improvements provided the following terms and conditions are complied with to Mortgagee's satisfaction, or notwithstanding the compliance of the following terms and conditions, may elect to apply such proceeds to prepayment of the Obligations:

(i) no Event of Default shall have occurred and be continuing;

(ii) the insurance company insuring the Mortgaged Property and the Improvements shall pay the claims in an amount which when added to Mortgagor's available cash is sufficient to reconstruct the Mortgaged Property and the Improvements in accordance with the plans and specifications referred to in subsection (iii);

(iii) Mortgagor shall submit for Mortgagee's reasonable approval a plan which shall include plans and specifications for repair/restoration of the Mortgaged Property and the Improvements, such plans and specifications showing the Mortgaged Property and the Improvements to have a value after repair/restoration to be at least equal to that prior to the casualty;

(iv) Mortgagee shall reasonably approve the plans and specifications referenced in the preceding subsection (iii); and

(v) Mortgagor shall pay any actual, reasonable expenses Mortgagee incurs during the restoration of the Improvements.

If an Event of Default shall have occurred and be continuing, or if any of the other above referenced conditions shall not have been satisfied within 90 days of the date of any casualty, Mortgagee may elect, in its sole discretion, to apply such proceeds to prepayment of the Obligations or to the repair or restoration of the Mortgaged Property and the Improvements as set forth above.

(f) In the alternative, without satisfying the provisions set forth in Sections 1.4(e)(i) through (v), Mortgagor may elect to apply any insurance proceeds to the prepayment, without premium or penalty, of the indebtedness evidenced by the Obligations, this Mortgage, and/or any of the other Loan Documents. If the insurance proceeds are applied to the payment of the sums secured by this Mortgage, any such application of proceeds to principal shall be without prepayment premium and not extend or postpone the due date of any amounts referred to in Section 1.2 or change the times for the payment of any such amounts.

1.5 **Use and Repairs.** To keep the Mortgaged Property in good condition and repair, ordinary wear and tear excepted; not to remove, demolish or substantially alter (except such alterations as may be required by laws, ordinances or regulations) any of the Mortgaged Property; subject to any event or effect that, through the exercise of reasonable diligence can neither be anticipated nor controlled (“force majeure”) to complete promptly and in good and workmanlike manner any building or improvements which may be constructed on the Property and promptly restore in like manner any of the Mortgaged Property which may be damaged or destroyed, and to pay when due all lawful claims for labor performed and materials furnished therefor; to comply with all laws, ordinances, regulations, covenants, franchise agreements, licenses, conditions and restrictions now or hereafter affecting the Mortgaged Property or any part thereof or requiring any alterations or improvements; not to knowingly commit or permit any waste or deterioration of the Mortgaged Property; to keep and maintain the grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair; to comply with the provisions of the lease concerned if this Mortgage is on a leasehold; not to knowingly commit, suffer or permit any act to be done to, in or upon the Mortgaged Property in violation of any law, ordinance or regulation and to operate and maintain any business located on the Property continuously in a first class manner consistent with other similar businesses similarly located. After completion of any new Improvements, they shall not be removed, demolished or substantially altered without Mortgagee’s prior written consent, except where appropriate replacements which are of value of at least equal to the value of the Improvements removed and which are free and clear of superior title, liens and claims, are immediately made, or except as may be permitted under the existing lease of the Property by and between Mortgagor, successor in interest, to Innovative Food Holdings, Inc. (“Tenant”).

1.6 **Advances by Mortgagee.**

(a) If Mortgagor shall fail to perform any of the covenants contained in Sections 1.1, 1.3, 1.4 and 1.5, then Mortgagee may make advances to perform the same in its behalf, and all sums so advanced shall be a lien upon the Mortgaged Property and secured by this Mortgage. Mortgagor will repay all sums so advanced on its behalf with interest at the “Default Rate” (as defined in the Obligations). This Section 1.6 shall not prevent any default in the observance of any covenant contained in said Sections 1.1, 1.3, 1.4 and 1.5 from constituting an Event of Default hereunder.

(b) If Mortgagee shall incur or expend any sums, including reasonable attorneys’ fees permitted by law, whether in connection with any action or proceeding or not, to sustain the

lien of this Mortgage or its priority, or to protect or enforce any of Mortgagee's rights hereunder, or to recover any indebtedness hereby secured, all such actual, reasonable sums shall become immediately due and payable by Mortgagor with interest thereon at the Default Rate. All such actual, reasonable sums shall be secured by this Mortgage and be a lien on the Mortgaged Property and the Improvements prior to any right, title, interest, or claim, in, to, or upon the same attaching or accruing subsequent to the lien of this Mortgage.

(c) Should Mortgagor fail to make any payment or to do any act as and in the manner required of it in any of the Loan Documents, then Mortgagee in its own discretion, without obligation so to do and without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation, may make or do the same in such manner and to such extent as may be deemed necessary to protect the security hereof. In connection therewith (without limiting its general powers), Mortgagee shall have and is hereby given the right, but not the obligation, (i) to enter upon and take possession of the Mortgaged Property, (ii) to make additions, alterations, repairs and improvements to the Mortgaged Property which it may consider necessary or proper to keep the Mortgaged Property in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Mortgagee; (iv) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of it may affect or appears to affect the security of this Mortgage or be prior or superior hereto; and (v) in exercising such powers, to pay necessary expenses, including employment of counsel or other necessary or desirable consultants. Mortgagor shall, within 10 days after demand therefore by Mortgagee, pay all costs and expenses incurred by Mortgagee in connection with the exercise by Mortgagee of the foregoing rights, including, without limitation, costs of evidence of title, court costs, appraisals, surveys and attorneys' fees.

1.7 **Condemnation.** Mortgagor shall give Mortgagee prompt notice of any condemnation or eminent domain action, actual or threatened, and hereby assigns, transfers, and sets over to Mortgagee Mortgagor's entire interest in the proceeds of any award or claim for damages for all or any part of the Mortgaged Property taken or damaged under the power of eminent domain or condemnation, including, without limitation, severance and consequential damage and change in grade of streets, Mortgagee being hereby authorized to intervene in any such action on Mortgagor's behalf, and to collect and receive from the condemning authorities and give proper receipts and acquittances for such proceeds. Mortgagor shall not enter into any agreement with the condemning authority permitting or consenting to the taking of the Mortgaged Property unless prior written consent of Mortgagee is first obtained. Any actual, reasonable expenses incurred by Mortgagee in intervening in such action or collecting such proceeds shall be reimbursed to Mortgagee first out of the condemnation proceeds. The proceeds or any part thereof shall be applied upon or in reduction of the indebtedness secured hereby then most remotely to be paid, whether due or not, without the application of any prepayment premium, to the restoration or repair of the Mortgaged Property, or to any other obligation of Mortgagor to Mortgagee, the choice of application to be solely at the discretion of Mortgagee.

1.8 **Mortgagor's Records.** With respect to the Mortgaged Property and the operations thereof, Mortgagor will keep or cause to be kept proper books of record and accounts in accordance with generally accepted accounting principles, consistently applied. Mortgagee shall have the right to examine said books of record and accounts at such reasonable times and intervals as Mortgagee may elect.



1.9 **Access to Mortgaged Property.** Provided the same shall not materially adversely impact day-to-day business operations at the Mortgaged Property, Mortgagee shall have access to and the right to inspect the Mortgaged Property during normal business hours upon reasonable advance written notice to Mortgagor.

1.10 **Change in Taxation.** In the event of the passage after the date of this Mortgage of any law deducting from the value of real property for the purpose of taxation any lien thereon, or changing in any way the laws now in force for the taxation of mortgages or debts secured thereby, for state or local purposes, or the manner of the collection of any such taxes so as to affect this Mortgage or the interest of Mortgagee hereunder, then and in such event, Mortgagor shall bear and pay the full amount of such taxes; provided that if for any reason payment by Mortgagor of any such new additional taxes would be unlawful or if the payment thereof would constitute usury or render the Loan or indebtedness secured hereby wholly or partially usurious under any of the terms or provisions of the Obligations, or this Mortgage, or otherwise, Mortgagee may, at its option, declare the Obligations and any other sums secured by this Mortgage with interest thereon to be immediately due and payable, or Mortgagee may, at its option, pay that amount or portion of such taxes as renders the Obligations or other sums secured unlawful or usurious, in which event Mortgagor shall concurrently therewith pay the remaining lawful and nonusurious portion or balance of said taxes.

1.11 **Transfer of or Lien Upon the Mortgaged Property.**

(a) **No Transfer or Liens.** Mortgagor shall not, without the prior reasonable written consent of Mortgagee, except as expressly permitted under the Loan Agreement:

(i) transfer whether voluntarily, involuntarily or by operation of law, title to any part of or any legal or equitable interest or full possessory right in the Mortgaged Property;

(ii) grant or permit to be filed against the Mortgaged Property any mortgage, charge, encumbrance or lien of any nature whatsoever, except for the Permitted Exceptions and the lien of ad valorem property taxes not then due and payable;

(iii) grant or create any easement, license, right-of-way, condition or covenant with respect to any portion of or interest in the Mortgaged Property, except for the Permitted Exceptions; or

(iv) permit or allow the member of Mortgagor to transfer, pledge, mortgage or otherwise assign its interest in Mortgagor or change the legal status of Mortgagor or dissolve Mortgagor.

(b) Notwithstanding anything to the contrary in Section 1.11(b) above, Mortgagor acknowledges and agrees that Mortgagor, pursuant to the terms of this Mortgage, has assigned, transferred, bargained, sold, granted and conveyed to Mortgagee the Executive Right to enter into any OGM Agreements and, as a result, Mortgagor acknowledges and agrees that Mortgagor has no right, without Mortgagee's prior written consent, to (i) enter into an OGM Agreement affecting all or any portion of the Mortgaged Property, (ii) grant or convey any interest in any oil, gas or other hydrocarbons, or coal, ore or other minerals, (iii) cancel, terminate, amend,

modify, restate, assign or convey any OGM Agreement, or (iv) enforce the terms of any OGM Agreement. Any OGM Agreement executed and delivered by Mortgagor, or any party acting, by, through or under Mortgagor, without Mortgagee's knowledge or consent, which consent may be withheld in Mortgagee's sole, but reasonable discretion, shall be an Event of Default hereunder and shall be void or voidable. Should Mortgagor intend or desire to enter into any OGM Agreement, Mortgagor shall request Mortgagee's consent thereto which consent Mortgagee may grant or withhold in Mortgagee's sole, but reasonable discretion. Mortgagor shall provide Mortgagee with copies of all proposed OGM Agreements and any addenda thereto, the terms of which shall be acceptable to Mortgagee in Mortgagee's sole and absolute discretion.

(c) **Contest of Liens.** Mortgagor may with respect to a lien which attaches to the Mortgaged Property without its consent, contest same in good faith and at its own expense by appropriate legal proceeding; provided that during such contest Mortgagor shall, at the option of Mortgagee, provide security satisfactory to Mortgagee, assuring the discharge of Mortgagor's obligation with respect to such lien and of any additional charge, penalty, or expense arising from or incurred as a result of such contest.

1.12 **Additions.** All right, title and interest of Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Property hereafter acquired by, or released to, Mortgagor or constructed, assembled or placed on the Mortgaged Property by Mortgagor, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by Mortgagor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Mortgagor and specifically described in the granting clause hereof, but at any and all times Mortgagor will execute and deliver to Mortgagee any and all such further assurances, mortgages, conveyances or assignments thereof as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

1.13 **Additional Security Documents.** Mortgagor, from time to time, within 15 days after request by Mortgagee, shall execute, acknowledge and deliver to Mortgagee, such security agreements or other similar security instruments, in form and substance reasonably satisfactory to Mortgagee, covering all property of any kind whatsoever owned by Mortgagor or in which Mortgagor may have any interest whether now or hereafter acquired, which, in the sole opinion of Mortgagee, is reasonably essential to the operation of the Mortgaged Property. Mortgagor shall further, from time to time, within 15 days after request by Mortgagee, execute, acknowledge and deliver, and hereby authorizes Mortgagee to execute in the name of Mortgagor to the extent it may lawfully do so, any financing statement, renewal affidavit, certificate, continuation statement or other document as Mortgagee may deem necessary to perfect, preserve, continue, extend or maintain this Mortgage or such security agreement or other security instrument as a first lien against the Mortgaged Property. Mortgagor shall pay to Mortgagee on demand all reasonable costs and expenses incurred by Mortgagee in connection with the preparation, execution, recording, filing and refiling of any such instrument or document including the charges for examining title and attorney's fee for rendering an opinion as to the priority of this Mortgage and of such security agreement or other security instrument as a valid first and subsisting lien against the Mortgaged Property. However, neither a request so made by Mortgagee nor the failure of Mortgagee to make such a request shall be construed as a release of the Mortgaged Property, or any part thereof, from the lien

of this Mortgage, it being understood and agreed that this covenant and any such security agreement or other security instrument, delivered to Mortgagee, are cumulative and given as additional security.

1.14 **Escrow for Taxes and Insurance.** Upon the occurrence of an Event of Default, Mortgagor shall, unless waived in writing by Mortgagee, pay to Mortgagee at the same time the monthly installments of interest on the Obligations are due, 1/12th of the annual taxes and assessments which may be levied against the Mortgaged Property and 1/12th of the annual premiums for the Policies, both as estimated initially and from time to time by Mortgagee, to be used for the purpose of paying such taxes and assessments 30 days before the due date thereof and to pay insurance premiums when due. Any deficit shall immediately be paid to Mortgagee by Mortgagor. It shall be the responsibility of Mortgagor to furnish Mortgagee with bills in sufficient time to pay the taxes and assessments before penalty attaches and the insurance premiums before the Policies lapse. Mortgagee may hold said payments in any manner it selects, may commingle such payments with any other funds, and shall have no obligation whatsoever to pay any interest or earnings to Mortgagor on such payments held by it. Upon the occurrence of any Event of Default hereunder, Mortgagee may apply against the indebtedness secured hereby, in such manner as Mortgagee may determine, any funds of Mortgagor then held by Mortgagee pursuant to the provisions of this Section.

1.15 **Compliance with Laws and Regulations.** Mortgagor covenants and agrees that in the ownership, development, maintenance, repair, renewal, replacement, remodeling, modification, operation and management of the Mortgaged Property, Mortgagor shall observe and comply with, or cause to be observed and complied with, all applicable, lawful and constitutional, federal, state and local statutes, ordinances, regulations, orders and restrictions, reserving hereby its respective rights to contest the same, or the application of the same, so long as such contest shall not prejudice the lien of this Mortgage nor affect the amounts secured hereby.

1.16 **Indemnification.** Mortgagor shall protect, indemnify and save harmless Mortgagee from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses except as may be limited by law or judicial order or decision entered in any action brought to recover moneys under this Section) imposed upon, incurred by or asserted against Mortgagee by reason of (a) Mortgagee's ownership of any interest in the Mortgaged Property or any part thereof, (b) any accident, injury to or death of persons or loss of or damage to property occurring on or about the Mortgaged Property or any part thereof or the adjoining sidewalks, curbs, vaults and vault space, if any, streets or ways, (c) any use, disuse or condition of the Mortgaged Property or any part thereof, or the adjoining sidewalks, curbs, vaults and vault space, if any, streets or ways, (d) any failure on the part of Mortgagor to perform or comply with any of the terms hereof, (e) any necessity to defend any of the rights, title or interests conveyed by this Mortgage, (f) the performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof, or (g) any alleged obligations or undertakings on Mortgagee's part to perform or discharge any of the terms, covenants or agreements contained in any lease; provided, however, that the indemnity herein contained shall not apply to liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses caused by the gross negligence or intentional misconduct of Mortgagee. In case any action, suit or proceeding is brought against Mortgagee for any such reason, Mortgagor, upon the request of Mortgagee, will, at Mortgagor's expense, cause such action, suit or proceeding to be resisted and defended by independent counsel. Any amounts payable to

Mortgagee under this Section which are not paid within 10 days after written demand therefor shall bear interest at the Default Rate from the date of such demand, and such amounts, together with such interest, shall be deemed indebtedness secured by this Mortgage. The covenants, representations, warranties, and indemnities under this Section 1.16 and Section 1.18 shall be deemed continuing covenants, representations, warranties and indemnities running with the land for the benefit of Mortgagee and any successors and assigns of Mortgagee, including any purchaser at a mortgage foreclosure sale, any transferee of the title of Mortgagee or any subsequent purchaser at a foreclosure sale, and any subsequent owner of the Mortgaged Property claiming through or under the title of Mortgagee, and shall survive any foreclosure of this Mortgage or the satisfaction of the obligations secured hereby.

1.17 **Hazardous Substances**. Mortgagor and Guarantor executed and delivered to Mortgagee that certain Environmental Indemnity Agreement of even date herewith (the "Environmental Indemnity"), which contains certain representations, covenants and indemnification obligations on the part of Mortgagor and provides to Mortgagee certain rights, inter alia, entry and mitigation. In addition, the Environmental Indemnity provides that if any representation, warranty or certification proves untrue or that if Mortgagor shall fail to comply with any provisions of the Environmental Indemnity, such shall be a default under the Loan Documents. This provision is included for the purpose of giving notice of the existence of the Environmental Indemnity, to which reference is made for the full description of the rights and duties of Mortgagor and Mortgagee. This provision shall in no way affect the terms and conditions of the Environmental Indemnity or the interpretation of the rights and duties of Mortgagor and Mortgagee thereunder.

1.18 **Compliance with Disability Laws**.

(a) Mortgagor warrants and represents that any and all new improvements constructed or caused to be constructed on the land and its use thereof comply fully with or will comply with all applicable federal, state, county or local statutes, laws, regulations, rules, ordinances, codes, standards, guidelines, or orders, as now or at any time hereafter in effect, relating to use, enjoyment, or access to the Mortgaged Property by persons with a disability, or to discrimination of such persons as such terms are defined by the disability laws, including, without limitation, the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et. seq.*; and the Fair Housing Act of 1968, 42 U.S.C. 3601 *et. seq.* (the "Disability Laws").

(b) Mortgagor warrants and represents that Mortgagor will not violate any Disability Law, in connection with the use, ownership, development, maintenance or operation of the Mortgaged Property and the conduct of the business related thereto.

(c) Mortgagor shall indemnify Mortgagee and hold Mortgagee harmless from and against any and all losses, liabilities, damages, injuries, expenses, including, without limitation, the cost of alterations to the Mortgaged Property, architectural, engineering, and accounting costs, reasonable attorneys' fees, claims for owed penalties, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, Mortgagee by any person, entity or governmental agency for, with respect to, or as a direct or indirect result of violation of Disability Laws (a "Disability Laws Violation").

(d) If Mortgagor receives any notice of any complaint, inspection by any governmental agency which lists any noncompliance, order, citation or notice with regard to a

Disability Law Violation from any person or entity (including, without limitation, the United States Department of Justice), then Mortgagor shall immediately notify Mortgagee orally and in writing of said notice.

1.19 **Waiver of Offset.** All sums payable by Mortgagor hereunder shall be paid without notice (subject to any applicable notice and right to cure provisions contained in the Loan Documents), demand, counterclaim, set off, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Mortgagor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of (a) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Property or any part thereof; (b) any restriction or prevention of or interference with any use of the Mortgaged Property or any part thereof; (c) any title defect or encumbrance or any eviction from the Property or the Improvements or any part thereof by title paramount or otherwise; (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Mortgagee, Mortgagor, or any action taken with respect to this Mortgage by any trustee or receiver of Mortgagee, or by any court, in any such proceeding; (e) any claim which Mortgagor has or might have against Mortgagee; (f) any default or failure on the part of Mortgagee to perform or comply with any of the terms hereof or of any other agreement with Mortgagor; or (g) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Mortgagor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein and to the extent waivable by Mortgagor, Mortgagor waives all equitable rights, or those rights now or hereafter conferred by statute or otherwise, to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Mortgagor.

1.20 **Utilities.** To pay or cause to be paid when due all utility charges which are incurred by Mortgagor for the benefit of the Mortgaged Property or which may become a charge or lien against the Mortgaged Property for gas, electricity, water, sanitary sewer or storm sewer services furnished to the Mortgaged Property and all other assessments or charges of a similar nature, whether public or private, affecting the Mortgaged Property or any part thereof, whether or not such taxes, assessments or charges are liens thereon.

## **ARTICLE 2** **ASSIGNMENT OF LEASES AND RENTS**

Mortgagor represents and warrants that in the event that Mortgagor enters into any leases, with respect to the Property, Mortgagor agrees to perform the following:

2.1 **Assignment of Leases and Rents.** In furtherance of and in addition to the grant and assignment made by Mortgagor above, Mortgagor hereby absolutely and unconditionally assigns, sells, transfers and conveys to Mortgagee, all of its right, title and interest in and to all Leases, whether now existing or hereafter entered into, and all of its right, title and interest in and to all Rents. This assignment is an absolute assignment and not an assignment for additional security only. Mortgagor shall have a revocable license from Mortgagee to exercise all rights extended to the landlord under the Leases, including the right to receive and collect all Rents and to hold the Rents in trust for use in the payment and performance of the Secured Obligations and to otherwise use the same. The foregoing license is granted subject to the conditional limitation that no Event of Default shall have occurred and be continuing. Upon the occurrence and during the continuance of

an Event of Default, whether or not legal proceedings have commenced, and without regard to waste, adequacy of security for the Obligations or solvency of Mortgagor, the license herein granted shall automatically expire and terminate without notice by Mortgagee (any such notice being hereby expressly waived by Mortgagor).

**2.2 Perfection Upon Recordation.** Mortgagor acknowledges that Mortgagee has taken all reasonable actions necessary to obtain, and that upon recordation of this Mortgage Mortgagee shall have, to the extent permitted under applicable law, a valid and fully perfected, first priority, present assignment of the Rents arising out of the Leases and all security for such Leases. Mortgagor acknowledges and agrees that, upon recordation of this Mortgage, Mortgagee's interest in the Rents shall be deemed to be fully perfected, "choate" and enforced as to Mortgagor and all third parties, including, without limitation, any subsequently appointed trustee in any case under the Bankruptcy Code, without the necessity of commencing a foreclosure action with respect to this Mortgage, making formal demand for the Rents, obtaining the appointment of a receiver or taking any other affirmative action.

**2.3 Collection Upon Default.** Upon the occurrence and continuance beyond any applicable notice and cure period of any Event of Default under any of the Loan Documents, Mortgagee may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the indebtedness secured hereby, enter upon and take possession of the Mortgaged Property, or any part thereof, in its own name sue for or otherwise collect the Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Mortgagee may reasonably determine. The collection of the Rents, or the entering upon and taking possession of the Mortgaged Property, or the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder, or invalidate any act done in response to such default or pursuant to such notice of default.

**2.4 Bankruptcy Provisions.** Without limitation of the absolute nature of the assignment of the Rents hereunder, Mortgagor and Mortgagee agree that (a) this Mortgage shall constitute a "security agreement" for purposes of Section 552(b) of the Bankruptcy Code, (b) the security interest created by this Mortgage extends to property of Mortgagor acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents and (c) such security interest shall extend to all Rents acquired by the estate after the commencement of any case in bankruptcy.

**2.5 No Merger of Estates.** So long as any part of the Secured Obligations remain unpaid and undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Mortgagor, Mortgagee, any tenant or any third party by purchase or otherwise.

### **ARTICLE 3** **SECURITY AGREEMENT**

**3.1 Security Agreement.** This Mortgage shall constitute a security agreement in the Mortgagor's Personal Property as defined in the UCC. Mortgagor hereby grants to Mortgagee a security interest in the Mortgagor's Personal Property. Any Personal Property not owned by Tenant

installed in or used on the Mortgaged Property are to be used by Mortgagor solely for Mortgagor's business purposes, and such Personal Property will be kept on the Mortgaged Property and will not be removed therefrom without the prior consent of Mortgagee, and may be affixed to any improvements located on the Mortgaged Property but will not be affixed to any other real estate. Upon the occurrence of an Event of Default, Mortgagor shall have all rights and remedies in and against the Personal Property and otherwise of a secured party under the UCC. The remedies of Mortgagee hereunder are cumulative and separate, and the exercise of any one or more of the remedies provided for herein or under the UCC shall not be construed as a waiver of any of the other rights of Mortgagee including having any Personal Property deemed part of the realty upon any foreclosure thereof. If notice to any party of the intended disposition of the Personal Property is required by law in a particular instance, such notice shall be deemed commercially reasonable if given at least 10 days prior to such intended disposition and may be given by advertisement in a newspaper accepted for legal publications either separately or as part of a notice given to foreclose the lien granted by this Mortgage or may be given by private notice if such parties are known to Mortgagee. Neither the grant of a security interest pursuant to this Mortgage nor the filing of a financing statement pursuant to the UCC shall ever impair the stated intention of this Mortgage that the Personal Property and at all times and for all purposes and in all proceedings both legal or equitable shall be regarded as part of the Mortgaged Property irrespective of whether such item is physically attached to the Property or any such item is referred to or reflected in a financing statement. Mortgagor authorizes Mortgagee to prepare and file all financing statements that it may deem necessary to establish and perfect the priority of Mortgagee's security interest in the Mortgaged Property and shall pay all expenses incurred by Mortgagee in connection with the amendment, assignment or continuation of any financing statements executed in connection with the Mortgaged Property; and shall give at least 30 days advance written notice of any proposed change in Mortgagor's name, identity, address structure of state of organization; and authorizes Mortgagee prior to or concurrently with such change to prepare and file all additional financing statements that Mortgagee deems necessary to establish and perfect the priority of Mortgagee's security interest.

3.2 **Maintenance of Personal Property.** Subject to the provisions of this Section 3.2, in any instance where Mortgagor in its sound discretion determines that any Personal Property subject to a security interest under this Mortgage has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary for the operation of the Mortgaged Property, then Mortgagor may, at its expense, remove and dispose of it and substitute and install other items not necessarily having the same function; provided, that such removal and substitution shall not impair the operating utility and unity of the Mortgaged Property. All substituted items shall become a part of the Mortgaged Property and subject to the lien and security interest hereof. Any amounts received or allowed Mortgagor upon the sale or other disposition of the removed items of Personal Property shall be applied first against the cost of acquisition and installation of the substituted items. Nothing herein contained shall be construed to prevent any tenant from removing from the Mortgaged Property trade fixtures, furniture and equipment installed by tenant and removable by tenant under its terms of a lease of a portion of the Mortgaged Property; provided, however, that such tenant shall at its own cost and expense, repair any and all damages to the Mortgaged Property resulting from or caused by the installation and removal thereof.

3.3 **Fixture Filing.** THIS MORTGAGE CREATES A SECURITY INTEREST IN GOODS WHICH ARE OR ARE TO BECOME FIXTURES RELATED TO THE PROPERTY, SHALL BE EFFECTIVE AS A FIXTURE FILING, AND IS TO BE FILED IN THE REAL

ESTATE RECORDS. For purposes of the UCC, Mortgagor is the "Debtor" and Mortgagee is the "Secured Party" and their names and mailing addresses are set forth on page 1 of this Mortgage.

3.4 **Mortgagor to comply with prior Security Instruments.** Mortgagor shall at its sole cost and expense perform, comply with and discharge all obligations of Mortgagor under any prior secured financing arrangements (whether lease purchase, conditional sales or pure lease arrangements) for any property subject to this security interest. Mortgagor shall not permit a surrender, assignment or transfer of its interest in any such property without the prior written consent of Mortgagee nor permit or suffer a default to exist under such prior financing arrangements.

3.5 **Mortgagor to Execute Additional Documents.** Mortgagor authorizes Mortgagee at the expense of Mortgagor to prepare and file all financing statements on its behalf as Mortgagee deems necessary to protect and perfect its security interest in the Personal Property. In addition, Mortgagor shall deliver or cause to be delivered such other documents as Mortgagee may request to secure the Obligations, including, without limitation, any certificate(s) of title to the Personal Property with the security interest of Mortgagee noted thereon.

#### **ARTICLE 4** **EVENTS OF DEFAULT AND REMEDIES**

4.1 **Events of Default.** An Event of Default under the Note, the Obligations or the other Loan Documents beyond any applicable grace or cure period, a failure to perform a covenant or agreement herein beyond any applicable grace or cure period, or any breach or failure of a representation or warranty herein, shall be an Event of Default under this Mortgage.

4.2 **Remedies.** Upon the happening of any Event of Default and at any time thereafter, and following any applicable notice and cure period:

(a) Mortgagee may declare the entire principal of the Obligations then outstanding (if not then due and payable), and all accrued and unpaid interest thereon, to be due and payable immediately, and upon any such declaration the principal of the Obligations and said accrued and unpaid interest shall become and be immediately due and payable, anything in the Obligations or this Mortgage to the contrary notwithstanding;

(b) Mortgagee may exercise all rights under the Loan Documents;

(c) Mortgagee may institute any one or more actions of mortgage foreclosure against all or any part of the Mortgaged Property, or take such other action at law or in equity for the enforcement of this Mortgage and realization on the security herein or elsewhere provided for, as law may allow, and may proceed therein to final judgment and execution for the entire amount of the outstanding indebtedness. Mortgagee shall have the option to proceed with foreclosure of the lien and security interests evidenced by this Mortgage in satisfaction of the Secured Obligations through the courts, all without declaring the Obligations due, and provided that if a sale of any particular Property comprising the Mortgaged Property is because of default in the payment of part of the Obligations beyond applicable cure periods, such sale may be made subject to the unmaturing part of the Debt, and such sale, if so made, shall not in any manner affect the unmaturing part of the



Debt, but as to such unmatured part of the Obligations, this Mortgage shall remain in full force and effect just as though no sale had been made.

(d) Mortgagee may, either in person or by agent, with or without bringing any action or proceedings, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Mortgaged Property, or any part thereof, in its own name and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Mortgaged Property, or any part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Mortgaged Property, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including reasonable attorneys' fees, upon any indebtedness secured hereby, all in such order as Mortgagee may reasonably determine. The entering upon and taking possession of the Mortgaged Property, the collection of such rents, issues and profits and the application thereof as aforesaid shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Mortgaged Property or the collection, receipt and application of rents, issues or profits, Mortgagee shall be entitled to exercise every right provided for in any of the Loan Documents or at law upon occurrence of any Event of Default, including the right to exercise the power of sale as authorized by law;

(e) Mortgagee may on demand require Mortgagor to assign any security deposits held by Mortgagor under the terms of any Lease to be held by Mortgagee and applied in accordance with the provisions of such Lease; provided that until Mortgagee makes such demand and the deposits are paid over to Mortgagee, Mortgagee assumes no responsibility for any such security deposit(s);

(f) Mortgagee may take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Obligations or this Mortgage, or in aid of the execution of any power herein granted, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect, including appointment of a receiver for the Mortgaged Property, and Mortgagor hereby irrevocably consents to such appointment and waives notice of any application thereof, and any receiver(s) shall possess the usual powers and duties of receivers in like or similar cases;

(g) Enter the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto or located thereon. If Mortgagor remains in possession of the Mortgaged Property after an Event of Default has occurred and while it is continuing, and without Mortgagee's prior written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor.

(h) Mortgagee, its successors and assigns, are hereby authorized and empowered to grant, bargain and sell, release and convey the Mortgaged Property at public venue, and to execute and deliver to the purchasers at such sale good and sufficient deeds of conveyance in law, pursuant to the statute in such case made and provided, rendering any surplus moneys after payment of the moneys due hereon, the attorney fees provided by law, and the cost and charges of such venue and sale, to Mortgagor, its successors and assigns;

(i) Mortgagee may exercise any or all of the remedies available to a secured party under the UCC, including, without limitation:

(i) either personally or by means of a court appointed receiver, take possession of all or any of the Personal Property and exclude therefrom Mortgagor and all others claiming under Mortgagor and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Mortgagor with respect to the Personal Property or any part thereof. In the event Mortgagee demands or attempts to take possession of the Personal Property in the exercise of any rights under any of the Loan Documents, then Mortgagor promises and agrees to promptly turn over and deliver complete possession thereof to Mortgagee;

(ii) without further notice to or demand upon Mortgagor, make such payments and do such acts as Mortgagee may deem necessary to protect its security interest in the Personal Property, including, without limitation, paying, purchasing, contesting or compromising any encumbrance, charge or lien which is prior to or superior to the security interest granted hereunder, and in exercising any such powers or authority to pay all expenses incurred in connection therewith;

(iii) require Mortgagor to assemble the Personal Property or any portion thereof, at a place designated by Mortgagee and reasonably convenient to both parties, and promptly deliver such Personal Property to Mortgagee, or an agent or representative designated by it. Mortgagee, and its agents and representatives, shall have the right to enter upon any or all of the Mortgagor's premises and property to exercise Mortgagee's rights hereunder;

(iv) sell, lease or otherwise dispose of the Personal Property, at public sale, with or without having the Personal Property at the place of sale, and upon such commercially reasonable terms and in such manner as Mortgagee may determine in accordance with any remedies allowable under applicable provisions of the UCC, and Mortgagee may be a purchaser at any such sale; and

(v) unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Mortgagee shall give Mortgagor at least 10 days prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof.

(i) At the election of Mortgagee, Mortgagee may sell the Personal Property concurrently with and in conjunction with a foreclosure sale of the Property. Mortgagor stipulates and agrees that a sale of the Personal Property in conjunction with the Property is a commercially reasonable manner of disposing of the Personal Property. Alternatively, Mortgagee may sell or otherwise dispose of the Personal Property separately and apart from the Property in the time and manner provided by the UCC.

4.3 **Enforcement; Expense of Litigation.** In any suit to enforce the lien and/or security interest hereof or enforce any other remedy, or protect any right, of Mortgagee under this Mortgage, the Note, the Obligations or the Loan Documents there shall be allowed and included as additional

indebtedness in the decree for sale or other judgment or decree to the extent allowed by law all actual, reasonable expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Mortgaged Property. All expenditures and expenses of the nature in this paragraph mentioned, and such expenses and fees as may be incurred in the protection of the Mortgaged Property and the maintenance of the lien and security interest of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Obligations or the Mortgaged Property, including bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate specified in the Note and shall be secured by this Mortgage.

4.4 **Application of Foreclosure Sale Proceeds.** The proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied in the following order of priority: first, on account of any amounts due to Mortgagee under this Mortgage or any other instrument securing payment of the Obligations, including, without limitation, all costs and expenses incident to the enforcement proceedings (including all such allowable items as are mentioned in the preceding paragraph hereof)(excluding accrued interest on, and outstanding principal of, the Obligations); second, to accrued interest on the Obligations; third, to principal of the Obligations; fourth, to any other obligations under the other Loan Documents; and fifth, any surplus to Mortgagor, its successors or assigns, as their rights may appear.

4.5 **Remedies Not Exclusive.** Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage, any of the other Loan Documents or other agreement or any laws now or hereafter in force, notwithstanding some or all of said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, security interest, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers contained herein, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as it in its absolute discretion determines. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or at law provided or permitted, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law, in equity or by statute. Every power or remedy given by any of the Loan Documents to Mortgagee may be exercised, concurrently and independently, from time to time and as often as may be deemed expedient by Mortgagee and Mortgagee may pursue inconsistent remedies. No delay or omission of Mortgagee to exercise any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Event of Default or an acquiescence therein; and every power and remedy given by this Mortgage to Mortgagee may be exercised from time to time as often as may be deemed expedient by Mortgagee. Nothing in this Mortgage or the Obligations shall affect the obligation of Mortgagor to pay the

principal of, and interest on, the Obligations in the manner and at the time and place therein respectively expressed.

4.6 **Remedies Under Pennsylvania Law.** Each of the remedies set forth shall be exercisable if, and to the extent, permitted by the laws of the Commonwealth of Pennsylvania in force at the time of the exercise of such remedies without regard to the enforceability of such remedies at the time of the execution and delivery of this Mortgage.

4.7 **Confession of Judgment.** FOR THE PURPOSE OF PROCURING POSSESSION OF THE MORTGAGED PROPERTY ONLY, UPON THE OCCURRENCE AND CONTINUANCE OF AN EVENT OF DEFAULT, MORTGAGOR HEREBY IRREVOCABLY AUTHORIZES AND EMPOWERS ANY ATTORNEY OF ANY COURT OF RECORD IN THE COMMONWEALTH OF PENNSYLVANIA, DESIGNATED BY MORTGAGEE, AS ATTORNEY FOR MORTGAGOR AND ALL PERSONS CLAIMING UNDER OR THROUGH MORTGAGOR, TO SIGN AN AGREEMENT FOR ENTERING IN ANY COURT OF COMPETENT JURISDICTION A PRAECIPE FOR WRIT OF SUMMONS OR A COMPLAINT PROVIDING FOR CONFESSION OF JUDGMENT IN EJECTMENT FOR POSSESSION OF THE MORTGAGED PROPERTY AND TO APPEAR FOR AND CONFESS JUDGMENT AGAINST MORTGAGOR, AND AGAINST ALL PERSONS CLAIMING UNDER OR THROUGH MORTGAGOR, FOR THE RECOVERY BY MORTGAGEE OF POSSESSION OF THE MORTGAGED PROPERTY, WITHOUT ANY STAY OF EXECUTION, FOR WHICH THIS MORTGAGE, OR A COPY HEREOF VERIFIED BY AFFIDAVIT, SHALL BE A SUFFICIENT WARRANT; AND THEREUPON A WRIT OF POSSESSION MAY BE ISSUED FORTHWITH, WITHOUT ANY PRIOR WRIT OR PROCEEDING WHATSOEVER, MORTGAGOR HEREBY RELEASING AND AGREEING TO RELEASE MORTGAGEE AND SAID ATTORNEYS FROM ALL ERRORS AND DEFECTS WHATSOEVER OF ANY NATURE IN ENTERING ANY SUCH JUDGMENT OR IN CAUSING ANY SUCH WRIT OR PROCESS TO BE ISSUED. IF FOR ANY REASON AFTER SUCH ACTION HAS BEEN COMMENCED THE SAME SHALL BE DISCONTINUED OR POSSESSION OF THE MORTGAGED PROPERTY SHALL REMAIN IN OR BE RESTORED TO THE MORTGAGOR, MORTGAGEE SHALL HAVE THE RIGHT FOR THE SAME EVENT OF DEFAULT OR ANY SUBSEQUENT EVENT OF DEFAULT TO BRING ONE OR MORE FURTHER ACTIONS AS ABOVE PROVIDED TO RECOVER POSSESSION OF THE MORTGAGED PROPERTY. MORTGAGEE MAY BRING SUCH ACTION IN EJECTMENT BEFORE OR AFTER THE INSTITUTION OF FORECLOSURE PROCEEDINGS UPON THIS MORTGAGE, OR AFTER JUDGMENT THEREON OR AFTER SALE OF THE MORTGAGED PROPERTY BY THE SHERIFF.

MORTGAGOR HEREBY IRREVOCABLY AUTHORIZES AND EMPOWERS ANY ATTORNEY OR ATTORNEYS OR THE PROTHONOTARY OR CLERK OF ANY COURT IN THE COMMONWEALTH OF PENNSYLVANIA, OR ELSEWHERE, AT ANY TIME FOLLOWING AN EVENT OF DEFAULT HEREUNDER TO APPEAR FOR MORTGAGOR IN SUCH COURT AND CONFESS JUDGMENT AGAINST MORTGAGOR FOR THE AMOUNT FOR WHICH MORTGAGOR MAY BE OR BECOME LIABLE TO MORTGAGEE, NOT TO EXCEED \$250,000,000, UNDER THIS MORTGAGE OR THE CREDIT DOCUMENTS, AND PAYMENT OF WHICH IS SECURED BY THE MORTGAGED PROPERTY, AS EVIDENCED BY AN AFFIDAVIT SIGNED BY AN OFFICER OF MORTGAGEE, SETTING FORTH THE AMOUNT THEN

DUE, PLUS REASONABLE ATTORNEYS' FEES AND COSTS OF SUIT, WITH RELEASE OF PROCEDURAL ERRORS AND WITHOUT RIGHT OF APPEAL AND FOR SO DOING THIS MORTGAGE OR A COPY HEREOF VERIFIED BY AFFIDAVIT SHALL BE SUFFICIENT WARRANT, IT BEING AGREED THAT THE FOREGOING AUTHORIZATION IS A POWER COUPLED WITH AN INTEREST. MORTGAGOR WAIVES THE RIGHT TO ANY STAY OF EXECUTION AND THE BENEFIT OF ALL EXEMPTION LAWS NOW OR HEREAFTER IN EFFECT. NO SINGLE EXERCISE OF THE FOREGOING WARRANT AND POWER TO CONFESS JUDGMENT SHALL BE DEEMED TO EXHAUST THE POWER, WHETHER OR NOT ANY SUCH EXERCISE SHALL BE HELD TO BE INVALID, VOIDABLE OR VOID, BUT THE POWER SHALL CONTINUE UNDIMINISHED AND MAY BE EXERCISED FROM TIME TO TIME AS OFTEN AS MORTGAGEE SHALL ELECT UNTIL ALL OBLIGATIONS OF MORTGAGOR TO MORTGAGEE HAVE BEEN PAID IN FULL.

MORTGAGOR ACKNOWLEDGES THAT IT HAS HAD THE ASSISTANCE OF COUNSEL IN THE REVIEW AND EXECUTION OF THIS MORTGAGE AND FURTHER ACKNOWLEDGES THAT THE MEANING AND EFFECT OF THE FOREGOING CONFESSION OF JUDGMENT HAVE BEEN FULLY EXPLAINED TO MORTGAGOR BY SUCH COUNSEL.

**ARTICLE 5**  
**MISCELLANEOUS**

5.1 **Agreements Separable**. In the event any one or more of the provisions contained in this Mortgage or the Obligations shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

5.2 **Notices**. The written notices provided for in Section 8143 of 42 Pa. C.S.A. from a per-son claiming priority of a lien or encumbrance over the lien of this Mortgage for any future advances made under the Note shall be either personally delivered to Michael E. Lewis, Senior Vice President at Mortgagee's principal place of business at 11201 USA Parkway, Fishers, Indiana 46037 or sent to Mortgagee by registered or certified mail, postage prepaid, return receipt requested, addressed to Mortgagee at 11201 USA Parkway, Fishers, Indiana 46037, Attention: Michael E. Lewis, Senior Vice President.

5.3 **Successors and Assigns**. All of the grants, warrants, covenants, terms, provisions and conditions contained herein shall run with the land and shall apply to, bind and inure to the benefit of, the legal representatives, successors and assigns of Mortgagor and Mortgagee. References in this Mortgage to "Mortgagee" shall include all such successors and assigns and any subsequent holder of this Mortgage and the Obligations secured hereby.

5.4 **Headings and Terminology**. Section headings used herein are for convenience only and are not a part of this Mortgage and shall not be used in construing it. The preamble and recitals hereto are hereby incorporated into this Mortgage. If Mortgagor shall be more than one individual, corporation, firm, partnership, joint venture, trustee, unincorporated association or other entity, their liability and obligation hereunder shall be joint and several. As used in this Mortgage, the singular

shall include the plural, and the plural, the singular; and the gender used shall include the other genders.

5.5 **Estoppel Certificates; Instruments of Further Assurance.** Mortgagor shall deliver to Mortgagee a duly acknowledged (a) certificate of Mortgagor setting forth the amount of principal and interest due and payable on the Obligations and whether any offsets or defenses exist with respect to this Mortgage or the debt secured hereby, and (b) certificate of any person having or acquiring an interest in or encumbrance on all or any part of the Mortgaged Property setting forth the nature and extent of the interest and stating that the interest is subordinate to this Mortgage and whether any offsets or defenses exist with respect to this Mortgage or the debt secured hereby, All such documentation required under (a) and (b) above shall be delivered to Mortgagee within 10 days after any request.

5.6 **Releases; Resort to Other Security, Etc.** Without affecting the liability of any party liable for payment of any indebtedness secured hereby or performance of any obligation contained herein, and without affecting the rights of Mortgagee with respect to any security not expressly released in writing, Mortgagee may, at any time, and without notice to or the consent of Mortgagor or any party having an interest in the Mortgaged Property or the Obligations (a) release any party liable for payment of all or any part of the indebtedness secured hereby or for performance of any obligation herein; (b) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the indebtedness secured hereby or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof; (c) accept any additional security; (d) release or otherwise deal with any property, real or personal, including any or all of the Mortgaged Property, including making partial releases of the Mortgaged Property; or (e) resort to any security agreements, pledges, contracts of guarantee, assignments of rents and leases or other securities, and exhaust any one or more of said securities and the security hereunder, either concurrently or independently and in such order as it may determine.

5.7 **Waiver of Laws.** Mortgagor waives the benefit of all laws now existing or that hereafter may be enacted providing for (a) any appraisal before sale of any portion of the Mortgaged Property, and (b) the benefit of all laws that may be hereafter enacted in any way extending the time for the enforcement of the collection of the Obligations or the debt evidenced thereby, or creating or extending beyond any statutory time a period of redemption from any sale made in collecting said debt. To the fullest extent Mortgagor may do so, Mortgagor shall not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and Mortgagor, for Mortgagor, and its representatives, successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Property through Mortgagor, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the secured indebtedness and marshaling in the event of foreclosure of the liens hereby created. If any law referred to in this Section 5.7 and now in force, of which Mortgagor and its successors and assigns or other person may take advantage despite this Section 5.7, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section 5.7. Mortgagor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Mortgage or to any action brought to enforce the Obligations or any other obligation secured by this Mortgage. Mortgagor expressly waives and relinquishes any and all rights and remedies which

Mortgagor may have or be able to assert by reason of the laws of the state where the Mortgaged Property is located pertaining to the rights and remedies of sureties.

5.8 **Governing Law.** This Mortgage and the rights and obligations of the parties under this Mortgage shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of Pennsylvania, without giving effect to principles of conflicts of law except that the creation, governance, administration and enforcement of the lien created hereby and rights and remedies with respect to the Mortgaged Property shall be governed by and interpreted in accordance with the laws of the Commonwealth of Pennsylvania.

5.9 **Mortgagee to Succeed to Priority of Prior Liens.** Should the proceeds of the debt secured hereby made by Mortgagor, as evidenced by the Obligations, or any part thereof, or any amount paid out or advanced by Mortgagee, be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property or any part thereof, then Mortgagee shall be subrogated to such other lien or encumbrance and to any additional security held by the holder thereof, and shall have the benefit of the priority of all of same, but the terms of such agreements relating thereto shall be superseded by this Mortgage and the Loan Documents.

5.10 **Nonwaiver.** No waiver of any covenant or condition or the breach of any covenant or condition of this Mortgage shall be deemed to constitute a waiver of any subsequent breach of such covenant or condition, nor to justify or authorize the nonobservance on any other occasion of the same or of any other covenant or condition hereof, nor shall any waiver or indulgence granted by Mortgagee to Mortgagor be taken as an estoppel against Mortgagee promptly to avail itself of such other rights or remedies as Mortgagee may have or be construed as a waiver of such Event of Default, but Mortgagee may at any time thereafter, if such default continues, exercise all its rights arising from such default in the manner provided in this Mortgage. The acceptance by Mortgagee of any sum after the same is due shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums hereby accrued or to declare a default as provided herein. The acceptance by Mortgagee of any sum in an amount less than the sum then due shall be deemed an acceptance on account only and upon condition that it shall not constitute a waiver of the obligation of Mortgagor to pay the entire sum then due, and Mortgagor's failure to pay said entire sum shall be and continue to be a default notwithstanding such acceptance of such amount on account, as aforesaid, and Mortgagee shall be at all times thereafter and until the entire sum then due shall have been paid, and notwithstanding the acceptance by Mortgagee thereafter of further sums on account, or otherwise, entitled to exercise all rights in this Mortgage conferred upon it, upon the occurrence of a default, and the right to proceed with a sale under any notice of default, and election to sell, shall in no way be impaired, whether any of such amounts are received prior or subsequent to such notice. Consent by Mortgagee to any transaction or action of Mortgagor which is subject to consent or approval of Mortgagee hereunder shall not be deemed a waiver of right to require such consent or approval to future or successive transactions or actions.

5.11 **Usury.** Mortgagor hereby agrees to pay an effective rate of interest that is the sum of the interest rate provided for in the Obligations, together with any additional rate of interest resulting from any other charges of interest or in the nature of interest paid or to be paid in connection with the Loan, including, without limitation, any fees to be paid by Mortgagor pursuant to the Loan Documents. Mortgagee and Mortgagor agree that none of the terms and provisions contained in the Obligations or the Loan Documents is to be construed to create a contract for the

use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws of the Commonwealth of Pennsylvania. **It is expressly stipulated and agreed to be the intent of Mortgagor and Mortgagee to comply at all times with the usury and other applicable laws now or hereafter governing the interest payable on the indebtedness extended pursuant to the Obligations or the other Loan Documents (the "Debt").** If the applicable law is ever revised, repealed or judicially interpreted so as to render usurious any amount called for under the Obligations or the Loan Documents, or contracted for, charged, taken, reserved or received with respect to the Debt, or if Mortgagee's exercise of its option to accelerate the Maturity Date of the Debt, or if the application of proceeds of collateral to the Debt, or if any prepayment of the Debt results in the payment of any interest in excess of that permitted by law, then it is the express intent of Mortgagor and Mortgagee that such excess amounts collected by Mortgagee shall be applied first to payment of sums, other than principal and interest, payable by Mortgagor under the Obligations or the Loan Documents, then second to reduce the Debt and not to pay interest, and then to the extent that such excessive interest exceeds the unpaid principal balance of the Debt, such excess shall be refunded to Mortgagor. After said application of excessive interest, the Obligations and the Loan Documents shall immediately be deemed reformed and the amounts thereafter collectable hereunder and thereunder reduced, without the necessity of executing a new document, so as to comply with the then applicable laws, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid, or agreed to be paid, for the use, forbearance, detention, taking, charging, receiving or reserving on the Debt shall, to the fullest extent permitted by applicable laws, be amortized, prorated, allocated and spread throughout the full term until payment in full of the Debt (including the period of any renewal or extension thereof), so that the rate or amount of interest on the Debt does not exceed any usury ceiling from time to time in effect and applicable thereto for long as the Debt is outstanding. This paragraph shall control all agreements between Mortgagor and Mortgagee.

5.12 **Maximum Indebtedness.** The maximum amount of indebtedness secured hereby is \$7,775,680.00, plus any future advances as provided in Section 5.15, and accrued but unpaid interest on the outstanding principal balance of the Obligations.

5.13 **Permanent Mortgage.** This Mortgage secures a loan on the Mortgaged Property pursuant to the Loan Documents. This Mortgage secures the payment of all sums and the performance of all covenants required by Mortgagor by the Loan Documents.

5.14 **Intentionally Omitted.**

5.15 **Future Advances.** This Mortgage secures (i) all advances made by Mortgagee with respect to any of the Property for the payment of impositions, maintenance charges, insurance premiums or costs incurred for the protection of any of the Property or the lien of this Mortgage, (ii) all expenses incurred by Mortgagee by reason of an Event of Default hereunder, and (iii) all advances made by Mortgagee to enable completion of any construction of improvements on the Property. As provided in 42 Pa.C.S.A. §8144, this Mortgage shall constitute a lien on the Mortgaged Property from the time this Mortgage is left of record for, among other things, all such advances and expenses, plus interest thereon, regardless of the time when such advances are made or such expenses are incurred.



5.16 **Construction of Improvements**. In the event that any of the proceeds from the Obligations or any of the other Loan Documents are to be used for the purpose of erecting a building or buildings on or otherwise improving the Property, then the parties hereto agree that, if construction of such improvements should cease or such construction be so slow that for all intents and purposes the construction may be said to have ceased (the determination of whether or not construction has ceased shall rest entirely with Mortgagee), then Mortgagee may, at its option, enter into and upon the Property and complete the construction of said improvements. Mortgagor hereby grants unto Mortgagee full power and authority to make such entry upon the Property and to enter into such contracts as Mortgagee may reasonably believe necessary or appropriate to complete such improvements; and the funds expended by Mortgagee in connection with such completion of construction shall be added to the principal amount that has been advanced under the terms of the Obligations and the other Loan Documents, and shall be secured by the Property and be payable by Mortgagor on demand together with interest stated in the Obligations.

5.17 **Due on Sale—Consent by Mortgagee**. Mortgagee may, at its option, declare immediately due and payable all sums secured by this Mortgage upon the sale, transfer without Mortgagee's prior written consent of all or any part of the Mortgaged Property or any interest therein. A "sale or transfer" shall mean the conveyance of the Mortgaged Property or any right, title or interest therein, whether legal, beneficial or equitable, whether voluntary or involuntary, whether by outright sale, deed, installment sale contract, land contract, contract for deed, lease-option contract or by sale, assignment or transfer of any beneficial interest in or to any land trust holding title to the Mortgaged Property, or by any other method of conveyance of real property. If Mortgagor is a corporation (unless its stock is publicly traded), partnership or limited liability company, then sale or transfer also includes any transfer of a majority ownership in Mortgagor without the prior written consent of Mortgagee. However, this right shall not be exercised by Mortgagee if it is prohibited by federal or state law.

5.18 **Incorporation by Reference**. All recitals, schedules, exhibits or other attachments to this Mortgage are incorporated into this Mortgage as if set out in full at the first place in this Mortgage that reference is made thereto.

5.19 **Warranty of Non-Foreign Borrower**. Mortgagor represents and warrants to Mortgagee that Mortgagor is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended (the "Code"), and is not either a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and the regulations promulgated thereunder. Mortgagor shall indemnify, defend and hold Mortgagee harmless from and against all loss, liability, cost, damage and expense (including, without limitation, reasonable attorneys' fees and costs) that Mortgagee may sustain as a result of a breach of the foregoing representation and warranty. The foregoing indemnification shall survive repayment of Mortgagor's obligations under the Obligations and the other Loan Documents, and the release or assignment of this Mortgage.

5.20 **WAIVER OF JURY TRIAL. MORTGAGOR AND MORTGAGEE HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS MORTGAGE, ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR**

**ACTIONS OF MORTGAGOR AND MORTGAGEE. MORTGAGOR ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT TO MORTGAGEE.**

IN TESTIMONY WHEREOF, Mortgagor, acting by and through its duly authorized representative, duly executed this Mortgage as of the date first set forth above.

**MORTGAGOR:**

INNOVATIVE FOOD PROPERTIES, LLC,  
a Delaware limited liability company

By INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation,  
its sole member

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

WITNESS:

\_\_\_\_\_

\_\_\_\_\_

ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )  
                                          ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, \_\_\_\_, 2022\_, by Samuel Klepfish, the Chief Executive Officer of Innovative Food Holdings, Inc., a Florida corporation and the sole member of Innovative Food Properties, LLC, a Delaware limited liability company, on behalf of said entities.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_

**CERTIFICATE OF RESIDENCE**

I hereby certify that the address of the within named mortgagee is 4143 Maple Ave., Suite 100, Dallas, Texas 75219.

\_\_\_\_\_  
Authorized signatory

**EXHIBIT A**

ALL that certain piece or parcel of land situate in the Township of Wright, County of Luzerne and Commonwealth of Pennsylvania, bounded and described as follows:

BEGINNING at a point in the Easterly right of way line of Oak Hill Road, a County Road, at its point of intersection with the Southwesterly sideline of a 150 foot wide right of way of the Pennsylvania Power and Light Company, said point being also the most Northwesterly corner of lands of Dana Perfumes Corporation; thence along the Easterly and then Southerly right of way line of Oak Hill Road by the 2 following lines: 1. By a curve to the right having a radius of 552.65 feet, an arc length of 664.18 feet, and a chord bearing distance of North 42° 58' 15" East, 624.92 feet to a point; 2. Thence North 77° 24' East 387.85 feet to a set iron pin corner in the Westerly sideline of lands conveyed by the Greater Wilkes-Barre Industrial Fund, Inc., to Pennsylvania Power and Light Company by deed dated July 9, 1954, and recorded in Luzerne County Deed Book 1242, page 133; thence along said lands South 1° 54' East 1,029.21 feet to a set iron pin corner in the Northeasterly sideline of the 150 foot wide right of way of the Pennsylvania Power and Light Company; then along the Northeasterly sideline of said right of way South 50° 58' East 264.75 feet to a point, said point being the Southeasterly corner of the aforesaid lands conveyed to Pennsylvania Power and Light Company; thence crossing said 150 foot wide right of way South 1° 54' East 198.55 feet to a point in the Southwesterly sideline of said 150 foot wide right of way of the Pennsylvania Power and Light Company, said point being also the Northeasterly corner of lands of Dana Perfumes Corporation; thence along the Northeasterly line of land of Dana Perfumes Corporation and the Southwesterly sideline of said 150 feet wide right of way North 50° 58' West 1,352.80 feet to the point of BEGINNING.

Being Tax Parcel No. 64M900A05D000.

SUBJECT, however, to the one hundred fifty (150) foot wide electric line right of way located along the Southwesterly line of the herein described parcel, said right of way having been granted to Pennsylvania Power and Light Company by Scranton-Spring Brook Water Service Company by an unrecorded instrument dated June 1, 1958.

SUBJECT, however, to a twenty (20) foot wide right of way for sanitary sewer purposes crossing the herein described parcel, as granted by the Greater Wilkes-Barre Industrial Fund, Inc., to the Mountaintop Area Joint Sanitary Authority by Agreement dated September 3, 1976, and recorded in Luzerne County Deed Book 1935 at page 619.

## PROMISSORY NOTE

\$2,680,000

Effective Date: June 6, 2022

FOR VALUE RECEIVED, INNOVATIVE FOOD HOLDINGS, INC., a Florida corporation, and INNOVATIVE FOOD PROPERTIES, LLC, a Delaware limited liability company (collectively, the "Borrower"), having an address at 28411 Race Track Road, Bonita Springs, FL 34135, hereby promises to pay to the order of MAPLEMARK BANK (together with its successors and assigns and any subsequent holders of this Promissory Note, the "Lender"), as hereinafter provided, the principal sum of TWO MILLION SIX HUNDRED EIGHTY THOUSAND AND 00/100 DOLLARS (\$2,680,000), together with interest thereon at the Note Rate (as hereinafter defined), and otherwise in strict accordance with the terms and provisions hereof. This Promissory Note is a Note evidencing the Loan under the Loan Agreement.

**ARTICLE I  
DEFINITIONS**

Section 1.1. Definitions. As used in this Promissory Note, the following terms shall have the following meanings:

Applicable Rate: The greater of (a) the Base Rate plus 1.25% per annum and (b) 4.50% per annum.

Base Rate: The rate of interest per annum quoted in the "Money Rates" section of The Wall Street Journal from time to time and designated as the "Prime Rate." Without notice to the Borrower, such Base Rate shall change automatically from time to time, as and in the amount, by which such rate shall fluctuate, with each such change to be effective as of the date of each change in such rate. The Base Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer of Lender. If such Base Rate, as so quoted is split between two or more different interest rates, then the Base Rate shall be the highest of such interest rates. If such Base Rate shall cease to be published or is published infrequently or sporadically, then the Base Rate shall be the rate of interest per annum established from time to time by Lender and designated as its base or prime rate, which may not necessarily be the lowest interest rate charged by Lender and is set by Lender in its sole discretion.

Borrower: As identified in the introductory paragraph of this Note.

Business Day: A weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in Dallas, Texas are authorized or required by law to be closed. Unless otherwise provided, the term "days" when used herein shall mean calendar days.

Charges: All fees, charges and/or any other things of value, if any, contracted for, charged, taken, received or reserved by Lender in connection with the transactions relating to this Note and the other Loan Documents, which are treated as interest under applicable law.

Debtor Relief Laws: Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts, or similar laws affecting the rights of creditors.

Default Rate: A rate per annum equal to the Note Rate plus five percent (5%), but in no event in excess of the Maximum Lawful Rate.

Event of Default: Any event or occurrence described under Section 3.1 hereof.

Lender: As identified in the introductory paragraph of this Note.

Loan Agreement: That certain Loan Agreement dated as of June 6, 2022 executed by Borrower and Lender, as may be amended, restated, supplemented or otherwise modified from time to time.

Loan Documents: As defined in the Loan Agreement.

Maturity Date: November 28, 2022.

Maximum Lawful Rate: The maximum lawful rate of interest which may be contracted for, charged, taken, received or reserved by Lender in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that such law permits Lender to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law), taking into account all Charges made in connection with the transaction evidenced by this Note and the other Loan Documents.

Note: This Promissory Note as may be amended, restated, renewed, or extended from time to time.

Note Rate: The rate equal to the lesser of (a) the Maximum Lawful Rate and (b) the Applicable Rate.

Payment Date: The first day of each and every calendar month during the term of this Note.

Related Indebtedness: Any and all indebtedness paid or payable by Borrower to Lender pursuant to the Loan Documents or any other communication or writing by or between Borrower and Lender related to the transaction or transactions that are the subject matter of the Loan Documents, except such indebtedness which has been paid or is payable by Borrower to Lender under this Note.

Any capitalized term used in this Note and not otherwise defined herein shall have the meaning ascribed to each such term in the Loan Agreement. All terms used herein, whether or not defined in Section 1.1 hereof, and whether used in singular or plural form, shall be deemed to refer to the object of such term whether such is singular or plural in nature, as the context may suggest or require. All personal pronouns used herein, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural and vice versa. Definitions contained herein or in the other Loan Documents which identify documents, instruments or agreements shall be deemed to include all amendments, modifications and supplements to such documents, instruments or agreements and all future amendments, modifications, and supplements thereto entered into from time to time.

## **ARTICLE II PAYMENT TERMS**

Section 2.1. Payment of Principal and Interest. All accrued but unpaid interest on the outstanding principal balance of this Note shall be due and payable in monthly installments beginning on July 1, 2022, and continuing on each Payment Date thereafter. The outstanding principal balance of this Note and any and all accrued but unpaid interest hereon shall be due and payable in full on the Maturity Date or upon the earlier maturity hereof, whether by acceleration or otherwise. No principal amount repaid may be reborrowed. The unpaid principal balance of this Note at any time shall be the total amount advanced hereunder by Lender less the amount of principal payments made hereon by or for Borrower, which balance may be endorsed hereon from time to time by Lender or otherwise noted in Lender's records, which notations shall be, absent manifest error, conclusive evidence of the amounts owing hereunder from time to time. If the Note Rate changes, Lender, at its sole option, may from time to time recalculate the periodic installment amount so that the remaining periodic installments will fully amortize the remaining loan balance within the remaining amortization term in equal installments at the

interest rate then being charged under this Note. BORROWER AGREES TO PAY THE PERIODIC INSTALLMENTS AS THEY MAY BE RECALCULATED BY LENDER, AT LENDER'S SOLE OPTION, FROM TIME TO TIME AND ACKNOWLEDGES THAT A RECALCULATION SHALL NOT AFFECT THE MATURITY DATE OR THE OTHER TERMS AND PROVISIONS OF THIS NOTE.

Section 2.2. Application. Except as expressly provided herein to the contrary, all payments on this Note shall be applied in the following order of priority: (i) the payment or reimbursement of any expenses, costs or obligations (other than the outstanding principal balance hereof and interest hereon) for which either Borrower shall be obligated or Lender shall be entitled pursuant to the provisions of this Note or the other Loan Documents, (ii) the payment of accrued but unpaid interest hereon, and (iii) the payment of all or any portion of the principal balance hereof then outstanding hereunder, in the direct order of maturity. If an Event of Default exists under this Note or under any of the other Loan Documents, then Lender may, at the sole option of Lender, apply any such payments, at any time and from time to time, to any of the items specified in clauses (i), (ii) or (iii) above without regard to the order of priority otherwise specified in this Section 2.2 and any application to the outstanding principal balance hereof may be made in either direct or inverse order of maturity.

Section 2.3. Payments. All payments under this Note made to Lender shall be made in immediately available funds at 4143 Maple Avenue, Suite 100, Dallas, Texas 75219 (or at such other place as Lender, in Lender's sole discretion, may have established by delivery of written notice thereof to Borrower from time to time), without offset, in lawful money of the United States of America, which shall at the time of payment be legal tender in payment of all debts and dues, public and private. Payments by check or draft shall not constitute payment in immediately available funds until the required amount is actually received by Lender in full. Payments in immediately available funds received by Lender in the place designated for payment on a Business Day prior to 3:00 p.m. Dallas, Texas time at said place of payment shall be credited prior to the close of business on the Business Day received, while payments received by Lender on a day other than a Business Day or after 3:00 p.m. Dallas, Texas time on a Business Day shall not be credited until the next succeeding Business Day. If any payment of principal or interest on this Note shall become due and payable on a day other than a Business Day, such payment shall be made on the next succeeding Business Day. Any such extension of time for payment shall be included in computing interest which has accrued and shall be payable in connection with such payment. Borrower has elected to authorize the Lender to effect payment of sums due under this Note by means of debiting the Borrower's account or accounts at Lender. This authorization shall not affect the obligation of the Borrower to pay such sums when due, without notice, if there are insufficient funds in such account or accounts to make such payment in full on the due date thereof, or if the Lender fails, or elects in its discretion not, to debit such account or accounts.

Section 2.4. Computation Period. Interest on the indebtedness evidenced by this Note shall be computed on the basis of a three hundred sixty (360) day year and shall accrue on the actual number of days elapsed for any whole or partial month in which interest is being calculated. In computing the number of days during which interest accrues, the day on which funds are initially advanced shall be included regardless of the time of day such advance is made, and the day on which funds are repaid shall be included unless repayment is credited prior to the close of business on the Business Day received as provided in Section 2.3 hereof.

Section 2.5. Prepayment. Borrower shall have the right to prepay, at any time and from time to time upon at least five (5) Business Days prior written notice to Lender, without fee, premium or penalty, all or any portion of the outstanding principal balance hereof; provided, however, that such prepayment shall also include any and all accrued but unpaid interest on the amount of principal being so repaid through and including the date of prepayment, plus any other sums which have become due to Lender under the other Loan Documents on or before the date of prepayment, but which have not been fully paid. Borrower agrees that all fees and other prepaid finance charges are fair and reasonable and are



earned fully when due and are not subject to refund upon early payment (whether voluntarily or involuntarily), except as otherwise required by law. Prepayments of principal shall be applied in inverse order of maturity. If at any time, the principal amount hereof exceeds the principal amount stated above, Borrower shall immediately make a payment to Lender in an amount of not less than such excess.

Section 2.6. Unconditional Payment. Borrower is and shall be obligated to pay all principal, interest and any and all other amounts which become payable under this Note or under any of the other Loan Documents absolutely and unconditionally and without any abatement, postponement, diminution or deduction whatsoever and without any reduction for counterclaim or setoff whatsoever. If at any time any payment received by Lender hereunder shall be deemed by a court of competent jurisdiction to have been a voidable preference or fraudulent conveyance under any Debtor Relief Law, then the obligation to make such payment shall survive any cancellation or satisfaction of this Note or return thereof to Borrower and shall not be discharged or satisfied with any prior payment thereof or cancellation of this Note, but shall remain a valid and binding obligation enforceable in accordance with the terms and provisions hereof, and such payment shall be immediately due and payable upon demand.

Section 2.7. Partial or Incomplete Payments. Remittances in payment of any part of this Note other than in the required amount in immediately available funds at the place where this Note is payable shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Lender in full in accordance herewith and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Lender of any payment in an amount less than the full amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an Event of Default in the payment of this Note.

Section 2.8. Default Rate, etc. For so long as any Event of Default exists under this Note or under any of the other Loan Documents, regardless of whether or not there has been an acceleration of the indebtedness evidenced by this Note, and at all times after the maturity of the indebtedness evidenced by this Note (whether by acceleration or otherwise), and in addition to all other rights and remedies of Lender hereunder, interest shall accrue on the outstanding principal balance hereof at the Default Rate, and such accrued interest shall be immediately due and payable. At the option of Lender, Borrower will pay Lender, on demand, (i) a "late charge" equal to five percent (5%) of the amount of any installment on this Note when such installment is not paid within ten (10) days following the date such installment is due and (ii) a processing fee in the amount of \$25.00 for each check which is provided to Lender by Borrower in payment for an obligation owing to Lender under any Loan Document but is returned or dishonored for any reason, in order to cover the additional expenses involved in handling delinquent and returned or dishonored payments. Borrower acknowledges that it would be extremely difficult or impracticable to determine Lender's actual damages resulting from any late payment or Event of Default, and such late charges and accrued interest are reasonable estimates of those damages and do not constitute a penalty.

### **ARTICLE III EVENT OF DEFAULT AND REMEDIES**

Section 3.1. Event of Default. The occurrence or happening, at any time and from time to time, of any one or more of the following shall constitute an "Event of Default" under this Note:

- (a) Borrower shall fail, refuse or neglect to pay and satisfy, in full and in the applicable method and manner required, any required payment of principal or interest or any other portion of the indebtedness evidenced by this Note on the date when the same shall become due and payable, whether at the stipulated due date thereof, at a date fixed for payment, or at maturity, by acceleration or otherwise; or

(b) Subject to any applicable notice, cure and/or grace periods, the occurrence of any other Default, breach or Event of Default as defined in or under this Note, the Loan Agreement or any other Loan Document that remains uncured under and pursuant to the provisions of this Note, the Loan Agreement or any other Loan Document.

Section 3.2. **Remedies.** Upon the occurrence of an Event of Default, Lender shall have the immediate right, at the sole discretion of Lender and without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action (**ALL OF WHICH BORROWER HEREBY EXPRESSLY WAIVES AND RELINQUISHES**) (i) to declare the entire unpaid balance of the indebtedness evidenced by this Note (including, without limitation, the outstanding principal balance hereof, including all sums advanced or accrued hereunder or under any other Loan Document, and all accrued but unpaid interest thereon) at once immediately due and payable (and upon such declaration, the same shall be at once immediately due and payable) and may be collected forthwith, whether or not there has been a prior demand for payment and regardless of the stipulated date of maturity, (ii) to foreclose any liens and security interests securing payment hereof or thereof (including, without limitation, any liens and security interests), and (iii) to exercise any of Lender's other rights, powers, recourses and remedies under this Note, under any other Loan Document, or at law or in equity, and the same (w) shall be cumulative and concurrent, (x) may be pursued separately, singly, successively, or concurrently against Borrower or others obligated for the repayment of this Note or any part hereof, or against any one or more of them, or against the Property at the sole discretion of Lender, (y) may be exercised as often as occasion therefor shall arise, it being agreed by Borrower that the exercise, discontinuance of the exercise of or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse, and (z) are intended to be, and shall be, nonexclusive. All rights and remedies of Lender hereunder and under the other Loan Documents shall extend to any period after the initiation of foreclosure proceedings, judicial or otherwise. Without limiting the provisions of Section 4.17 hereof, if this Note, or any part hereof, is collected by or through an attorney-at-law, Borrower agrees to pay all costs and expenses of collection, including, but not limited to, Lender's reasonable attorneys' fees, whether or not any legal action shall be instituted to enforce this Note. This Note is also subject to acceleration as provided in the Loan Agreement.

#### **ARTICLE IV GENERAL PROVISIONS**

Section 4.1. **No Waiver; Amendment.** No failure to accelerate the indebtedness evidenced by this Note by reason of an Event of Default hereunder, acceptance of a partial or past due payment, or indulgences granted from time to time shall be construed (i) as a novation of this Note or as reinstatement of the indebtedness evidenced by this Note or as a waiver of such right of acceleration or of the right of Lender thereafter to insist upon strict compliance with the terms of this Note, or (ii) to prevent the exercise of such right of acceleration or any other right granted under this Note, under any of the other Loan Documents or by any applicable laws. Borrower hereby expressly waives and relinquishes the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing. The failure to exercise any remedy available to Lender shall not be deemed to be a waiver of any rights or remedies of Lender under this Note or under any of the other Loan Documents, or at law or in equity. No extension of the time for the payment of this Note or any installment due hereunder, made by agreement with any person now or hereafter liable for the payment of this Note, shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part, unless Lender specifically, unequivocally and expressly agrees otherwise in writing. This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, or modification is sought.

Section 4.2. Waivers. EXCEPT AS SPECIFICALLY PROVIDED IN THE LOAN DOCUMENTS TO THE CONTRARY, BORROWER AND ANY ENDORSERS OR GUARANTORS HEREOF SEVERALLY WAIVE AND RELINQUISH PRESENTMENT FOR PAYMENT, DEMAND, NOTICE OF NONPAYMENT OR NONPERFORMANCE, PROTEST, NOTICE OF PROTEST, NOTICE OF INTENT TO ACCELERATE, NOTICE OF ACCELERATION OR ANY OTHER NOTICES OR ANY OTHER ACTION. BORROWER AND ANY ENDORSERS OR GUARANTORS HEREOF SEVERALLY WAIVE AND RELINQUISH, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO THE BENEFITS OF ANY MORATORIUM, REINSTATEMENT, MARSHALING, FORBEARANCE, VALUATION, STAY, EXTENSION, REDEMPTION, APPRAISEMENT, EXEMPTION AND HOMESTEAD NOW OR HEREAFTER PROVIDED BY THE CONSTITUTION AND LAWS OF THE UNITED STATES OF AMERICA AND OF EACH STATE THEREOF, BOTH AS TO ITSELF AND IN AND TO ALL OF ITS PROPERTY, REAL AND PERSONAL, AGAINST THE ENFORCEMENT AND COLLECTION OF THE OBLIGATIONS EVIDENCED BY THIS NOTE OR BY THE OTHER LOAN DOCUMENTS.

Section 4.3. Interest Provisions.

(a) Savings Clause. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply strictly with the applicable Texas law governing the maximum rate or amount of interest payable on the indebtedness evidenced by this Note and the Related Indebtedness (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If the applicable law is ever judicially interpreted so as to render usurious any amount (i) contracted for, charged, taken, reserved or received pursuant to this Note, any of the other Loan Documents or any other communication or writing by or between Borrower and Lender related to the transaction or transactions that are the subject matter of the Loan Documents, (ii) contracted for, charged, taken, reserved or received by reason of Lender's exercise of the option to accelerate the maturity of this Note and/or the Related Indebtedness, or (iii) Borrower will have paid or Lender will have received by reason of any voluntary prepayment by Borrower of this Note and/or the Related Indebtedness, then it is Borrower's and Lender's express intent that all amounts charged in excess of the Maximum Lawful Rate shall be automatically canceled, *ab initio*, and all amounts in excess of the Maximum Lawful Rate theretofore collected by Lender shall be credited on the principal balance of this Note and/or the Related Indebtedness (or, if this Note and all Related Indebtedness have been or would thereby be paid in full, refunded to Borrower), and the provisions of this Note and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder; provided, however, if this Note has been paid in full before the end of the stated term of this Note, then Borrower and Lender agree that Lender shall, with reasonable promptness after Lender discovers or is advised by Borrower that interest was received in an amount in excess of the Maximum Lawful Rate, either refund such excess interest to Borrower and/or credit such excess interest against this Note and/or any Related Indebtedness then owing by Borrower to Lender. Borrower hereby agrees that as a condition precedent to any claim seeking usury penalties against Lender, Borrower will provide written notice to Lender, advising Lender in reasonable detail of the nature and amount of the violation, and Lender shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Borrower or crediting such excess interest against this Note and/or the Related Indebtedness then owing by Borrower to Lender. All sums contracted for, charged, taken, reserved or received by Lender for the use, forbearance or detention of any debt evidenced by this Note and/or the Related Indebtedness shall, to the extent permitted by applicable law, be amortized or spread, using the actuarial method, throughout the stated term of this Note and/or the Related Indebtedness (including any and all renewal and extension periods) until payment in

full so that the rate or amount of interest on account of this Note and/or the Related Indebtedness does not exceed the Maximum Lawful Rate from time to time in effect and applicable to this Note and/or the Related Indebtedness for so long as debt is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to this Note and/or any of the Related Indebtedness. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

(b) Ceiling Election. To the extent that Lender is relying on Chapter 303 of the Texas Finance Code to determine the Maximum Lawful Rate payable on the Note and/or any other portion of the Indebtedness, Lender will utilize the weekly ceiling from time to time in effect as provided in such Chapter 303, as amended. To the extent United States federal law permits Lender to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law, Lender will rely on United States federal law instead of such Chapter 303 for the purpose of determining the Maximum Lawful Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Lender may, at its option and from time to time, utilize any other method of establishing the Maximum Lawful Rate under such Chapter 303 or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect.

Section 4.4. Use of Funds. Borrower hereby warrants, represents and covenants that (i) the loan evidenced by this Note is made to Borrower solely for the purpose of acquiring or carrying on a business or commercial enterprise, (ii) all proceeds of this Note shall be used only for business and commercial purposes, and (iii) no funds disbursed hereunder shall be used for personal, family, agricultural or household purposes.

Section 4.5. Further Assurances and Corrections. From time to time, at the written request of Lender, Borrower will (i) promptly correct any defect, error or omission which may be discovered in the contents of this Note or in any other Loan Document or in the execution or acknowledgment thereof; (ii) execute, acknowledge, deliver, record and/or file (or cause to be executed, acknowledged, delivered, recorded and/or filed) such further documents and instruments (including, without limitation, further deeds of trust, security agreements, financing statements, continuation statements and assignments of rents) and perform such further acts and provide such further assurances as may be necessary, desirable, or proper, in Lender's opinion, (A) to carry out more effectively the purposes of this Note and the Loan Documents and the transactions contemplated hereunder and thereunder, (B) to confirm the rights created under this Note and the other Loan Documents, (C) to protect and further the validity, priority and enforceability of this Note and the other Loan Documents and the liens and security interests created thereby, and (D) to subject to the Loan Documents any property of Borrower intended by the terms of any one or more of the Loan Documents to be encumbered by the Loan Documents; and (iii) pay all costs in connection with any of the foregoing.

Section 4.6. Waiver of Jury Trial. BORROWER, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY KNOWINGLY, INTENTIONALLY, IRREVOCABLY, UNCONDITIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS NOTE OR ANY CONDUCT, ACT OR OMISSION OF LENDER OR BORROWER, OR ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH LENDER OR BORROWER, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

Section 4.7. Governing Law; Submission to Jurisdiction. This Note is executed and delivered as an incident to a lending transaction negotiated and consummated in Dallas County, Texas, and shall be governed by and construed in accordance with the laws of the State of Texas. Borrower, for itself and its successors and assigns, hereby irrevocably (i) submits to the nonexclusive jurisdiction of the state and federal courts in Texas, (ii) waives, to the fullest extent permitted by law, any objection that it may now or in the future have to the laying of venue of any litigation arising out of or in connection with this Note or any Loan Document brought in Dallas County, Texas, (iii) waives any objection it may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum, and (iv) agrees that any legal proceeding against any party to any of the Loan Documents arising out of or in connection with any of the Loan Documents may be brought in one of the foregoing courts. Borrower hereby agrees that service of process upon Borrower may be made by certified or registered mail, return receipt requested, at its address specified herein. Nothing herein shall affect the right of Lender to serve process in any other manner permitted by law or shall limit the right of Lender to bring any action or proceeding against Borrower or with respect to any of Borrower's property in courts in other jurisdictions. The scope of each of the foregoing waivers is intended to be all encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including, without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims. Borrower acknowledges that these waivers are a material inducement to Lender's agreement to enter into the agreements and obligations evidenced by the Loan Documents, that Lender has already relied on these waivers and will continue to rely on each of these waivers in related future dealings. The waivers in this Section 4.7 are irrevocable, meaning that they may not be modified either orally or in writing, and these waivers apply to any future renewals, extensions, amendments, modifications, or replacements in respect of any and all of the applicable Loan Documents. In connection with any litigation, this Note may be filed as a written consent to a trial by the court.

Section 4.8. Counting of Days. If any time period referenced hereunder ends on a day other than a Business Day, such time period shall be deemed to end on the next succeeding Business Day.

Section 4.9. Relationship of the Parties. Notwithstanding any prior business or personal relationship between Borrower and Lender, or any officer, director or employee of Lender, that may exist or have existed, the relationship between Borrower and Lender is solely that of debtor and creditor, Lender has no fiduciary or other special relationship with Borrower, Borrower and Lender are not partners or joint venturers, and no term or condition of any of the Loan Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

Section 4.10. Successors and Assigns. The terms and provisions hereof shall be binding upon and inure to the benefit of Borrower and Lender and their respective heirs, executors, legal representatives, successors, successors-in-title and assigns, whether by voluntary action of the parties, by operation of law or otherwise, and all other persons claiming by, through or under them. The terms "Borrower" and "Lender" as used hereunder shall be deemed to include their respective heirs, executors, legal representatives, successors, successors-in-title and assigns, whether by voluntary action of the parties, by operation of law or otherwise, and all other persons claiming by, through or under them.

Section 4.11. Time is of the Essence. Time is of the essence with respect to all provisions of this Note and the other Loan Documents.

Section 4.12. Headings. The Article, Section, and Subsection entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify, define, limit, amplify or be used in construing the text, scope or intent of such Articles, Sections, or Subsections or any provisions hereof.

Section 4.13. Controlling Agreement. In the event of any conflict between the provisions of this Note and the Loan Agreement, it is the intent of the parties hereto that the provisions of the Loan Agreement shall control. In the event of any conflict between the provisions of this Note and any of the

other Loan Documents (other than the Loan Agreement), it is the intent of the parties hereto that the provisions of this Note shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of this Note and the other Loan Documents and that this Note and the other Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same.

Section 4.14. Notices. All notices or other communications required or permitted to be given pursuant to this Note shall be in writing and shall be considered as properly given if given in accordance with the terms of the Loan Agreement.

Section 4.15. Severability. If any provision of this Note or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, then neither the remainder of this Note nor the application of such provision to other persons or circumstances nor the other instruments referred to herein shall be affected thereby, but rather shall be enforced to the greatest extent permitted by applicable law.

Section 4.16. Right of Setoff. In addition to all liens upon and rights of setoff against the money, securities, or other property of Borrower given to Lender that may exist under applicable law, Lender shall have and Borrower hereby grants to Lender a lien upon and a right of setoff against all money, securities, and other property of Borrower, now or hereafter in possession of or on deposit with Lender, whether held in a general or special account or deposit, for safe-keeping or otherwise, and every such lien and right of setoff may be exercised without demand upon or notice to Borrower. No lien or right of setoff shall be deemed to have been waived by any act or conduct on the part of Lender, or by any neglect to exercise such right of setoff or to enforce such lien, or by any delay in so doing, and every right of setoff and lien shall continue in full force and effect until such right of setoff or lien is specifically waived or released by an instrument in writing executed by Lender.

Section 4.17. Costs of Collection. If any holder of this Note retains an attorney-at-law in connection with any Event of Default or at maturity or to collect, enforce or defend this Note or any part hereof, or any other Loan Document in any lawsuit or in any probate, reorganization, bankruptcy or other proceeding, or if Borrower sues any holder in connection with this Note or any other Loan Document and does not prevail, then Borrower agrees to pay to each such holder, in addition to the principal balance hereof and all interest hereon, all costs and expenses of collection or incurred by such holder or in any such suit or proceeding, including, but not limited to, reasonable attorneys' fees.

Section 4.18. Statement of Unpaid Balance. At any time and from time to time, Borrower will furnish promptly, upon the request of Lender, a written statement or affidavit, in form satisfactory to Lender, stating the unpaid balance of the indebtedness evidenced by this Note and the Related Indebtedness and that there are no offsets or defenses against full payment of the indebtedness evidenced by this Note and the Related Indebtedness and the terms hereof, or if there are any such offsets or defenses, specifying them.

Section 4.19. Entire Agreement. THIS NOTE AND THE OTHER LOAN DOCUMENTS CONTAIN THE FINAL, ENTIRE AGREEMENT BETWEEN THE PARTIES HERETO RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND ALL PRIOR AGREEMENTS, WHETHER WRITTEN OR ORAL, RELATIVE HERETO AND THERETO WHICH ARE NOT CONTAINED HEREIN OR THEREIN ARE SUPERSEDED AND TERMINATED HEREBY, AND THIS NOTE AND THE OTHER LOAN DOCUMENTS MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES HERETO.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, Borrower, intending to be legally bound hereby, has duly executed this Note as of the day and year first written above.

**BORROWER:**

INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

INNOVATIVE FOOD PROPERTIES, LLC,  
a Delaware limited liability company

By INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation,  
its sole member

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

## PROMISSORY NOTE

\$7,775,680

Effective Date: June 6, 2022

FOR VALUE RECEIVED, INNOVATIVE FOOD HOLDINGS, INC., a Florida corporation, and INNOVATIVE FOOD PROPERTIES, LLC, a Delaware limited liability company (collectively, the "Borrower"), having an address at 28411 Race Track Road, Bonita Springs, FL 34135, hereby promises to pay to the order of MAPLEMARK BANK (together with its successors and assigns and any subsequent holders of this Promissory Note, the "Lender"), as hereinafter provided, the principal sum of SEVEN MILLION SEVEN HUNDRED SEVENTY FIVE THOUSAND SIX HUNDRED EIGHT AND 00/100 DOLLARS (\$7,775,680), together with interest thereon at the Note Rate (as hereinafter defined), and otherwise in strict accordance with the terms and provisions hereof. This Promissory Note is a Note evidencing the Loan under the Loan Agreement.

**ARTICLE I  
DEFINITIONS**

Section 1.1. Definitions. As used in this Promissory Note, the following terms shall have the following meanings:

Applicable Rate: The greater of (a) the Base Rate plus 1.25% per annum and (b) 4.50% per annum.

Base Rate: The rate of interest per annum quoted in the "Money Rates" section of The Wall Street Journal from time to time and designated as the "Prime Rate." Without notice to the Borrower, such Base Rate shall change automatically from time to time, as and in the amount, by which such rate shall fluctuate, with each such change to be effective as of the date of each change in such rate. The Base Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer of Lender. If such Base Rate, as so quoted is split between two or more different interest rates, then the Base Rate shall be the highest of such interest rates. If such Base Rate shall cease to be published or is published infrequently or sporadically, then the Base Rate shall be the rate of interest per annum established from time to time by Lender and designated as its base or prime rate, which may not necessarily be the lowest interest rate charged by Lender and is set by Lender in its sole discretion.

Borrower: As identified in the introductory paragraph of this Note.

Business Day: A weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in Dallas, Texas are authorized or required by law to be closed. Unless otherwise provided, the term "days" when used herein shall mean calendar days.

Charges: All fees, charges and/or any other things of value, if any, contracted for, charged, taken, received or reserved by Lender in connection with the transactions relating to this Note and the other Loan Documents, which are treated as interest under applicable law.

Debtor Relief Laws: Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts, or similar laws affecting the rights of creditors.

Default Rate: A rate per annum equal to the Note Rate plus five percent (5%), but in no event in excess of the Maximum Lawful Rate.

Event of Default: Any event or occurrence described under Section 3.1 hereof.



Lender: As identified in the introductory paragraph of this Note.

Loan Agreement: That certain Loan Agreement dated as of June 6, 2022 executed by Borrower and Lender, as may be amended, restated, supplemented or otherwise modified from time to time.

Loan Documents: As defined in the Loan Agreement.

Maturity Date: November 28, 2022.

Maximum Lawful Rate: The maximum lawful rate of interest which may be contracted for, charged, taken, received or reserved by Lender in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that such law permits Lender to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law), taking into account all Charges made in connection with the transaction evidenced by this Note and the other Loan Documents.

Note: This Promissory Note as may be amended, restated, renewed, or extended from time to time.

Note Rate: The rate equal to the lesser of (a) the Maximum Lawful Rate and (b) the Applicable Rate.

Payment Date: The first day of each and every calendar month during the term of this Note.

Related Indebtedness: Any and all indebtedness paid or payable by Borrower to Lender pursuant to the Loan Documents or any other communication or writing by or between Borrower and Lender related to the transaction or transactions that are the subject matter of the Loan Documents, except such indebtedness which has been paid or is payable by Borrower to Lender under this Note.

Any capitalized term used in this Note and not otherwise defined herein shall have the meaning ascribed to each such term in the Loan Agreement. All terms used herein, whether or not defined in Section 1.1 hereof, and whether used in singular or plural form, shall be deemed to refer to the object of such term whether such is singular or plural in nature, as the context may suggest or require. All personal pronouns used herein, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural and vice versa. Definitions contained herein or in the other Loan Documents which identify documents, instruments or agreements shall be deemed to include all amendments, modifications and supplements to such documents, instruments or agreements and all future amendments, modifications, and supplements thereto entered into from time to time.

## **ARTICLE II PAYMENT TERMS**

Section 2.1. Payment of Principal and Interest. All accrued but unpaid interest on the outstanding principal balance of this Note shall be due and payable in monthly installments beginning on July 1, 2022, and continuing on each Payment Date thereafter. The outstanding principal balance of this Note and any and all accrued but unpaid interest hereon shall be due and payable in full on the Maturity Date or upon the earlier maturity hereof, whether by acceleration or otherwise. No principal amount repaid may be reborrowed. The unpaid principal balance of this Note at any time shall be the total amount advanced hereunder by Lender less the amount of principal payments made hereon by or for Borrower, which balance may be endorsed hereon from time to time by Lender or otherwise noted in Lender's records, which notations shall be, absent manifest error, conclusive evidence of the amounts owing hereunder from time to time. If the Note Rate changes, Lender, at its sole option, may from time to time recalculate the periodic installment amount so that the remaining periodic installments will fully amortize the remaining loan balance within the remaining amortization term in equal installments at the

interest rate then being charged under this Note. BORROWER AGREES TO PAY THE PERIODIC INSTALLMENTS AS THEY MAY BE RECALCULATED BY LENDER, AT LENDER'S SOLE OPTION, FROM TIME TO TIME AND ACKNOWLEDGES THAT A RECALCULATION SHALL NOT AFFECT THE MATURITY DATE OR THE OTHER TERMS AND PROVISIONS OF THIS NOTE.

Section 2.2. Application. Except as expressly provided herein to the contrary, all payments on this Note shall be applied in the following order of priority: (i) the payment or reimbursement of any expenses, costs or obligations (other than the outstanding principal balance hereof and interest hereon) for which either Borrower shall be obligated or Lender shall be entitled pursuant to the provisions of this Note or the other Loan Documents, (ii) the payment of accrued but unpaid interest hereon, and (iii) the payment of all or any portion of the principal balance hereof then outstanding hereunder, in the direct order of maturity. If an Event of Default exists under this Note or under any of the other Loan Documents, then Lender may, at the sole option of Lender, apply any such payments, at any time and from time to time, to any of the items specified in clauses (i), (ii) or (iii) above without regard to the order of priority otherwise specified in this Section 2.2 and any application to the outstanding principal balance hereof may be made in either direct or inverse order of maturity.

Section 2.3. Payments. All payments under this Note made to Lender shall be made in immediately available funds at 4143 Maple Avenue, Suite 100, Dallas, Texas 75219 (or at such other place as Lender, in Lender's sole discretion, may have established by delivery of written notice thereof to Borrower from time to time), without offset, in lawful money of the United States of America, which shall at the time of payment be legal tender in payment of all debts and dues, public and private. Payments by check or draft shall not constitute payment in immediately available funds until the required amount is actually received by Lender in full. Payments in immediately available funds received by Lender in the place designated for payment on a Business Day prior to 3:00 p.m. Dallas, Texas time at said place of payment shall be credited prior to the close of business on the Business Day received, while payments received by Lender on a day other than a Business Day or after 3:00 p.m. Dallas, Texas time on a Business Day shall not be credited until the next succeeding Business Day. If any payment of principal or interest on this Note shall become due and payable on a day other than a Business Day, such payment shall be made on the next succeeding Business Day. Any such extension of time for payment shall be included in computing interest which has accrued and shall be payable in connection with such payment. Borrower has elected to authorize the Lender to effect payment of sums due under this Note by means of debiting the Borrower's account or accounts at Lender. This authorization shall not affect the obligation of the Borrower to pay such sums when due, without notice, if there are insufficient funds in such account or accounts to make such payment in full on the due date thereof, or if the Lender fails, or elects in its discretion not, to debit such account or accounts.

Section 2.4. Computation Period. Interest on the indebtedness evidenced by this Note shall be computed on the basis of a three hundred sixty (360) day year and shall accrue on the actual number of days elapsed for any whole or partial month in which interest is being calculated. In computing the number of days during which interest accrues, the day on which funds are initially advanced shall be included regardless of the time of day such advance is made, and the day on which funds are repaid shall be included unless repayment is credited prior to the close of business on the Business Day received as provided in Section 2.3 hereof..

Section 2.5. Prepayment. Borrower shall have the right to prepay, at any time and from time to time upon at least five (5) Business Days prior written notice to Lender, without fee, premium or penalty, all or any portion of the outstanding principal balance hereof; provided, however, that such prepayment shall also include any and all accrued but unpaid interest on the amount of principal being so repaid through and including the date of prepayment, plus any other sums which have become due to Lender under the other Loan Documents on or before the date of prepayment, but which have not been fully paid. Borrower agrees that all fees and other prepaid finance charges are fair and reasonable and are

earned fully when due and are not subject to refund upon early payment (whether voluntarily or involuntarily), except as otherwise required by law. Prepayments of principal shall be applied in inverse order of maturity. If at any time, the principal amount hereof exceeds the principal amount stated above, Borrower shall immediately make a payment to Lender in an amount of not less than such excess.

Section 2.6. Unconditional Payment. Borrower is and shall be obligated to pay all principal, interest and any and all other amounts which become payable under this Note or under any of the other Loan Documents absolutely and unconditionally and without any abatement, postponement, diminution or deduction whatsoever and without any reduction for counterclaim or setoff whatsoever. If at any time any payment received by Lender hereunder shall be deemed by a court of competent jurisdiction to have been a voidable preference or fraudulent conveyance under any Debtor Relief Law, then the obligation to make such payment shall survive any cancellation or satisfaction of this Note or return thereof to Borrower and shall not be discharged or satisfied with any prior payment thereof or cancellation of this Note, but shall remain a valid and binding obligation enforceable in accordance with the terms and provisions hereof, and such payment shall be immediately due and payable upon demand.

Section 2.7. Partial or Incomplete Payments. Remittances in payment of any part of this Note other than in the required amount in immediately available funds at the place where this Note is payable shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Lender in full in accordance herewith and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Lender of any payment in an amount less than the full amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an Event of Default in the payment of this Note.

Section 2.8. Default Rate, etc. For so long as any Event of Default exists under this Note or under any of the other Loan Documents, regardless of whether or not there has been an acceleration of the indebtedness evidenced by this Note, and at all times after the maturity of the indebtedness evidenced by this Note (whether by acceleration or otherwise), and in addition to all other rights and remedies of Lender hereunder, interest shall accrue on the outstanding principal balance hereof at the Default Rate, and such accrued interest shall be immediately due and payable. At the option of Lender, Borrower will pay Lender, on demand, (i) a "late charge" equal to five percent (5%) of the amount of any installment on this Note when such installment is not paid within ten (10) days following the date such installment is due and (ii) a processing fee in the amount of \$25.00 for each check which is provided to Lender by Borrower in payment for an obligation owing to Lender under any Loan Document but is returned or dishonored for any reason, in order to cover the additional expenses involved in handling delinquent and returned or dishonored payments. Borrower acknowledges that it would be extremely difficult or impracticable to determine Lender's actual damages resulting from any late payment or Event of Default, and such late charges and accrued interest are reasonable estimates of those damages and do not constitute a penalty.

### **ARTICLE III EVENT OF DEFAULT AND REMEDIES**

Section 3.1. Event of Default. The occurrence or happening, at any time and from time to time, of any one or more of the following shall constitute an "Event of Default" under this Note:

- (a) Borrower shall fail, refuse or neglect to pay and satisfy, in full and in the applicable method and manner required, any required payment of principal or interest or any other portion of the indebtedness evidenced by this Note on the date when the same shall become due and payable, whether at the stipulated due date thereof, at a date fixed for payment, or at maturity, by acceleration or otherwise; or

(b) Subject to any applicable notice, cure and/or grace periods, the occurrence of any other Default, breach or Event of Default as defined in or under this Note, the Loan Agreement or any other Loan Document that remains uncured under and pursuant to the provisions of this Note, the Loan Agreement or any other Loan Document.

Section 3.2. **Remedies.** Upon the occurrence of an Event of Default, Lender shall have the immediate right, at the sole discretion of Lender and without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action (**ALL OF WHICH BORROWER HEREBY EXPRESSLY WAIVES AND RELINQUISHES**) (i) to declare the entire unpaid balance of the indebtedness evidenced by this Note (including, without limitation, the outstanding principal balance hereof, including all sums advanced or accrued hereunder or under any other Loan Document, and all accrued but unpaid interest thereon) at once immediately due and payable (and upon such declaration, the same shall be at once immediately due and payable) and may be collected forthwith, whether or not there has been a prior demand for payment and regardless of the stipulated date of maturity, (ii) to foreclose any liens and security interests securing payment hereof or thereof (including, without limitation, any liens and security interests), and (iii) to exercise any of Lender's other rights, powers, recourses and remedies under this Note, under any other Loan Document, or at law or in equity, and the same (w) shall be cumulative and concurrent, (x) may be pursued separately, singly, successively, or concurrently against Borrower or others obligated for the repayment of this Note or any part hereof, or against any one or more of them, or against the Property at the sole discretion of Lender, (y) may be exercised as often as occasion therefor shall arise, it being agreed by Borrower that the exercise, discontinuance of the exercise of or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse, and (z) are intended to be, and shall be, nonexclusive. All rights and remedies of Lender hereunder and under the other Loan Documents shall extend to any period after the initiation of foreclosure proceedings, judicial or otherwise. Without limiting the provisions of Section 4.17 hereof, if this Note, or any part hereof, is collected by or through an attorney-at-law, Borrower agrees to pay all costs and expenses of collection, including, but not limited to, Lender's reasonable attorneys' fees, whether or not any legal action shall be instituted to enforce this Note. This Note is also subject to acceleration as provided in the Loan Agreement.

#### **ARTICLE IV GENERAL PROVISIONS**

Section 4.1. **No Waiver; Amendment.** No failure to accelerate the indebtedness evidenced by this Note by reason of an Event of Default hereunder, acceptance of a partial or past due payment, or indulgences granted from time to time shall be construed (i) as a novation of this Note or as a reinstatement of the indebtedness evidenced by this Note or as a waiver of such right of acceleration or of the right of Lender thereafter to insist upon strict compliance with the terms of this Note, or (ii) to prevent the exercise of such right of acceleration or any other right granted under this Note, under any of the other Loan Documents or by any applicable laws. Borrower hereby expressly waives and relinquishes the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing. The failure to exercise any remedy available to Lender shall not be deemed to be a waiver of any rights or remedies of Lender under this Note or under any of the other Loan Documents, or at law or in equity. No extension of the time for the payment of this Note or any installment due hereunder, made by agreement with any person now or hereafter liable for the payment of this Note, shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part, unless Lender specifically, unequivocally and expressly agrees otherwise in writing. This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, or modification is sought.

Section 4.2. Waivers. EXCEPT AS SPECIFICALLY PROVIDED IN THE LOAN DOCUMENTS TO THE CONTRARY, BORROWER AND ANY ENDORSERS OR GUARANTORS HEREOF SEVERALLY WAIVE AND RELINQUISH PRESENTMENT FOR PAYMENT, DEMAND, NOTICE OF NONPAYMENT OR NONPERFORMANCE, PROTEST, NOTICE OF PROTEST, NOTICE OF INTENT TO ACCELERATE, NOTICE OF ACCELERATION OR ANY OTHER NOTICES OR ANY OTHER ACTION. BORROWER AND ANY ENDORSERS OR GUARANTORS HEREOF SEVERALLY WAIVE AND RELINQUISH, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO THE BENEFITS OF ANY MORATORIUM, REINSTATEMENT, MARSHALING, FORBEARANCE, VALUATION, STAY, EXTENSION, REDEMPTION, APPRAISEMENT, EXEMPTION AND HOMESTEAD NOW OR HEREAFTER PROVIDED BY THE CONSTITUTION AND LAWS OF THE UNITED STATES OF AMERICA AND OF EACH STATE THEREOF, BOTH AS TO ITSELF AND IN AND TO ALL OF ITS PROPERTY, REAL AND PERSONAL, AGAINST THE ENFORCEMENT AND COLLECTION OF THE OBLIGATIONS EVIDENCED BY THIS NOTE OR BY THE OTHER LOAN DOCUMENTS.

Section 4.3. Interest Provisions.

(a) Savings Clause. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply strictly with the applicable Texas law governing the maximum rate or amount of interest payable on the indebtedness evidenced by this Note and the Related Indebtedness (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If the applicable law is ever judicially interpreted so as to render usurious any amount (i) contracted for, charged, taken, reserved or received pursuant to this Note, any of the other Loan Documents or any other communication or writing by or between Borrower and Lender related to the transaction or transactions that are the subject matter of the Loan Documents, (ii) contracted for, charged, taken, reserved or received by reason of Lender's exercise of the option to accelerate the maturity of this Note and/or the Related Indebtedness, or (iii) Borrower will have paid or Lender will have received by reason of any voluntary prepayment by Borrower of this Note and/or the Related Indebtedness, then it is Borrower's and Lender's express intent that all amounts charged in excess of the Maximum Lawful Rate shall be automatically canceled, *ab initio*, and all amounts in excess of the Maximum Lawful Rate theretofore collected by Lender shall be credited on the principal balance of this Note and/or the Related Indebtedness (or, if this Note and all Related Indebtedness have been or would thereby be paid in full, refunded to Borrower), and the provisions of this Note and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder; provided, however, if this Note has been paid in full before the end of the stated term of this Note, then Borrower and Lender agree that Lender shall, with reasonable promptness after Lender discovers or is advised by Borrower that interest was received in an amount in excess of the Maximum Lawful Rate, either refund such excess interest to Borrower and/or credit such excess interest against this Note and/or any Related Indebtedness then owing by Borrower to Lender. Borrower hereby agrees that as a condition precedent to any claim seeking usury penalties against Lender, Borrower will provide written notice to Lender, advising Lender in reasonable detail of the nature and amount of the violation, and Lender shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Borrower or crediting such excess interest against this Note and/or the Related Indebtedness then owing by Borrower to Lender. All sums contracted for, charged, taken, reserved or received by Lender for the use, forbearance or detention of any debt evidenced by this Note and/or the Related Indebtedness shall, to the extent permitted by applicable law, be amortized or spread, using the actuarial method, throughout the stated term of this Note and/or the Related Indebtedness (including any and all renewal and extension periods) until payment in

full so that the rate or amount of interest on account of this Note and/or the Related Indebtedness does not exceed the Maximum Lawful Rate from time to time in effect and applicable to this Note and/or the Related Indebtedness for so long as debt is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to this Note and/or any of the Related Indebtedness. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

(b) Ceiling Election. To the extent that Lender is relying on Chapter 303 of the Texas Finance Code to determine the Maximum Lawful Rate payable on the Note and/or any other portion of the Indebtedness, Lender will utilize the weekly ceiling from time to time in effect as provided in such Chapter 303, as amended. To the extent United States federal law permits Lender to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law, Lender will rely on United States federal law instead of such Chapter 303 for the purpose of determining the Maximum Lawful Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Lender may, at its option and from time to time, utilize any other method of establishing the Maximum Lawful Rate under such Chapter 303 or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect.

Section 4.4. Use of Funds. Borrower hereby warrants, represents and covenants that (i) the loan evidenced by this Note is made to Borrower solely for the purpose of acquiring or carrying on a business or commercial enterprise, (ii) all proceeds of this Note shall be used only for business and commercial purposes, and (iii) no funds disbursed hereunder shall be used for personal, family, agricultural or household purposes.

Section 4.5. Further Assurances and Corrections. From time to time, at the written request of Lender, Borrower will (i) promptly correct any defect, error or omission which may be discovered in the contents of this Note or in any other Loan Document or in the execution or acknowledgment thereof; (ii) execute, acknowledge, deliver, record and/or file (or cause to be executed, acknowledged, delivered, recorded and/or filed) such further documents and instruments (including, without limitation, further deeds of trust, security agreements, financing statements, continuation statements and assignments of rents) and perform such further acts and provide such further assurances as may be necessary, desirable, or proper, in Lender's opinion, (A) to carry out more effectively the purposes of this Note and the Loan Documents and the transactions contemplated hereunder and thereunder, (B) to confirm the rights created under this Note and the other Loan Documents, (C) to protect and further the validity, priority and enforceability of this Note and the other Loan Documents and the liens and security interests created thereby, and (D) to subject to the Loan Documents any property of Borrower intended by the terms of any one or more of the Loan Documents to be encumbered by the Loan Documents; and (iii) pay all costs in connection with any of the foregoing.

Section 4.6. Waiver of Jury Trial. BORROWER, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY KNOWINGLY, INTENTIONALLY, IRREVOCABLY, UNCONDITIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS NOTE OR ANY CONDUCT, ACT OR OMISSION OF LENDER OR BORROWER, OR ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH LENDER OR BORROWER, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

Section 4.7. Governing Law; Submission to Jurisdiction. This Note is executed and delivered as an incident to a lending transaction negotiated and consummated in Dallas County, Texas, and shall be governed by and construed in accordance with the laws of the State of Texas. Borrower, for itself and its successors and assigns, hereby irrevocably (i) submits to the nonexclusive jurisdiction of the state and federal courts in Texas, (ii) waives, to the fullest extent permitted by law, any objection that it may now or in the future have to the laying of venue of any litigation arising out of or in connection with this Note or any Loan Document brought in Dallas County, Texas, (iii) waives any objection it may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum, and (iv) agrees that any legal proceeding against any party to any of the Loan Documents arising out of or in connection with any of the Loan Documents may be brought in one of the foregoing courts. Borrower hereby agrees that service of process upon Borrower may be made by certified or registered mail, return receipt requested, at its address specified herein. Nothing herein shall affect the right of Lender to serve process in any other manner permitted by law or shall limit the right of Lender to bring any action or proceeding against Borrower or with respect to any of Borrower's property in courts in other jurisdictions. The scope of each of the foregoing waivers is intended to be all encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including, without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims. Borrower acknowledges that these waivers are a material inducement to Lender's agreement to enter into the agreements and obligations evidenced by the Loan Documents, that Lender has already relied on these waivers and will continue to rely on each of these waivers in related future dealings. The waivers in this Section 4.7 are irrevocable, meaning that they may not be modified either orally or in writing, and these waivers apply to any future renewals, extensions, amendments, modifications, or replacements in respect of any and all of the applicable Loan Documents. In connection with any litigation, this Note may be filed as a written consent to a trial by the court.

Section 4.8. Counting of Days. If any time period referenced hereunder ends on a day other than a Business Day, such time period shall be deemed to end on the next succeeding Business Day.

Section 4.9. Relationship of the Parties. Notwithstanding any prior business or personal relationship between Borrower and Lender, or any officer, director or employee of Lender, that may exist or have existed, the relationship between Borrower and Lender is solely that of debtor and creditor, Lender has no fiduciary or other special relationship with Borrower, Borrower and Lender are not partners or joint venturers, and no term or condition of any of the Loan Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

Section 4.10. Successors and Assigns. The terms and provisions hereof shall be binding upon and inure to the benefit of Borrower and Lender and their respective heirs, executors, legal representatives, successors, successors-in-title and assigns, whether by voluntary action of the parties, by operation of law or otherwise, and all other persons claiming by, through or under them. The terms "Borrower" and "Lender" as used hereunder shall be deemed to include their respective heirs, executors, legal representatives, successors, successors-in-title and assigns, whether by voluntary action of the parties, by operation of law or otherwise, and all other persons claiming by, through or under them.

Section 4.11. Time is of the Essence. Time is of the essence with respect to all provisions of this Note and the other Loan Documents.

Section 4.12. Headings. The Article, Section, and Subsection entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify, define, limit, amplify or be used in construing the text, scope or intent of such Articles, Sections, or Subsections or any provisions hereof.

Section 4.13. Controlling Agreement. In the event of any conflict between the provisions of this Note and the Loan Agreement, it is the intent of the parties hereto that the provisions of the Loan Agreement shall control. In the event of any conflict between the provisions of this Note and any of the

other Loan Documents (other than the Loan Agreement), it is the intent of the parties hereto that the provisions of this Note shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of this Note and the other Loan Documents and that this Note and the other Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same.

Section 4.14. Notices. All notices or other communications required or permitted to be given pursuant to this Note shall be in writing and shall be considered as properly given if given in accordance with the terms of the Loan Agreement.

Section 4.15. Severability. If any provision of this Note or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, then neither the remainder of this Note nor the application of such provision to other persons or circumstances nor the other instruments referred to herein shall be affected thereby, but rather shall be enforced to the greatest extent permitted by applicable law.

Section 4.16. Right of Setoff. In addition to all liens upon and rights of setoff against the money, securities, or other property of Borrower given to Lender that may exist under applicable law, Lender shall have and Borrower hereby grants to Lender a lien upon and a right of setoff against all money, securities, and other property of Borrower, now or hereafter in possession of or on deposit with Lender, whether held in a general or special account or deposit, for safe-keeping or otherwise, and every such lien and right of setoff may be exercised without demand upon or notice to Borrower. No lien or right of setoff shall be deemed to have been waived by any act or conduct on the part of Lender, or by any neglect to exercise such right of setoff or to enforce such lien, or by any delay in so doing, and every right of setoff and lien shall continue in full force and effect until such right of setoff or lien is specifically waived or released by an instrument in writing executed by Lender.

Section 4.17. Costs of Collection. If any holder of this Note retains an attorney-at-law in connection with any Event of Default or at maturity or to collect, enforce or defend this Note or any part hereof, or any other Loan Document in any lawsuit or in any probate, reorganization, bankruptcy or other proceeding, or if Borrower sues any holder in connection with this Note or any other Loan Document and does not prevail, then Borrower agrees to pay to each such holder, in addition to the principal balance hereof and all interest hereon, all costs and expenses of collection or incurred by such holder or in any such suit or proceeding, including, but not limited to, reasonable attorneys' fees.

Section 4.18. Statement of Unpaid Balance. At any time and from time to time, Borrower will furnish promptly, upon the request of Lender, a written statement or affidavit, in form satisfactory to Lender, stating the unpaid balance of the indebtedness evidenced by this Note and the Related Indebtedness and that there are no offsets or defenses against full payment of the indebtedness evidenced by this Note and the Related Indebtedness and the terms hereof, or if there are any such offsets or defenses, specifying them.

Section 4.19. Entire Agreement. THIS NOTE AND THE OTHER LOAN DOCUMENTS CONTAIN THE FINAL, ENTIRE AGREEMENT BETWEEN THE PARTIES HERETO RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND ALL PRIOR AGREEMENTS, WHETHER WRITTEN OR ORAL, RELATIVE HERETO AND THERETO WHICH ARE NOT CONTAINED HEREIN OR THEREIN ARE SUPERSEDED AND TERMINATED HEREBY, AND THIS NOTE AND THE OTHER LOAN DOCUMENTS MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES HERETO.

[Remainder of page intentionally left blank.]



IN WITNESS WHEREOF, Borrower, intending to be legally bound hereby, has duly executed this Note as of the day and year first written above.

**BORROWER:**

INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

INNOVATIVE FOOD PROPERTIES, LLC,  
a Delaware limited liability company

By INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation,  
its sole member

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

PROMISSORY NOTE -  
Signature Page

**PLEDGE AND SECURITY AGREEMENT**

THIS PLEDGE AND SECURITY AGREEMENT is entered into as of June 6, 2022 by and among INNOVATIVE FOOD HOLDINGS, INC., a Florida corporation ("IVFH"), and INNOVATIVE FOOD PROPERTIES, LLC, a Delaware limited liability company ("IVFP" and, collectively with IVFH, the "Borrower"), each of the parties set forth on the signature pages hereof (together with the Borrower, each a "Grantor" and, collectively, the "Grantors"), and MAPLEMARK BANK (together with its successors and assigns, the "Lender") on behalf of itself and its Affiliates ("Secured Party").

**RECITAL**

Borrower and Lender are entering into a Loan Agreement dated of even date herewith (as it may be amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"). Each Grantor is entering into this Pledge and Security Agreement (as it may be amended, restated, supplemented or otherwise modified from time to time, this "Security Agreement") in order to, among other things, induce Lender to enter into and extend credit to Borrower under the Loan Agreement.

**AGREEMENT**

ACCORDINGLY, Debtor and Secured Party hereby agree as follows:

**ARTICLE I  
DEFINITIONS**

1.1 Terms Defined in Loan Agreement. All capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Loan Agreement.

1.2 Terms Defined in Texas Uniform Commercial Code. Terms defined in the UCC which are not otherwise defined in this Security Agreement are used herein as defined in the UCC as in effect on the date hereof.

1.3 Definitions of Certain Terms Used Herein. As used in this Security Agreement, in addition to the terms defined in the Preliminary Statement, the following terms shall have the following meanings:

"Accounts" mean any "account," as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor, and, in any event, shall include, without limitation, each of the following, whether now owned or hereafter acquired by Debtor: (a) all rights of Debtor to payment for goods sold or leased or services rendered or the license of Intellectual Property, whether or not earned by performance, (b) all accounts receivable of Debtor, (c) all rights of Debtor to receive any payment of money or other form of consideration, (d) all security pledged, assigned, or granted to or held by Debtor to secure any of the foregoing, (e) all guaranties of, or indemnifications with respect to, any of the foregoing, (f) all Chattel Paper, (g) all Instruments, and (h) all rights of Debtor as unpaid sellers of goods or services, including, but not limited to, all rights of stoppage in transit, replevin, reclamation, and resale.

"Account Debtor" means any Person who is or who may become obligated to Debtor under, with respect to, or on account of an Account.

"Article" means a numbered article of this Security Agreement, unless another document is specifically referenced.

“Books and Records” means any and all presently existing and hereafter acquired or created books and records of Debtor respecting Debtor’s business, including, without limitation all records (including maintenance and warranty records), ledgers, computer programs, software, disc or tape files, printouts, runs, and other computer prepared information indicating, summarizing, or evidencing the Collateral or that is otherwise used to access and process the Collateral.

“Chattel Paper” means any “chattel paper”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor and, in any event, shall include, without limitation, all Electronic Chattel Paper, Tangible Chattel Paper and all records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, or a lease of specific goods, now owned or hereafter acquired by Debtor.

“Collateral” means all Accounts, Books and Records, Chattel Paper, Commercial Tort Claims, Deposit Accounts (including all funds, certificates, checks, drafts, wire transfers, receipts and other earnings, profits, or other proceeds from time to time representing, evidencing, deposited into or held in Deposit Accounts), Documents, Equipment, Financial Assets, Fixtures, General Intangibles, Instruments, Intellectual Property, Inventory, Investment Property, Letter of Credit Rights, Marks, Pledged Equity, Stock Rights, and all other personal property, wherever located, in which Debtor now has or hereafter acquires any right or interest, and the Proceeds, insurance proceeds and products thereof, and any accessories thereto, substitutions therefor and replacements thereof, together with all books and records, customer lists, credit files, computer files, programs, printouts and other computer materials and records related thereto. With respect to Intellectual Property, Collateral further includes all applications and registrations related thereto and any reissues, renewals, continuations, continuations-in-part, divisions, substitutions or extensions thereof, all goodwill associated with and symbolized by any of the foregoing, all income, royalties, profits, damages, awards, and payments relating to or payable under any of the foregoing, the right to sue for past, present, and future infringements, dilution or breach of any of the foregoing, and all other rights and benefits relating to any of the foregoing throughout the world; in each case, whether now owned or hereafter acquired or whether now known or subsequently developed, by or for Debtor.

“Commercial Tort Claims” means any “commercial tort claim”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor and in any event, shall include, without limitation, any claim now owned or hereafter acquired by Debtor, arising in tort with respect to which: (a) the claimant is an organization; or (b) the claimant is an individual and the claim (i) arose in the course of the claimant’s business or profession and (ii) does not include damages arising out of personal injury to or the death of an individual.

“Control” shall have the meaning set forth in Section 9.104, 9.105, 9.106 or 9.107 of the UCC, as applicable.

“Debtor” means, collectively, the Grantors, and each their respective successors and assigns.

“Deposit Accounts” means any “deposit account”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor and in any event, shall include, without limitation, any and all deposit accounts or other bank accounts now owned or hereafter acquired or opened by Debtor, and any account which is a replacement or substitute for any of such accounts, including, without limitation, those deposit accounts identified on Exhibit A.

“Documents” means any “document”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor, including without limitation all bills of lading, dock warrants, dock receipts, warehouse receipts and orders for the delivery of goods, and also any other document

which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers.

“Electronic Chattel Paper” means any “electronic chattel paper”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor.

“Equipment” means any “equipment”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor and, in any event, shall include, without limitation, all machinery, equipment, furnishings, Fixtures and vehicles now owned or hereafter acquired by Debtor and any and all additions, substitutions, and replacements of any of the foregoing, wherever located, together with all attachments, components, parts, equipment, and accessories installed thereon or affixed thereto.

“Exhibit” refers to a specific exhibit to this Security Agreement, unless another document is specifically referenced.

“Financial Assets” means any “financial asset”, as such term is defined in Chapter 8 of the UCC, now owned or hereafter acquired by Debtor.

“Fixtures” means all goods, now owned or hereafter acquired by Debtor, which become so related to particular real estate that an interest in such goods arises under any real estate law applicable thereto, including, without limitation, all trade fixtures.

“General Intangibles” means any “general intangibles”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor and, in any event, shall include, without limitation, each of the following, whether now owned or hereafter acquired by Debtor: (a) all of Debtor’s trade secrets, Intellectual Property, registrations, renewal rights, goodwill franchises, licenses, permits, proprietary information, customer lists, designs, and inventions, (b) all of Debtor’s books, records, data, plans, manuals, computer software, and computer programs, (c) all of Debtor’s contract rights, partnership interests, joint venture interests, securities, deposit accounts, investment accounts, certificates of deposit, and investment property, (d) all rights of Debtor to payment under letters of credit and similar agreements, (e) all tax refunds and tax refund claims of Debtor, (f) all choses in action and causes of action of Debtor (whether arising in contract, tort, or otherwise and whether or not currently in litigation) and all judgments in favor of Debtor, (g) all rights and claims of Debtor under warranties and indemnities, and (h) all rights of Debtor under any insurance, surety, or similar contract or arrangement. General Intangibles include payment intangibles.

“Instrument” means any “instrument”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor, other than stock and other securities, and in any event, shall include, without limitation, all promissory notes, drafts, bills of exchange and trade acceptances of Debtor, whether now owned or hereafter acquired.

“Intellectual Property” means all domestic and foreign (a) internet domains and URLs; (b) trademarks, trademark registrations, trademark applications, service marks, service mark registrations, service mark applications, business marks, brand names, trade names, trade dress, names, logos and slogans; (c) patents, patent rights, provisional patent applications, patent applications, designs, registered designs, registered design applications, industrial designs, industrial design applications, industrial design registrations and inventors’ certificates, including any and all divisions, continuations, continuations-in-part, extensions, substitutions, renewals, registrations, revalidations, re-examinations, reissues or additions, including supplementary certificates of protection, of or to any of the foregoing items; (d) copyrights (whether or not registered and including all derivative works, moral rights, renewals, extensions, reversions and restorations associated with such copyrights, now or hereafter provided by

applicable law), copyright registrations, copyright applications, copyright renewals, original works of authorship fixed in any tangible medium of expression or fixation, including literary works (including all forms and types of computer software, including all source code, object code, firmware, development tools, files, records and data, and all documentation related to any of the foregoing), musical, dramatic, pictorial, graphic and sculptured works; (e) trade secrets, technology, discoveries and improvements, know-how, proprietary rights, formulae, confidential and proprietary information, research and development information, technical or other data or information, techniques, customer and vendor lists, unpatented inventions, designs, drawings, procedures, processes, models, materials, methods, developments, formulations, manuals and systems, whether or not patentable or copyrightable and whether or not such has actual or potential commercial value and are not available in the public domain; and (f) all other intellectual property or proprietary rights, in each case whether or not subject to statutory registration or protection and whether now owned or hereafter acquired by Debtor.

“Inventory” means any “inventory”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor, and, in any event, shall include, without limitation, each of the following, whether now owned or hereafter acquired by Debtor: (a) all goods and other personal property of Debtor that are held for sale or lease or to be furnished under any contract of service, (b) all raw materials, work-in-process, finished goods, inventory, supplies, and materials of Debtor, (c) all wrapping, packaging, advertising, and shipping materials of Debtor, (d) all goods that have been returned to, repossessed by, or stopped in transit by Debtor, and (e) all Documents evidencing any of the foregoing.

“Investment Property” means any “investment property”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor, and, in any event, shall include, without limitation, each of the following, whether now owned or hereafter acquired by Debtor: (a) any security, whether certificated or uncertificated; (b) any security entitlement; (c) any securities account (including, without limitation, those described on Exhibit C); (d) any commodity contract; and (e) any commodity account (including, without limitation, those identified on Exhibit C).

“Letter-of-Credit Right” means any “letter-of-credit right”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor, and in any event, shall include, without limitation, any right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance (but shall not include any right of a beneficiary to demand payment or performance under a letter of credit), now owned or hereafter acquired by Debtor.

“Marks” means all registered and unregistered trademarks, service marks, domain names and trade names now or hereafter used by Debtor.

“Obligations” means, collectively, the Indebtedness and Obligations as defined in the Loan Agreement.

“Pledged Equity” means 100% of the issued and outstanding Equity Interests in each Subsidiary, in each case, together with the certificates (or other agreements or instruments), if any, representing such Equity Interests, and all options and other rights, contractual or otherwise, with respect thereto, including, but not limited to, the following: (a) all Equity Interests representing a non-cash dividend thereon, or representing a distribution or return of capital upon or in respect thereof, or resulting from a stock split, revision, reclassification or other exchange therefor, and any subscriptions, warrants, rights or options issued to the holder thereof, or otherwise in respect thereof; and (b) in the event of any consolidation or merger involving the issuer thereof and in which such issuer is not the surviving Person, all shares of each class of the Equity Interests of the successor Person formed by or resulting from such consolidation or merger, to the extent that such successor Person is a direct Subsidiary of Debtor.

“Proceeds” means any “proceeds,” as such term is defined in Chapter 9 of the UCC and, in any event, shall include, but not be limited to, (a) any and all proceeds of any insurance, indemnity, warranty, or guaranty payable to Debtor from time to time with respect to any of the Collateral, (b) any and all payments (in any form whatsoever) made or due and payable to Debtor 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 Authority (or any person 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.

“Receivables” means the Accounts, Chattel Paper, Documents, Investment Property, Instruments, or Commercial Tort Claims, and any other rights or claims to receive money which are General Intangibles or which are otherwise included as Collateral.

“Section” means a numbered Section of this Security Agreement, unless another document is specifically referenced.

“Secured Obligations” means the Obligations, whether or not (a) such Obligations arise or accrue before or after the filing by or against any Debtor of a petition under the Bankruptcy Code, or any similar filing by or against any Debtor under the laws of any jurisdiction, or any bankruptcy, insolvency, receivership or other similar proceeding, (b) such Obligations are allowable under Section 502(b)(2) of the Bankruptcy Code or under any other insolvency proceedings, (c) the right of payment in respect of such Obligations is reduced to judgment, or (d) such Obligations are liquidated, unliquidated, similar, dissimilar, related, unrelated, direct, indirect, fixed, contingent, primary, secondary, joint, several, or joint and several, matured, disputed, undisputed, legal, equitable, secured, or unsecured.

“Security” means any “security,” as such term is defined in Chapter 8 of the UCC, now owned or hereafter acquired by Debtor.

“Stock Rights” means any securities, dividends or other distributions and any other right or property which Debtor shall receive or shall become entitled to receive for any reason whatsoever with respect to, in substitution for or in exchange for any securities or other ownership interests in a corporation, partnership, joint venture or limited liability company constituting Collateral and any securities, any right to receive securities and any right to receive earnings, in which Debtor now has or hereafter acquires any right, issued by an issuer of such securities.

“Tangible Chattel Paper” means any “tangible chattel paper”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor.

“UCC” means the Uniform Commercial Code as in effect in the State of Texas, as the same has been or may be amended or revised from time to time, or, if so required with respect to any particular Collateral by mandatory provisions of applicable law, as in effect in the jurisdiction in which such Collateral is located.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms.

## ARTICLE II GRANT OF SECURITY INTEREST

2.1 Security Interest. Debtor hereby pledges, assigns and grants to Secured Party (including their Affiliates), a security interest in all of Debtor’s right, title and interest in and to the Collateral to

secure the prompt and complete payment and performance of the Secured Obligations. If the security interest granted hereby in any rights of Debtor under any contract included in the Collateral is expressly prohibited by such contract, then the security interest hereby granted therein nonetheless remains effective to the extent allowed by Article or Chapter 9 of the UCC or other applicable law but is otherwise limited by that prohibition. Secured Party acknowledges that the attachment of its security interest in any Commercial Tort Claim as Collateral is subject to Debtor's compliance with Section 5.14.

2.2 Debtor Remains Liable. Notwithstanding anything to the contrary contained herein, (a) Debtor shall remain liable under the contracts and agreements included in the Collateral to the extent set forth therein to perform all of its respective duties and obligations thereunder to the same extent as if this Security Agreement had not been executed, (b) the exercise by Secured Party of any of its rights hereunder shall not release Debtor from any of its duties or obligations under the contracts and agreements included in the Collateral, and (c) Secured Party shall not have any obligation or liability under any of the contracts and agreements included in the Collateral by reason of this Security Agreement, nor shall Secured Party be obligated to perform any of the obligations or duties of Debtor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

2.3 Authorization to File Financing Statements. Debtor hereby irrevocably authorizes Secured Party at any time and from time to time to file in any UCC jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral (i) as all assets of Debtor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article or Chapter 9 of the UCC, or (ii) as being of an equal or lesser scope or with greater detail, and (b) contain any other information required by subchapter E of Chapter 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether Debtor is an organization, the type of organization and any organization identification number issued to Debtor and (ii) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Debtor hereby irrevocably authorizes Secured Party at any time and from time to time to file in the United States Patent and Trademark Office, the United States Copyright Office or any other Governmental Authority this Security Agreement or a document of similar import signed by Debtor (including without limitation a short form of security agreement satisfactory to Secured Party and Debtor) or a true and correct copy thereof. Debtor agrees to furnish any such information to Secured Party promptly upon request.

### ARTICLE III REPRESENTATIONS AND WARRANTIES

Debtor represents and warrants to Secured Party that:

3.1 Title, Authorization, Validity and Enforceability. Debtor has good and record and marketable title to the Collateral and none of the Collateral is subject to any Lien, except for Liens permitted under Section 5.1, and has full power and authority to grant to Secured Party the security interest in such Collateral pursuant hereto. The execution and delivery by Debtor of this Security Agreement has been duly authorized by proper corporate, limited liability, or partnership proceedings, as applicable, and this Security Agreement constitutes a legal, valid and binding obligation of Debtor and creates a security interest which is enforceable against Debtor in all now owned and hereafter acquired Collateral. When financing statements have been filed in the appropriate offices against Debtor, Secured Party will have a fully perfected first priority security interest in that Collateral in which a security interest may be perfected by filing, subject only to Liens permitted under Section 5.1.

3.2 Conflicting Laws and Contracts. Neither the execution and delivery by Debtor of this Security Agreement, the creation and perfection of the security interest in the Collateral granted hereunder, nor compliance with the terms and provisions hereof will violate any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on Debtor or Debtor's Constituent Documents, the provisions of any indenture, instrument or agreement to which Debtor is a party or is subject, or by which it, or its Property, is bound, or conflict with or constitute a default thereunder, or result in the creation or imposition of any Lien pursuant to the terms of any such indenture, instrument or agreement (other than any Lien of Secured Party).

3.3 Principal Location. Debtor's mailing address, and the location of its chief executive office and of the books and records relating to the Receivables, are disclosed in Exhibit E; Debtor has no other places of business except those set forth in Exhibit E.

3.4 Property Locations. The Inventory, Equipment and Fixtures are located solely at the locations described in Exhibit E. All of said locations are owned by Debtor except for locations (a) which are leased by Debtor as lessee and designated in Exhibit E and (b) at which Inventory is held in a public warehouse or is otherwise held by a bailee or on consignment as designated in Exhibit E, with respect to which Inventory, Debtor has delivered bailment agreements, warehouse receipts, financing statements or other documents satisfactory to the Secured Party to protect Secured Party's security interest in such Inventory.

3.5 Deposit, Commodity, and Securities Account. Exhibit A correctly identifies all deposit, commodity, and securities accounts owned by Debtor and the institutions holding such accounts. No Person other than Debtor has control over any Investment Property.

3.6 Litigation. There is no litigation, investigation or governmental proceeding threatened against Debtor or any of its Property which could reasonably be expected to have a Material Adverse Event.

3.7 No Other Names. Debtor has not conducted business under any name except the name in which it has executed this Security Agreement.

3.8 No Event of Default. No Event of Default exists.

3.9 Accounts and Chattel Paper. The names of the obligors, amounts owing, due dates and other information with respect to the Accounts and Chattel Paper are and will be correctly stated in all records of Debtor relating thereto and in all invoices and reports with respect thereto furnished to Secured Party by Debtor from time to time. As of the time when each Account or each item of Chattel Paper arises, Debtor shall be deemed to have represented and warranted that such Account or Chattel Paper, as the case may be, and all records relating thereto, are genuine and in all respects what they purport to be.

3.10 No Financing Statements. No financing statement describing all or any portion of the Collateral which has not lapsed or been terminated naming Debtor as debtor has been filed in any jurisdiction except (i) financing statements naming Secured Party as the secured party, and (ii) as permitted by Section 5.1.

3.11 Federal Employer Identification Number. Debtor's Federal employer identification number is listed on Exhibit E.

3.12 Pledged Equity and Other Investment Property. Exhibit C sets forth a complete and accurate list of the Instruments, Securities and other Investment Property owned by Debtor. Debtor is the



direct and beneficial owner of each Instrument, Security and other type of Investment Property listed on Exhibit C as being owned by it, free and clear of any Liens, except for the security interest granted to Secured Party hereunder. Debtor further represents and warrants that (a) all such Instruments, Securities or other types of Investment Property which are shares of stock in a corporation or ownership interests in a partnership or limited liability company have been (to the extent such concepts are relevant with respect to such Instrument, Security or other type of Investment Property) duly and validly issued, are fully paid and non-assessable and (b) with respect to any certificates delivered to Secured Party representing an ownership interest in a partnership or limited liability company, either such certificates are Securities as defined in Chapter 8 of the UCC of the applicable jurisdiction as a result of actions by the issuer or otherwise, or, if such certificates are not Securities, Debtor has so informed Secured Party so that Secured Party may take steps to perfect its security interest therein as a General Intangible. With respect to ownership interests in its Subsidiaries, Debtor represents and warrants that the Pledged Equity constitutes 100% of the issued and outstanding capital stock (as other equity interests) in all its Subsidiaries.

#### ARTICLE IV CONCERNING INTELLECTUAL PROPERTY

4.1 Registrations. Exhibit B sets forth a complete and accurate list of the Intellectual Property owned by Debtor registered with, or subject to an application for registration with, the United States Patent and Trademark Office, United States Copyright Office, or any state trademark offices or other foreign offices or agencies, as applicable. Debtor is the direct and beneficial owner of the Intellectual Property listed on Exhibit B as being owned by it, free and clear of any Liens, except for the Liens permitted under Section 5.1.

4.2 Intellectual Property. To the knowledge and belief of Debtor, all Marks listed on Exhibit B for Debtor and all licenses held by such Debtor related to such Marks constitute all such rights that are required or reasonably necessary for the conduct of the business of Debtor as currently conducted. All such Marks (and all applications and registrations therefor) are currently in compliance in all material respects with all legal requirements (including, without limitation, timely filings, proofs and payments of all fees), and are valid and enforceable, and are not subject to any filings, fees or other actions falling due within ninety (90) days after the date hereof. Debtor owns or otherwise possesses adequate licenses or other valid rights to use, sell and license, free and clear of any and all adverse claims (including by current and former employees and contractors), liens, restrictions or other obligation to pay royalties, honoraria or other fees, any and all Intellectual Property (including without limitation the Marks) used in the conduct of the business of Debtor as currently conducted or proposed to be conducted. No Marks have been within the preceding three (3) years or are now the subject of any claims or litigation and, to the knowledge of Debtor, no claims or litigation have been alleged or threatened. Debtor has taken all reasonable steps to maintain, police and protect the Marks owned or used in the operation of Debtor's business. The conduct of Debtor's business as currently conducted or planned to be conducted does not infringe or otherwise impair or conflict with any Intellectual Property or other proprietary or personal rights of any third party, and, to the knowledge of Debtor, the Intellectual Property owned or licensed by Debtor is not being infringed by any third party. There is no litigation or order pending or outstanding, or to the knowledge of Debtor, threatened, that seeks to limit or challenge or that concerns the ownership, use, validity or enforceability of any Marks or any Intellectual Property of Debtor. The consummation of the transactions contemplated hereby will not result in the alteration, loss or impairment of the validity, enforceability or Debtor's right to own or use any of the Intellectual Property used in the conduct of the business of Debtor as currently conducted or proposed to be conducted. Debtor has made available to Secured Party a list of all software (other than generally commercially available, non-custom, off-the-shelf software application programs having a retail acquisition price of less than \$5,000) that is owned or used by Debtor, and identified which software is owned, otherwise used and/or licensed or otherwise distributed by Debtor to any third party, as the case may be.

ARTICLE V  
COVENANTS

From the date of this Security Agreement, and thereafter until this Security Agreement is terminated, Debtor agrees that:

5.1 General.

5.1.1 Inspection. From time to time, Debtor will permit Secured Party, by its representatives and agents, at the expense of Debtor, (a) to inspect the Collateral, (b) to examine and make copies of the records of Debtor relating to the Collateral and (c) to discuss the Collateral and the related records of Debtor with, and to be advised as to the same by, Debtor's officers and employees (and, in the case of any Receivable, with any person or entity which is or may be obligated thereon) subject to the restrictions set forth in the Loan Agreement.

5.1.2 Taxes. Debtor will pay when due all taxes, assessments and governmental charges and levies as set forth in the Loan Agreement.

5.1.3 Exhibits. Debtor shall promptly update any Exhibits if any information therein shall become inaccurate or incomplete. The failure of property descriptions to be accurate or complete on any Exhibits shall not impair Secured Party's security interest in such property.

5.1.4 Records and Reports; Notification of Event of Default. Debtor will maintain complete and accurate books and records with respect to the Collateral, and furnish to Secured Party such reports relating to the Collateral as Secured Party shall from time to time reasonably request in writing. Debtor will give prompt notice in writing to Secured Party of the occurrence of any development, financial or otherwise, which might materially and adversely affect the Collateral. Debtor shall mark its books and records to reflect the security interest of Secured Party under this Security Agreement.

5.1.5 Actions; Defense of Title. Debtor will execute and deliver to Secured Party all statements, amendments and other agreements and documents and take such other actions as may from time to time be reasonably requested in writing by Secured Party in order to maintain a first perfected security interest in and, in the case of Investment Property, Deposit Accounts, Letter-of-Credit-Rights, and Electronic Chattel Paper, Control of, the Collateral. Debtor will take any and all actions necessary to defend title to the Collateral against all Persons and to defend the security interest of Secured Party in the Collateral and the priority thereof against any Lien not expressly permitted hereunder.

5.1.6 Disposition of Collateral. Debtor will not sell, lease, license or otherwise dispose of the Collateral except (a) prior to the occurrence of an Event of Default, dispositions specifically permitted pursuant to the Loan Agreement, (b) until such time following the occurrence and continuance of an Event of Default, as Debtor receives a notice from Secured Party instructing Debtor to cease such transactions, Debtor may make sales or leases of Inventory in the ordinary course of business and (c) until such time as Debtor receives a notice from Secured Party pursuant to Article VIII following the occurrence and continuance of an Event of Default, Debtor may use proceeds of Inventory and Accounts collected in the ordinary course of business.

5.1.7 Liens. Debtor will not create, incur, or suffer to exist any Lien on the Collateral except (a) the security interest created by this Security Agreement, and (b) other Liens permitted pursuant to the Loan Agreement.

5.1.8 Change in Location, Jurisdiction of Organization or Name. Debtor will not (a) have any Inventory, Equipment or Fixtures or Proceeds or products thereof (other than Inventory and proceeds thereof disposed of as permitted by Section 5.1.6) at a location other than a location specified in Exhibit E, (b) maintain records relating to the Receivables at a location other than at the location specified on Exhibit E, (c) maintain a place of business at a location other than a location specified on Exhibit E, (d) change its name or taxpayer identification number, (e) change its mailing address, or (f) change its jurisdiction of organization, unless Debtor shall have given Secured Party not less than 30 days' prior written notice thereof, and Secured Party shall have determined that such change will not adversely affect the validity, perfection or priority of Secured Party's security interest in the Collateral.

5.1.9 Other Financing Statements. Debtor will not file or authorize the filing on its behalf of any financing statement naming it as debtor covering all or any portion of the Collateral, except in favor of Secured Party.

## 5.2 Receivables.

5.2.1 Certain Agreements on Receivables. Debtor will not make or agree to make any discount, credit, rebate or other reduction in the original amount owing on a Receivable or accept in satisfaction of a Receivable less than the original amount thereof, except that, prior to the occurrence of an Event of Default, Debtor may reduce the amount of Accounts arising from the sale of Inventory in accordance with its present policies and in the ordinary course of business.

5.2.2 Collection of Receivables. Except as otherwise provided in this Security Agreement, Debtor will collect and enforce, at Debtor's sole expense, all amounts due or hereafter due to Debtor under the Receivables.

5.2.3 Delivery of Invoices. Debtor will deliver to Secured Party immediately upon its request after the occurrence of an Event of Default duplicate invoices with respect to each Account bearing such language of assignment as Secured Party shall specify.

5.2.4 Disclosure of Counterclaims on Receivables. If (a) any discount, credit or agreement to make a rebate or to otherwise reduce the amount owing on a Receivable exists or (b) if, to the knowledge of Debtor, any dispute, setoff, claim, counterclaim or defense exists or has been asserted or threatened with respect to a Receivable, Debtor will disclose such fact to Secured Party in writing in connection with the inspection by Secured Party of any record of Debtor relating to such Receivable and in connection with any invoice or report furnished by Debtor to Secured Party relating to such Receivable.

## 5.3 Inventory and Equipment.

5.3.1 Maintenance of Goods. Debtor will do all things commercially reasonably and necessary to maintain, preserve, protect and keep the Inventory and the Equipment in good repair and working and saleable condition.

5.3.2 Insurance. Debtor will maintain insurance in accordance with Section 4.5 of the Loan Agreement.

5.3.3 Inventory Warranties. Reserved.

5.3.4 Safekeeping of Inventory; Inventory Covenants. Secured Party shall not be responsible for (a) the safekeeping of the Inventory; (b) any loss or damage thereto or destruction thereof occurring or arising in any manner or fashion from any cause; (c) any diminution in the value of Inventory or (d) any act or default of any carrier, warehouseman, bailee or forwarding agency or any other Person in any way dealing with or handling the Inventory. All risk of loss, damage, distribution or diminution in value of the Inventory shall be borne by Debtor.

5.3.5 Records and Schedules of Inventory. Debtor shall keep correct and accurate records itemizing and describing the kind, type, quality and quantity of Inventory, Debtor's cost therefor and selling price thereof, and the withdrawals therefrom and additions thereto and Inventory then on consignment, and shall, at the request of Secured Party, furnish to Secured Party, daily copies of the working papers related thereto. A physical count of the Inventory shall be conducted no less often than annually and a report based on such count of Inventory shall promptly thereafter be provided to Secured Party together with such supporting information including, without limitation invoices relating to Debtor's purchase of goods listed in said report, as Secured Party shall, in its sole and absolute discretion, request.

5.3.6 Returned and Repossessed Inventory. If at any time prior to the occurrence of an Event of Default, any Account Debtor returns any Inventory to Debtor with a value in excess of \$10,000.00, Debtor shall promptly determine the reason for such return and, if Debtor accepts such return, issue a credit memorandum (with a copy to be sent to Secured Party if Secured Party has so requested) in the appropriate amount to such Account Debtor. After the occurrence of an Event of Default, Debtor shall hold all returned Inventory in trust for Secured Party, shall segregate all returned Inventory from all other property of Debtor or in its possession and shall conspicuously label said returned Inventory as the property of Secured Party. Debtor shall, in all cases, immediately notify Secured Party of the return of any Inventory with a value in excess of \$10,000.00 specifying the reason for such return and the location and condition of the returned Inventory.

5.4 Instruments, Securities, Chattel Paper, and Documents. Debtor will (a) deliver to Secured Party immediately upon execution of this Security Agreement the originals of all Chattel Paper, Securities and Instruments (if any then exist), (b) hold in trust for Secured Party upon receipt and immediately thereafter deliver to Secured Party any Chattel Paper, Securities and Instruments constituting Collateral, and (c) upon Secured Party's request, deliver to Secured Party (and thereafter hold in trust for Secured Party upon receipt and immediately deliver to Secured Party) any Document evidencing or constituting Collateral.

5.5 Uncertificated Securities and Certain Other Investment Property. Debtor will permit Secured Party from time to time to cause the appropriate issuers (and, if held with a securities intermediary, such securities intermediary) of uncertificated securities or other types of Investment Property not represented by certificates which are Collateral to mark their books and records with the numbers and face amounts of all such uncertificated securities or other types of Investment Property not represented by certificates and all rollovers and replacements therefor to reflect the Lien of Secured Party granted pursuant to this Security Agreement. Debtor will take any actions necessary to cause (a) the issuers of uncertificated securities which are Collateral and which are Securities and (b) any financial intermediary which is the holder of any Investment Property, to cause Secured Party to have and retain Control over such Securities or other Investment Property. Without limiting the foregoing, Debtor will, with respect to Investment Property held with a financial intermediary, cause such financial intermediary to enter into a control agreement with Secured Party in form and substance satisfactory to Secured Party.

## 5.6 Stock and Other Ownership Interests.

5.6.1 Changes in Capital Structure of Issuers. Except as expressly permitted under the Loan Agreement, Debtor will not (a) permit or suffer any issuer of privately held corporate securities or other ownership interests in a corporation, partnership, joint venture or limited liability company constituting Collateral to dissolve, liquidate, retire any of its capital stock or other Instruments or Securities evidencing ownership, reduce its capital or merge or consolidate with any other entity, or (b) vote any of the Instruments, Securities or other Investment Property in favor of any of the foregoing.

5.6.2 Issuance of Additional Equity. Debtor will not permit or suffer the issuer of privately held corporate securities or other ownership interests in a corporation, partnership, joint venture or limited liability company constituting Collateral to issue any such securities or other ownership interests, any right to receive the same or any right to receive earnings, except to Debtor.

5.6.3 Registration of Pledged Equity and other Investment Property. Debtor will permit any registerable Collateral to be registered in the name of Secured Party or its nominee at any time.

5.6.4 Exercise of Rights in Pledged Equity and other Investment Property. Debtor will permit Secured Party or its nominee at any time after the occurrence of an Event of Default, without notice, to exercise all voting and corporate rights relating to the Collateral, including, without limitation, exchange, subscription or any other rights, privileges, or options pertaining to any corporate securities or other ownership interests or Investment Property in or of a corporation, partnership, joint venture or limited liability company constituting Collateral and the Stock Rights as if it were the absolute owner thereof.

5.6.5 Issuance of Securities. Debtor shall not permit any limited partnership interests or ownership interests in a limited liability company which are included within the Collateral to at any time constitute a Security or consent to the issuer of any such interests taking any action to have such interests treated as a Security unless (a) all certificates or other documents constituting such Security have been delivered to Secured Party and such Security is properly defined as such under Article 8 of the UCC of the applicable jurisdiction, whether as a result of actions by the issuer thereof or otherwise, or (b) Secured Party has entered into a control agreement with the issuer of such Security or with a securities intermediary relating to such Security and such Security is defined as such under Article 8 of the UCC of the applicable jurisdiction, whether as a result of actions by the issuer thereof or otherwise.

## 5.7 Accounts.

5.7.1 Account Warranties. Reserved.

5.7.2 Verification of Accounts. Secured Party shall have the right, at any time or times hereafter, in its name or in the name of a nominee of Secured Party, to verify the validity, amount or any other matter relating to any Accounts, by mail, telephone, telegraph or otherwise.

5.7.3 Disputed Accounts; Limitation on Modification of Accounts. Upon the occurrence and during the continuation of an Event of Default, Debtor will not, without Secured Party's prior written consent, grant any extension of the time for payment of any of the Accounts, compromise, compound or settle the same for less than the full amount thereof, release, wholly or

partly, any Person liable for the payment thereof, or allow any credit or discount whatsoever thereon other than trade discounts and refunds granted in the ordinary course of business of Debtor.

5.7.4 Appointment of the Agent as Attorney-in-Fact. Debtor hereby irrevocably designates, makes, constitutes and appoints Secured Party (and all persons designated by Secured Party), exercisable after the occurrence and during the continuation of an Event of Default, as its true and lawful attorney-in-fact, and authorizes Secured Party, in Debtor's or Secured Party's name, to: (a) demand payment of Accounts; (b) enforce payment of Accounts by legal proceedings or otherwise; (c) exercise all of Debtor's rights and remedies with respect to proceedings brought to collect an Account; (d) sell or assign any Account upon such terms, for such amount and at such time or times as Secured Party deems advisable; (e) settle, adjust, compromise, extend or renew an Account; (f) discharge and release any Account; (g) take control in any manner of any item of payment or proceeds thereof; (h) prepare, file and sign Debtor's name on any proof of claim in bankruptcy or other similar document against an Account Debtor; (i) endorse Debtor's name upon any items of payment or proceeds thereof and deposit the same in Secured Party's account on account of the Secured Obligations; (j) endorse Debtor's name upon any chattel paper, document, instrument, invoice, or similar document or agreement relating to any Account or any goods pertaining thereto; (k) sign Debtor's name on any verification of Accounts and notices thereof to Account Debtor; (l) notify the post office authorities to change the address for delivery of Debtor's mail to an address designated by Secured Party, have access to any lock box or postal box into which any of Debtor's mail is deposited, and open and dispose of all mail addressed Debtor, and (m) do all acts and things which are necessary, in Secured Party's sole discretion, to fulfill Debtor's obligations under this Security Agreement.

5.7.5 Notice to Account Debtor. Secured Party may, in its sole discretion, at any time or times after an Event of Default has occurred and is continuing, and without prior notice to Debtor, notify any or all Account Debtors that the Accounts have been assigned to Secured Party and that Secured Party has a security interest therein. Secured Party may direct any or all Account Debtors to make all payments upon the Accounts directly to Secured Party. Secured Party shall furnish Debtor with a copy of such notice.

5.8 Deposit Accounts. As and to the extent required under the Loan Agreement, Debtor will cause each bank or other financial institution in which it maintains a Deposit Account or other deposit (general or special, time or demand, provisional or final) to execute and deliver to Secured Party, and at all times maintain in full force and effect, a control agreement in form and substance reasonably satisfactory to Secured Party.

5.9 Federal, State or Municipal Claims. Debtor will notify Secured Party of any Collateral which constitutes a claim against a Governmental Authority, the assignment of which claim is restricted by federal, state or municipal law.

5.10 Warehouse Receipts Non-Negotiable. Debtor agrees that if any warehouse receipt or receipt in the nature of a warehouse receipt is issued with respect to any of its Inventory, such warehouse receipt or receipt in the nature thereof shall not be "negotiable" (as such term is used in Section 7-104 of the UCC).

5.11 Mortgagee's and Landlord Waivers. Debtor shall cause each mortgagee of real property owned by Debtor (upon request by Secured Party) and each landlord of real property leased by Debtor to execute and deliver instruments satisfactory in form and substance to Secured Party by which such mortgagee or landlord waives its rights, if any, in the Collateral.

5.12 Compliance with Agreements. Debtor shall comply in all material respects with all mortgages, deeds of trust, instruments, and other agreements binding on it or affecting its properties or business.

5.13 Compliance with Laws. Debtor shall comply in all material respects with all applicable Laws.

5.14 Commercial Tort Claims. If Debtor at any time holds or acquires a Commercial Tort Claim, Debtor shall immediately notify Secured Party in writing of the details thereof and grant to Secured Party in writing a security interest therein or lien thereon and in the Proceeds thereof, in form and substance satisfactory to Secured Party.

5.15 Letters-of-Credit Rights. If Debtor is at any time a beneficiary under a letter of credit now or hereafter issued in favor of Debtor, Debtor shall promptly notify Secured Party thereof in writing and, at Secured Party's written request, Debtor shall, pursuant to an agreement in form and substance satisfactory to Secured Party, either (a) arrange for the issuer or any confirmer of such letter of credit to consent to an assignment to Secured Party of the proceeds of any drawing under the letter of credit or (b) arrange for Secured Party to become the transferee beneficiary of the letter of credit, with Secured Party agreeing, in each case, that the proceeds of any drawing under the letter of credit are to be applied as provided in the Loan Agreement.

5.16 Further Assurances. At any time and from time to time, upon the written request of Secured Party, and at the sole expense of Debtor, Debtor shall promptly execute and deliver all such further instruments and documents and take such further action as Secured Party may deem reasonably necessary to preserve and perfect its security interest in the Collateral and carry out the provisions and purposes of this Security Agreement, including, without limitation, (a) the filing of such financing statements as Secured Party may require and (b) the deposit of all certificates of title issuable with respect to any of the Collateral and noting thereon the security interest hereunder. A carbon, photographic, or other reproduction of this Security Agreement or of any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement and may be filed as a financing statement. Debtor shall promptly endorse and deliver to Secured Party all documents, instruments, and chattel paper that it now owns or may hereafter acquire.

5.17 Intellectual Property. Debtor will give prompt notice in writing to Secured Party of the occurrence of any development, financial or otherwise, which might materially and adversely affect the Intellectual Property, including, without limitation, of any (a) Lien (other than the Liens permitted under Section 5.1.7) asserted against the Collateral, (b) any infringement, misappropriation, or dilution by a third party of any Intellectual Property, or (c) any abandonment or dedication, or adverse determination or development regarding Debtor's ownership of any rights therein. If Debtor obtains any new registered Intellectual Property, or rights thereto or therein, or becomes entitled to the benefit of any Intellectual Property, which are subject to or arise from this Security Agreement, Debtor shall give Secured Party written notice thereof within twenty (20) days of the end of the calendar month in which Debtor obtains such property or rights, and shall execute and deliver, in form and substance satisfactory to Secured Party, an amendment to this Security Agreement (or any Exhibit hereto) or a security agreement, the terms of which are substantially similar to this Security Agreement, as requested by Secured Party, describing any such new registered Intellectual Property or license granted. Debtor shall: (a) prosecute diligently any patent, copyright or trademark application at any time pending, which is necessary for the conduct of its business; (b) make application on all new patents, copyrights and trademarks as it may reasonably deem appropriate; (c) preserve and maintain all rights in all Intellectual Property that are necessary for the conduct of Debtor's business; and (d) use its best efforts to obtain any consents, waivers, or agreements necessary to enable Secured Party to exercise its remedies with respect to the Collateral. Debtor shall not

abandon any pending patent, copyright or trademark application, or patent, copyright or trademark, or any other Intellectual Property that are necessary for the conduct of its business without the prior written consent of Secured Party. Debtor shall not, without Secured Party's consent, amend or otherwise modify any pending application or registration contained in or covering the Collateral, to the extent such amendment or modification would impair the Liens of Secured Party in the Collateral.

## ARTICLE VI DEFAULT

6.1 Acceleration and Remedies. Upon the occurrence and continuance of an Event of Default under the Loan Agreement or any other Loan Document, Secured Party may exercise any or all of the following rights and remedies:

(a) Exercise any or all of those rights and remedies provided in this Security Agreement, the Loan Agreement, or any other Loan Document, provided that this paragraph shall not be understood to limit any rights or remedies available to Secured Party prior to an Event of Default.

(b) Exercise any or all of those rights and remedies available to a secured party under the UCC (whether or not the UCC applies to the affected Collateral) or under any other applicable law (including, without limitation, any law governing the exercise of a bank's right of setoff or bankers' lien) when a debtor is in default under a security agreement.

(c) Without notice except as specifically provided in Section 6.2 or elsewhere herein, sell, lease, license, assign, grant an option or options to purchase or otherwise dispose of the Collateral or any part thereof in one or more parcels at public or private sale, for cash, on credit or for future delivery, and upon such other terms as Secured Party may deem commercially reasonable.

(d) Require Debtor to, and Debtor hereby agrees that it will at its expense and upon request of Secured Party, assemble and make available to Secured Party the Collateral and all records relating thereto at any place or places specified by Secured Party.

(e) Prior to the disposition of any Collateral, (i) to the extent permitted by applicable law, enter, with or without process of law and without breach of peace, any premises where any of the Collateral is or may be located, and without charge or liability to Secured Party, seize and remove such Collateral from such premises, (ii) have access to and use Debtor's books, records and information relating to the Collateral, and (iii) store or transfer any of the Collateral, without charge in or by means of any storage or transportation facility owned or leased by Debtor, process, repair or recondition any of the Collateral or otherwise prepare it for disposition in any manner and to the extent Secured Party deems appropriate and, in connection with such preparation and disposition, use without charge any copyright, trademark, trade name, patent or technical process used by Debtor.

(f) Reduce its claim to judgment or foreclose or otherwise enforce, in whole or in part, the security interest created hereby by any available judicial procedure.

(g) Dispose of, at its office, on the premises of Debtor or elsewhere, all or any part of the Collateral, as a unit or in parcels, by public or private proceedings, and by way of one or more contracts (it being agreed that the sale of any part of the Collateral shall not exhaust Secured Party's power of sale, but sales may be made from time to time, and at any time, until all of the



Collateral has been sold or until all of the Secured Obligations have been paid and performed in full), and at any such sale it shall not be necessary to exhibit any of the Collateral.

(h) Buy the Collateral, or any part thereof, at any public sale.

(i) Buy the Collateral, or any part thereof, at any private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations.

(j) Apply by appropriate judicial proceedings for appointment of a receiver for the Collateral, or any part thereof, and Debtor hereby consents to any such appointment.

(k) Grant or issue any exclusive or non-exclusive license under or with respect to any of Debtor's Intellectual Property (subject to the rights of third parties under pre-existing licenses) included in the Collateral.

(l) Endorse Debtor's name on all applications and other documentation necessary or desirable in order for Secured Party to use any such Intellectual Property included in the Collateral or covered by the Loan Agreement.

6.2 Notice of Disposition of Collateral. Debtor hereby agrees that notice of the time and place of any public sale or the time after which any private sale or other disposition of all or any part of the Collateral may be made shall be deemed reasonable if sent to Debtor, addressed as set forth in Article X, at least ten (10) days prior to (a) the date of any such public sale or (b) the time after which any such private sale or other disposition may be made.

6.3 License. Secured Party is hereby granted a license or other right to use, following the occurrence and during the continuance of an Event of Default, without charge, Debtor's Intellectual Property, customer lists and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral, and, following the occurrence and during the continuance of an Event of Default, Debtor's rights under all licenses shall inure to Secured Party's benefit. In addition, Debtor hereby irrevocably agrees that Secured Party may, following the occurrence and during the continuance of an Event of Default, sell any of Debtor's Inventory directly to any Person, including without limitation Persons who have previously purchased Debtor's Inventory from Debtor and in connection with any such sale or other enforcement of Secured Party's rights under this Security Agreement, may sell Inventory which bears any trademark owned by or licensed to Debtor and any Inventory that is covered by any copyright owned by or licensed to Debtor and Secured Party may finish any work in process and affix any trademark owned by or licensed to Debtor and sell such Inventory as provided herein.

6.4 Deficiency. In the event that the proceeds of any sale, collection or realization of or upon Collateral by Secured Party are insufficient to pay all Secured Obligations and any other amounts to which Secured Party is legally entitled, Debtor shall be liable for the deficiency, together with interest thereon as provided in the Loan Agreement or (if no interest is so provided) at such other rate as shall be fixed by applicable law, together with the costs of collection and the reasonable fees of any attorneys employed by Secured Party to collect such deficiency.

6.5 Non-Judicial Remedies. In granting to Secured Party the power to enforce its rights hereunder without prior judicial process or judicial hearing, Debtor expressly waives, renounces and knowingly relinquishes any legal right which might otherwise require Secured Party to enforce its rights by judicial process. In so providing for non-judicial remedies, Debtor recognizes and concedes that such

remedies are consistent with the usage of trade, are responsive to commercial necessity, and are the result of a bargain at arm's length. Nothing herein is intended, however, to prevent Secured Party from resorting to judicial process at its option.

6.6 Limitation on Duty of Secured Party in Respect of Collateral. Beyond the exercise of reasonable care in the custody thereof, Secured Party shall have no duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or as to the preservation of rights against prior parties or any other rights pertaining thereto. Secured Party shall be deemed to have exercised reasonable care in the custody of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which it accords its own property, and shall not be liable or responsible for any loss or damage to any of the Collateral, or for any diminution in the value thereof, by reason of the act or omission of any warehouseman, carrier, forwarding agency, consignee or other agent or bailee selected by Secured Party in good faith.

#### ARTICLE VII WAIVERS, AMENDMENTS AND REMEDIES

No delay or omission of Secured Party to exercise any right or remedy granted under this Security Agreement shall impair such right or remedy or be construed to be a waiver of any Event of Default, or an acquiescence therein, and any single or partial exercise of any such right or remedy shall not preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver, amendment or other variation of the terms, conditions or provisions of this Security Agreement whatsoever shall be valid unless in writing signed by Secured Party and then only to the extent in such writing specifically set forth. All rights and remedies contained in this Security Agreement or by law afforded shall be cumulative and all shall be available to Secured Party until the Secured Obligations have been paid in full.

#### ARTICLE VIII PROCEEDS; COLLECTION OF RECEIVABLES

8.1 Lockboxes. [Intentionally deleted.]

8.2 Collection of Receivables. Upon the occurrence and continuation of an Event of Default, Secured Party may at any time in its sole discretion, by giving Debtor written notice, elect to require that the Receivables be paid directly to Secured Party. In such event, Debtor shall, and shall permit Secured Party to, promptly notify the Account Debtors or obligors under the Receivables of Secured Party's interest therein and direct such Account Debtors or obligors to make payment of all amounts then or thereafter due under the Receivables directly to Secured Party. Upon receipt of any such notice from Secured Party, Debtor shall thereafter hold in trust for Secured Party, all amounts and proceeds received by it with respect to the Receivables and Other Collateral and immediately and at all times thereafter deliver to Secured Party all such amounts and proceeds in the same form as so received, whether by cash, check, draft or otherwise, with any necessary endorsements. Secured Party shall hold and apply funds so received as provided by the terms of Sections 8.4.

8.3 Special Collateral Account. Secured Party may require all cash proceeds of the Collateral to be deposited in a special non-interest bearing cash collateral account with Secured Party and held there as security for the Secured Obligations. Debtor shall not have control whatsoever over said cash collateral account. If no Event of Default has occurred or is continuing, Secured Party shall from time to time deposit the collected balances in said cash collateral account into Debtor's general operating account with Secured Party. If any Event of Default has occurred and is continuing, Secured Party may, from time to time, apply the collected balances in said cash collateral account to the payment of the Secured Obligations whether or not the Secured Obligations shall then be due.

8.4 Application of Proceeds. After the occurrence and during the continuation of an Event of Default, the proceeds of the Collateral shall be applied by Secured Party to payment of the Secured Obligations in such manner and order as Secured Party may elect in its sole discretion.

## ARTICLE IX GENERAL PROVISIONS

9.1 Compromises and Collection of Collateral. Debtor and Secured Party recognize that setoffs, counterclaims, defenses and other claims may be asserted by obligors with respect to certain of the Receivables, that certain of the Receivables may be or become uncollectible in whole or in part and that the expense and probability of success in litigating a disputed Receivable may exceed the amount that reasonably may be expected to be recovered with respect to a Receivable. In view of the foregoing, Debtor agrees that Secured Party may at any time and from time to time, if an Event of Default has occurred and is continuing, compromise with the obligor on any Receivable, accept in full payment of any Receivable such amount as Secured Party in its sole discretion shall determine or abandon any Receivable, and any such action by Secured Party shall be commercially reasonable so long as Secured Party acts in good faith based on information known to it at the time it takes any such action.

9.2 Secured Party Performance of Debtor's Obligations. Without having any obligation to do so, Secured Party may perform or pay any obligation which Debtor has agreed to perform or pay in this Security Agreement and Debtor shall reimburse Secured Party for any amounts paid by Secured Party pursuant to this Section 9.2. Debtor's obligation to reimburse Secured Party pursuant to the preceding sentence shall be a Secured Obligation payable on demand.

9.3 Authorization for Secured Party to Take Certain Action. Debtor irrevocably authorizes Secured Party at any time and from time to time in the sole discretion of Secured Party and appoints Secured Party as its attorney in fact (a) to file financing statements necessary or desirable in the Secured Party's sole discretion to perfect and to maintain the perfection and priority of Secured Party's security interest in the Collateral, (b) to indorse and collect any cash proceeds of the Collateral, (c) to file a copy of this Security Agreement or any financing statement with respect to the Collateral as a financing statement in such offices as Secured Party in its sole discretion deems necessary or desirable to perfect and to maintain the perfection and priority of Secured Party's security interest in the Collateral, (d) to contact and enter into one or more agreements with the issuers of uncertificated securities which are Collateral and which are Securities or with financial intermediaries holding other Investment Property as may be necessary or advisable to give Secured Party Control over such Securities or other Investment Property, (e) subject to the terms of Section 2.2, to enforce payment of the Receivables in the name of Secured Party or Debtor, (f) to apply the proceeds of any Collateral received by Secured Party to the Secured Obligations as provided in Article VIII and (g) to discharge past due taxes, assessments, charges, fees or Liens on the Collateral (except for such Liens as are specifically permitted hereunder), and Debtor agrees to reimburse Secured Party on demand for any payment made or any expense incurred by Secured Party in connection therewith, provided that this authorization shall not relieve Debtor of any of its obligations under this Security Agreement or under the Loan Agreement.

9.4 Specific Performance of Certain Covenants. Debtor acknowledges and agrees that a breach of any of the covenants contained in Sections 5.1.4, 5.1.6, 5.1.7, 5.4, 6.3, 9.5, 9.6 or in Article VIII will cause irreparable injury to Secured Party, that Secured Party has no adequate remedy at law in respect of such breaches and therefore agrees, without limiting the right of Secured Party to seek and obtain specific performance of other obligations of Debtor contained in this Security Agreement, that the covenants of Debtor contained in the Sections referred to in this Section 9.4 shall be specifically enforceable against Debtor.

9.5 Use and Possession of Certain Premises. If an Event of Default has occurred and is continuing, Secured Party shall be entitled to occupy and use any premises owned or leased by Debtor where any of the Collateral or any records relating to the Collateral are located until the Secured Obligations are paid or the Collateral is removed therefrom, whichever first occurs, without any obligation to pay Debtor for such use and occupancy.

9.6 Dispositions Not Authorized. Debtor is not authorized to sell or otherwise dispose of the Collateral except as set forth in Section 5.1.6 and notwithstanding any course of dealing between Debtor and Secured Party or other conduct of Secured Party, no authorization to sell or otherwise dispose of the Collateral (except as set forth in Section 5.1.6) shall be binding upon Secured Party unless such authorization is in writing signed by Secured Party.

9.7 Benefit of Agreement. The terms and provisions of this Security Agreement shall be binding upon and inure to the benefit of Debtor, Secured Party and their respective successors and assigns, except that Debtor shall not have the right to assign its rights or delegate its obligations under this Security Agreement or any interest herein, without the prior written consent of Secured Party.

9.8 Survival of Representations. All representations and warranties of Debtor contained in this Security Agreement shall survive the execution and delivery of this Security Agreement.

9.9 Taxes and Expenses. Any taxes (including income taxes) payable or ruled payable by any Federal or State authority in respect of this Security Agreement shall be paid by Debtor, together with interest and penalties, if any. To the extent permitted by applicable law, Debtor promptly will pay, upon demand, any out-of-pocket expenses incurred by Secured Party in connection herewith, including all costs, expenses, taxes, assessments, insurance premiums, repairs (including repairs to realty or other property to which any Collateral may have been attached), court costs, attorneys' fees, rent, storage costs and expenses of sales incurred in connection with the administration of this Security Agreement, the enforcement of the rights of Secured Party hereunder, whether incurred before or after the occurrence of an Event of Default or incurred in connection with the perfection, preservation, or defense of the security interest created hereunder, or the custody, protection, collection, repossession, enforcement or sale of the Collateral. All such expenses shall become part of the Secured Obligations and shall bear interest at the Default Rate from the date paid or incurred by Secured Party until paid by Debtor.

9.10 Headings. The title of and section headings in this Security Agreement are for convenience of reference only, and shall not govern the interpretation of any of the terms and provisions of this Security Agreement.

9.11 Termination. This Security Agreement shall continue in effect (notwithstanding the fact that from time to time there may be no Secured Obligations outstanding) until (a) the Loan Agreement has terminated pursuant to its express terms and (b) all of the Secured Obligations have been indefeasibly paid and performed in full and no commitments of Secured Party which would give rise to any Secured Obligations are outstanding.

9.12 Entire Agreement. This Security Agreement embodies the entire agreement and understanding between Debtor and Secured Party relating to the Collateral and supersedes all prior agreements and understandings between Debtor and Secured Party relating to the Collateral.

9.13 Governing Law; Jurisdiction, Etc.

9.13.1 GOVERNING LAW. THIS SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF TEXAS.

9.13.2 SUBMISSION TO JURISDICTION. DEBTOR IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF TEXAS SITTING IN DALLAS COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE NORTHERN DISTRICT OF TEXAS (DALLAS DIVISION), AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH STATE OF TEXAS STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH 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. NOTHING IN THIS SECURITY AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST DEBTOR OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

9.13.3 WAIVER OF VENUE. DEBTOR IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN SECTION 9.13.2. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

9.13.4 SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN THE LOAN AGREEMENT. NOTHING IN THIS SECURITY AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

9.14 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD

NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS SECURITY AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

9.15 INDEMNITY. DEBTOR HEREBY AGREES TO INDEMNIFY SECURED PARTY AND ITS RESPECTIVE SUCCESSORS, ASSIGNS, AGENTS, ATTORNEYS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, PENALTIES, SUITS, COSTS, AND EXPENSES OF ANY KIND AND NATURE (INCLUDING, WITHOUT LIMITATION, ALL EXPENSES OF LITIGATION OR PREPARATION THEREFOR WHETHER OR NOT SECURED PARTY IS A PARTY THERETO) IMPOSED ON, INCURRED BY OR ASSERTED AGAINST SECURED PARTY OR THEIR RESPECTIVE SUCCESSORS, ASSIGNS, AGENTS, ATTORNEYS, AND EMPLOYEES, IN ANY WAY RELATING TO OR ARISING OUT OF THIS SECURITY AGREEMENT, OR THE MANUFACTURE, PURCHASE, ACCEPTANCE, REJECTION, OWNERSHIP, DELIVERY, LEASE, POSSESSION, USE, OPERATION, CONDITION, SALE, RETURN OR OTHER DISPOSITION OF ANY COLLATERAL (INCLUDING, WITHOUT LIMITATION, LATENT AND OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE BY THE SECURED PARTY OR DEBTOR, AND ANY CLAIM FOR PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENT).

ARTICLE X  
NOTICES

10.1 Sending Notices. Any notice required or permitted to be given under this Security Agreement shall be sent (and deemed received) in the manner and to the addresses set forth in the Loan Agreement.

10.2 Change in Address for Notices. Debtor and Secured Party may change the address for service of notice upon it by a notice in writing to the other parties.

IN WITNESS WHEREOF, Debtor and Secured Party have executed this Security Agreement as of the date first above written.

**DEBTOR:**

INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

INNOVATIVE FOOD PROPERTIES, LLC,  
a Delaware limited liability company

By INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation,  
its sole member

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

**SECURED PARTY:**

MAPLEMARK BANK

By: \_\_\_\_\_  
Elizabeth Nebergall, Vice President



**EXHIBIT A**

**DEPOSIT ACCOUNTS**

Those maintained with Secured Party.

PLEDGE AND SECURITY AGREEMENT

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**EXHIBIT B**

**INTELLECTUAL PROPERTY**

PLEDGE AND SECURITY AGREEMENT

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**EXHIBIT C**

**LIST OF INSTRUMENTS, SECURITIES AND OTHER INVESTMENT PROPERTY**

NONE

PLEDGE AND SECURITY AGREEMENT

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**EXHIBIT D**

**UCC FILING JURISDICTIONS**

PLEDGE AND SECURITY AGREEMENT

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**EXHIBIT E**

**LOCATIONS**

Principal Place of Business and Mailing Address:

Location(s) of Receivables Records (if different from Principal Place of Business above):

Same as above

Locations of Inventory and Equipment and Fixtures:

Properties Owned by Debtor (indicate which): NONE

Properties Leased by Debtor (indicate which):

Public Warehouses or other Locations pursuant to Bailment or Consignment Arrangements for Debtor (indicate which) (include name of Warehouse Operator or other Bailee or Consignee): NONE

PLEDGE AND SECURITY AGREEMENT

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**EXHIBIT F**

**FEDERAL EMPLOYER IDENTIFICATION NUMBER**

PLEDGE AND SECURITY AGREEMENT

**PLEDGE AND SECURITY AGREEMENT**

THIS PLEDGE AND SECURITY AGREEMENT is entered into as of June 6, 2022 by and among INNOVATIVE FOOD HOLDINGS, INC., a Florida corporation ("IVFH"), and INNOVATIVE FOOD PROPERTIES, LLC, a Delaware limited liability company ("IVFP" and, collectively with IVFH, the "Borrower"), each of the parties set forth on the signature pages hereof (together with the Borrower, each a "Grantor" and, collectively, the "Grantors"), and MAPLEMARK BANK (together with its successors and assigns, the "Lender") on behalf of itself and its Affiliates ("Secured Party").

**RECITAL**

Borrower and Lender are entering into a Loan Agreement dated of even date herewith (as it may be amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"). Each Grantor is entering into this Pledge and Security Agreement (as it may be amended, restated, supplemented or otherwise modified from time to time, this "Security Agreement") in order to, among other things, induce Lender to enter into and extend credit to Borrower under the Loan Agreement.

**AGREEMENT**

ACCORDINGLY, Debtor and Secured Party hereby agree as follows:

**ARTICLE I  
DEFINITIONS**

1.1 Terms Defined in Loan Agreement. All capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Loan Agreement.

1.2 Terms Defined in Texas Uniform Commercial Code. Terms defined in the UCC which are not otherwise defined in this Security Agreement are used herein as defined in the UCC as in effect on the date hereof.

1.3 Definitions of Certain Terms Used Herein. As used in this Security Agreement, in addition to the terms defined in the Preliminary Statement, the following terms shall have the following meanings:

"Accounts" mean any "account," as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor, and, in any event, shall include, without limitation, each of the following, whether now owned or hereafter acquired by Debtor: (a) all rights of Debtor to payment for goods sold or leased or services rendered or the license of Intellectual Property, whether or not earned by performance, (b) all accounts receivable of Debtor, (c) all rights of Debtor to receive any payment of money or other form of consideration, (d) all security pledged, assigned, or granted to or held by Debtor to secure any of the foregoing, (e) all guaranties of, or indemnifications with respect to, any of the foregoing, (f) all Chattel Paper, (g) all Instruments, and (h) all rights of Debtor as unpaid sellers of goods or services, including, but not limited to, all rights of stoppage in transit, replevin, reclamation, and resale.

"Account Debtor" means any Person who is or who may become obligated to Debtor under, with respect to, or on account of an Account.

"Article" means a numbered article of this Security Agreement, unless another document is specifically referenced.

“Books and Records” means any and all presently existing and hereafter acquired or created books and records of Debtor respecting Debtor’s business, including, without limitation all records (including maintenance and warranty records), ledgers, computer programs, software, disc or tape files, printouts, runs, and other computer prepared information indicating, summarizing, or evidencing the Collateral or that is otherwise used to access and process the Collateral.

“Chattel Paper” means any “chattel paper”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor and, in any event, shall include, without limitation, all Electronic Chattel Paper, Tangible Chattel Paper and all records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, or a lease of specific goods, now owned or hereafter acquired by Debtor.

“Collateral” means all Accounts, Books and Records, Chattel Paper, Commercial Tort Claims, Deposit Accounts (including all funds, certificates, checks, drafts, wire transfers, receipts and other earnings, profits, or other proceeds from time to time representing, evidencing, deposited into or held in Deposit Accounts), Documents, Equipment, Financial Assets, Fixtures, General Intangibles, Instruments, Intellectual Property, Inventory, Investment Property, Letter of Credit Rights, Marks, Pledged Equity, Stock Rights, and all other personal property, wherever located, in which Debtor now has or hereafter acquires any right or interest, and the Proceeds, insurance proceeds and products thereof, and any accessories thereto, substitutions therefor and replacements thereof, together with all books and records, customer lists, credit files, computer files, programs, printouts and other computer materials and records related thereto. With respect to Intellectual Property, Collateral further includes all applications and registrations related thereto and any reissues, renewals, continuations, continuations-in-part, divisions, substitutions or extensions thereof, all goodwill associated with and symbolized by any of the foregoing, all income, royalties, profits, damages, awards, and payments relating to or payable under any of the foregoing, the right to sue for past, present, and future infringements, dilution or breach of any of the foregoing, and all other rights and benefits relating to any of the foregoing throughout the world; in each case, whether now owned or hereafter acquired or whether now known or subsequently developed, by or for Debtor.

“Commercial Tort Claims” means any “commercial tort claim”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor and in any event, shall include, without limitation, any claim now owned or hereafter acquired by Debtor, arising in tort with respect to which: (a) the claimant is an organization; or (b) the claimant is an individual and the claim (i) arose in the course of the claimant’s business or profession and (ii) does not include damages arising out of personal injury to or the death of an individual.

“Control” shall have the meaning set forth in Section 9.104, 9.105, 9.106 or 9.107 of the UCC, as applicable.

“Debtor” means, collectively, the Grantors, and each their respective successors and assigns.

“Deposit Accounts” means any “deposit account”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor and in any event, shall include, without limitation, any and all deposit accounts or other bank accounts now owned or hereafter acquired or opened by Debtor, and any account which is a replacement or substitute for any of such accounts, including, without limitation, those deposit accounts identified on Exhibit A.

“Documents” means any “document”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor, including without limitation all bills of lading, dock warrants, dock receipts, warehouse receipts and orders for the delivery of goods, and also any other document



which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers.

“Electronic Chattel Paper” means any “electronic chattel paper”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor.

“Equipment” means any “equipment”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor and, in any event, shall include, without limitation, all machinery, equipment, furnishings, Fixtures and vehicles now owned or hereafter acquired by Debtor and any and all additions, substitutions, and replacements of any of the foregoing, wherever located, together with all attachments, components, parts, equipment, and accessories installed thereon or affixed thereto.

“Exhibit” refers to a specific exhibit to this Security Agreement, unless another document is specifically referenced.

“Financial Assets” means any “financial asset”, as such term is defined in Chapter 8 of the UCC, now owned or hereafter acquired by Debtor.

“Fixtures” means all goods, now owned or hereafter acquired by Debtor, which become so related to particular real estate that an interest in such goods arises under any real estate law applicable thereto, including, without limitation, all trade fixtures.

“General Intangibles” means any “general intangibles”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor and, in any event, shall include, without limitation, each of the following, whether now owned or hereafter acquired by Debtor: (a) all of Debtor’s trade secrets, Intellectual Property, registrations, renewal rights, goodwill franchises, licenses, permits, proprietary information, customer lists, designs, and inventions, (b) all of Debtor’s books, records, data, plans, manuals, computer software, and computer programs, (c) all of Debtor’s contract rights, partnership interests, joint venture interests, securities, deposit accounts, investment accounts, certificates of deposit, and investment property, (d) all rights of Debtor to payment under letters of credit and similar agreements, (e) all tax refunds and tax refund claims of Debtor, (f) all choses in action and causes of action of Debtor (whether arising in contract, tort, or otherwise and whether or not currently in litigation) and all judgments in favor of Debtor, (g) all rights and claims of Debtor under warranties and indemnities, and (h) all rights of Debtor under any insurance, surety, or similar contract or arrangement. General Intangibles include payment intangibles.

“Instrument” means any “instrument”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor, other than stock and other securities, and in any event, shall include, without limitation, all promissory notes, drafts, bills of exchange and trade acceptances of Debtor, whether now owned or hereafter acquired.

“Intellectual Property” means all domestic and foreign (a) internet domains and URLs; (b) trademarks, trademark registrations, trademark applications, service marks, service mark registrations, service mark applications, business marks, brand names, trade names, trade dress, names, logos and slogans; (c) patents, patent rights, provisional patent applications, patent applications, designs, registered designs, registered design applications, industrial designs, industrial design applications, industrial design registrations and inventors’ certificates, including any and all divisions, continuations, continuations-in-part, extensions, substitutions, renewals, registrations, revalidations, re-examinations, reissues or additions, including supplementary certificates of protection, of or to any of the foregoing items; (d) copyrights (whether or not registered and including all derivative works, moral rights, renewals, extensions, reversions and restorations associated with such copyrights, now or hereafter provided by

applicable law), copyright registrations, copyright applications, copyright renewals, original works of authorship fixed in any tangible medium of expression or fixation, including literary works (including all forms and types of computer software, including all source code, object code, firmware, development tools, files, records and data, and all documentation related to any of the foregoing), musical, dramatic, pictorial, graphic and sculptured works; (e) trade secrets, technology, discoveries and improvements, know-how, proprietary rights, formulae, confidential and proprietary information, research and development information, technical or other data or information, techniques, customer and vendor lists, unpatented inventions, designs, drawings, procedures, processes, models, materials, methods, developments, formulations, manuals and systems, whether or not patentable or copyrightable and whether or not such has actual or potential commercial value and are not available in the public domain; and (f) all other intellectual property or proprietary rights, in each case whether or not subject to statutory registration or protection and whether now owned or hereafter acquired by Debtor.

“Inventory” means any “inventory”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor, and, in any event, shall include, without limitation, each of the following, whether now owned or hereafter acquired by Debtor: (a) all goods and other personal property of Debtor that are held for sale or lease or to be furnished under any contract of service, (b) all raw materials, work-in-process, finished goods, inventory, supplies, and materials of Debtor, (c) all wrapping, packaging, advertising, and shipping materials of Debtor, (d) all goods that have been returned to, repossessed by, or stopped in transit by Debtor, and (e) all Documents evidencing any of the foregoing.

“Investment Property” means any “investment property”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor, and, in any event, shall include, without limitation, each of the following, whether now owned or hereafter acquired by Debtor: (a) any security, whether certificated or uncertificated; (b) any security entitlement; (c) any securities account (including, without limitation, those described on Exhibit C); (d) any commodity contract; and (e) any commodity account (including, without limitation, those identified on Exhibit C).

“Letter-of-Credit Right” means any “letter-of-credit right”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor, and in any event, shall include, without limitation, any right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance (but shall not include any right of a beneficiary to demand payment or performance under a letter of credit), now owned or hereafter acquired by Debtor.

“Marks” means all registered and unregistered trademarks, service marks, domain names and trade names now or hereafter used by Debtor.

“Obligations” means, collectively, the Indebtedness and Obligations as defined in the Loan Agreement.

“Pledged Equity” means 100% of the issued and outstanding Equity Interests in each Subsidiary, in each case, together with the certificates (or other agreements or instruments), if any, representing such Equity Interests, and all options and other rights, contractual or otherwise, with respect thereto, including, but not limited to, the following: (a) all Equity Interests representing a non-cash dividend thereon, or representing a distribution or return of capital upon or in respect thereof, or resulting from a stock split, revision, reclassification or other exchange therefor, and any subscriptions, warrants, rights or options issued to the holder thereof, or otherwise in respect thereof; and (b) in the event of any consolidation or merger involving the issuer thereof and in which such issuer is not the surviving Person, all shares of each class of the Equity Interests of the successor Person formed by or resulting from such consolidation or merger, to the extent that such successor Person is a direct Subsidiary of Debtor.

“Proceeds” means any “proceeds,” as such term is defined in Chapter 9 of the UCC and, in any event, shall include, but not be limited to, (a) any and all proceeds of any insurance, indemnity, warranty, or guaranty payable to Debtor from time to time with respect to any of the Collateral, (b) any and all payments (in any form whatsoever) made or due and payable to Debtor 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 Authority (or any person 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.

“Receivables” means the Accounts, Chattel Paper, Documents, Investment Property, Instruments, or Commercial Tort Claims, and any other rights or claims to receive money which are General Intangibles or which are otherwise included as Collateral.

“Section” means a numbered Section of this Security Agreement, unless another document is specifically referenced.

“Secured Obligations” means the Obligations, whether or not (a) such Obligations arise or accrue before or after the filing by or against any Debtor of a petition under the Bankruptcy Code, or any similar filing by or against any Debtor under the laws of any jurisdiction, or any bankruptcy, insolvency, receivership or other similar proceeding, (b) such Obligations are allowable under Section 502(b)(2) of the Bankruptcy Code or under any other insolvency proceedings, (c) the right of payment in respect of such Obligations is reduced to judgment, or (d) such Obligations are liquidated, unliquidated, similar, dissimilar, related, unrelated, direct, indirect, fixed, contingent, primary, secondary, joint, several, or joint and several, matured, disputed, undisputed, legal, equitable, secured, or unsecured.

“Security” means any “security,” as such term is defined in Chapter 8 of the UCC, now owned or hereafter acquired by Debtor.

“Stock Rights” means any securities, dividends or other distributions and any other right or property which Debtor shall receive or shall become entitled to receive for any reason whatsoever with respect to, in substitution for or in exchange for any securities or other ownership interests in a corporation, partnership, joint venture or limited liability company constituting Collateral and any securities, any right to receive securities and any right to receive earnings, in which Debtor now has or hereafter acquires any right, issued by an issuer of such securities.

“Tangible Chattel Paper” means any “tangible chattel paper”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor.

“UCC” means the Uniform Commercial Code as in effect in the State of Texas, as the same has been or may be amended or revised from time to time, or, if so required with respect to any particular Collateral by mandatory provisions of applicable law, as in effect in the jurisdiction in which such Collateral is located.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms.

## ARTICLE II GRANT OF SECURITY INTEREST

2.1 Security Interest. Debtor hereby pledges, assigns and grants to Secured Party (including their Affiliates), a security interest in all of Debtor’s right, title and interest in and to the Collateral to

secure the prompt and complete payment and performance of the Secured Obligations. If the security interest granted hereby in any rights of Debtor under any contract included in the Collateral is expressly prohibited by such contract, then the security interest hereby granted therein nonetheless remains effective to the extent allowed by Article or Chapter 9 of the UCC or other applicable law but is otherwise limited by that prohibition. Secured Party acknowledges that the attachment of its security interest in any Commercial Tort Claim as Collateral is subject to Debtor's compliance with Section 5.14.

2.2 Debtor Remains Liable. Notwithstanding anything to the contrary contained herein, (a) Debtor shall remain liable under the contracts and agreements included in the Collateral to the extent set forth therein to perform all of its respective duties and obligations thereunder to the same extent as if this Security Agreement had not been executed, (b) the exercise by Secured Party of any of its rights hereunder shall not release Debtor from any of its duties or obligations under the contracts and agreements included in the Collateral, and (c) Secured Party shall not have any obligation or liability under any of the contracts and agreements included in the Collateral by reason of this Security Agreement, nor shall Secured Party be obligated to perform any of the obligations or duties of Debtor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

2.3 Authorization to File Financing Statements. Debtor hereby irrevocably authorizes Secured Party at any time and from time to time to file in any UCC jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral (i) as all assets of Debtor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article or Chapter 9 of the UCC, or (ii) as being of an equal or lesser scope or with greater detail, and (b) contain any other information required by subchapter E of Chapter 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether Debtor is an organization, the type of organization and any organization identification number issued to Debtor and (ii) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Debtor hereby irrevocably authorizes Secured Party at any time and from time to time to file in the United States Patent and Trademark Office, the United States Copyright Office or any other Governmental Authority this Security Agreement or a document of similar import signed by Debtor (including without limitation a short form of security agreement satisfactory to Secured Party and Debtor) or a true and correct copy thereof. Debtor agrees to furnish any such information to Secured Party promptly upon request.

### ARTICLE III REPRESENTATIONS AND WARRANTIES

Debtor represents and warrants to Secured Party that:

3.1 Title, Authorization, Validity and Enforceability. Debtor has good and record and marketable title to the Collateral and none of the Collateral is subject to any Lien, except for Liens permitted under Section 5.1, and has full power and authority to grant to Secured Party the security interest in such Collateral pursuant hereto. The execution and delivery by Debtor of this Security Agreement has been duly authorized by proper corporate, limited liability, or partnership proceedings, as applicable, and this Security Agreement constitutes a legal, valid and binding obligation of Debtor and creates a security interest which is enforceable against Debtor in all now owned and hereafter acquired Collateral. When financing statements have been filed in the appropriate offices against Debtor, Secured Party will have a fully perfected first priority security interest in that Collateral in which a security interest may be perfected by filing, subject only to Liens permitted under Section 5.1.

3.2 Conflicting Laws and Contracts. Neither the execution and delivery by Debtor of this Security Agreement, the creation and perfection of the security interest in the Collateral granted hereunder, nor compliance with the terms and provisions hereof will violate any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on Debtor or Debtor's Constituent Documents, the provisions of any indenture, instrument or agreement to which Debtor is a party or is subject, or by which it, or its Property, is bound, or conflict with or constitute a default thereunder, or result in the creation or imposition of any Lien pursuant to the terms of any such indenture, instrument or agreement (other than any Lien of Secured Party).

3.3 Principal Location. Debtor's mailing address, and the location of its chief executive office and of the books and records relating to the Receivables, are disclosed in Exhibit E; Debtor has no other places of business except those set forth in Exhibit E.

3.4 Property Locations. The Inventory, Equipment and Fixtures are located solely at the locations described in Exhibit E. All of said locations are owned by Debtor except for locations (a) which are leased by Debtor as lessee and designated in Exhibit E and (b) at which Inventory is held in a public warehouse or is otherwise held by a bailee or on consignment as designated in Exhibit E, with respect to which Inventory, Debtor has delivered bailment agreements, warehouse receipts, financing statements or other documents satisfactory to the Secured Party to protect Secured Party's security interest in such Inventory.

3.5 Deposit, Commodity, and Securities Account. Exhibit A correctly identifies all deposit, commodity, and securities accounts owned by Debtor and the institutions holding such accounts. No Person other than Debtor has control over any Investment Property.

3.6 Litigation. There is no litigation, investigation or governmental proceeding threatened against Debtor or any of its Property which could reasonably be expected to have a Material Adverse Event.

3.7 No Other Names. Debtor has not conducted business under any name except the name in which it has executed this Security Agreement.

3.8 No Event of Default. No Event of Default exists.

3.9 Accounts and Chattel Paper. The names of the obligors, amounts owing, due dates and other information with respect to the Accounts and Chattel Paper are and will be correctly stated in all records of Debtor relating thereto and in all invoices and reports with respect thereto furnished to Secured Party by Debtor from time to time. As of the time when each Account or each item of Chattel Paper arises, Debtor shall be deemed to have represented and warranted that such Account or Chattel Paper, as the case may be, and all records relating thereto, are genuine and in all respects what they purport to be.

3.10 No Financing Statements. No financing statement describing all or any portion of the Collateral which has not lapsed or been terminated naming Debtor as debtor has been filed in any jurisdiction except (i) financing statements naming Secured Party as the secured party, and (ii) as permitted by Section 5.1.

3.11 Federal Employer Identification Number. Debtor's Federal employer identification number is listed on Exhibit F.

3.12 Pledged Equity and Other Investment Property. Exhibit C sets forth a complete and accurate list of the Instruments, Securities and other Investment Property owned by Debtor. Debtor is the

direct and beneficial owner of each Instrument, Security and other type of Investment Property listed on Exhibit C as being owned by it, free and clear of any Liens, except for the security interest granted to Secured Party hereunder. Debtor further represents and warrants that (a) all such Instruments, Securities or other types of Investment Property which are shares of stock in a corporation or ownership interests in a partnership or limited liability company have been (to the extent such concepts are relevant with respect to such Instrument, Security or other type of Investment Property) duly and validly issued, are fully paid and non-assessable and (b) with respect to any certificates delivered to Secured Party representing an ownership interest in a partnership or limited liability company, either such certificates are Securities as defined in Chapter 8 of the UCC of the applicable jurisdiction as a result of actions by the issuer or otherwise, or, if such certificates are not Securities, Debtor has so informed Secured Party so that Secured Party may take steps to perfect its security interest therein as a General Intangible. With respect to ownership interests in its Subsidiaries, Debtor represents and warrants that the Pledged Equity constitutes 100% of the issued and outstanding capital stock (as other equity interests) in all its Subsidiaries.

#### ARTICLE IV CONCERNING INTELLECTUAL PROPERTY

4.1 Registrations. Exhibit B sets forth a complete and accurate list of the Intellectual Property owned by Debtor registered with, or subject to an application for registration with, the United States Patent and Trademark Office, United States Copyright Office, or any state trademark offices or other foreign offices or agencies, as applicable. Debtor is the direct and beneficial owner of the Intellectual Property listed on Exhibit B as being owned by it, free and clear of any Liens, except for the Liens permitted under Section 5.1.

4.2 Intellectual Property. To the knowledge and belief of Debtor, all Marks listed on Exhibit B for Debtor and all licenses held by such Debtor related to such Marks constitute all such rights that are required or reasonably necessary for the conduct of the business of Debtor as currently conducted. All such Marks (and all applications and registrations therefor) are currently in compliance in all material respects with all legal requirements (including, without limitation, timely filings, proofs and payments of all fees), and are valid and enforceable, and are not subject to any filings, fees or other actions falling due within ninety (90) days after the date hereof. Debtor owns or otherwise possesses adequate licenses or other valid rights to use, sell and license, free and clear of any and all adverse claims (including by current and former employees and contractors), liens, restrictions or other obligation to pay royalties, honoraria or other fees, any and all Intellectual Property (including without limitation the Marks) used in the conduct of the business of Debtor as currently conducted or proposed to be conducted. No Marks have been within the preceding three (3) years or are now the subject of any claims or litigation and, to the knowledge of Debtor, no claims or litigation have been alleged or threatened. Debtor has taken all reasonable steps to maintain, police and protect the Marks owned or used in the operation of Debtor's business. The conduct of Debtor's business as currently conducted or planned to be conducted does not infringe or otherwise impair or conflict with any Intellectual Property or other proprietary or personal rights of any third party, and, to the knowledge of Debtor, the Intellectual Property owned or licensed by Debtor is not being infringed by any third party. There is no litigation or order pending or outstanding, or to the knowledge of Debtor, threatened, that seeks to limit or challenge or that concerns the ownership, use, validity or enforceability of any Marks or any Intellectual Property of Debtor. The consummation of the transactions contemplated hereby will not result in the alteration, loss or impairment of the validity, enforceability or Debtor's right to own or use any of the Intellectual Property used in the conduct of the business of Debtor as currently conducted or proposed to be conducted. Debtor has made available to Secured Party a list of all software (other than generally commercially available, non-custom, off-the-shelf software application programs having a retail acquisition price of less than \$5,000) that is owned or used by Debtor, and identified which software is owned, otherwise used and/or licensed or otherwise distributed by Debtor to any third party, as the case may be.

ARTICLE V  
COVENANTS

From the date of this Security Agreement, and thereafter until this Security Agreement is terminated, Debtor agrees that:

5.1 General.

5.1.1 Inspection. From time to time, Debtor will permit Secured Party, by its representatives and agents, at the expense of Debtor, (a) to inspect the Collateral, (b) to examine and make copies of the records of Debtor relating to the Collateral and (c) to discuss the Collateral and the related records of Debtor with, and to be advised as to the same by, Debtor's officers and employees (and, in the case of any Receivable, with any person or entity which is or may be obligated thereon) subject to the restrictions set forth in the Loan Agreement.

5.1.2 Taxes. Debtor will pay when due all taxes, assessments and governmental charges and levies as set forth in the Loan Agreement.

5.1.3 Exhibits. Debtor shall promptly update any Exhibits if any information therein shall become inaccurate or incomplete. The failure of property descriptions to be accurate or complete on any Exhibits shall not impair Secured Party's security interest in such property.

5.1.4 Records and Reports; Notification of Event of Default. Debtor will maintain complete and accurate books and records with respect to the Collateral, and furnish to Secured Party such reports relating to the Collateral as Secured Party shall from time to time reasonably request in writing. Debtor will give prompt notice in writing to Secured Party of the occurrence of any development, financial or otherwise, which might materially and adversely affect the Collateral. Debtor shall mark its books and records to reflect the security interest of Secured Party under this Security Agreement.

5.1.5 Actions; Defense of Title. Debtor will execute and deliver to Secured Party all statements, amendments and other agreements and documents and take such other actions as may from time to time be reasonably requested in writing by Secured Party in order to maintain a first perfected security interest in and, in the case of Investment Property, Deposit Accounts, Letter-of-Credit-Rights, and Electronic Chattel Paper, Control of, the Collateral. Debtor will take any and all actions necessary to defend title to the Collateral against all Persons and to defend the security interest of Secured Party in the Collateral and the priority thereof against any Lien not expressly permitted hereunder.

5.1.6 Disposition of Collateral. Debtor will not sell, lease, license or otherwise dispose of the Collateral except (a) prior to the occurrence of an Event of Default, dispositions specifically permitted pursuant to the Loan Agreement, (b) until such time following the occurrence and continuance of an Event of Default, as Debtor receives a notice from Secured Party instructing Debtor to cease such transactions, Debtor may make sales or leases of Inventory in the ordinary course of business and (c) until such time as Debtor receives a notice from Secured Party pursuant to Article VIII following the occurrence and continuance of an Event of Default, Debtor may use proceeds of Inventory and Accounts collected in the ordinary course of business.

5.1.7 Liens. Debtor will not create, incur, or suffer to exist any Lien on the Collateral except (a) the security interest created by this Security Agreement, and (b) other Liens permitted pursuant to the Loan Agreement.

5.1.8 Change in Location, Jurisdiction of Organization or Name. Debtor will not (a) have any Inventory, Equipment or Fixtures or Proceeds or products thereof (other than Inventory and proceeds thereof disposed of as permitted by Section 5.1.6) at a location other than a location specified in Exhibit E, (b) maintain records relating to the Receivables at a location other than at the location specified on Exhibit E, (c) maintain a place of business at a location other than a location specified on Exhibit E, (d) change its name or taxpayer identification number, (e) change its mailing address, or (f) change its jurisdiction of organization, unless Debtor shall have given Secured Party not less than 30 days' prior written notice thereof, and Secured Party shall have determined that such change will not adversely affect the validity, perfection or priority of Secured Party's security interest in the Collateral.

5.1.9 Other Financing Statements. Debtor will not file or authorize the filing on its behalf of any financing statement naming it as debtor covering all or any portion of the Collateral, except in favor of Secured Party.

## 5.2 Receivables.

5.2.1 Certain Agreements on Receivables. Debtor will not make or agree to make any discount, credit, rebate or other reduction in the original amount owing on a Receivable or accept in satisfaction of a Receivable less than the original amount thereof, except that, prior to the occurrence of an Event of Default, Debtor may reduce the amount of Accounts arising from the sale of Inventory in accordance with its present policies and in the ordinary course of business.

5.2.2 Collection of Receivables. Except as otherwise provided in this Security Agreement, Debtor will collect and enforce, at Debtor's sole expense, all amounts due or hereafter due to Debtor under the Receivables.

5.2.3 Delivery of Invoices. Debtor will deliver to Secured Party immediately upon its request after the occurrence of an Event of Default duplicate invoices with respect to each Account bearing such language of assignment as Secured Party shall specify.

5.2.4 Disclosure of Counterclaims on Receivables. If (a) any discount, credit or agreement to make a rebate or to otherwise reduce the amount owing on a Receivable exists or (b) if, to the knowledge of Debtor, any dispute, setoff, claim, counterclaim or defense exists or has been asserted or threatened with respect to a Receivable, Debtor will disclose such fact to Secured Party in writing in connection with the inspection by Secured Party of any record of Debtor relating to such Receivable and in connection with any invoice or report furnished by Debtor to Secured Party relating to such Receivable.

## 5.3 Inventory and Equipment.

5.3.1 Maintenance of Goods. Debtor will do all things commercially reasonably and necessary to maintain, preserve, protect and keep the Inventory and the Equipment in good repair and working and saleable condition.

5.3.2 Insurance. Debtor will maintain insurance in accordance with Section 4.5 of the Loan Agreement.



5.3.3 Inventory Warranties. Reserved.

5.3.4 Safekeeping of Inventory; Inventory Covenants. Secured Party shall not be responsible for (a) the safekeeping of the Inventory; (b) any loss or damage thereto or destruction thereof occurring or arising in any manner or fashion from any cause; (c) any diminution in the value of Inventory or (d) any act or default of any carrier, warehouseman, bailee or forwarding agency or any other Person in any way dealing with or handling the Inventory. All risk of loss, damage, distribution or diminution in value of the Inventory shall be borne by Debtor.

5.3.5 Records and Schedules of Inventory. Debtor shall keep correct and accurate records itemizing and describing the kind, type, quality and quantity of Inventory, Debtor's cost therefor and selling price thereof, and the withdrawals therefrom and additions thereto and Inventory then on consignment, and shall, at the request of Secured Party, furnish to Secured Party, daily copies of the working papers related thereto. A physical count of the Inventory shall be conducted no less often than annually and a report based on such count of Inventory shall promptly thereafter be provided to Secured Party together with such supporting information including, without limitation invoices relating to Debtor's purchase of goods listed in said report, as Secured Party shall, in its sole and absolute discretion, request.

5.3.6 Returned and Repossessed Inventory. If at any time prior to the occurrence of an Event of Default, any Account Debtor returns any Inventory to Debtor with a value in excess of \$10,000.00, Debtor shall promptly determine the reason for such return and, if Debtor accepts such return, issue a credit memorandum (with a copy to be sent to Secured Party if Secured Party has so requested) in the appropriate amount to such Account Debtor. After the occurrence of an Event of Default, Debtor shall hold all returned Inventory in trust for Secured Party, shall segregate all returned Inventory from all other property of Debtor or in its possession and shall conspicuously label said returned Inventory as the property of Secured Party. Debtor shall, in all cases, immediately notify Secured Party of the return of any Inventory with a value in excess of \$10,000.00 specifying the reason for such return and the location and condition of the returned Inventory.

5.4 Instruments, Securities, Chattel Paper, and Documents. Debtor will (a) deliver to Secured Party immediately upon execution of this Security Agreement the originals of all Chattel Paper, Securities and Instruments (if any then exist), (b) hold in trust for Secured Party upon receipt and immediately thereafter deliver to Secured Party any Chattel Paper, Securities and Instruments constituting Collateral, and (c) upon Secured Party's request, deliver to Secured Party (and thereafter hold in trust for Secured Party upon receipt and immediately deliver to Secured Party) any Document evidencing or constituting Collateral.

5.5 Uncertificated Securities and Certain Other Investment Property. Debtor will permit Secured Party from time to time to cause the appropriate issuers (and, if held with a securities intermediary, such securities intermediary) of uncertificated securities or other types of Investment Property not represented by certificates which are Collateral to mark their books and records with the numbers and face amounts of all such uncertificated securities or other types of Investment Property not represented by certificates and all rollovers and replacements therefor to reflect the Lien of Secured Party granted pursuant to this Security Agreement. Debtor will take any actions necessary to cause (a) the issuers of uncertificated securities which are Collateral and which are Securities and (b) any financial intermediary which is the holder of any Investment Property, to cause Secured Party to have and retain Control over such Securities or other Investment Property. Without limiting the foregoing, Debtor will, with respect to Investment Property held with a financial intermediary, cause such financial intermediary to enter into a control agreement with Secured Party in form and substance satisfactory to Secured Party.

## 5.6 Stock and Other Ownership Interests.

5.6.1 Changes in Capital Structure of Issuers. Except as expressly permitted under the Loan Agreement, Debtor will not (a) permit or suffer any issuer of privately held corporate securities or other ownership interests in a corporation, partnership, joint venture or limited liability company constituting Collateral to dissolve, liquidate, retire any of its capital stock or other Instruments or Securities evidencing ownership, reduce its capital or merge or consolidate with any other entity, or (b) vote any of the Instruments, Securities or other Investment Property in favor of any of the foregoing.

5.6.2 Issuance of Additional Equity. Debtor will not permit or suffer the issuer of privately held corporate securities or other ownership interests in a corporation, partnership, joint venture or limited liability company constituting Collateral to issue any such securities or other ownership interests, any right to receive the same or any right to receive earnings, except to Debtor.

5.6.3 Registration of Pledged Equity and other Investment Property. Debtor will permit any registerable Collateral to be registered in the name of Secured Party or its nominee at any time.

5.6.4 Exercise of Rights in Pledged Equity and other Investment Property. Debtor will permit Secured Party or its nominee at any time after the occurrence of an Event of Default, without notice, to exercise all voting and corporate rights relating to the Collateral, including, without limitation, exchange, subscription or any other rights, privileges, or options pertaining to any corporate securities or other ownership interests or Investment Property in or of a corporation, partnership, joint venture or limited liability company constituting Collateral and the Stock Rights as if it were the absolute owner thereof.

5.6.5 Issuance of Securities. Debtor shall not permit any limited partnership interests or ownership interests in a limited liability company which are included within the Collateral to at any time constitute a Security or consent to the issuer of any such interests taking any action to have such interests treated as a Security unless (a) all certificates or other documents constituting such Security have been delivered to Secured Party and such Security is properly defined as such under Article 8 of the UCC of the applicable jurisdiction, whether as a result of actions by the issuer thereof or otherwise, or (b) Secured Party has entered into a control agreement with the issuer of such Security or with a securities intermediary relating to such Security and such Security is defined as such under Article 8 of the UCC of the applicable jurisdiction, whether as a result of actions by the issuer thereof or otherwise.

## 5.7 Accounts.

5.7.1 Account Warranties. Reserved.

5.7.2 Verification of Accounts. Secured Party shall have the right, at any time or times hereafter, in its name or in the name of a nominee of Secured Party, to verify the validity, amount or any other matter relating to any Accounts, by mail, telephone, telegraph or otherwise.

5.7.3 Disputed Accounts; Limitation on Modification of Accounts. Upon the occurrence and during the continuation of an Event of Default, Debtor will not, without Secured Party's prior written consent, grant any extension of the time for payment of any of the Accounts, compromise, compound or settle the same for less than the full amount thereof, release, wholly or

partly, any Person liable for the payment thereof, or allow any credit or discount whatsoever thereon other than trade discounts and refunds granted in the ordinary course of business of Debtor.

5.7.4 Appointment of the Agent as Attorney-in-Fact. Debtor hereby irrevocably designates, makes, constitutes and appoints Secured Party (and all persons designated by Secured Party), exercisable after the occurrence and during the continuation of an Event of Default, as its true and lawful attorney-in-fact, and authorizes Secured Party, in Debtor's or Secured Party's name, to: (a) demand payment of Accounts; (b) enforce payment of Accounts by legal proceedings or otherwise; (c) exercise all of Debtor's rights and remedies with respect to proceedings brought to collect an Account; (d) sell or assign any Account upon such terms, for such amount and at such time or times as Secured Party deems advisable; (e) settle, adjust, compromise, extend or renew an Account; (f) discharge and release any Account; (g) take control in any manner of any item of payment or proceeds thereof; (h) prepare, file and sign Debtor's name on any proof of claim in bankruptcy or other similar document against an Account Debtor; (i) endorse Debtor's name upon any items of payment or proceeds thereof and deposit the same in Secured Party's account on account of the Secured Obligations; (j) endorse Debtor's name upon any chattel paper, document, instrument, invoice, or similar document or agreement relating to any Account or any goods pertaining thereto; (k) sign Debtor's name on any verification of Accounts and notices thereof to Account Debtor; (l) notify the post office authorities to change the address for delivery of Debtor's mail to an address designated by Secured Party, have access to any lock box or postal box into which any of Debtor's mail is deposited, and open and dispose of all mail addressed Debtor, and (m) do all acts and things which are necessary, in Secured Party's sole discretion, to fulfill Debtor's obligations under this Security Agreement.

5.7.5 Notice to Account Debtor. Secured Party may, in its sole discretion, at any time or times after an Event of Default has occurred and is continuing, and without prior notice to Debtor, notify any or all Account Debtors that the Accounts have been assigned to Secured Party and that Secured Party has a security interest therein. Secured Party may direct any or all Account Debtors to make all payments upon the Accounts directly to Secured Party. Secured Party shall furnish Debtor with a copy of such notice.

5.8 Deposit Accounts. As and to the extent required under the Loan Agreement, Debtor will cause each bank or other financial institution in which it maintains a Deposit Account or other deposit (general or special, time or demand, provisional or final) to execute and deliver to Secured Party, and at all times maintain in full force and effect, a control agreement in form and substance reasonably satisfactory to Secured Party.

5.9 Federal, State or Municipal Claims. Debtor will notify Secured Party of any Collateral which constitutes a claim against a Governmental Authority, the assignment of which claim is restricted by federal, state or municipal law.

5.10 Warehouse Receipts Non-Negotiable. Debtor agrees that if any warehouse receipt or receipt in the nature of a warehouse receipt is issued with respect to any of its Inventory, such warehouse receipt or receipt in the nature thereof shall not be "negotiable" (as such term is used in Section 7-104 of the UCC).

5.11 Mortgagee's and Landlord Waivers. Debtor shall cause each mortgagee of real property owned by Debtor (upon request by Secured Party) and each landlord of real property leased by Debtor to execute and deliver instruments satisfactory in form and substance to Secured Party by which such mortgagee or landlord waives its rights, if any, in the Collateral.

5.12 Compliance with Agreements. Debtor shall comply in all material respects with all mortgages, deeds of trust, instruments, and other agreements binding on it or affecting its properties or business.

5.13 Compliance with Laws. Debtor shall comply in all material respects with all applicable Laws.

5.14 Commercial Tort Claims. If Debtor at any time holds or acquires a Commercial Tort Claim, Debtor shall immediately notify Secured Party in writing of the details thereof and grant to Secured Party in writing a security interest therein or lien thereon and in the Proceeds thereof, in form and substance satisfactory to Secured Party.

5.15 Letters-of-Credit Rights. If Debtor is at any time a beneficiary under a letter of credit now or hereafter issued in favor of Debtor, Debtor shall promptly notify Secured Party thereof in writing and, at Secured Party's written request, Debtor shall, pursuant to an agreement in form and substance satisfactory to Secured Party, either (a) arrange for the issuer or any confirmer of such letter of credit to consent to an assignment to Secured Party of the proceeds of any drawing under the letter of credit or (b) arrange for Secured Party to become the transferee beneficiary of the letter of credit, with Secured Party agreeing, in each case, that the proceeds of any drawing under the letter of credit are to be applied as provided in the Loan Agreement.

5.16 Further Assurances. At any time and from time to time, upon the written request of Secured Party, and at the sole expense of Debtor, Debtor shall promptly execute and deliver all such further instruments and documents and take such further action as Secured Party may deem reasonably necessary to preserve and perfect its security interest in the Collateral and carry out the provisions and purposes of this Security Agreement, including, without limitation, (a) the filing of such financing statements as Secured Party may require and (b) the deposit of all certificates of title issuable with respect to any of the Collateral and noting thereon the security interest hereunder. A carbon, photographic, or other reproduction of this Security Agreement or of any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement and may be filed as a financing statement. Debtor shall promptly endorse and deliver to Secured Party all documents, instruments, and chattel paper that it now owns or may hereafter acquire.

5.17 Intellectual Property. Debtor will give prompt notice in writing to Secured Party of the occurrence of any development, financial or otherwise, which might materially and adversely affect the Intellectual Property, including, without limitation, of any (a) Lien (other than the Liens permitted under Section 5.1.7) asserted against the Collateral, (b) any infringement, misappropriation, or dilution by a third party of any Intellectual Property, or (c) any abandonment or dedication, or adverse determination or development regarding Debtor's ownership of any rights therein. If Debtor obtains any new registered Intellectual Property, or rights thereto or therein, or becomes entitled to the benefit of any Intellectual Property, which are subject to or arise from this Security Agreement, Debtor shall give Secured Party written notice thereof within twenty (20) days of the end of the calendar month in which Debtor obtains such property or rights, and shall execute and deliver, in form and substance satisfactory to Secured Party, an amendment to this Security Agreement (or any Exhibit hereto) or a security agreement, the terms of which are substantially similar to this Security Agreement, as requested by Secured Party, describing any such new registered Intellectual Property or license granted. Debtor shall: (a) prosecute diligently any patent, copyright or trademark application at any time pending, which is necessary for the conduct of its business; (b) make application on all new patents, copyrights and trademarks as it may reasonably deem appropriate; (c) preserve and maintain all rights in all Intellectual Property that are necessary for the conduct of Debtor's business; and (d) use its best efforts to obtain any consents, waivers, or agreements necessary to enable Secured Party to exercise its remedies with respect to the Collateral. Debtor shall not

abandon any pending patent, copyright or trademark application, or patent, copyright or trademark, or any other Intellectual Property that are necessary for the conduct of its business without the prior written consent of Secured Party. Debtor shall not, without Secured Party's consent, amend or otherwise modify any pending application or registration contained in or covering the Collateral, to the extent such amendment or modification would impair the Liens of Secured Party in the Collateral.

ARTICLE VI  
DEFAULT

6.1 Acceleration and Remedies. Upon the occurrence and continuance of an Event of Default under the Loan Agreement or any other Loan Document, Secured Party may exercise any or all of the following rights and remedies:

(a) Exercise any or all of those rights and remedies provided in this Security Agreement, the Loan Agreement, or any other Loan Document, provided that this paragraph shall not be understood to limit any rights or remedies available to Secured Party prior to an Event of Default.

(b) Exercise any or all of those rights and remedies available to a secured party under the UCC (whether or not the UCC applies to the affected Collateral) or under any other applicable law (including, without limitation, any law governing the exercise of a bank's right of setoff or bankers' lien) when a debtor is in default under a security agreement.

(c) Without notice except as specifically provided in Section 6.2 or elsewhere herein, sell, lease, license, assign, grant an option or options to purchase or otherwise dispose of the Collateral or any part thereof in one or more parcels at public or private sale, for cash, on credit or for future delivery, and upon such other terms as Secured Party may deem commercially reasonable.

(d) Require Debtor to, and Debtor hereby agrees that it will at its expense and upon request of Secured Party, assemble and make available to Secured Party the Collateral and all records relating thereto at any place or places specified by Secured Party.

(e) Prior to the disposition of any Collateral, (i) to the extent permitted by applicable law, enter, with or without process of law and without breach of peace, any premises where any of the Collateral is or may be located, and without charge or liability to Secured Party, seize and remove such Collateral from such premises, (ii) have access to and use Debtor's books, records and information relating to the Collateral, and (iii) store or transfer any of the Collateral, without charge in or by means of any storage or transportation facility owned or leased by Debtor, process, repair or recondition any of the Collateral or otherwise prepare it for disposition in any manner and to the extent Secured Party deems appropriate and, in connection with such preparation and disposition, use without charge any copyright, trademark, trade name, patent or technical process used by Debtor.

(f) Reduce its claim to judgment or foreclose or otherwise enforce, in whole or in part, the security interest created hereby by any available judicial procedure.

(g) Dispose of, at its office, on the premises of Debtor or elsewhere, all or any part of the Collateral, as a unit or in parcels, by public or private proceedings, and by way of one or more contracts (it being agreed that the sale of any part of the Collateral shall not exhaust Secured Party's power of sale, but sales may be made from time to time, and at any time, until all of the

Collateral has been sold or until all of the Secured Obligations have been paid and performed in full), and at any such sale it shall not be necessary to exhibit any of the Collateral.

(h) Buy the Collateral, or any part thereof, at any public sale.

(i) Buy the Collateral, or any part thereof, at any private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations.

(j) Apply by appropriate judicial proceedings for appointment of a receiver for the Collateral, or any part thereof, and Debtor hereby consents to any such appointment.

(k) Grant or issue any exclusive or non-exclusive license under or with respect to any of Debtor's Intellectual Property (subject to the rights of third parties under pre-existing licenses) included in the Collateral.

(l) Endorse Debtor's name on all applications and other documentation necessary or desirable in order for Secured Party to use any such Intellectual Property included in the Collateral or covered by the Loan Agreement.

6.2 Notice of Disposition of Collateral. Debtor hereby agrees that notice of the time and place of any public sale or the time after which any private sale or other disposition of all or any part of the Collateral may be made shall be deemed reasonable if sent to Debtor, addressed as set forth in Article X, at least ten (10) days prior to (a) the date of any such public sale or (b) the time after which any such private sale or other disposition may be made.

6.3 License. Secured Party is hereby granted a license or other right to use, following the occurrence and during the continuance of an Event of Default, without charge, Debtor's Intellectual Property, customer lists and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral, and, following the occurrence and during the continuance of an Event of Default, Debtor's rights under all licenses shall inure to Secured Party's benefit. In addition, Debtor hereby irrevocably agrees that Secured Party may, following the occurrence and during the continuance of an Event of Default, sell any of Debtor's Inventory directly to any Person, including without limitation Persons who have previously purchased Debtor's Inventory from Debtor and in connection with any such sale or other enforcement of Secured Party's rights under this Security Agreement, may sell Inventory which bears any trademark owned by or licensed to Debtor and any Inventory that is covered by any copyright owned by or licensed to Debtor and Secured Party may finish any work in process and affix any trademark owned by or licensed to Debtor and sell such Inventory as provided herein.

6.4 Deficiency. In the event that the proceeds of any sale, collection or realization of or upon Collateral by Secured Party are insufficient to pay all Secured Obligations and any other amounts to which Secured Party is legally entitled, Debtor shall be liable for the deficiency, together with interest thereon as provided in the Loan Agreement or (if no interest is so provided) at such other rate as shall be fixed by applicable law, together with the costs of collection and the reasonable fees of any attorneys employed by Secured Party to collect such deficiency.

6.5 Non-Judicial Remedies. In granting to Secured Party the power to enforce its rights hereunder without prior judicial process or judicial hearing, Debtor expressly waives, renounces and knowingly relinquishes any legal right which might otherwise require Secured Party to enforce its rights by judicial process. In so providing for non-judicial remedies, Debtor recognizes and concedes that such

remedies are consistent with the usage of trade, are responsive to commercial necessity, and are the result of a bargain at arm's length. Nothing herein is intended, however, to prevent Secured Party from resorting to judicial process at its option.

6.6 Limitation on Duty of Secured Party in Respect of Collateral. Beyond the exercise of reasonable care in the custody thereof, Secured Party shall have no duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or as to the preservation of rights against prior parties or any other rights pertaining thereto. Secured Party shall be deemed to have exercised reasonable care in the custody of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which it accords its own property, and shall not be liable or responsible for any loss or damage to any of the Collateral, or for any diminution in the value thereof, by reason of the act or omission of any warehouseman, carrier, forwarding agency, consignee or other agent or bailee selected by Secured Party in good faith.

#### ARTICLE VII WAIVERS, AMENDMENTS AND REMEDIES

No delay or omission of Secured Party to exercise any right or remedy granted under this Security Agreement shall impair such right or remedy or be construed to be a waiver of any Event of Default, or an acquiescence therein, and any single or partial exercise of any such right or remedy shall not preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver, amendment or other variation of the terms, conditions or provisions of this Security Agreement whatsoever shall be valid unless in writing signed by Secured Party and then only to the extent in such writing specifically set forth. All rights and remedies contained in this Security Agreement or by law afforded shall be cumulative and all shall be available to Secured Party until the Secured Obligations have been paid in full.

#### ARTICLE VIII PROCEEDS; COLLECTION OF RECEIVABLES

8.1 Lockboxes. [Intentionally deleted.]

8.2 Collection of Receivables. Upon the occurrence and continuation of an Event of Default, Secured Party may at any time in its sole discretion, by giving Debtor written notice, elect to require that the Receivables be paid directly to Secured Party. In such event, Debtor shall, and shall permit Secured Party to, promptly notify the Account Debtors or obligors under the Receivables of Secured Party's interest therein and direct such Account Debtors or obligors to make payment of all amounts then or thereafter due under the Receivables directly to Secured Party. Upon receipt of any such notice from Secured Party, Debtor shall thereafter hold in trust for Secured Party, all amounts and proceeds received by it with respect to the Receivables and Other Collateral and immediately and at all times thereafter deliver to Secured Party all such amounts and proceeds in the same form as so received, whether by cash, check, draft or otherwise, with any necessary endorsements. Secured Party shall hold and apply funds so received as provided by the terms of Sections 8.4.

8.3 Special Collateral Account. Secured Party may require all cash proceeds of the Collateral to be deposited in a special non-interest bearing cash collateral account with Secured Party and held there as security for the Secured Obligations. Debtor shall not have control whatsoever over said cash collateral account. If no Event of Default has occurred or is continuing, Secured Party shall from time to time deposit the collected balances in said cash collateral account into Debtor's general operating account with Secured Party. If any Event of Default has occurred and is continuing, Secured Party may, from time to time, apply the collected balances in said cash collateral account to the payment of the Secured Obligations whether or not the Secured Obligations shall then be due.

8.4 Application of Proceeds. After the occurrence and during the continuation of an Event of Default, the proceeds of the Collateral shall be applied by Secured Party to payment of the Secured Obligations in such manner and order as Secured Party may elect in its sole discretion.

## ARTICLE IX GENERAL PROVISIONS

9.1 Compromises and Collection of Collateral. Debtor and Secured Party recognize that setoffs, counterclaims, defenses and other claims may be asserted by obligors with respect to certain of the Receivables, that certain of the Receivables may be or become uncollectible in whole or in part and that the expense and probability of success in litigating a disputed Receivable may exceed the amount that reasonably may be expected to be recovered with respect to a Receivable. In view of the foregoing, Debtor agrees that Secured Party may at any time and from time to time, if an Event of Default has occurred and is continuing, compromise with the obligor on any Receivable, accept in full payment of any Receivable such amount as Secured Party in its sole discretion shall determine or abandon any Receivable, and any such action by Secured Party shall be commercially reasonable so long as Secured Party acts in good faith based on information known to it at the time it takes any such action.

9.2 Secured Party Performance of Debtor's Obligations. Without having any obligation to do so, Secured Party may perform or pay any obligation which Debtor has agreed to perform or pay in this Security Agreement and Debtor shall reimburse Secured Party for any amounts paid by Secured Party pursuant to this Section 9.2. Debtor's obligation to reimburse Secured Party pursuant to the preceding sentence shall be a Secured Obligation payable on demand.

9.3 Authorization for Secured Party to Take Certain Action. Debtor irrevocably authorizes Secured Party at any time and from time to time in the sole discretion of Secured Party and appoints Secured Party as its attorney in fact (a) to file financing statements necessary or desirable in the Secured Party's sole discretion to perfect and to maintain the perfection and priority of Secured Party's security interest in the Collateral, (b) to indorse and collect any cash proceeds of the Collateral, (c) to file a copy of this Security Agreement or any financing statement with respect to the Collateral as a financing statement in such offices as Secured Party in its sole discretion deems necessary or desirable to perfect and to maintain the perfection and priority of Secured Party's security interest in the Collateral, (d) to contact and enter into one or more agreements with the issuers of uncertificated securities which are Collateral and which are Securities or with financial intermediaries holding other Investment Property as may be necessary or advisable to give Secured Party Control over such Securities or other Investment Property, (e) subject to the terms of Section 2.2, to enforce payment of the Receivables in the name of Secured Party or Debtor, (f) to apply the proceeds of any Collateral received by Secured Party to the Secured Obligations as provided in Article VIII and (g) to discharge past due taxes, assessments, charges, fees or Liens on the Collateral (except for such Liens as are specifically permitted hereunder), and Debtor agrees to reimburse Secured Party on demand for any payment made or any expense incurred by Secured Party in connection therewith, provided that this authorization shall not relieve Debtor of any of its obligations under this Security Agreement or under the Loan Agreement.

9.4 Specific Performance of Certain Covenants. Debtor acknowledges and agrees that a breach of any of the covenants contained in Sections 5.1.4, 5.1.6, 5.1.7, 5.4, 6.3, 9.5, 9.6 or in Article VIII will cause irreparable injury to Secured Party, that Secured Party has no adequate remedy at law in respect of such breaches and therefore agrees, without limiting the right of Secured Party to seek and obtain specific performance of other obligations of Debtor contained in this Security Agreement, that the covenants of Debtor contained in the Sections referred to in this Section 9.4 shall be specifically enforceable against Debtor.



9.5 Use and Possession of Certain Premises. If an Event of Default has occurred and is continuing, Secured Party shall be entitled to occupy and use any premises owned or leased by Debtor where any of the Collateral or any records relating to the Collateral are located until the Secured Obligations are paid or the Collateral is removed therefrom, whichever first occurs, without any obligation to pay Debtor for such use and occupancy.

9.6 Dispositions Not Authorized. Debtor is not authorized to sell or otherwise dispose of the Collateral except as set forth in Section 5.1.6 and notwithstanding any course of dealing between Debtor and Secured Party or other conduct of Secured Party, no authorization to sell or otherwise dispose of the Collateral (except as set forth in Section 5.1.6) shall be binding upon Secured Party unless such authorization is in writing signed by Secured Party.

9.7 Benefit of Agreement. The terms and provisions of this Security Agreement shall be binding upon and inure to the benefit of Debtor, Secured Party and their respective successors and assigns, except that Debtor shall not have the right to assign its rights or delegate its obligations under this Security Agreement or any interest herein, without the prior written consent of Secured Party.

9.8 Survival of Representations. All representations and warranties of Debtor contained in this Security Agreement shall survive the execution and delivery of this Security Agreement.

9.9 Taxes and Expenses. Any taxes (including income taxes) payable or ruled payable by any Federal or State authority in respect of this Security Agreement shall be paid by Debtor, together with interest and penalties, if any. To the extent permitted by applicable law, Debtor promptly will pay, upon demand, any out-of-pocket expenses incurred by Secured Party in connection herewith, including all costs, expenses, taxes, assessments, insurance premiums, repairs (including repairs to realty or other property to which any Collateral may have been attached), court costs, attorneys' fees, rent, storage costs and expenses of sales incurred in connection with the administration of this Security Agreement, the enforcement of the rights of Secured Party hereunder, whether incurred before or after the occurrence of an Event of Default or incurred in connection with the perfection, preservation, or defense of the security interest created hereunder, or the custody, protection, collection, repossession, enforcement or sale of the Collateral. All such expenses shall become part of the Secured Obligations and shall bear interest at the Default Rate from the date paid or incurred by Secured Party until paid by Debtor.

9.10 Headings. The title of and section headings in this Security Agreement are for convenience of reference only, and shall not govern the interpretation of any of the terms and provisions of this Security Agreement.

9.11 Termination. This Security Agreement shall continue in effect (notwithstanding the fact that from time to time there may be no Secured Obligations outstanding) until (a) the Loan Agreement has terminated pursuant to its express terms and (b) all of the Secured Obligations have been indefeasibly paid and performed in full and no commitments of Secured Party which would give rise to any Secured Obligations are outstanding.

9.12 Entire Agreement. This Security Agreement embodies the entire agreement and understanding between Debtor and Secured Party relating to the Collateral and supersedes all prior agreements and understandings between Debtor and Secured Party relating to the Collateral.

9.13 Governing Law; Jurisdiction, Etc.

9.13.1 GOVERNING LAW. THIS SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF TEXAS.

9.13.2 SUBMISSION TO JURISDICTION. DEBTOR IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF TEXAS SITTING IN DALLAS COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE NORTHERN DISTRICT OF TEXAS (DALLAS DIVISION), AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH STATE OF TEXAS STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH 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. NOTHING IN THIS SECURITY AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST DEBTOR OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

9.13.3 WAIVER OF VENUE. DEBTOR IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN SECTION 9.13.2. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

9.13.4 SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN THE LOAN AGREEMENT. NOTHING IN THIS SECURITY AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

9.14 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD

NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS SECURITY AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

9.15 INDEMNITY. DEBTOR HEREBY AGREES TO INDEMNIFY SECURED PARTY AND ITS RESPECTIVE SUCCESSORS, ASSIGNS, AGENTS, ATTORNEYS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, PENALTIES, SUITS, COSTS, AND EXPENSES OF ANY KIND AND NATURE (INCLUDING, WITHOUT LIMITATION, ALL EXPENSES OF LITIGATION OR PREPARATION THEREFOR WHETHER OR NOT SECURED PARTY IS A PARTY THERETO) IMPOSED ON, INCURRED BY OR ASSERTED AGAINST SECURED PARTY OR THEIR RESPECTIVE SUCCESSORS, ASSIGNS, AGENTS, ATTORNEYS, AND EMPLOYEES, IN ANY WAY RELATING TO OR ARISING OUT OF THIS SECURITY AGREEMENT, OR THE MANUFACTURE, PURCHASE, ACCEPTANCE, REJECTION, OWNERSHIP, DELIVERY, LEASE, POSSESSION, USE, OPERATION, CONDITION, SALE, RETURN OR OTHER DISPOSITION OF ANY COLLATERAL (INCLUDING, WITHOUT LIMITATION, LATENT AND OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE BY THE SECURED PARTY OR DEBTOR, AND ANY CLAIM FOR PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENT).

ARTICLE X  
NOTICES

10.1 Sending Notices. Any notice required or permitted to be given under this Security Agreement shall be sent (and deemed received) in the manner and to the addresses set forth in the Loan Agreement.

10.2 Change in Address for Notices. Debtor and Secured Party may change the address for service of notice upon it by a notice in writing to the other parties.

IN WITNESS WHEREOF, Debtor and Secured Party have executed this Security Agreement as of the date first above written.

**DEBTOR:**

INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

INNOVATIVE FOOD PROPERTIES, LLC,  
a Delaware limited liability company

By INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation,  
its sole member

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

**SECURED PARTY:**

MAPLEMARK BANK

By: \_\_\_\_\_  
Elizabeth Nebergall, Vice President

**EXHIBIT A**

**DEPOSIT ACCOUNTS**

Those maintained with Secured Party.

PLEDGE AND SECURITY AGREEMENT

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**EXHIBIT B**

**INTELLECTUAL PROPERTY**

PLEDGE AND SECURITY AGREEMENT

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**EXHIBIT C**

**LIST OF INSTRUMENTS, SECURITIES AND OTHER INVESTMENT PROPERTY**

NONE

PLEDGE AND SECURITY AGREEMENT

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**EXHIBIT D**

**UCC FILING JURISDICTIONS**

PLEDGE AND SECURITY AGREEMENT

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**EXHIBIT E**

**LOCATIONS**

Principal Place of Business and Mailing Address:

Location(s) of Receivables Records (if different from Principal Place of Business above):

Same as above

Locations of Inventory and Equipment and Fixtures:

Properties Owned by Debtor (indicate which): NONE

Properties Leased by Debtor (indicate which):

Public Warehouses or other Locations pursuant to Bailment or Consignment Arrangements for Debtor (indicate which) (include name of Warehouse Operator or other Bailee or Consignee): NONE

PLEDGE AND SECURITY AGREEMENT

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**EXHIBIT F**

**FEDERAL EMPLOYER IDENTIFICATION NUMBER**

PLEDGE AND SECURITY AGREEMENT

**GUARANTY AGREEMENT**

THIS GUARANTY AGREEMENT (this "Guaranty Agreement") is executed as of June 6, 2022, by the undersigned (whether one or more, together with such Person's permitted successors and permitted assigns, being hereinafter referred to as "Guarantor"), in favor of MAPLEMARK BANK (together with its successors and assigns, any subsequent holder(s) of the Note, being hereinafter referred to as "Lender").

## INTRODUCTORY PROVISIONS:

A. Borrower is indebted to Lender pursuant to that certain Loan Agreement dated of even date herewith (as modified, amended, renewed, extended, and restated from time to time, the "Loan Agreement"), by and between Borrower and Lender.

B. It is expressly understood among Borrower, Guarantor, and Lender that the execution and delivery of this Guaranty Agreement is a condition precedent to Lender's obligation to make loans or extend credit under the Loan Agreement and is an integral part of the transactions contemplated thereby.

C. Guarantor is the beneficial owner of a direct or indirect interest in Borrower, and the value of the consideration and benefit received and to be received by Guarantor, directly or indirectly, as a result of Lender's extension of credit to Borrower is a substantial and direct benefit to Guarantor.

## AGREEMENT:

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, Guarantor hereby guarantees to Lender the prompt payment and performance of the Guaranteed Obligations, this Guaranty Agreement being upon the following terms and conditions:

1. Definitions. Any capitalized term used in this Guaranty Agreement and not otherwise defined herein shall have the meaning ascribed to such term in the Loan Agreement. In addition, the following terms have the following meanings:

"Borrower" means INNOVATIVE FOOD HOLDINGS, INC., a Florida corporation, and without limitation, Borrower's successors and assigns (regardless of whether such successor or assign is formed by or results from any merger, consolidation, conversion, sale or transfer of assets, reorganization, or otherwise) including Borrower as a debtor-in-possession, and any receiver, trustee, liquidator, conservator, custodian, or similar party hereafter appointed for Borrower or all or substantially all of its assets pursuant to any liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization, or similar Debtor Relief Laws from time to time in effect.

"Debtor Relief Laws" means Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts, or similar laws affecting the rights of creditors generally from time to time in effect.

"Guaranteed Indebtedness" means all (a) "Obligations" as defined in the Loan Agreement, including, without limitation, any and all pre- and post-maturity interest thereon (including post-petition interest and expenses (including attorneys' fees), if Borrower is the debtor in a bankruptcy proceeding under the Debtor Relief Laws, whether or not allowed under any Debtor Relief Law), (b) obligations of Borrower to Lender under any documents evidencing, securing, governing and/or pertaining to all or any part of the indebtedness described in clause (a) above, (c) costs and expenses incurred by Lender in connection with the collection and administration of all or any part of the indebtedness and obligations

described in (a) and (b) above or the protection or preservation of, or realization upon, the collateral securing all or any part of such indebtedness and obligations, including, without limitation, all reasonable attorneys' fees, and (d) renewals, extensions, modifications and rearrangements of the indebtedness and obligations described in (a), (b) and (c) above.

“Guaranteed Obligations” means the Guaranteed Indebtedness and the Guaranteed Performance Obligations.

“Guaranteed Performance Obligations” means all obligations of Borrower and Guarantor under the Loan Documents other than an obligation to pay money.

2. Payment. Guarantor hereby unconditionally and irrevocably guarantees to Lender, as a guaranty of payment and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, by lapse of time, by acceleration of maturity, demand or otherwise, and at all times thereafter, of the Guaranteed Indebtedness. This Guaranty Agreement covers the Guaranteed Indebtedness, whether presently outstanding or arising subsequent to the date hereof, including all amounts advanced by Lender in stages or installments. The guaranty of Guarantor as set forth in this Section 2 is a continuing guaranty of payment and not a guaranty of collection. Guarantor acknowledges and agrees that Guarantor may be required to pay and perform the Guaranteed Indebtedness in full without assistance or support from Borrower or any other party. Guarantor agrees that if all or any part of the Guaranteed Indebtedness shall not be punctually paid when due, whether on the scheduled payment date, by lapse of time, by acceleration of maturity or otherwise, Guarantor shall, immediately upon demand by Lender, pay the amount due on the Guaranteed Indebtedness to Lender at Lender's address as set forth in the Loan Agreement. Any such demand may be made at any time coincident with or after the time for payment of all or part of the Guaranteed Indebtedness, and may be made from time to time with respect to the same or different items of Guaranteed Indebtedness. Any such demand shall be made, given and received in accordance with the notice provisions in Section 21 hereof.

3. Performance. Guarantor hereby unconditionally and irrevocably guarantees to Lender the timely performance of the Guaranteed Performance Obligations, and not merely as a guaranty of collection. If any of the Guaranteed Performance Obligations of Borrower are not satisfied or complied with in any respect whatsoever, and without the necessity of any notice from Lender to Guarantor, Guarantor agrees to indemnify and hold Lender harmless from any and all loss, cost, liability or expense that Lender may suffer by any reason of any such non-performance or non-compliance. The obligations and liability of Guarantor under this Section 3 shall not be limited or restricted by the existence of, or any terms of, the guaranty of payment under Section 2 of this Guaranty Agreement.

4. Primary Liability of Guarantor.

(a) This Guaranty Agreement is an absolute, irrevocable and unconditional guaranty of payment and performance. Guarantor is and shall be liable for the payment and performance of the Guaranteed Obligations, as set forth in this Guaranty Agreement, as a primary obligor.

(b) In the event of default in payment or performance of the Guaranteed Obligations, or any part thereof, when such Guaranteed Obligations become due, whether by its terms, by acceleration, or otherwise, Guarantor shall promptly pay the amount due thereon to Lender without notice or demand of any kind or nature, in lawful money of the United States of America or perform the obligations to be performed hereunder, and it shall not be necessary for Lender in order to enforce such payment and performance by Guarantor first, or contemporaneously, to institute suit or exhaust remedies against Borrower or any other Person liable on the Guaranteed Obligations, or to enforce any rights, remedies, powers, privileges or benefits of Lender against

any collateral or any other security or collateral which shall ever have been given to secure the Guaranteed Obligations.

(c) Suit may be brought or demand may be made against Guarantor or any other guaranty in favor of Lender covering all or any part of the Guaranteed Obligations, or against any one or more of them, separately or together, without impairing the rights of Lender against Guarantor. Any time that Lender is entitled to exercise its rights or remedies hereunder, Lender may in its sole discretion elect to demand payment and/or performance. If Lender elects to demand performance, then it shall at all times thereafter have the right to demand payment until all of the Guaranteed Obligations have been paid and performed in full. If Lender elects to demand payment, then it shall at all times thereafter have the right to demand performance until all of the Guaranteed Obligations have been paid and performed in full.

5. Other Guaranteed Obligations. If Guarantor becomes liable for any indebtedness owing by Borrower to Lender by endorsement or otherwise, other than under this Guaranty Agreement, such liability shall not in any manner be impaired or affected hereby, and the rights and remedies hereunder shall be cumulative of any and all other rights and remedies that Lender may ever have against Guarantor. The exercise by Lender of any right or remedy hereunder or under any other instrument, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy by Lender.

6. Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, until the Guaranteed Obligations and any amounts payable under this Guaranty Agreement have been indefeasibly paid and performed in full and any commitments of Lender with respect to the Guaranteed Obligations are terminated, Guarantor waives to the extent permitted by applicable law any right of subrogation, reimbursement, indemnification or contribution arising from the existence or performance of this Guaranty Agreement or any of the Loan Documents. This waiver is given to induce Lender to make the Loan to Borrower.

7. Subordinated Debt. All indebtedness, liabilities, and obligations of Borrower or its Affiliates to Guarantor (the "Subordinated Debt") now or hereafter existing, due or to become due to Guarantor, or held or to be held by Guarantor, whether created directly or acquired by assignment or otherwise, and whether evidenced by written instrument or not, shall be expressly subordinated to the Guaranteed Obligations. Until such time as the Guaranteed Obligations are paid and performed in full and all commitments to lend under the Loan Documents have terminated, Guarantor agrees not to receive or accept any payment from Borrower with respect to the Subordinated Debt at any time an Event of Default exists before or after giving effect thereto; and, in the event Guarantor receives any payment on the Subordinated Debt in violation of the foregoing, Guarantor will hold any such payment in trust for Lender and forthwith turn it over to Lender in the form received, to be applied to the Guaranteed Obligations, but without reducing or affecting in any manner the liability of the Guarantor under this Guaranty Agreement.

8. Obligations Not to be Diminished. Guarantor hereby agrees that its obligations under this Guaranty Agreement shall not be released, discharged, diminished, impaired, reduced, or affected for any reason or by the occurrence of any event, including, without limitation, one or more of the following events, whether or not with notice to or the consent of Guarantor: (a) the taking or accepting of collateral as security for any or all of the Guaranteed Obligations or the release, surrender, exchange, or subordination of any collateral now or hereafter securing any or all of the Guaranteed Obligations; (b) any partial release of the liability of Borrower or the full or partial release of any other guarantor or obligor from liability for any or all of the Guaranteed Obligations; (c) any disability of Borrower, or the dissolution, insolvency, or bankruptcy of Borrower, any other guarantor, or any other party at any time liable for the payment of any or all of the Guaranteed Obligations; (d) any renewal, extension,

modification, waiver, amendment, or rearrangement of any or all of the Guaranteed Obligations or any instrument, document, or agreement evidencing, securing, or otherwise relating to any or all of the Guaranteed Obligations; (e) any adjustment, indulgence, forbearance, waiver, or compromise that may be granted or given by Lender to Borrower, Guarantor, or any other party ever liable for any or all of the Guaranteed Obligations; (f) any neglect, delay, omission, failure, or refusal of Lender to take or prosecute any action for the collection of any of the Guaranteed Obligations or to foreclose or take or prosecute any action in connection with any instrument, document, or agreement evidencing, securing, or otherwise relating to any or all of the Guaranteed Obligations; (g) the unenforceability or invalidity of any or all of the Guaranteed Obligations or of any instrument, document, or agreement evidencing, securing, or otherwise relating to any or all of the Guaranteed Obligations; (h) any payment by Borrower or any other party to Lender is held to constitute a preference under applicable bankruptcy or insolvency law or if for any other reason Lender is required to refund any payment or pay the amount thereof to someone else; (i) the settlement or compromise of any of the Guaranteed Obligations; (j) the non-perfection of any security interest or Lien securing any or all of the Guaranteed Obligations; (k) any impairment of any collateral securing any or all of the Guaranteed Obligations; (l) the failure of Lender to sell any collateral securing any or all of the Guaranteed Obligations in a commercially reasonable manner or as otherwise required by law; (m) any change in the corporate, partnership, or limited liability company, as applicable, existence, structure, or ownership of Borrower; or (n) any other circumstance which might otherwise constitute a defense available to, or discharge of, Borrower or Guarantor.

9. Waivers. Guarantor waives for the benefit of Lender: (a) any right to revoke this Guaranty Agreement with respect to future indebtedness; (b) any right to require Lender to do any of the following before Guarantor is obligated to pay the Guaranteed Obligations or before Lender may proceed against Guarantor: (i) sue or exhaust remedies against Borrower or any other guarantors or obligors; (ii) sue on an accrued right of action in respect of any of the Guaranteed Obligations or bring any other action, exercise any other right, or exhaust all other remedies or (iii) enforce rights against Borrower's assets or any collateral pledged by Borrower to secure the Guaranteed Obligations; (c) any right relating to the timing, manner, or conduct of Lender's enforcement of rights against Borrower's assets or any collateral pledged by Borrower to secure the Guaranteed Obligations; (d) if both Guarantor and Borrower or any other Person have pledged assets to secure the Guaranteed Obligations, any right to require Lender to proceed first against any such other collateral before proceeding against any collateral pledged by Guarantor; (e) except as expressly required hereby, promptness, diligence, notice of any default under the Guaranteed Obligations, notice of acceleration or intent to accelerate, demand for payment, notice of acceptance of this Guaranty Agreement, presentment, notice of protest, notice of dishonor, notice of the incurring by Borrower of additional indebtedness, notice of any suit or other action by Lender against Borrower or any other Person, any notice to any Person liable for the obligation which is the subject of the suit or action, and all other notices and demands with respect to the Guaranteed Obligations and this Guaranty Agreement; (f)(i) any principles or provisions of law, statutory, or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting Guarantor's liability hereunder or the enforcement hereof; and (iii) any requirement that Lender protect, secure, perfect or insure any security interest or Lien or any property subject thereto; (g) each of the foregoing rights or defenses regardless whether they arise under (i) Section 43.001–005 of the Texas Civil Practice and Remedies Code, as amended (ii) Section 17.001 of the Texas Civil Practice and Remedies Code, as amended, (iii) Rule 31 of the Texas Rules of Civil Procedure, as amended, and (iv) common law, in equity, under contract, by statute, or otherwise; and (h) any and all rights under Sections 51.003, 51.004 and 51.005 of the Texas Property Code, as amended.

10. Insolvency. Should Guarantor become insolvent, or fail to pay Guarantor's debts generally as they become due, or voluntarily seek, consent to, or acquiesce in the benefit or benefits of any Debtor Relief Law, or become a party to (or be made the subject of) any proceeding provided for by

any Debtor Relief Law (other than as a creditor or claimant) that could suspend or otherwise adversely affect the rights and remedies of Lender granted hereunder, then, in any such event, the Guaranteed Obligations shall be, as between Guarantor and Lender, a fully matured, due, and payable obligation of Guarantor to Lender (without regard to whether Borrower is then in default under the Loan Agreement or whether the Obligations, or any part thereof is then due and owing by Borrower to Lender), payable in full by Guarantor to Lender upon demand, which shall be the estimated amount owing in respect of the contingent claim created hereunder.

11. Termination; Reinstatement. Guarantor's obligations hereunder shall remain in full force and effect until all commitments to lend under the Loan Documents have terminated, and the Guaranteed Obligations have been paid and performed in full. If at any time any payment of the principal of or interest or any other amount payable by Borrower under the Loan Documents is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy, or reorganization of Borrower or otherwise, then Guarantor's obligations hereunder with respect to such payment shall be reinstated as though such payment had been due but not made at such time.

12. Stay of Acceleration. Should Borrower voluntarily seek, consent to, or acquiesce in the benefit or benefits of any Debtor Relief Law, or become a party to (or be made the subject of) any proceeding provided for by any Debtor Relief Law (other than as a creditor or claimant), all Guaranteed Obligations shall nonetheless be payable by Guarantor immediately if requested by Lender.

13. Representations and Warranties. Guarantor represents and warrants that (a) this Guaranty Agreement constitutes its legal, valid and binding obligation enforceable in accordance with its terms, except as limited by Debtor Relief Laws; (b) the making and performance of this Guaranty Agreement does not and will not violate the provisions of any applicable law, regulation or order, and does not and will not result in the breach of, or constitute a default or require any consent (that has not been obtained) under, any material agreement, instrument, or document to which Guarantor is a party or by which it or any of its property may be bound or affected; (c) all consents, approvals, licenses and authorizations of, and filings and registrations with, any governmental authority required under applicable law and regulations for the making and performance of this Guaranty Agreement have been obtained or made and are in full force and effect; (d) by virtue of its relationship with Borrower, the execution, delivery and performance of this Guaranty Agreement is for the direct benefit of Guarantor and it has received adequate consideration for this Guaranty Agreement; and (e) Guarantor has, independently and without reliance upon Lender and based upon such documents and information as Guarantor has deemed appropriate, made its own analysis and decision to enter into this Guaranty Agreement, and Guarantor has adequate means to obtain from Borrower on a continuing basis information concerning the financial condition and assets of Borrower, and Guarantor is not relying upon Lender to provide (and Lender shall have no duty to provide) any such information to Guarantor either now or in the future.

14. Covenants. So long as this Guaranty Agreement remains in full force and effect, Guarantor shall:

- (a) Furnish to Lender such financial, tax and other information of Guarantor as required in the Loan Agreement; and
- (b) Furnish to Lender such additional information concerning Guarantor as Lender may reasonably request.

Guarantor acknowledges and agrees that the failure of Guarantor to comply with the terms of this Section 14 shall constitute an Event of Default under the Loan Agreement and the other Loan Documents.



15. No Fraudulent Transfer. It is the intention of Guarantor and Lender that the amount of the Guaranteed Obligations guaranteed by Guarantor by this Guaranty Agreement shall be in, but not in excess of, the maximum amount permitted by fraudulent conveyance, fraudulent transfer, or similar laws applicable to Guarantor (collectively, "Fraudulent Transfer Laws"). Accordingly, notwithstanding anything to the contrary contained in this Guaranty Agreement or any other agreement or instrument executed in connection with the payment of any of the Guaranteed Obligations, the amount of the Guaranteed Obligations guaranteed by Guarantor by this Guaranty Agreement shall be limited to that amount which after giving effect thereto would not (a) render Guarantor insolvent, (b) result in the fair saleable value of the assets of Guarantor being less than the amount required to pay its debts and other liabilities (including contingent liabilities) as they mature, or (c) leave Guarantor with unreasonably small capital to carry out its business as now conducted and as proposed to be conducted, including its capital needs, as such concepts described in clauses (a), (b) and (c) of this Section 15 are determined under applicable law, if the obligations of Guarantor hereunder would otherwise be set aside, terminated, annulled or avoided for such reason by a court of competent jurisdiction in a proceeding actually pending before such court. For purposes of this Guaranty Agreement, the term "applicable law" means as to Guarantor each statute, law, ordinance, regulation, order, judgment, injunction or decree of the United States or any state or commonwealth, any municipality, any foreign country, or any territory, possession or governmental authority applicable to Guarantor. Any analysis of the provisions of this Guaranty Agreement for purposes of Fraudulent Transfer Laws shall take into account the right of contribution against any Other Guarantor (as defined in Section 25) and, for purposes of such analysis, give effect to any discharge of intercompany debt as a result of any payment made under the Guaranty.

16. Successors and Assigns. This Guaranty Agreement is for the benefit of Lender and its successors and assigns, and, in the event of an assignment of the Guaranteed Obligations in accordance with the provisions of the Loan Agreement, or any part thereof, the rights and remedies hereunder, to the extent applicable to the indebtedness so assigned, may be transferred with such indebtedness. This Guaranty Agreement is binding on Guarantor, and Guarantor's successors and permitted assigns; *provided that*, Guarantor may not assign its obligations under this Guaranty Agreement without obtaining Lender's prior written consent, and any assignment purported to be made without Lender's prior written consent shall be null and void.

17. LOAN AGREEMENT, THE LOAN AGREEMENT, AND ALL OF THE TERMS THEREOF, ARE INCORPORATED HEREIN BY REFERENCE, THE SAME AS IF STATED VERBATIM HEREIN, AND GUARANTOR AGREES THAT LENDER MAY EXERCISE ANY AND ALL RIGHTS GRANTED TO IT UNDER THE LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS WITHOUT AFFECTING THE VALIDITY OR ENFORCEABILITY OF THIS GUARANTY AGREEMENT. **GUARANTOR WILL COMPLY WITH AND PERFORM ALL COVENANTS AND AGREEMENTS MADE BY THE BORROWER IN THE LOAN AGREEMENT WITH RESPECT TO GUARANTOR. ALL REPRESENTATIONS AND WARRANTIES MADE BY BORROWER IN THE LOAN AGREEMENT WITH RESPECT TO GUARANTOR ARE TRUE AND CORRECT IN ALL MATERIAL RESPECTS AS OF THE DATE OF THIS GUARANTY AGREEMENT. LENDER SHALL BE ENTITLED TO RELY ON ALL OF THE REPRESENTATIONS, WARRANTIES, AND COVENANTS MADE BY BORROWER IN THE LOAN AGREEMENT WITH RESPECT TO GUARANTOR WITH THE SAME FORCE AND EFFECT AS THOUGH THEY WERE INCORPORATED IN THIS GUARANTY AGREEMENT AND MADE BY GUARANTOR FOR LENDER HEREIN.**

18. Setoff Rights. Lender shall have the right to set off and apply against this Guaranty Agreement or the Guaranteed Obligations or both, at any time and without notice to Guarantor, any and all deposits (general or special, time or demand, provisional or final) or other sums at any time credited by or owing from Lender to Guarantor whether or not the Guaranteed Obligations are then due and

irrespective of whether or not Lender shall have made any demand under this Guaranty Agreement. As further security for this Guaranty Agreement and the Guaranteed Obligations, Guarantor hereby grants Lender a security interest in all deposits (general or special, time or demand, provisional or final) other accounts of Guarantor, money, instruments, and other property of Guarantor now or hereafter on deposit with or held by Lender and all other sums at any time credited by or owing from Lender to Guarantor. The rights and remedies of Lender hereunder are in addition to other rights and remedies (including, without limitation, other rights of setoff) which Lender may have.

19. Time of Essence. Time shall be of the essence in this Guaranty Agreement with respect to all of Guarantor's obligations hereunder.

20. GOVERNING LAW; VENUE; SERVICE OF PROCESS. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS; PROVIDED THAT LENDER SHALL RETAIN ALL RIGHTS UNDER FEDERAL LAW. THIS AGREEMENT HAS BEEN ENTERED INTO IN DALLAS COUNTY, TEXAS, AND IS PERFORMABLE FOR ALL PURPOSES IN DALLAS COUNTY, TEXAS. THE PARTIES HEREBY AGREE THAT ANY LAWSUIT, ACTION, OR PROCEEDING THAT IS BROUGHT (WHETHER IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO ANY OF THE LOAN DOCUMENTS, THE TRANSACTIONS CONTEMPLATED THEREBY, OR THE ACTIONS OF THE LENDER IN THE NEGOTIATION, ADMINISTRATION OR ENFORCEMENT OF ANY OF THE LOAN DOCUMENTS SHALL BE BROUGHT IN A STATE OR FEDERAL COURT OF COMPETENT JURISDICTION LOCATED IN DALLAS COUNTY, TEXAS. GUARANTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY (A) SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS, (B) WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH LAWSUIT, ACTION, OR PROCEEDING BROUGHT IN ANY SUCH COURT, AND (C) FURTHER WAIVES ANY CLAIM THAT IT MAY NOW OR HEREAFTER HAVE THAT ANY SUCH COURT IS AN INCONVENIENT FORUM. EACH OF THE PARTIES HERETO AGREES THAT SERVICE OF PROCESS UPON IT MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED AT THE ADDRESS FOR NOTICES REFERENCED IN SECTION 8.1 OF THE LOAN AGREEMENT.

21. Notices. Whenever any notice is required or permitted to be given under the terms of this Guaranty Agreement, the same shall, except as otherwise expressly provided for in this Guaranty Agreement, be given in writing, and sent by: (a) certified mail, return receipt requested, postage prepaid; (b) a national overnight delivery service; (c) hand delivery with written receipt acknowledged; or (d) facsimile, followed by a copy sent in accordance with clause (b) or (c) of this Section 21 sent the same day as the facsimile, in each case to the address or facsimile number (together with a contemporaneous copy to each copied addressee), as applicable, in the case of Guarantor, set forth on the signature page to this Guaranty Agreement, and in the case of Lender, set forth in the Loan Agreement. Lender and Guarantor shall not conduct communications contemplated by this Guaranty Agreement by electronic mail or other electronic means, except by facsimile transmission as expressly provided in this Section 21, and the use of the phrase "in writing" or the word "written" shall not be construed to include electronic communications except by facsimile transmissions as expressly provided in this Section 21. Any notice required or given hereunder shall be deemed received the same Business Day if sent by hand delivery or facsimile, the next Business Day if sent by overnight courier, or three (3) Business Days after posting if sent by certified mail, return receipt requested; provided that any notice received after 5:00 p.m., Dallas, Texas time on any Business Day or received on any day that is not a Business Day shall be deemed to have been received on the following Business Day.

22. Expenses. Guarantor hereby agrees to pay on demand: (a) all costs and expenses of Lender in connection with the preparation, negotiation, execution, and delivery of this Guaranty

Agreement and the other Loan Documents and any and all amendments, modifications, renewals, extensions, and supplements thereof and thereto, including, without limitation, the reasonable fees and expenses of legal counsel, advisors, consultants, and auditors for Lender, (b) all costs and expenses of Lender in connection with any Default and the enforcement of this Guaranty Agreement or any other Loan Document, including, without limitation, the fees and expenses of legal counsel, advisors, consultants, and auditors for Lender, (c) all transfer, stamp, documentary, or other similar taxes, assessments, or charges levied by any Governmental Authority in respect of this Guaranty Agreement or any of the other Loan Documents, (d) all costs, expenses, assessments, and other charges incurred in connection with any filing, registration, recording, or perfection of any Lien contemplated by this Guaranty Agreement or any other Loan Document, and (e) all other costs and expenses incurred by Lender in connection with this Guaranty Agreement or any other Loan Document, any litigation, dispute, suit, proceeding or action; the enforcement of its rights and remedies, and the protection of its interests in bankruptcy, insolvency or other legal proceedings, including, without limitation, all costs, expenses, and other charges (including Lender's internal charges) incurred in connection with evaluating, observing, collecting, examining, auditing, appraising, selling, liquidating, or otherwise disposing of the Collateral or other assets of Borrower.

23. Indemnification and Survival. Without limitation on any other obligations of Guarantor or remedies of Lender under this Guaranty Agreement, Guarantor shall, to the fullest extent permitted by law, indemnify, defend and save and hold harmless Lender from and against, and shall pay on demand, any and all damages, losses, liabilities and expenses (including attorneys' fees and expenses and the allocated cost and disbursements of Lender's internal legal counsel) that may be suffered or incurred by Lender in connection with or as a result of any failure of any Guaranteed Obligations to be the legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their terms. The obligations of Guarantor under this paragraph shall survive the payment in full of the Guaranteed Obligations and termination of this Guaranty Agreement.

24. Amendments; Counterparts. This Guaranty Agreement may be amended only by an instrument in writing executed by Guarantor and Lender. Delivery of an executed counterpart of this Guaranty Agreement by facsimile transmission or other electronic mail transmission (e.g. ".pdf" or ".tif") shall be effective as delivery of an executed original counterpart and shall constitute a covenant to deliver an executed original counterpart, but the failure to do so shall not affect the validity, enforceability and binding effect of this Guaranty Agreement.

25. Joint and Several Liability. If Guarantor consists of more than one person or entity, each shall be jointly and severally liable to perform the obligations of Guarantor under this Guaranty Agreement.

26. Contribution. To the extent that any other Person guarantees the Guaranteed Indebtedness (each such Person is an "Other Guarantor"), and such Other Guarantor shall be required to pay any portion of any Guaranteed Indebtedness exceeding the greater of (a) the amount of the value actually received by such Other Guarantor and its Subsidiaries from the Loans and other Obligations and (b) the amount such Other Guarantor would otherwise have paid if such Other Guarantor had paid the aggregate amount of the Guaranteed Indebtedness (excluding the amount thereof repaid by Borrower) in the same proportion as such Other Guarantor's net worth on the date enforcement is sought hereunder bears to the aggregate net worth of Guarantor and all Other Guarantors on such date, then Guarantor agrees to reimburse each such Other Guarantor for the amount of such excess, pro rata, based on the respective net worth of each such Other Guarantors on such date.

27. WAIVER OF JURY TRIAL. EACH OF GUARANTOR AND LENDER HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION

OR PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY AGREEMENT AND THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH OF GUARANTOR AND LENDER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO OR ACCEPTING THIS GUARANTY AGREEMENT AND THE OTHER LOAN DOCUMENTS, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH OF GUARANTOR AND LENDER WARRANTS AND REPRESENTS THAT EACH HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

28. FINAL AGREEMENT. THIS GUARANTY AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS BETWEEN THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

EXECUTED as of the first date herein set forth.

GUARANTOR:

INNOVATIVE FOOD PROPERTIES, LLC,  
a Delaware limited liability company

By INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation,  
its sole member

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

FOOD INNOVATIONS, INC.,  
a Florida corporation

By: \_\_\_\_\_  
Samuel Klepfish, Authorized Officer

GOURMET FOODSERVICE GROUP, INC.,  
a Florida corporation

By: \_\_\_\_\_  
Samuel Klepfish, Authorized Officer

ARTISAN SPECIALTY FOODS, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Samuel Klepfish, Authorized Officer

4 THE GOURMET, INC., d.b.a. FOR THE GOURMET, INC.,  
a Florida corporation

By: \_\_\_\_\_  
Samuel Klepfish, Authorized Officer

HALEY FOOD GROUP, INC.,  
a Florida corporation

By: \_\_\_\_\_  
Samuel Klepfish, Authorized Officer

GOURMET FOODSERVICE GROUP WAREHOUSE, INC.,  
a Florida corporation

By: \_\_\_\_\_  
Samuel Klepfish, Authorized Officer

ORGANIC FOOD BROKERS, LLC,  
a Colorado limited liability company

By: \_\_\_\_\_  
Samuel Klepfish, Manager

INNOVATIVE GOURMET, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Samuel Klepfish, Manager

FOOD FUNDING, LLC,  
a Delaware limited liability company

By: INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation,  
its sole member

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

P INNOVATIONS LLC,  
a Florida limited liability company

By: \_\_\_\_\_  
Samuel Klepfish, Manager

M FOODS INNOVATIONS, LLC,  
a Delaware limited liability company

By: M INNOVATIONS, LLC,  
its sole member

By: INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation,  
its sole member

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

FOOD NEW MEDIA GROUP, INC.,  
a New York corporation

By: \_\_\_\_\_  
Samuel Klepfish, Authorized Officer

GOURMETING INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Samuel Klepfish, Authorized Officer

OASIS SALES CORP,  
a Florida corporation

By: \_\_\_\_\_  
Samuel Klepfish, Authorized Officer

LOGISTICS INNOVATIONS, LLC,  
a Delaware limited liability company

By: INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation,  
its sole member

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

M INNOVATIONS, LLC,  
a Delaware limited liability company

By: INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation,  
its sole member

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

MI FOODS, LLC,  
a Delaware limited liability company

By: M INNOVATIONS, LLC,  
sole member

By: INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation,  
its sole member

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

PLANT INNOVATIONS, INC.,  
a Florida Corporation

By: \_\_\_\_\_  
Samuel Klepfish, Authorized Officer

PLANTBELLY, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Samuel Klepfish, Manager

INNOVATIVE FOODS, INC.,  
a Florida Corporation

By: \_\_\_\_\_  
Samuel Klepfish, Authorized Officer



INNOVATIVE GOURMET PARTNERSHIPS, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Samuel Klepfish, Manager

GOURMET FOODSERVICE GROUP REINHART, INC.

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

GOURMET FOODSERVICE GROUP GORDON, INC.

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

***Address for Notices:***  
28411 Race Track Road  
Bonita Springs, FL 34135  
Attention: Samuel Klepfish

**LOAN AGREEMENT**

THIS LOAN AGREEMENT dated effective as of June 6, 2022, is between INNOVATIVE FOOD HOLDINGS, INC., a Florida corporation (“Borrower”), and MAPLEMARK BANK (together with its successors and assigns, the “Lender”).

**RECITAL**

Borrower has requested that Lender extend credit to Borrower as described in this Agreement. Lender is willing to make such credit available to Borrower upon and subject to the provisions, terms and conditions hereinafter set forth.

**AGREEMENT**

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

**ARTICLE I  
DEFINITIONS**

Section 1.1 Definitions. As used in this Agreement, all exhibits, appendices and schedules hereto and in any note, certificate, report or other Loan Documents made or delivered pursuant to this Agreement, the following terms will have the meanings given such terms in this Section 1.1 or in the provision, section or recital referred to below:

“Account Debtor” means a Person who is obligated on or under an Account.

“Accounts” means any right of a Person to payment for goods sold or leased or for services rendered, but shall not include interest or service charges.

“Affiliate” means, as to any Person, any other Person (a) that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such Person; (b) that directly or indirectly beneficially owns or holds five percent (5%) or more of any class of voting stock of such Person; or (c) five percent (5%) or more of the voting stock of which is directly or indirectly beneficially owned or held by the Person in question. The term “control” means the possession, directly or indirectly, of the power to direct or cause direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise; provided, however, in no event shall Lender be deemed an Affiliate of Borrower or any of its Subsidiaries or Affiliates.

“Agreement” means this Loan Agreement, as the same may, from time to time, be amended, modified, restated, renewed, waived, supplemented, or otherwise changed, and includes all schedules, exhibits and appendices attached or otherwise identified therewith.

“Borrower” means the Person identified as such in the Introductory Paragraph hereof, and its successors and assigns.

“Borrowing Base” means, as of any date of calculation, a dollar amount calculated pursuant to the Borrowing Base Certificate most recently delivered to Lender in accordance with the terms hereof, equal to the sum of (a) eighty percent (80%) of Eligible Accounts and (b) sixty percent (60%) of the value of the Eligible Inventory, with such value to be the lesser of (i) the Borrower’s direct cost of acquiring the Eligible Inventory and (ii) the appraised value, on a wholesale value basis (as established by an appraiser

acceptable to Lender) of the Eligible Inventory consistent with the most recent appraisal of Eligible Inventory received and accepted by, or performed by, Lender, provided, however, that the total dollar amount ascribed to Eligible Inventory hereunder may not exceed either (aa) the total dollar amount ascribed to Eligible Accounts, or (bb) 50% of the total amount ascribed to the Borrowing Base.

“Borrowing Base Report” means a report in the form of report attached hereto as Exhibit B, appropriately completed, executed by the president or chief financial officer of the Borrower, together with the following attachments: (a) detailed aged schedule of all Eligible Accounts, as of the date specified in the report, listing the face amount and date of invoices of each Eligible Account and the name and address of each Account Debtor (and upon request by Lender, copies of invoices, credit reports and any other matters and information relating to Eligible Accounts), and (b) a schedule of Eligible Inventory, setting forth the locations of Eligible Inventory including Eligible Inventory not in the possession of Borrowers and the names of Persons in possession of the Eligible Inventory.

“Borrowing Request” has the meaning set forth in Section 2.1(a).

“BSA” has the meaning set forth in Section 3.24 of this Agreement.

“Business Day” has the meaning assigned to it in the Notes.

“Capitalized Lease Obligation” means, for any Person, the amount of Debt under a lease of Property by such Person that would be shown as a liability on a balance sheet of such Person prepared for financial reporting purposes in accordance with Recognized Accounting Principles.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any Law, (b) any change in any Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any rule, guideline or directive (having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd Frank Wall Street Reform and Consumer Protection Act and all requests, guidelines and directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case shall be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Closing Date” means June 6, 2022.

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

“Collateral” has the meaning for such term set forth in Section 2.7 of this Agreement.

“Commitment” means the Revolving Commitment.

“Compliance Certificate” means a certificate, substantially in the form of Exhibit C attached hereto, prepared by and executed by a responsible officer of the Borrower reasonably acceptable to Lender.

“Consolidated Interest Charges” means the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as

interest in accordance with Recognized Accounting Principles, and (b) the portion of rent expense under Capitalized Lease Obligations that is treated as interest in accordance with Recognized Accounting Principles, in each case, of or by Borrower and its Subsidiaries on a consolidated basis for the most recently completed measurement period.

“Consolidated Net Income” means the net income (or loss) of Borrower and its Subsidiaries in accordance with Recognized Accounting Principles on a consolidated basis for the most recently completed measurement period; provided that Consolidated Net Income shall exclude (a) extraordinary gains and extraordinary losses for such measurement period, (b) the net income of any Subsidiary during such measurement period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such income is not permitted by operation of the terms of its Constituent Documents or any agreement, instrument or Law applicable to such Subsidiary during such measurement period, and (c) any income (or loss) for such measurement period of any Person if such Person is not a Subsidiary.

“Constituent Documents” means (i) in the case of a corporation, its articles or certificate of incorporation and bylaws; (ii) in the case of a general partnership, its partnership agreement; (iii) in the case of a limited partnership, its certificate of limited partnership and partnership agreement; (iv) in the case of a trust, its trust agreement; (v) in the case of a joint venture, its joint venture agreement; (vi) in the case of a limited liability company, its articles of organization and operating agreement or regulations; and (vii) in the case of any other entity, its organizational and governance documents and agreements.

“Current Maturities of Long-Term Debt” means, on any date of determination, that portion of the long term Debt of Borrower and its Subsidiaries, and that portion of the Capital Lease Obligations of Borrower and its Subsidiaries.

“Debt” means as to any Person at any time (without duplication): (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, notes, debentures, or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable of such Person arising in the ordinary course of business that are not past due by more than ninety (90) days, (d) all Capitalized Lease Obligations of such Person, (e) all Debt or other obligations of others guaranteed by such Person, (f) all obligations secured by a lien existing on property owned by such Person, whether or not the obligations secured thereby have been assumed by such Person or are non-recourse to the creditors of such Person, (g) any other obligation for borrowed money or other financial accommodations which in accordance with Recognized Accounting Principles would be shown as a liability on the balance sheet of such Person, (h) any repurchase obligation or liability of a Person with respect to accounts, chattel paper or notes receivable sold by such Person, (i) any liability under a sale and leaseback transaction that is not a Capitalized Lease Obligation, (j) any obligation under any so called “synthetic leases”, (k) any obligation arising with respect to any other transaction that is the functional equivalent of borrowing but which does not constitute a liability on the balance sheets of a Person, (l) all payment and reimbursement obligations of such Person (whether contingent or otherwise) in respect of letters of credit, bankers’ acceptances, surety or other bonds and similar instruments, and (m) all liabilities of such Person in respect of unfunded vested benefits under any Plan.

“Default” means an Event of Default or the occurrence of an event or condition which with notice or lapse of time or both would become an Event of Default.

“Default Rate” has the meaning assigned to it in the Notes.

“Dollars” and “\$” each mean lawful money of the United States of America.

“Eligible Accounts” means all Accounts of Borrower, except for any Account:

- (a) that is unpaid more than ninety (90) days after the date of the original invoice;
- (b) that is the obligation of an Account Debtor if twenty five percent (25%) or more of the dollar amount of all Accounts owing by that Account Debtor are ineligible under the other criteria set forth herein;
- (c) that arises from a sale to any director, officer, other employee, supplier, trade creditor or other creditor or Affiliate of Borrower or any Subsidiary, or to any Person (other than a natural person) which has any common officer or director with Borrower;
- (d) that is the obligation of an Account Debtor located in a foreign country (other than Canada) unless (i) the Account Debtor has delivered to, and for the benefit of, Borrower an irrevocable letter of credit issued or confirmed by a bank satisfactory to Lender and payable only in the United States and in Dollars, sufficient to cover such Account, in form and substance satisfactory to Lender and, if required by Lender, the original of such letter of credit has been delivered to Lender, and Borrower has assigned the proceeds of such letter of credit to Lender pursuant to documentation in form and substance acceptable to Lender or otherwise named Lender as transferee beneficiary thereunder, as Lender may specify, (ii) such Account is subject to credit insurance payable to Lender and issued by an insurer and on terms and in an amount acceptable to Lender, (iii) such Account is guaranteed under the Working Capital Guarantee Program of The Export-Import Bank of the United States on terms and documentation acceptable to Lender, or (iv) such Account is otherwise acceptable in all respects to Lender (subject to such limits or lending formulae with respect thereto as Lender may determine);
- (e) an Account Debtor that is the United States government or a political subdivision thereof, or any state or municipality or department, agency or instrumentality thereof unless Lender, in its sole discretion, has agreed to the contrary and Borrower, if requested by Lender, has complied in a manner acceptable to Lender with the Federal Assignment of Claims Act of 1940 or any applicable state statute or municipal ordinance of similar purpose and effect, with respect to such obligation;
- (f) that is the obligation of any Account Debtor that is a sovereign nation (e.g., a foreign country, tribal nation, etc.);
- (g) as to which any proceedings or actions known to Borrower (or to Lender) are threatened or pending against the Account Debtor with respect to such Account which could reasonably be expected to have a material adverse change in any such Account Debtor’s financial condition (including, without limitation, any bankruptcy, dissolution, liquidation, reorganization or similar proceeding);
- (h) that consists of credit card billings, sales tax, use tax, commissions, retainage, pre-billings, future billings, service charges, management fees, rebates, progress billings or bill and hold accounts;
- (i) owed by an Account Debtor obligated in respect of Accounts constituting more than twenty five percent (25%) of the aggregate amount of all Accounts (but the portion of the Accounts not in excess of the applicable percentages may be deemed Eligible Accounts);
- (j) any defense, counterclaim, setoff or dispute is asserted as to such Account;

(k) is evidenced by a judgment, promissory note, factored receivable, instrument or chattel paper;

(l) as to which Lender's Lien therein is not a first priority perfected security interest, or as to which the goods giving rise thereto are not, and were not at the time of the applicable sale, subject to a first priority perfected security interest in favor of Lender;

(m) that (i) is not owned by Borrower or (ii) is subject to any right, claim, Lien or other interest of any other Person, other than Liens in favor of Lender;

(n) upon which (i) Borrower's right to receive payment is not absolute or is contingent upon the fulfillment of any condition whatsoever (including any Account that arises from a sale on consignment, guaranteed sale, sale and return, sale on approval or other terms under which payment by the Account Debtor may be conditioned or contingent) or (ii) Borrower is not able to bring suit or otherwise enforce its remedies against the Account Debtor through judicial process;

(o) that does not arise from the actual and bona fide sale and delivery of goods or the performance of services by Borrower in the ordinary course of business, which transactions are completed in accordance with the terms and provisions contained in any documents related thereto;

(p) that is payable in any currency other than Dollars;

(q) to the extent constituting the obligation of an Account Debtor in respect of interest, service or similar charges or fees;

(r) that is reissued in respect of partial payment, including without limitation debit memos and charge backs;

(s) that arises in connection with cash on delivery or other cash sales;

(t) to the extent such Account exceeds any credit limit established by Lender, in its reasonable discretion;

(u) owed by an Account Debtor having a credit standing unsatisfactory to Lender, in its reasonable discretion;

(v) to the extent credits are due to the applicable Account Debtor, or to the extent Borrower is liable for goods sold or services rendered by the applicable Account Debtor to Borrower, but only to the extent of the potential offset;

(w) as to which any facts, events or occurrences exist which could reasonably be expected to impair the validity, enforceability or collectability of such Account or reduce the amount payable or delay payment thereunder;

(x) as to which any of the representations or warranties pertaining to such Account set forth in any Loan Document is untrue;

(y) with respect to which an invoice, reasonably acceptable to Lender in form and substance, has not been sent to the applicable Account Debtor; and

- (z) that is otherwise unacceptable to Lender in its reasonable credit judgment.

Notwithstanding the foregoing, Lender may, from time to time, in the exercise of its reasonable credit judgment, change the criteria for Eligible Accounts as reflected on the Borrowing Base Certificate based on either: (a) an event, condition or other circumstance arising after the Closing Date, or (b) an event, condition or other circumstance existing on the Closing Date to the extent Lender has no written notice thereof from Borrower prior to the Closing Date, in either case under clause (a) or (b) which adversely affects or, in the judgment of Lender, could reasonably be expected to adversely affect, the Accounts as determined by Lender in the exercise of its reasonable credit judgment. For purposes of this Agreement, the amount of Eligible Accounts at any time shall be equal to the face amount of such Eligible Accounts at such time less 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 issued, owing, claimed by Account Debtors, granted, outstanding or payable in connection with such Accounts at such time. Any Accounts of Borrower which are not Eligible Accounts shall nevertheless be part of the Collateral.

“Eligible Inventory” means all Inventory of Borrower, except for any Inventory:

- (a) that consists of work-in-process or raw materials;
- (b) that in Lender's reasonable determination or in the determination of Borrower's management is excess, obsolete, unsaleable, shopworn, seconds, damaged or unfit for sale;
- (c) that is not of a type held for sale by Borrower in the ordinary course of business;
- (d) as to which Lender's security interest therein is not a first priority perfected security interest;
- (e) that is not owned by Borrower free and clear of all Liens and rights of any other Person (including goods subject to a patent held by a third party, goods subject to a license, or which are otherwise restricted from general liquidation, or goods that are subject to the rights of a purchaser that has made progress payments or goods that are subject to the rights of a surety that has issued a bond to assure performance with respect to that Inventory), except the Liens in favor of Lender;
- (f) that is located on premises leased by Borrower, or stored with a bailee, warehouseman, processor or similar Person, unless (aa) Lender has given its prior consent thereto, (bb) a Lien waiver and collateral access agreement, in form and substance satisfactory to Lender has been delivered to Lender, together with any and all duly authorized UCC financing statements required by Lender naming such Person as debtor, Borrower as secured creditor and Lender as assignee or (cc) reserves satisfactory to Lender have been established with respect thereto;
- (g) that is placed on consignment, is in transit, is outside the possession or control of Borrower (other than as described in the preceding clause (f)) or is in possession of Borrower on a sale-on-approval or sale-on-return basis or subject to any other repurchase or return agreement; provided that Inventory on location with Amazon shall not be excluded provided such Inventory is subject to such bailment or other agreements as Lender may reasonably request, if any.;
- (h) that is manufactured, assembled or otherwise produced in violation of the Fair Labor Standards Act and subject to the “hot goods” provisions contained in Title 25 U.S.C. 215(a)(i);

- (i) that is not covered by casualty insurance acceptable to Lender;
- (j) that consists of display items, samples or packing or shipping materials, packaging, manufacturing supplies or replacement or spare parts; provided that packing and shipping materials may be included in an amount not to exceed 5% of the Eligible Inventory;
- (k) that consists of goods which have been returned by the buyer;
- (l) that consists of any costs associated with “freight in” charges;
- (m) as to which any of the representations or warranties pertaining to such Inventory set forth in any Loan Document is untrue;
- (n) that consists of Hazardous Materials or goods that can be transported or sold only with licenses that are not readily available;
- (o) that is covered by a negotiable document of title, unless such document has been delivered to Lender;
- (p) that is bill and hold Inventory;
- (q) that is located outside the United States of America; and
- (r) that is otherwise unacceptable to Lender in its reasonable credit judgment.

Notwithstanding the foregoing, Lender may, from time to time, in the exercise of its reasonable credit judgment, change the criteria for Eligible Inventory as reflected on the Borrowing Base Certificate, based on either: (a) an event, condition or other circumstance arising after the Closing Date, or (b) an event, condition or other circumstance existing on the Closing Date to the extent Lender has no written notice thereof from Borrower prior to the Closing Date, in either case under clause (a) or (b) which adversely affects or, in the judgment of Lender, could reasonably be expected to adversely affect, the Inventory as determined by Lender in the exercise of its reasonable credit judgment. For purposes of this Agreement, the amount of Eligible Inventory shall be determined on a first-in, first-out, lower of cost or market basis in accordance with Recognized Accounting Principles. Any Inventory of Borrower which is not Eligible Inventory shall nevertheless be part of the Collateral.

“Environmental Actions” means any complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter, or other communication from any Governmental Authority, or any third party involving violations of Environmental Laws or releases of Hazardous Materials (a) from any assets, properties, or businesses of any Related Party, or any of its predecessors in interest, (b) from adjoining properties or businesses, or (c) from or onto any facilities which received Hazardous Materials generated by any Related Party, or any of its predecessors in interest.

“Environmental Laws” means any and all federal, state, and local laws, regulations, judicial decisions, orders, decrees, plans, rules, permits, licenses, and other governmental restrictions and requirements pertaining to health, safety, or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.*, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 *et seq.*, the Occupational Safety and Health Act, 29 U.S.C. § 651 *et seq.*, the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, the Clean



Water Act, 33 U.S.C. § 1251 *et seq.*, and the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, as the same may be amended or supplemented from time to time.

“Environmental Liabilities” means, as to any Person, all liabilities, obligations, responsibilities, Remedial Actions, losses, damages, punitive damages, consequential damages, treble damages, costs, and expenses, (including, without limitation, all reasonable fees, disbursements and expenses of counsel, expert and consulting fees and costs of investigation and feasibility studies), fines, penalties, sanctions, and interest incurred as a result of any claim or demand, by any 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, arising from environmental, health or safety conditions or the Release or threatened Release of a Hazardous Material into the environment, resulting from the past, present, or future operations of such Person or its Affiliates.

“Environmental Lien” means any Lien in favor of any Governmental Authority for Environmental Liabilities.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust, or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interests.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder, as in effect as of the date hereof and any subsequent provisions which are amendatory thereof, supplemental thereto or substituted therefor. In addition, the terms “Multiemployer Plan,” “PBGC,” “Prohibited Transaction,” and “Reportable Event” have the same meanings as provided therefor in ERISA.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Plan” means, at any time, any employee benefit plan which is covered by ERISA and in respect of which Borrower or any ERISA Affiliate is (or, if such plan were terminated at such time, would under ERISA be deemed to be) an “employer” as defined in ERISA.

“Event of Default” has the meaning specified in Section 8.1.

“Fixed Charge Coverage Ratio” means, at any date of determination, the ratio of (a) Consolidated Net Income, *plus* cash reserves *plus* (to the extent any of the following reduce Consolidated Net Income in the calculation thereof) the sum of (i) Consolidated Interest Charges, (ii) depreciation (iii) amortization, and (iv) other non-cash expenses deemed reasonable to Lender but *less* distributions paid by Borrower (including for tax purposes), to (b) the sum of (i) Current Maturities of Long-Term Debt and (ii) Consolidated Interest Charges paid in cash, in each case for the twelve (12) months preceding the date of determination paid by Borrower and its Subsidiaries.

“GAAP” means generally accepted accounting principles, applied on a consistent basis, as set forth in Opinions of the Accounting Principles Board of the American Institute of Certified Public Accountants and/or in statements of the Financial Accounting Standards Board and/or their respective successors and which are applicable in the circumstances as of the date in question. Accounting principles are applied on a “consistent basis” when the accounting principles applied in a current period are comparable in all material respects to those accounting principles applied in a preceding period.

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

“Guarantor” means each Person who, from time to time guarantees all or any portion of the Indebtedness and Obligations.

“Guaranty” means the guaranty agreement executed by Guarantor or any other Person, guaranteeing all of the Indebtedness and the Obligations, as such may be amended, restated, supplemented or otherwise modified from time to time.

“Hazardous Material” includes all materials defined as hazardous materials or substances under any Laws relating to the environment, and petroleum, petroleum products, oil and asbestos.

“Hedge Agreement” means (a) any and all interest rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules and annexes, a “Master Agreement”) and (c) any and all Master Agreements and any and all related confirmations.

“Hedge Bank” means any Person that, at the time it enters into a Hedge Agreement permitted hereunder is Lender or an Affiliate of Lender in its capacity as a party to such Hedge Agreement.

“Hedge Obligations” means, at any time with respect to any Person, all indebtedness, liabilities, and obligations of such Person under or in connection with any Hedge Agreement, whether actual or contingent, due or to become due and existing or arising from time to time.

“Initial Financial Statements” means the financial statements of the Related Parties described or referred to in Section 3.2.

“Intellectual Property” means all copyrights, copyright licenses, patents, patent licenses, trademarks, trademark licenses and other types of intellectual property in whatever form, now owned or hereafter acquired.

“Inventory” means all inventory (as defined in Chapter 9 of the UCC) of Borrower including raw materials, work-in-process and finished goods of every kind and character, whether presently in existence or hereafter acquired and wherever located.

“Knowledge” means, with respect to a particular subject, area, or aspect of the Borrower or Guarantor, the actual knowledge of Sam Klepfish, or an officer of the Borrower or Guarantor, or an employee or person with the primary responsibility for a particular matter, or, with respect to each such Person, the knowledge a prudent person could be expected to discover or otherwise acquire in the course

of conducting a reasonably comprehensive investigations concerning the existence of facts or other matters.

“Laws” means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“Lien” means any lien, mortgage, security interest, tax lien, pledge, charge, hypothecation, assignment, preference, priority, or other encumbrance of any kind or nature whatsoever (including, without limitation, any conditional sale or title retention agreement), whether arising by contract, operation of law, or otherwise.

“Loan Documents” means this Agreement and all promissory notes, security agreements, deeds of trust, assignments, letters of credit, guaranties, and other instruments, documents, and agreements executed and delivered pursuant to or in connection with this Agreement, as such instruments, documents, and agreements may be amended, modified, renewed, restated, extended, supplemented, replaced, consolidated, substituted, or otherwise changed from time to time.

“Loans” means, collectively, the Revolving Loan and any other loans made by Lender to Borrower, if any, from time to time hereunder.

“Material Adverse Event” means any act, event, condition, or circumstance which could materially and adversely affect: (a) the operations, business, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of Borrower or of the Borrower and the other Related Parties, taken as a whole; (b) the ability of any Obligated Party to perform its obligations under any Loan Document to which it is a party; or (c) the legality, validity, binding effect or enforceability against any Obligated Party of any Loan Document to which it is a party.

“Maximum Rate” means, at any time, the maximum non-usurious rate of interest which may be charged, contracted for, taken, received or reserved by Lender in accordance with applicable Texas law (or applicable United States federal law to the extent that such law permits Lender to charge, contract for, receive or reserve a greater amount of interest than under Texas law). The Maximum Rate shall be calculated in a manner that takes into account any and all fees, payments, and other charges in respect of the Loan Documents that constitute interest under applicable law. Each change in any interest rate provided for herein based upon the Maximum Rate resulting from a change in the Maximum Rate shall take effect without notice to Borrower at the time of such change in the Maximum Rate.

“Notes” means, collectively, the Revolving Note and any other promissory note executed by Borrower and payable to Lender hereunder, as the same may be amended, renewed, replaced, extended, supplemented, consolidated, restated, modified, otherwise changed and/or increased from time to time.

“Obligated Party” means Borrower, Guarantor, and any other Person who is or becomes party to any agreement that obligates such Person to pay or perform, or that secures payment or performance of, the Obligations or any part thereof.

“Obligations” means all obligations, indebtedness, and liabilities of Borrower and each other Obligated Party to Lender or Affiliates of Lender, or both, now existing or hereafter arising, whether direct, indirect, related, unrelated, fixed, contingent, liquidated, unliquidated, joint, several, or joint and

several, including, without limitation, the obligations, indebtedness, and liabilities under this Agreement, all Hedge Obligations under any Secured Hedge Agreements, the other Loan Documents, any cash management or treasury services agreements and all interest accruing thereon (whether a claim for post-filing or post-petition interest is allowed in any insolvency, reorganization or similar proceeding) and all attorneys' fees and other expenses incurred in the enforcement or collection thereof.

"OFAC" has the meaning set forth in Section 3.24 of this Agreement.

"Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. 107-56, signed into law October 26, 2001).

"Permitted Liens" means (a) Liens for taxes, assessments and other governmental charges arising by law in the ordinary course of business for sums which are not yet due and payable, (b) Liens of mechanics, materialmen, warehousemen and other like Persons arising by law in the ordinary course of business for sums which are not yet due and payable, (c) Liens not delinquent created by statute in connection with worker's compensation, unemployment insurance and social security obligations, and (d) encumbrances consisting of minor irregularities, easements, zoning restrictions or other restrictions on the use of real property that do not (individually or in the aggregate) materially affect the value of the assets encumbered thereby or materially impair the ability of any Related Party to use such assets in its business; provided that the term "Permitted Liens" shall not include any Lien securing Debt.

"Permitted Tax Distribution" means payments by Borrower to the holders of its Equity Interests to permit such holders (or to permit the owners of such holders) to pay federal income taxes and all relevant state and local income taxes (including estimated taxes) at a rate equal to the highest marginal applicable tax rate for the applicable tax year, however denominated (together with any interest, penalties, additions to tax, or additional amounts with respect thereto) imposed as a result of taxable income attributed to such holder of Equity Interests under federal, state, and local income tax laws, determined on a basis that combines those liabilities arising out of the net effect of the income, gains, deductions, losses, and credits of Borrower and attributable to it in proportion and to the extent in which such holders hold Equity Interests of Borrower.

"Person" means any individual, corporation, limited liability company, business trust, association, company, partnership, joint venture, Governmental Authority, or other entity, and shall include such Person's heirs, administrators, personal representatives, executors, successors and assigns.

"Principal Office" means the principal office of Lender, presently located at 4143 Maple Avenue, Suite 100, Dallas, Texas 75219.

"Property" of a Person means any and all property, whether real, personal, tangible, intangible or mixed, of such Person, or any other assets owned, operated or leased by such Person.

"Recognized Accounting Principles" means GAAP, tax, cash basis or other accounting principles reasonably acceptable to Lender and applied on a consistent basis from one period to another.

"Related Party" means any of Borrower and the Subsidiaries. "Related Parties" means, collectively, all said Persons.

"Release" means, as to any Person, any release, spill, emission, leaking, pumping, injection, deposit, disposal, disbursement, leaching, or migration of Hazardous Materials into the indoor or outdoor

environment or into or out of property owned by such Person, including, without limitation, the movement of Hazardous Materials through or in the air, soil, surface water, ground water, or property.

“Remedial Action” means all actions required to (a) clean up, remove, treat, or otherwise address Hazardous Materials in the indoor or outdoor environment, (b) prevent the Release or threat of Release or minimize the further Release of Hazardous Materials so that they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment, or (c) perform pre-remedial studies and investigations and post-remedial monitoring and care.

“Revolving Commitment” means the obligation of Lender to make Revolving Loans pursuant to Section 2.1(a) in an aggregate principal amount at any time outstanding up to but not exceeding \$2,014,333.34, subject, however, to termination pursuant to Section 8.2. Notwithstanding the foregoing, upon the extension of the Revolving Termination Date as set forth in Section 2.2, the Commitment hereunder will be an aggregate principal amount at any time outstanding up to but not exceeding three million Dollars (\$3,000,000).

“Revolving Loans” has the meaning set forth in Section 2.1(a).

“Revolving Note” means that certain promissory note dated of even date herewith in the stated principal amount of the Revolving Commitment from Borrower and payable to the order of Lender, and all amendments, extensions, renewals, replacements, and modifications thereof.

“Revolving Termination Date” means 11:00 A.M. Dallas, Texas time on means November 28, 2022 (subject to extension specified below in Section 2.2), or such earlier date on which the Revolving Commitment terminates as provided in this Agreement, subject to the extension as specified below in Section 2.2(b).

“RICO” means the Racketeer Influenced and Corrupt Organization Act of 1970.

“Secured Hedge Agreement” means any Hedge Agreement permitted under this Agreement entered into by and between Borrower and any Hedge Bank.

“Security Agreement” means the Pledge and Security Agreement of Borrower in favor of Lender, in form and substance satisfactory to Lender, as the same may be amended, restated, supplemented, modified, or changed from time to time.

“Security Documents” means each and every Security Agreement, pledge, mortgage, deed of trust or other collateral security agreement required by or delivered to Lender from time to time to secure the Obligations or any portion thereof.

“Solvent” means, with respect to any Person on a particular date, that, at fair valuations, the sum of such Person’s assets is greater than all of such Person’s debt.

“Subordinated Debt” means any unsecured Debt of Borrower (other than the Obligations) that has been subordinated to the Obligations by written agreement, in form and content reasonably satisfactory to Lender.

“Subsidiary” means (a) any corporation of which at least a majority of the outstanding shares of stock having by the terms thereof ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether or not at the time stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at

the time directly or indirectly owned or controlled by Borrower or one or more of the Subsidiaries or by Borrower and one or more of the Subsidiaries; and (b) any other entity (i) of which at least a majority of the ownership, equity or voting interest is at the time directly or indirectly owned or controlled by one or more of Borrower and the Subsidiaries and (ii) which is treated as a subsidiary in accordance with Recognized Accounting Principles.

“UCC” means the Chapters 1 through 11 of the Texas Business and Commerce Code, as amended from time to time.

Section 1.2 Accounting Matters. Any accounting term used in this Agreement or the other Loan Documents shall have, unless otherwise specifically provided therein, the meaning customarily given such term in accordance with Recognized Accounting Principles, and all financial computations thereunder shall be computed, unless otherwise specifically provided therein, in accordance with Recognized Accounting Principles; provided, that all financial covenants and calculations in the Loan Documents shall be made in accordance with Recognized Accounting Principles as in effect on the date of this Agreement unless Borrower and Lender shall otherwise specifically agree in writing. That certain items or computations are explicitly modified by the phrase “in accordance with Recognized Accounting Principles” shall in no way be construed to limit the foregoing.

Section 1.3 Other Definitional Provisions. All definitions contained in this Agreement are equally applicable to the singular and plural forms of the terms defined. The words “hereof”, “herein”, and “hereunder” and words of similar import referring to this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all Article and Section references pertain to this Agreement. Terms used herein that are defined in the UCC, unless otherwise defined herein, shall have the meanings specified in the UCC.

## ARTICLE II LOANS; PAYMENTS; AND COLLATERAL

### Section 2.1 Loans.

(a) Revolving Loans. Subject to the terms and conditions of this Agreement, Lender agrees to make one or more loans (each herein called a “Revolving Loan” and collectively the “Revolving Loans”) to Borrower from time to time from the date hereof to and including the Revolving Termination Date in an aggregate principal amount at any time outstanding up to but not exceeding the amount of the Revolving Commitment, provided that the aggregate amount of all Revolving Loans at any time outstanding shall not exceed the lesser of (i) the amount of the Revolving Commitment or (ii) the Borrowing Base. Subject to the foregoing limitations, and the other terms and provisions of this Agreement, Borrower may borrow, repay, and reborrow hereunder.

(i) Revolving Note. Subject to prior acceleration as provided in this Agreement, the obligation of Borrower to repay the Revolving Loans and interest thereon shall be evidenced by the Revolving Note.

(ii) Repayment of Principal of Revolving Loans. Borrower shall repay the unpaid principal amount of all Revolving Loans on the Revolving Termination Date, unless sooner due by reason of acceleration by Lender as provided in this Agreement.

(iii) Interest. The unpaid principal amount of the Revolving Note shall, subject to the following sentence, bear interest as provided in the Revolving Note. If at

any time the rate of interest specified in the Revolving Note would exceed the Maximum Rate but for the provisions thereof limiting interest to the Maximum Rate, then any subsequent reduction shall not reduce the rate of interest on the Revolving Loans below the Maximum Rate until the aggregate amount of interest accrued on the Revolving Loans equals the aggregate amount of interest which would have accrued on the Revolving Loans if the interest rate had not been limited by the Maximum Rate. Accrued and unpaid interest on the Revolving Loans shall be payable as provided in the Revolving Note and on the Revolving Termination Date.

(iv) Borrowing Procedure. Borrower shall give Lender notice of each Revolving Loan by means of a borrowing request in the form of Exhibit A attached hereto (the "Borrowing Request") containing the information required therein and delivered (by hand or by mechanically confirmed facsimile) to Lender no later than 11:00 a.m. (Texas time) on the day on which the Revolving Loan is desired to be funded. Lender at its option may accept telephonic requests for such Revolving Loans, provided that such acceptance shall not constitute a waiver of Lender's right to require delivery of a Borrowing Request in connection with subsequent Revolving Loans. Any telephonic request for a Revolving Loan by Borrower shall be promptly confirmed by submission of a properly completed a Borrowing Request to Lender, but failure to deliver a Borrowing Request shall not be a defense to payment of the Revolving Loan. Lender shall have no liability to Borrower for any loss or damage suffered by Borrower as a result of Lender's honoring of any requests, execution of any instructions, authorizations or agreements or reliance on any reports communicated to it telephonically, by facsimile or electronically and purporting to have been sent to Lender by Borrower and Lender shall have no duty to verify the origin of any such communication or the identity or authority of the Person sending it. Subject to the terms and conditions of this Agreement, each Revolving Loan shall be made available to Borrower by depositing the same, in immediately available funds, in an account of Borrower designated by Borrower maintained with Lender at the Principal Office.

Section 2.2 Revolving Termination Date Extension. Borrower and Lender acknowledge and agree that Lender has submitted an application to the United States Department of Agriculture ("USDA") to have the USDA guarantee repayment of this Loan pursuant to its Business and Industry Loan Guarantee Program. Borrower may extend the Revolving Termination Date from November 28, 2022 to November 28, 2023 if:

- (a) Borrower requests in writing an extension to the Revolving Termination Date no later than thirty (30) days prior to the Revolving Termination Date (the "Extension Request");
- (b) No Default or Event of Default has occurred;
- (c) USDA executes a guarantee in favor of Lender (in form and substance reasonably satisfactory Lender);
- (d) Borrower shall have delivered to Lender together with the Extension Request, a certificate in form reasonably acceptable to the Lender certifying that (a) each of the representations and warranties of Borrower contained in the Loan Documents is true, complete and correct in all material respects as of the date of such certificate except to the extent such representations and warranties are matters which by their nature can no longer be true and correct as a result of the passage of time, (b) no Default or Event of Default has occurred;

(e) Borrower shall have paid all reasonable expenses, including (without limitation) reasonable attorneys' fees and legal expenses, incurred by Lender in connection with the extension no later than the day prior to the first day of the extension; and

(a) Borrower shall have delivered to Lender such information, documentation, agreements, and instruments as Lender shall require including such legal opinions as may be requested by Lender.

If the USDA does not execute a guaranty in favor of Lender (in form and substance reasonably satisfactory to Lender), Lender may, but shall not be obligated to, extend the Loan in cooperation with the Borrower, in form and substance reasonably satisfactory to Lender.

### Section 2.3 General Provisions Regarding Interest; Etc.

(a) Default Rate. Any outstanding principal of any Loan and (to the fullest extent permitted by law) any other amount payable by Borrower under this Agreement or any other Loan Document that is not paid in full when due (after expiration of any cure periods with respect thereto) (whether at stated maturity, by acceleration, or otherwise) shall, at the option of the Lender, bear interest at the Default Rate for the period from and including the due date thereof to but excluding the date the same is paid in full. Additionally, upon the occurrence of an Event of Default (and from the date of such occurrence and during the continuance thereof), all outstanding and unpaid principal amounts of all of the Obligations shall, at the option of the Lender (or, in the case of any Event of Default under Sections 8.1(e) or (f), immediately and automatically upon the occurrence of any such Event of Default without the requirement of any affirmative action by any party), to the extent permitted by law, bear interest at the Default Rate. Interest payable at the Default Rate shall be payable from time to time ON DEMAND.

(b) Computation of Interest. Interest on the Loans and all other amounts payable by Borrower hereunder shall be computed on the basis of a year of 360 days and the actual number of days elapsed (including the first day but excluding the last day) unless such calculation would result in a usurious rate, in which case interest shall be calculated on the basis of a year of 365 or 366 days, as the case may be.

(c) Capital Adequacy. If after the date hereof, the Lender shall have determined that any central bank or other Governmental Authority properly authorized to do so has adopted or implemented (and has taken all necessary action to legally adopt or implement) any applicable law, rule, or regulation regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof, compliance with which by the Lender would have the effect of reducing the rate of return on the Lender's capital as a consequence of its obligations hereunder or the transactions contemplated hereby to a level below that which the Lender could have achieved but for such adoption, implementation, change, or compliance (taking into consideration the Lender's policies with respect to capital adequacy) by an amount deemed by the Lender to be material, then from time to time, within ten Business Days after demand by the Lender, the Borrower shall pay to the Lender (or its parent) such additional amount or amounts as will compensate the Lender for such reduction. The Lender will give the Borrower notice of any event occurring after the date of this Agreement which will entitle the Lender to compensation pursuant to this Section promptly after it obtains knowledge thereof and determines to request such compensation, and no claim by the Lender for compensation under this Section shall in any case be made until such time as the Lender determines that it is legally required to comply with such law, rule, regulations or change thereto giving rise to such claim. A certificate of the Lender claiming compensation under this Section and setting forth the additional amount or amounts to



be paid to it hereunder shall be conclusive, provided that the determination thereof is made on a reasonable basis. In determining such amount or amounts, the Lender may use any reasonable averaging and attribution methods.

(d) Increased Costs.

(i) Increased Costs Generally. If any Change in Law shall:

(aa) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, the Lender;

(bb) and the result of any of the foregoing shall be to increase the cost to the Lender, or to reduce the amount of any sum received or receivable by the Lender, (whether of principal, interest or any other amount) then, upon request of the Lender, the Borrower will pay to the Lender such additional amount or amounts as will compensate the Lender for such additional costs incurred or reduction suffered, but only to the extent Lender is assessing and collecting such additional amounts from other borrowers under substantially all other similar credit facilities.

(ii) Capital Requirements. If the Lender determines that any Change in Law affecting the Lender or any Principal Office of the Lender or the Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on the Lender's capital or on the capital of the Lender's holding company, if any, as a consequence of this Agreement, the commitments of the Lender or the Loans made by the Lender to a level below that which the Lender or the Lender's holding company could have achieved but for such Change in Law (taking into consideration the Lender's policies and the policies of the Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to the Lender such additional amount or amounts as will compensate the Lender or the Lender's holding company for any such reduction suffered.

(iii) Certificates for Reimbursement. A certificate of the Lender setting forth, in detail, with explanations for the additional amounts, the amount or amounts necessary to compensate the Lender or its holding company, as the case may be, as specified in this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay the Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(iv) Delay in Requests. Failure or delay on the part of the Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of the Lender's right to demand such compensation, provided that the Borrower shall not be required to compensate the Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of the Lender's intention to claim compensation therefor (except that, if the change in law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

Section 2.4 Use of Proceeds. The proceeds of the Revolving Loan shall be used by Borrower for working capital and general corporate purposes not otherwise prohibited by this Agreement.

Section 2.5 Method of Payment. All payments of principal, interest and other amounts to be made by Borrower under this Agreement and the other Loan Documents shall be made to Lender at the Principal Office in Dollars and immediately available funds, without setoff, deduction, or counterclaim, and free and clear of all taxes at the time and in the manner provided in the Notes.

Section 2.6 Prepayments.

(a) Voluntary Prepayments. Borrower may prepay all or any portion of the Notes to the extent and in the manner provided for therein.

(b) Mandatory Prepayment. If at any time the principal amount outstanding under the Revolving Note exceeds the lesser of the Revolving Commitment and the Borrowing Base, Borrower shall immediately remit such excess to Lender.

(c) Yield Maintenance Fee. Intentionally deleted.

Section 2.7 Lockbox and Account Collections. Upon request of Lender, Borrower will maintain under such written agreements as Lender requires, as security for the Obligations, a lockbox ("Lockbox") and depository account in the name of Lender ("Depository Account"). All payments from account debtors of Borrower will be deposited directly into the Depository Accounts, and Lender is authorized to transfer to the Depository Account any funds which are account debtor payments but which have been deposited into any other depository account of Borrower at Lender. Borrower agrees that Lender will have all right, title and interest in and to all items and funds from time to time in the Depository Account. Checks received into the Depository Account will not be considered good funds until Lender's depository bank has effected final settlement with respect thereto by irrevocable credit to Lender. Lender is authorized to apply any and all funds in the Depository Account at any time, and from time to time, to the Obligations in any order Lender may elect. Upon written notice to Borrower from Lender, Borrower will advise all of its account debtors to direct their payments to the Lockbox, at the address established by the Lockbox arrangements. All payments received into the Lockbox will be deposited into the Depository Account for disposition as set forth above in this section.

Section 2.8 Collateral. To secure full and complete payment and performance of the Obligations, Borrower shall execute and deliver or cause to be executed and delivered all of the Security Documents required by Lender covering the Property and collateral described in such Security Documents (which, together with any other Property and collateral described in the Security Documents, and any other Property which may now or hereafter secure the Obligations or any part thereof, is sometimes herein called the "Collateral"). Borrower shall execute and cause to be executed such further documents and instruments, including without limitation, UCC financing statements, as Lender, in its sole discretion, deems necessary or desirable to create, evidence, preserve, and perfect its liens and security interests in the Collateral.

Section 2.9 Setoff. If an Event of Default shall have occurred and be continuing, Lender shall have the right to set off and apply against the Obligations in such manner as Lender may determine, at any time and without notice to Borrower, any and all deposits (general or special, time or demand, provisional or final) or other sums at any time credited by or owing from Lender to Borrower whether or not the Obligations are then due. As further security for the Obligations, Borrower hereby grants to Lender a security interest in all money, instruments, and other property of Borrower now or hereafter held by Lender, including, without limitation, property held in safekeeping. In addition to Lender's right of

setoff and as further security for the Obligations, Borrower hereby grants to Lender a security interest in all deposits (general or special, time or demand, provisional or final) and other accounts of Borrower now or hereafter on deposit with or held by Lender and all other sums at any time credited by or owing from Lender to Borrower. The rights and remedies of Lender hereunder are in addition to other rights and remedies (including, without limitation, other rights of setoff) which Lender may have.

Section 2.10 Unused Facility Fee. Borrower agrees to pay to Lender an unused facility fee on the daily average unused amount of the Commitment for the period from and including the date of this Agreement to and including the Revolving Termination Date, at the rate of 0.002% per annum based on a 360 day year and the actual number of days elapsed. For the purpose of calculating the unused facility fee hereunder, the Commitment shall be deemed utilized by the amount of all outstanding Revolving Loans. Accrued unused facility fee shall be payable in arrears on each December 31<sup>st</sup> and June 30<sup>th</sup> and on the Termination Date.

### ARTICLE III REPRESENTATIONS AND WARRANTIES

To induce Lender to enter into this Agreement, Borrower represents and warrants to Lender that:

Section 3.1 Corporate Existence. Each Obligated Party (a) is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation, organization, or formation, as applicable; (b) has all requisite power and authority to own its Property and carry on its business as now being or as proposed to be conducted; and (c) is qualified to do business in all jurisdictions in which the nature of its business makes such qualification necessary and where failure to so qualify could result in a Material Adverse Event. Each Obligated Party has the power and authority to execute, deliver, and perform its obligations under each of the Loan Documents to which it is or may become a party.

Section 3.2 Financial Statements; Etc. Borrower has delivered to Lender consolidated financial statements of the Borrower and Guarantor as at and for the fiscal year ended December 31, 2021 and for the quarter ended March 31, 2022. Such financial statements are true and correct, have been prepared in accordance with Recognized Accounting Principles, and fairly and accurately present, on a consolidated basis, the financial condition of the Obligated Parties as of the respective dates indicated therein and the results of operations for the respective periods indicated therein. No Obligated Party has any material contingent liabilities, liabilities for taxes, unusual forward or long-term commitments, or unrealized or anticipated losses from any unfavorable commitments except as referred to or reflected in such financial statements. No Material Adverse Event has occurred since the effective date of the most recent financial statements referred to in this Section. All projections delivered by Borrower to Lender have been prepared in good faith, with care and diligence and use assumptions that are reasonable under the circumstances at the time such projections were prepared and delivered to Lender and all such assumptions are disclosed in the projections.

Section 3.3 Action; No Breach. The execution, delivery, and performance by Borrower and each other Obligated Party of the Loan Documents to which it is or may become a party and compliance with the terms and provisions thereof have been duly authorized by all requisite action on the part of such Person and do not and will not (a) violate or conflict with, or result in a breach of, or require any consent under (i) the Constituent Documents of such Person, (ii) any Law to which such Person is subject, or (iii) any agreement or instrument to which such Person is a party or by which such Person or any of its Property is bound or subject, or (b) constitute a default under any such agreement or instrument, or result in the creation or imposition of any Lien upon any of the revenues or property of such Person, other than Liens created by the Loan Documents.

Section 3.4 Operation of Business. Each Obligated Party possesses all licenses, permits, franchises, patents, copyrights, trademarks, and tradenames, or rights thereto, necessary to conduct its business substantially as now conducted and as presently proposed to be conducted, and no Obligated Party is in violation of any valid rights of others with respect to any of the foregoing.

Section 3.5 Litigation and Judgments. There is no action, suit, investigation, or proceeding before or by any Governmental Authority or arbitrator pending, or to the knowledge of Borrower, threatened against or affecting any Related Party or any other Obligated Party, that could result in a Material Adverse Event. There are no outstanding judgments against any Related Party or any other Obligated Party.

Section 3.6 Rights in Properties; Liens. Each Obligated Party has good and indefeasible title to or valid leasehold interests in its Property, including the Property reflected in the Initial Financial Statements and none of the Property of any Obligated Party is subject to any Lien, except as permitted by Section 5.2.

Section 3.7 Enforceability. The Loan Documents constitute legal, valid, and binding obligations of Borrower and each other Obligated Party thereto, enforceable against such Person in accordance with their respective terms, except as limited by bankruptcy, insolvency, or other laws of general application relating to the enforcement of creditors' rights.

Section 3.8 Approvals. No authorization, approval, or consent of, and no filing or registration with, any Governmental Authority or third party is or will be necessary for the execution, delivery, or performance by Borrower or any other Obligated Party of the Loan Documents to which it is a party or the validity or enforceability thereof.

Section 3.9 Debt. No Obligated Party has any Debt, except for the Obligations and Debt disclosed in the Initial Financial Statements.

Section 3.10 Taxes. Each Obligated Party has filed all tax returns (federal, state, and local) required to be filed, including all income, franchise, employment, property, and sales tax returns, and has paid all of its liabilities for taxes, assessments, governmental charges, and other levies that are due and payable. Borrower knows of no pending investigation of any Obligated Party by any taxing authority or of any pending but unassessed tax liability of any Obligated Party.

Section 3.11 Use of Proceeds; Margin Securities. No Obligated Party is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulations G, T, U, or X of the Board of Governors of the Federal Reserve System), and no part of the proceeds of any Loan will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying margin stock.

Section 3.12 ERISA. The Obligated Parties are in compliance in all material respects with all applicable provisions of ERISA. Neither a Reportable Event nor a Prohibited Transaction has occurred and is continuing with respect to any ERISA Plan. No notice of intent to terminate an ERISA Plan has been filed, nor has any ERISA Plan been terminated. To the Knowledge of Borrower, no circumstances exist which constitute grounds entitling the PBGC to institute proceedings to terminate, or appoint a trustee to administer, an ERISA Plan, nor has the PBGC instituted any such proceedings. Neither the Obligated Parties nor any ERISA Affiliate have completely or partially withdrawn from a Multiemployer Plan. The Obligated Parties and each ERISA Affiliate have met their minimum funding requirements under ERISA with respect to all of their ERISA Plans, and the present value of all vested benefits under each ERISA Plan do not exceed the fair market value of all ERISA Plan assets allocable to such benefits,

as determined on the most recent valuation date of the ERISA Plan and in accordance with ERISA. Neither Borrower nor any ERISA Affiliate have incurred any liability to the PBGC under ERISA.

Section 3.13 Disclosure. No statement, information, report, representation, or warranty made by Borrower or any other Obligated Party in this Agreement or in any other Loan Document or furnished to Lender in connection with this Agreement or any of the transactions contemplated hereby contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements herein or therein not misleading. There is no fact known to Borrower which is a Material Adverse Event, or which could in the future be a Material Adverse Event, that has not been disclosed in writing to Lender.

Section 3.14 Subsidiaries. Borrower has no Subsidiaries except as set forth on Schedule 3.14. All of the outstanding Equity Interests in each Subsidiary has been validly issued, is fully paid, and is nonassessable. There are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments of any nature relating to any Equity Interests of Borrower or any Subsidiary.

Section 3.15 Agreements. No Obligated Party is a party to any indenture, loan, or credit agreement, or to any lease or other agreement or instrument, or subject to any charter or corporate or other organizational restriction which, in each case, could result in a Material Adverse Event. No Obligated Party is in default in any respect in the performance, observance, or fulfillment of any of the obligations, covenants, or conditions contained in any agreement or instrument material to its business to which it is a party.

Section 3.16 Compliance with Laws. No Obligated Party is in violation in any material respect of any Laws to which it is subject.

Section 3.17 Inventory. All Inventory of Borrower has been produced in compliance with all applicable laws, rules, regulations, and governmental standards, including, without limitation, the minimum wage and overtime provisions of the Fair Labor Standards Act (29 U.S.C. §§ 201-219).

Section 3.18 Investment Company Act. No Obligated Party is an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

Section 3.19 Environmental Condition.

(a) to Borrower’s knowledge, none of the Property of any Obligated Party has ever been used by any of the Obligated Parties, or by previous owners or operators in the disposal of, or to produce, store, handle, treat, release, or transport, any Hazardous Materials, where such use, production, storage, handling, treatment, release or transport was in violation, in any material respect, of any applicable Environmental Law;

(b) to Borrower’s knowledge, none of the Property of any Obligated Party has ever been designated or identified in any manner pursuant to any environmental protection statute as a Hazardous Materials disposal site;

(c) none of the Obligated Parties has received notice that a Lien arising under any Environmental Law has attached to any revenues or to any Property owned or operated by any Related Party; and

(d) none of the Obligated Parties has received a summons, citation, notice, or directive from the United States Environmental Protection Agency or any other federal or state

governmental agency concerning any action or omission by any Obligated Party resulting in the releasing or disposing of Hazardous Materials into the environment.

Section 3.20 Intellectual Property. All material Intellectual Property owned or used by the Borrower is listed in the Security Agreement. Each Person identified therein owns, or is licensed to use, all such Intellectual Property and all Intellectual Property necessary to conduct its business as currently conducted except for such Intellectual Property the failure of which to own or license could not reasonably be expected to result in a Material Adverse Event. Borrower will maintain the patenting and registration of all such Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office, or other appropriate Governmental Authority and will promptly patent or register, as the case may be, all new Intellectual Property and notify Lender in writing five (5) Business Days prior to filing any such new patent or registration.

Section 3.21 State of Organization; Location of Chief Executive Office; Organizational Identification Number.

- (a) The jurisdiction of organization of the Borrower is Florida.
- (b) The chief executive office of the Borrower is [\_\_\_\_\_].
- (c) Borrower's federal tax identification number is listed in the Security Agreement.

Section 3.22 Fraudulent Transfer.

- (a) Each Related Party and each other Obligated Party is Solvent.
- (b) No transfer of Property is being made by Borrower or any other Obligated Party, and no obligation is being incurred by Borrower or any other Obligated Party in connection with the transaction contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of Borrower or any other Obligated Party.

Section 3.23 Leases. The Related Parties enjoy peaceful and undisturbed possession under all leases material to their businesses and to which they are parties or under which they are operating, and all of such material leases are valid and subsisting and no default by any Related Party exists under any of them.

Section 3.24 Anti-Terrorism and Anti-Money Laundering. No Related Party or any other Obligated Party or any of their respective Affiliates is or shall be (a) listed on the Specially Designated Nationals and Blocked Person List maintained by the Office of Foreign Assets Control ("OFAC"), Department of the Treasury, or any other similar lists maintained by OFAC or any other Governmental Authority pursuant to any authorizing statute, Executive Order or regulation; or (b) a Person designated under Section 1(b), (c) or (d) of Executive Order No. 13224 (September 23, 2001), any related enabling legislation, or any other similar Executive Orders. To Borrower's knowledge, each Related Party, each other Obligated Party, and each of their respective Affiliates are in full compliance with all applicable provisions of the Bank Secrecy Act ("BSA") and of all other laws, regulations, and government guidance relating to the prevention and detection of money laundering violations or terrorist activities or threats.

Section 3.25 Continuation of Representations and Warranties. All representations and warranties made under this Agreement shall be deemed to be made at and as of the date of this Agreement and Borrower shall acknowledge in writing that the representations and warranties made under this

Agreement are true and correct in all material respects on each date an advance of Loan proceeds hereunder is requested by Borrower or made by Lender, and in all instances shall be true and correct in all material respects and not misleading.

ARTICLE IV  
AFFIRMATIVE COVENANTS

So long as the Obligations or any part thereof are outstanding, or Lender has any Commitment hereunder, unless Lender otherwise consents in writing, Borrower agrees that:

Section 4.1 Reporting Requirements. Borrower will furnish, or cause to be furnished, to Lender:

(a) Annual Financial Statements and Tax Returns. As soon as available, and in any event within the earlier of sixty days after filing with the SEC or 180 days after the end of each fiscal year of Borrower, beginning with the fiscal year ending December 31, 2022, a copy of the audited financial report of the Borrower for such fiscal year containing, on a consolidated basis, balance sheets and statements of income, retained earnings, and cash flow as at the end of such fiscal year and for the 12-month period then ended, in each case setting forth in comparative form the figures for the preceding fiscal year, all in reasonable detail and audited and certified by independent certified public accountants of recognized standing acceptable to Lender to the effect that such report has been prepared in accordance with GAAP and containing no material qualifications or limitations on scope, and in any event within the earlier of fifteen (15) days after same has been filed with the Internal Revenue Service or September 15<sup>th</sup> of each calendar year, commencing with the calendar year ending December 31, 2021, a copy of Borrower's federal income tax return for each fiscal year of Borrower, together with, if tax returns are not filed on or before April 15<sup>th</sup> of each calendar year, a copy of each extension filed with the Internal Revenue Service;

(b) Quarterly Financial Statements. As soon as available, and in any event within the earlier of thirty days after filing with the SEC or thirty days after the end of each calendar quarter, commencing June 30, 2022, a copy of the financial report of the Borrower for such period containing, on a consolidated basis, balance sheets and statements of income, retained earnings, and cash flow as at the end of such fiscal period and for the 12-month period then ended, in each case setting forth in comparative form the figures for the preceding fiscal year, all in reasonable detail and certified by the chief financial officer of the Borrower to the effect that such report has been prepared in accordance with GAAP and containing no material qualifications or limitations on scope.

(c) Quarterly Compliance Certificate. Within the earlier of thirty (30) days after the end of each calendar quarter, or thirty (30) days after quarterly financial statements have been filed with the SEC, a Compliance Certificate certified by a responsible officer of the Borrower reasonably acceptable to Lender;

(d) Monthly Borrowing Base Report. As soon as available, and in any event within thirty (30) days after the end of each calendar quarter, a Borrowing Base Report, in a form acceptable to Lender, certified by a responsible officer of the Borrower reasonably acceptable to Lender;

(e) Management Letters. Promptly upon receipt thereof, a copy of any management letter or written report submitted to any Obligated Party by independent certified public

accountants with respect to the business, condition (financial or otherwise), operations, prospects, or properties of any Obligated Party;

(f) Notice of Litigation. Promptly after the commencement thereof, notice of all actions, suits, and proceedings before any Governmental Authority or arbitrator affecting any Related Party or any other Obligated Party or any of their respective Properties (i) that could, individually or in the aggregate, result in a Material Adverse Event or (ii) that involves any of the Loan Documents or any of the transactions contemplated thereby;

(g) Notice of Default. As soon as possible and in any event within five (5) Business Days after the occurrence of each Default, a written notice setting forth the details of such Default and the action that the Related Parties are taking or propose to take with respect thereto;

(h) Notice of Claimed Default. Immediately upon becoming aware that any Person has given notice or taken any other action with respect to a claimed default under any note, agreement, contract, or undertaking to which any Related Party or Obligated Party is a party regarding a monetary obligation of \$25,000 or more, a written notice specifying the notice given or action taken by such Person and the nature of the claimed default and what action the Related Parties or Obligated Parties are taking or propose to take with respect thereto;

(i) ERISA Reports. Promptly after the filing or receipt thereof, copies of all reports, including annual reports, and notices which each Related Party and Obligated Party files with or receives from the PBGC or the U.S. Department of Labor under ERISA; and as soon as possible and in any event within five (5) days after Borrower knows or has reason to know that any Reportable Event or Prohibited Transaction has occurred with respect to any Plan or that the PBGC or any Related Party or Obligated Party has instituted or will institute proceedings under Title IV of ERISA to terminate any Plan, a certificate of the President or Chief Executive Officer of Borrower setting forth the details as to such Reportable Event or Prohibited Transaction or Plan termination and the action that Borrower proposes to take with respect thereto;

(j) Reports to Other Creditors. Promptly after the furnishing thereof, copies of any statement or report furnished by any Related Party or Obligated Party to any other party pursuant to the terms of any indenture, loan, or credit or similar agreement and not otherwise required to be furnished to Lender pursuant to any other clause of this Section;

(k) Tax Audits. Promptly upon becoming aware thereof, notice of any investigation of any Related Party or Obligated Party by any governmental taxing authority;

(l) Notice of Material Adverse Event. As soon as possible and in any event within five (5) Business Days after the occurrence thereof, written notice of any event or circumstance that resulted in a Material Adverse Event;

(m) Insurance Reports. Upon request of Lender, furnish to Lender reports on each existing insurance policy showing such information as Lender may reasonably request, including without limitation the following: (i) the name of the insurer; (ii) the risks insured; (iii) the amount of the policy; (iv) the properties insured; (v) the then current property values on the basis of which insurance has been obtained, and the manner of determining those values; and (vi) the expiration date of the policy. In addition, upon request of Lender (however not more often than annually), Borrower will have an independent appraiser satisfactory to Lender determine, as applicable, the actual cash value or replacement cost of any Collateral. The cost of such appraisal shall be paid by Borrower; and



(n) General Information. Promptly, such other information concerning any Related Party or any other Obligated Party as Lender may from time to time reasonably request.

Section 4.2 Maintenance of Existence; Conduct of Business. Borrower will, and will cause each other Obligated Party to, preserve and maintain its existence and all of its leases, privileges, licenses, permits, franchises, qualifications, and rights that are necessary or desirable in the ordinary conduct of its business. Borrower will, and will cause each other Obligated Party to, conduct its business in an orderly and efficient manner in accordance with good business practices. Without limitation, Borrower will not, and will not permit any other Obligated Party to, make any material change in its credit collection policies if such change would materially impair the collectibility of any Account, and Borrower will not, and will not permit any other Obligated Party to, rescind, cancel or modify any Account except in the ordinary course of business.

Section 4.3 Maintenance of Properties. Borrower will, and will cause each other Obligated Party to, maintain, keep, and preserve all of its Property (tangible and intangible) necessary or useful in the proper conduct of its business in good working order and condition.

Section 4.4 Taxes and Claims. Borrower will, and will cause each other Obligated Party to, pay or discharge before becoming delinquent (a) all of its indebtedness and obligations including, without limitation, all taxes, levies, assessments, and governmental charges imposed on it or its income or profits or any of its Property, and (b) all lawful claims for labor, material, and supplies, which, if unpaid, might become a Lien upon any of its Property.

Section 4.5 Insurance.

(a) Borrower will keep, and will cause each other Related Party and Obligated Party to keep, all property useful and necessary in its business in good working order and condition, ordinary wear and tear excepted.

(b) Borrower will maintain, and will cause each other Related Party to maintain, (i) casualty insurance on all real and personal property on an all risks basis (including the perils of flood and quake), covering the repair and replacement cost of all such property and coverage for business interruption and public liability insurance (including products/completed operations liability coverage) in each case of the kinds customarily carried or maintained by Persons of established reputation engaged in similar businesses and in amounts acceptable to Lender and (ii) such other insurance coverage in such amounts and with respect to such risks as Lender may reasonably request. All such insurance shall be provided by insurers having an A.M. Best policyholders rating reasonably acceptable to Lender. Borrower will not, and will not permit any other Related Party to, bring or keep any article on any business location of any Related Party, or cause or allow any condition to exist, if the presence of such article or the occurrence of such condition could reasonably cause the invalidation of any insurance required by this Section 4.5, or would otherwise be prohibited by the terms thereof.

(c) On or prior to the Closing Date, and at all times thereafter, Borrower will cause Lender to be named as an additional insured, assignee and loss payee (which shall include, as applicable, identification as mortgagee), as applicable, on each insurance policy required to be maintained pursuant to this Section 4.5 pursuant to endorsements in form and content acceptable to Lender. Borrower will deliver to Lender (i) on the Closing Date, a certificate from Borrower's insurance broker dated such date showing the amount of coverage as of such date, and that such policies will include effective waivers (whether under the terms of any such policy or otherwise) by the insurer of all claims for insurance premiums against all loss payees and additional insureds

and all rights of subrogation against all loss payees and additional insureds, and that if all or any part of such policy is canceled, terminated or expires, the insurer will forthwith give notice thereof to each additional insured, assignee and loss payee and that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by each additional insured, assignee and loss payee of written notice thereof, (ii) on an annual basis, and upon the request of Lender from time to time full information as to the insurance carried, (iii) within five (5) days of receipt of notice from any insurer, a copy of any notice of cancellation, nonrenewal or material change in coverage from that existing on the date of this Agreement and (iv) forthwith, notice of any cancellation or nonrenewal of coverage by Borrower.

(d) In the event Borrower fails to provide Lender with evidence of the insurance coverage required by this Agreement, Lender may purchase insurance at Borrower's expense to protect Lender's interests in the Collateral. This insurance may, but need not, protect Borrower's interests. The coverage purchased by Lender may not pay any claim made by Borrower or any claim that is made against Borrower in connection with the Collateral. Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has obtained insurance as required by this Agreement. If Lender purchases insurance for the Collateral, to the fullest extent provided by law Borrower will be responsible for the costs of that insurance, including interest and other charges imposed by Lender in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations. The costs of the insurance may be more than the cost of insurance Borrower is able to obtain on its own.

Section 4.6 Inspection Rights. At any reasonable time and from time to time, Borrower will, and will cause each other Related Party to, at Borrower's expense, permit representatives of Lender to examine the Collateral and conduct Collateral audits, to examine, copy, and make extracts from its books and records, to visit and inspect its Property, and to discuss its business, operations, and financial condition with its officers, employees, and independent certified public accountants; provided however, absent the occurrence and continuation of an Event of Default such inspections shall be limited to one (1) visit in any calendar year. If Borrower now or at any time hereafter maintains any records (including without limitation computer generated records and computer software programs for the generation of such records) in the possession of a third party, Borrower, upon request of Lender, shall notify such party to permit Lender free access to such records at all reasonable times and to provide Lender with copies of any records it may request, all at Borrower's expense.

Section 4.7 Keeping Books and Records. Borrower will, and will cause each other Related Party and Obligated Party to, maintain proper books of record and account in which full, true, and correct entries in conformity with sound business practices and Recognized Accounting Principles shall be made of all dealings and transactions in relation to its business and activities and permit Lender to examine and audit such books and records at reasonable times.

Section 4.8 Compliance with Laws. Borrower will, and will cause each other Related Party and Obligated Party to, comply, in all material respects, with all applicable Laws and all restrictions and requirements imposed by any Governmental Authority.

Section 4.9 Compliance with Agreements. Borrower will, and will cause each other Related Party and Obligated Party to, comply, in all material respects, with all agreements, contracts, and instruments binding on it or affecting its Property or business, including, without limitation, the Loan Documents.

Section 4.10 Further Assurances. Borrower will, and will cause each other Related Party and Obligated Party to, execute and deliver such further agreements and instruments and take such further action as may be requested by Lender to carry out the provisions and purposes of this Agreement and the other Loan Documents and to create, preserve, and perfect the Liens of Lender in the Collateral.

Section 4.11 ERISA. Borrower will, and will cause each other Related Party and Obligated Party to, comply with all minimum funding requirements, and all other material requirements, of ERISA, if applicable, so as not to give rise to any liability thereunder.

Section 4.12 Environmental. Borrower will, and will cause each other Related Party and Obligated Party to, (a) keep any Property either owned or operated by it free of any Environmental Liens or post bonds or other financial assurances sufficient to satisfy the obligations or liability evidenced by such Environmental Liens, (b) comply, in all material respects, with Environmental Laws and provide to Lender documentation of such compliance which Lender reasonably requests, (c) promptly notify Lender of any release of a Hazardous Material in any reportable quantity from or onto Property owned or operated by any Related Party or Obligated Party and take any Remedial Actions required to abate said release or otherwise to come into compliance with applicable Environmental Law, and (d) promptly, but in any event within 5 days of its receipt thereof, provide Lender with written notice of any of the following: (i) notice that an Environmental Lien has been filed against any of the Property of any Related Party or Obligated Party, (ii) commencement of any Environmental Action or notice that an Environmental Action will be filed against any Related Party or Obligated Party, and (iii) notice of a violation, citation, or other administrative order which reasonably would be expected to result in a Material Adverse Event.

Section 4.13 Treasury Management. Within sixty (60) days of the date hereof, Borrower will, and will cause each other Related Party to, maintain all accounts and execute such agreements necessary for Lender to act as the principal bank of Related Parties and Borrower will, and will cause each other Related Party to, maintain Lender as the principal depository bank of Related Parties, including for the maintenance of business, cash management, operating and administrative deposit accounts. Within sixty (60) days of the date hereof, for each bank account maintained by a Related Party with a financial institution other than Lender, Borrowers shall cause such financial institution to execute and deliver to Lender, and at all times maintain in full force and effect, a control agreement in form and substance satisfactory to Lender.

Section 4.14 Additional Subsidiaries. Borrower shall notify Lender at the time that any Person becomes a Subsidiary, and promptly thereafter (and any event within ten (10) Business Days) cause such Person to (a) execute and deliver all Security Documents requested by Lender pledging to Lender all of its Property (subject to such exceptions as Lender may permit) and take all actions required by Lender to grant to Lender a perfected first priority security interest in such property, including the filing of UCC financing statements in such jurisdictions as may be requested by Lender, and (c) deliver to Lender such other documents and instruments as Lender may reasonably require. Lender acknowledges and agrees that the Subsidiaries of the Borrower on the Closing Date are not and shall not be required to be guarantors of the Obligations hereunder.

#### ARTICLE V NEGATIVE COVENANTS

So long as the Obligations or any part thereof are outstanding, or Lender has any Commitment hereunder, unless Lender otherwise consents in writing, Borrower agrees that: [NOTE: Please review.]

Section 5.1 Debt. Borrower will not, and will not permit any other Related Party or Obligated Party to, incur, create, assume, or permit to exist any Debt, except:

- (a) Debt to Lender;
- (b) Debt existing on the date of this Agreement which is disclosed in the Initial Financial Statements; and
- (c) Purchase money Debt or capital leases not to exceed, in the aggregate, \$1,000,000, at any one time outstanding;
- (d) Hedge Obligations existing or arising under Hedge Agreements permitted under this Agreement;
- (e) Unsecured guarantees incurred in the ordinary course of business with respect to surety and appeal bonds, performance bonds, and similar obligations in an amount not to exceed, in the aggregate, \$250,000 at any one time outstanding; and
- (f) Subordinated Debt.

Section 5.2 Limitation on Liens. Borrower will not, and will not permit any other Related Party or Obligated Party to, incur, create, assume, or permit to exist any Lien upon any of its property, assets, or revenues, whether now owned or hereafter acquired, except:

- (a) Liens in favor of Lender or an Affiliate of Lender; and
- (b) Permitted Liens.

Section 5.3 Mergers, Consolidations, Etc. Borrower will not, and will not permit any other Related Party or Obligated Party, without the prior written consent of Lender or in the ordinary course of business of Borrower with not less than thirty (30) days prior written notice to Lender, to, (a) amend its Constituent Documents or otherwise change its corporate name or structure, (b) form a subsidiary company, (c) consolidate with or merge into, or acquire any Person, (d) permit any Person to consolidate with or merge into, or acquire any Related Party, (e) acquire any shares or other evidence of any ownership or beneficial interest of any Person, (f) acquire all or substantially all of the assets and business of any Person or any division of any Person, or (g) sell or otherwise transfer any Equity Interests.

Section 5.4 Restricted Payments. Borrower will not, directly or indirectly, declare or pay any dividends or make any other payment or distribution (in cash, Property, or obligations) on account of its Equity Interests, or redeem, purchase, retire, call, or otherwise acquire any of its Equity Interests, or permit any Related Party to purchase or otherwise acquire any Equity Interest of Borrower or of any other Related Party or set apart any money for a sinking or other analogous fund for any dividend or other distribution on its Equity Interests or for any redemption, purchase, retirement, or other acquisition of any of its Equity Interests; provided, however, if (a) no Default or Event of Default has occurred and is continuing or will occur as a result of such payment, and (b) Borrower gives Lender not less than ten (10) days prior written notice of such distribution, including evidence of compliance with the financial covenants contained herein both before and after giving effect to such distribution, then Borrower may declare and pay Permitted Tax Distributions to holders of its Equity Interests.

Section 5.5 Loans and Investments. Borrower will not, and will not permit any other Obligated Party to, make any advance, loan, extension of credit, or capital contribution to or investment in, or purchase any stock, bonds, notes, debentures, or other securities of, any Person, except:

- (a) readily marketable direct obligations of the United States of America or any agency thereof with maturities of one year or less from the date of acquisition;
- (b) fully insured certificates of deposit with maturities of one year or less from the date of acquisition issued by any commercial bank operating in the United States of America having capital and surplus in excess of \$50,000,000.00; or
- (c) commercial paper of a domestic issuer if at the time of purchase such paper is rated in one of the two highest rating categories of Standard and Poor's Corporation or Moody's Investors Service.

Section 5.6 Limitation on Issuance of Equity. Without Lender's prior consent, which shall not be unreasonably withheld, or in the ordinary course of business of Borrower with not less than thirty (30) days prior written notice to Lender, Borrower will not, and will not permit any other Obligated Party to, at any time issue, sell, assign, or otherwise dispose of (a) any of its Equity Interests, (b) any securities exchangeable for or convertible into or carrying any rights to acquire any of its Equity Interests, or (c) any option, warrant, or other right to acquire any of its Equity Interests.

Section 5.7 Transactions With Affiliates. Without Lender's prior consent, which shall not be unreasonably withheld, Borrower will not, and will not permit any other Obligated Party to, enter into any transaction, including, without limitation, the purchase, sale, or exchange of Property or the rendering of any service, with any Affiliate of the Obligated Parties, except in the ordinary course of and pursuant to the reasonable requirements of the Obligated Parties' business and upon fair and reasonable terms no less favorable to the Obligated Parties than would be obtained in a comparable arm's-length transaction with a Person not an Affiliate of the Related Parties.

Section 5.8 Disposition of Assets. Without Lender's prior consent, which shall not be unreasonably withheld, Borrower will not, and will not permit any other Obligated Party to, directly or indirectly, sell, lease, assign, transfer, or otherwise dispose of any of its assets except (a) dispositions of Inventory in the ordinary course of business and (b) dispositions, for fair value, of worn-out and obsolete equipment not necessary or useful to the conduct of business.

Section 5.9 Sale and Leaseback. Without Lender's prior consent, which shall not be unreasonably withheld, Borrower will not, and will not permit any other Obligated Party to, enter into any arrangement with any Person pursuant to which it leases from such Person real or personal property that has been or is to be sold or transferred, directly or indirectly, by it to such Person.

Section 5.10 Prepayment of Debt. Without Lender's prior consent, which shall not be unreasonably withheld, Borrower will not, and will not permit any other Obligated Party to, directly or indirectly, prepay any Debt, except the Obligations.

Section 5.11 Nature of Business. Without Lender's prior consent, which shall not be unreasonably withheld, Borrower will not, and will not permit any other Obligated Party to, engage in any business other than the business in which it is engaged as of the date of this Agreement.

Section 5.12 Environmental Protection. Borrower will not, and will not permit any other Obligated Party to, (a) use (or permit any tenant to use) any of its Property for the handling, processing,

storage, transportation, or disposal of any Hazardous Material, except for the use of Hazardous Materials in the ordinary course of business in accordance with applicable Environmental Laws, (b) generate any Hazardous Material, (c) conduct any activity that is likely to cause a Release or threatened Release of any Hazardous Material, or (d) otherwise conduct any activity or use any of its Properties in any manner that is likely to violate any Environmental Law or create any Environmental Liabilities for which any of the Related Parties would be responsible.

Section 5.13 Accounting. Without Lender's prior consent, which shall not be unreasonably withheld, Borrower will not, and will not permit any other Obligated Party to, change its fiscal year or make any change (a) in accounting treatment or reporting practices, except as required by Recognized Accounting Principles and disclosed in writing to Lender, or (b) in tax reporting treatment, except as required by law and disclosed in writing to Lender.

Section 5.14 No Negative Pledge. Borrower will not, and will not permit any other Obligated Party to, enter into or permit to exist any arrangement or agreement, other than pursuant to this Agreement or any Loan Document, which directly or indirectly prohibits any Obligated Party from creating or incurring a Lien on any of its Property.

Section 5.15 Subsidiaries. Borrower will not, directly or indirectly, form or acquire any Subsidiary unless such Subsidiary complies with the requirements of Section 4.14.

Section 5.16 Officer and Director Compensation. Intentionally deleted.

Section 5.17 Anti-Terrorism and Anti-Money Laundering Provisions. Borrower will not, and will not permit any other Obligated Party to, take any action or engage in any activity of any nature whatsoever that would or could result in any Related Party or Obligated Party being (a) listed on the Specially Designated Nationals and Blocked Person List maintained by OFAC or any other similar lists maintained by OFAC or any other Governmental Authority pursuant to any authorizing statute, Executive Order or regulation; or (b) a Person designated under Section 1(b), (c) or (d) of Executive Order No. 13224 (September 23, 2001), any related enabling legislation, or any other similar Executive Orders. Borrower will not, and will not permit any other Related Party or Obligated Party to, fail to comply with the applicable provisions of the BSA and all other laws, regulations, and government guidance relating to the prevention and detection of money laundering violations or terrorist activities or threats.

Section 5.18 Hedge Agreements. Borrower shall not, and shall not permit any other Obligated Party to, enter into any Hedge Agreement without the prior written consent of Lender.

## ARTICLE VI FINANCIAL COVENANTS

So long as the Obligations or any part thereof are outstanding or Lender has any Commitment hereunder, unless Lender otherwise consents in writing Borrower agrees that:

Section 6.1 Minimum Fixed Charge Coverage Ratio. Borrower will not permit, for Borrower and its Subsidiaries on a consolidated basis, the Fixed Charge Coverage Ratio to be less than 1.25 to 1.00, measured quarterly on the last day of each quarter commencing June 30, 2022; provided, (a) for the period ended June 30, 2022, the numerator shall be determined based on a trailing three (3) months multiplied by four (4); (b) for the period ended September, 2022, the numerator shall be determined based on a trailing six (6) months multiplied by two (2); and (c) for the period ended December 31, 2022, the numerator shall be determined based on a trailing nine (9) months multiplied by 1.33.

Section 6.2 Equity Cure. For purposes of determining compliance with Section 6.1, an equity contribution (in the form of cash paid or contributed in respect of common equity of a Borrower) made to Borrower after the date of this Agreement and on or prior to the day that is 15 calendar days after the day on which the Compliance Certificate is required to be delivered pursuant to Section 4.1(c) will be included in the calculation of Consolidated Net Income for the most recently ended period solely for the purpose of determining compliance with Section 6.1 as of the end of such period (any such equity contribution being a "Specified Equity Contribution") provided that:

- (a) the Specified Equity Contribution will be delivered to Lender for application to the principal outstanding under the Loan and, at the option of Lender, a reduction of the Commitment in the amount of the Specified Equity Contribution;
- (b) no more than three Specified Equity Contributions will be permitted during the term of this Agreement, and only one Specified Equity Contribution may be made in any six-month period;
- (c) the Specified Equity Contribution will be disregarded for all purposes other than the calculation of compliance with Section 6.1, and
- (d) written notice of any Borrower's intent to include a Specified Equity Contribution shall be delivered to Lender no later than the day on which the Compliance Certificate is required to be delivered under this Agreement for the applicable period.

Notwithstanding anything to the contrary contained herein, from the date of any Borrower's election to apply a Specified Equity Contribution as set forth herein, and for a period of 12 months thereafter, Borrower will not declare or pay any distribution to the holders of its Equity Interests.

#### ARTICLE VII CONDITIONS PRECEDENT

Section 7.1 Initial Extension of Credit. The obligation of Lender to make the initial advance under the Revolving Loan is subject to the condition precedent that Lender shall have received on or before the day of such Loan all of the following, dated (unless otherwise indicated) as of the date hereof, in form and substance satisfactory to Lender:

- (a) Resolutions. Resolutions of the Members and/or Manager(s) of Borrower and each other Obligated Party certified by its Secretary or an Assistant Secretary (or other custodian of records) which authorize the execution, delivery, and performance by each such Person of this Agreement and the other Loan Documents to which it is or is to be a party;
- (b) Incumbency Certificate. A certificate of incumbency certified by an authorized officer or representative certifying the names of the individuals or other Persons authorized to sign this Agreement and each of the other Loan Documents to which Borrower and each other Obligated Party is or is to be a party (including the certificates contemplated herein) on behalf of such Persons together with specimen signatures of such Persons;
- (c) Constituent Documents. The Constituent Documents for each Related Party and each other Obligated Party as of a date acceptable to Lender;
- (d) Governmental Certificates. Certificates of the appropriate government officials of the state of incorporation or organization of each Related Party and each other Obligated Party

as to the existence and good standing of, such Person, each dated within ten (10) days prior to the date of the initial Loan;

- (e) Notes. The Revolving Note executed by Borrower;
- (f) Security Documents. The Security Documents executed by each Obligated Party thereto;
- (g) Financing Statements. UCC financing statements covering such Collateral as Lender may request;
- (h) Landlord Waivers. Landlord waivers executed by the landlords of Borrower;
- (i) Insurance Matters. Copies of insurance certificates describing all insurance policies required by Section 4.5, together with loss payable and lender endorsements in favor of Lender with respect to all insurance policies covering Collateral;
- (j) UCC Search. The results of a UCC search showing all financing statements and other documents or instruments on file against each Related Party and each other Obligated Party in the offices of the Secretary of State of the state of incorporation or formation, such search to be as of a date no more than ten (10) days prior to the date of the Loan;
- (k) Releases of Liens and UCC-3 Termination Statements. Release of Liens and UCC-3 Termination Statements executed by such Persons as Lender may deem necessary to insure Lender's first priority security interest in and to the Collateral;
- (l) Opinion of Counsel. Intentionally deleted;
- (m) Attorneys' Fees and Expenses. Evidence that the costs and expenses (including reasonable attorneys' fees) referred to in Section 9.1, to the extent incurred, shall have been paid in full by Borrower;
- (n) Fees. Borrower shall have paid all fees, costs and expenses that the Borrower is required to pay pursuant to any loan application or commitment, including an origination fee of \$7,500.00;
- (o) Certificate. Lender shall have received a certificate executed by a responsible officer of Borrower certifying that the conditions precedent set forth herein have been complied with by Borrower and that no Material Adverse Event has occurred since the date of the Initial Financial Statements;
- (p) Due Diligence. Lender shall have completed such credit underwriting and due diligence with respect to each Related Party and each other Obligated Party (including verifications necessary or required under OFAC and BSA), the Collateral, and the transactions as Lender deems appropriate, and the results of such underwriting and due diligence are satisfactory to the Lender, in its sole discretion;
- (q) Additional Items. Lender shall have received such other agreements, certificates and documents as Lender may reasonably request.



Section 7.2 All Extensions of Credit. The obligation of Lender to make any Loan (including the initial Loan) is subject to the following additional conditions precedent:

(a) Borrowing Request. Lender shall have received in accordance with this Agreement a Borrowing Request pursuant to Lender's requirements dated the date of such Loan and executed by an authorized officer of Borrower, together with such other documents and certificates that Lender may request including, without limitation, a current Borrowing Base Report;

(b) No Default, Etc. No Default or Material Adverse Event shall have occurred and be continuing, or would result from or after giving effect to such Loan;

(c) Representations and Warranties. All of the representations and warranties contained in Article III hereof and in the other Loan Documents shall be true and correct on and as of the date of such Loan with the same force and effect as if such representations and warranties had been made on and as of such date; and

(d) Additional Documentation. Lender shall have received such additional agreements, certificates, documents, approvals, or opinions as Lender or its legal counsel may reasonably request.

## ARTICLE VIII DEFAULT

Section 8.1 Events of Default. Each of the following shall be deemed an "Event of Default":

(a) Borrower shall fail to pay the Obligations or any part thereof shall not be paid when due or declared due;

(b) Borrower shall fail to provide to Lender timely any notice of required by Section 4.1 of this Agreement or any Related Party shall breach any other provision of Article IV, Article V or Article VI of this Agreement;

(c) Any material representation or warranty made or deemed made by Borrower or any other Obligated Party (or any of its officers, partners, or members, as applicable) in any Loan Document or in any certificate, report, notice, or financial statement furnished at any time in connection with the Loan Documents shall be false, misleading, or erroneous in any material respect when made or deemed to have been made;

(d) Borrower or any other Obligated Party shall fail to perform, observe, or comply with any covenant, agreement, or term contained in this Agreement or any other Loan Document (other than as otherwise covered by this Section 8.1), and such failure continues for more than thirty (30) days following the date such failure first began;

(e) Any Related Party or any Obligated Party shall commence a voluntary proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official of it or a substantial part of its property or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it or shall make a general assignment for the benefit of creditors or shall generally fail to

pay its debts as they become due or shall take any corporate action to authorize any of the foregoing;

(f) An involuntary proceeding shall be commenced against any Related Party or any Obligated Party seeking liquidation, reorganization, or other relief with respect to it or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official for it or a substantial part of its property, and such involuntary proceeding shall remain undismissed and unstayed for a period of thirty (30) days;

(g) Any Related Party or any Obligated Party shall fail to pay when due (after giving effect to any grace periods with respect thereto) any principal of or interest on any Debt (other than the Obligations) of \$25,000 or more (whether individually or in the aggregate), or the maturity of any such Debt shall have been accelerated, or any such Debt shall have been required to be prepaid prior to the stated maturity thereof, or any event shall have occurred that permits (or, with the giving of notice or lapse of time or both, would permit) any holder or holders of such Debt or any Person acting on behalf of such holder or holders to accelerate the maturity thereof or require any such prepayment;

(h) This Agreement or any other Loan Document shall cease to be in full force and effect or shall be declared null and void or the validity or enforceability thereof shall be contested or challenged by Borrower or any other Obligated Party or any of their respective shareholders, partners, or members, as applicable, or Borrower or any other Obligated Party shall deny that it has any further liability or obligation under any of the Loan Documents, or any lien or security interest created by the Loan Documents shall for any reason cease to be a valid, first priority perfected security interest in and lien upon any of the Collateral purported to be covered thereby;

(i) Any of the following events shall occur or exist with respect to any Related Party and any ERISA Affiliate:

(i) any Reportable Event shall occur;

(ii) complete or partial withdrawal from any Multiemployer Plan shall take place;

(iii) any Prohibited Transaction shall occur;

(iv) a notice of intent to terminate an ERISA Plan shall be filed, or an ERISA Plan shall be terminated; or

(v) circumstances shall exist which constitute grounds entitling the PBGC to institute proceedings to terminate an ERISA Plan, or the PBGC shall institute such proceedings;

and in each case above, such event or condition, together with all other events or conditions, if any, could subject any Related Party to any tax, penalty or other liability that would result in a Material Adverse Event.

(j) Any Related Party or any Obligated Party or any of its Property or revenues shall become subject to an order of forfeiture, seizure, or divestiture (whether under RICO or

otherwise) and the same shall not have been discharged within thirty (30) days from the date of entry thereof;

(k) Any Related Party or any Obligated Party shall fail to discharge within a period of thirty (30) days after the commencement thereof any Lien, attachment, sequestration, or similar proceeding or proceedings involving an amount in excess of \$100,000 against any of its assets or properties;

(l) A final judgment or judgments for the payment of money in excess of \$100,000 shall be rendered by a court or courts against any Related Party or any Obligated Party and the same shall not be discharged (or provision shall not be made for such discharge), or a stay of execution thereof shall not be procured, within thirty (30) days from the date of entry thereof and the relevant Related Party or any Obligated Party shall not, within said period of thirty (30) days, or such longer period during which execution of the same shall have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal;

(m) Any substantial impairment of value, loss, damage or destruction (not covered by insurance) of the Collateral occurs;

(n) If there is a suit, investigation, or proceeding before or by any Governmental Authority pending against any Obligated Party that could, if adversely determined, result in a Material Adverse Event as determined by Lender;

(o) The occurrence of any default or Event of Default under any documents, agreements, or instruments (other than the Loan Documents) executed by any Related Party, any Obligated Party, or any affiliate thereof with or in favor of Lender;

(p) Lender determines that a Material Adverse Event has occurred or a circumstance exists that could result in a Material Adverse Event; or

(q) The occurrence of any event of default, after applicable notice and cure periods, under (a) that certain Loan Agreement dated on or about June 6, 2022 between Borrower Innovative Food Holdings, Inc., Innovative Food Properties, LLC, and Lender or any other document, agreement, and instrument executed in connection therewith or (b) any other documents, agreement, and instruments executed by Borrower or Innovative Food Properties with or in favor of Lender (other than the Loan Documents).

(r) If any Loan Document shall cease to be in full force and effect or shall be declared null and void or the validity or enforceability thereof shall be contested or challenged by the Borrower or any other Obligated Party or any of their respective partners, members, shareholders or other equity holders, or the Borrower or any other Obligated Party shall deny that it has any further liability or obligation under any of the Loan Documents, or any lien or security interest created by the Loan Documents shall for any reason cease to be a valid, first priority perfected security interest in and lien upon any Property of Borrower.

Section 8.2 Remedies Upon Default. If any Default shall occur and be continuing, then Lender may with notice to Borrower terminate the Commitment. If any Event of Default shall occur and be continuing, then Lender may with notice to Borrower terminate the Commitment or declare the Obligations or any part thereof to be immediately due and payable, or both, and the same may at the discretion of Lender thereupon become immediately due and payable, without presentment, notice of dishonor, notice of acceleration, notice of intent to accelerate, notice of intent to demand, protest, or other

formalities of any kind, all of which are hereby expressly waived by Borrower; *provided, however*, that upon the occurrence of an Event of Default under Section 8.1(e) or (f), the Commitment shall automatically terminate and the Obligations shall become immediately due and payable, in each case without notice, demand, presentment, notice of dishonor, notice of acceleration, notice of intent to accelerate, notice of intent to demand, protest, or other formalities of any kind, all of which are hereby expressly waived by Borrower. In addition to the foregoing, if any Event of Default shall occur and be continuing, Lender may exercise all rights and remedies available to it in law or in equity, under the Loan Documents, or otherwise

Section 8.3 Application of Funds. After the exercise of remedies provided for in Section 8.2 (or after the Loans have automatically become immediately due and payable), any amounts received on account of the Obligations shall be applied by Lender in such order as it elects in its sole discretion

Section 8.4 Right of Setoff. If an Event of Default shall have occurred and be continuing, Lender and its Affiliates are hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by Lender or any such Affiliate to or for the credit or the account of Borrower and any other Obligated Party against any and all of the obligations of Borrower and any other Obligated Party now or hereafter existing under this Agreement or any other Loan Document to Lender. The rights of Lender and its Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that Lender or its Affiliates may have. Lender agrees to notify Borrower promptly after any such setoff and application, *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

Section 8.5 Performance by Lender. If any Obligated Party shall fail to perform any covenant or agreement contained in any of the Loan Documents, Lender may perform or attempt to perform such covenant or agreement on behalf of such Obligated Party. In such event, Borrower shall, at the request of Lender, promptly pay any amount expended by Lender in connection with such performance or attempted performance to Lender, together with interest thereon at the Default Rate from and including the date of such expenditure to but excluding the date such expenditure is paid in full. Notwithstanding the foregoing, it is expressly agreed that Lender shall not have any liability or responsibility for the performance of any obligation of any Obligated Party under this Agreement or any other Loan Document.

#### ARTICLE IX EXPENSES AND INDEMNITY

Section 9.1 Expenses. Borrower hereby agrees to pay on demand: (a) all commercially reasonable and necessary costs and expenses of Lender in connection with the preparation, negotiation, execution, and delivery of this Agreement and the other Loan Documents and any and all amendments, modifications, renewals, extensions, and supplements thereof and thereto, including, without limitation, the reasonable fees and expenses of legal counsel, advisors, consultants, and auditors for Lender, (b) all commercially reasonable and necessary costs and expenses of Lender in connection with any Default and the enforcement of this Agreement or any other Loan Document, including, without limitation, the fees and expenses of legal counsel, advisors, consultants, and auditors for Lender, (c) all transfer, stamp, documentary, or other similar taxes, assessments, or charges levied by any Governmental Authority in respect of this Agreement or any of the other Loan Documents, (d) all costs, expenses, assessments, and other charges incurred in connection with any filing, registration, recording, or perfection of any security interest or Lien contemplated by this Agreement or any other Loan Document, and (e) all other commercially reasonable and necessary costs and expenses incurred by Lender in connection with this

Agreement or any other Loan Document, any litigation, dispute, suit, proceeding or action; the enforcement of its rights and remedies, protection of its interests in bankruptcy, insolvency or other legal proceedings, including, without limitation, all costs, expenses, and other charges (including Lender's internal charges) incurred in connection with evaluating, observing, collecting, examining, auditing, appraising, selling, liquidating, or otherwise disposing of the Collateral or other assets of the Related Parties.

Section 9.2 **INDEMNIFICATION.** BORROWER SHALL INDEMNIFY LENDER AND EACH AFFILIATE OF LENDER AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, AND AGENTS FROM, AND HOLD EACH OF THEM HARMLESS AGAINST, ANY AND ALL LOSSES, LIABILITIES, CLAIMS, DAMAGES, PENALTIES, JUDGMENTS, DISBURSEMENTS, COSTS, AND EXPENSES (INCLUDING ATTORNEYS' FEES) TO WHICH ANY OF THEM MAY BECOME SUBJECT WHICH DIRECTLY OR INDIRECTLY ARISE FROM OR RELATE TO (A) THE NEGOTIATION, EXECUTION, DELIVERY, PERFORMANCE, ADMINISTRATION, OR ENFORCEMENT OF ANY OF THE LOAN DOCUMENTS, (B) ANY OF THE TRANSACTIONS CONTEMPLATED BY THE LOAN DOCUMENTS, (C) ANY BREACH BY ANY RELATED PARTY OF ANY REPRESENTATION, WARRANTY, COVENANT, OR OTHER AGREEMENT CONTAINED IN ANY OF THE LOAN DOCUMENTS, (D) THE PRESENCE, RELEASE, THREATENED RELEASE, DISPOSAL, REMOVAL, OR CLEANUP OF ANY HAZARDOUS MATERIAL LOCATED ON, ABOUT, WITHIN, OR AFFECTING ANY OF THE PROPERTIES OR ASSETS OF ANY RELATED PARTY, OR © ANY INVESTIGATION, LITIGATION, OR OTHER PROCEEDING, INCLUDING, WITHOUT LIMITATION, ANY THREATENED INVESTIGATION, LITIGATION, OR OTHER PROCEEDING, RELATING TO ANY OF THE FOREGOING. **WITHOUT LIMITING ANY PROVISION OF THIS AGREEMENT OR OF ANY OTHER LOAN DOCUMENT, IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT EACH PERSON TO BE INDEMNIFIED UNDER THIS SECTION SHALL BE INDEMNIFIED FROM AND HELD HARMLESS AGAINST ANY AND ALL LOSSES, LIABILITIES, CLAIMS, DAMAGES, PENALTIES, JUDGMENTS, DISBURSEMENTS, COSTS, AND EXPENSES (INCLUDING ATTORNEYS' FEES) ARISING OUT OF OR RESULTING FROM THE SOLE, CONTRIBUTORY OR ORDINARY NEGLIGENCE OF SUCH PERSON.**

Section 9.3 **Limitation of Liability.** Neither Lender or any Affiliate of Lender, or any officer, director, employee, attorney, or agent of Lender or any Affiliate of Lender shall have any liability with respect to, and Borrower hereby waives, releases, and agrees not to sue any of them upon, any claim for any special, indirect, incidental, or consequential damages suffered or incurred by any Related Party in connection with, arising out of, or in any way related to, this Agreement or any of the other Loan Documents, or any of the transactions contemplated by this Agreement or any of the other Loan Documents. Borrower hereby waives, releases, and agrees not to sue Lender or any of Lender's Affiliates, officers, directors, employees, attorneys, or agents for punitive damages in respect of any claim in connection with, arising out of, or in any way related to, this Agreement or any of the other Loan Documents, or any of the transactions contemplated by this Agreement or any of the other Loan Documents.

ARTICLE X  
MISCELLANEOUS

Section 10.1 **No Duty.** All attorneys, accountants, appraisers, and other professional Persons and consultants retained by Lender shall have the right to act exclusively in the interest of Lender and shall have no duty of disclosure, duty of loyalty, duty of care, or other duty or obligation of any type or

nature whatsoever to any Obligated Party or any of its shareholders, partners, or members, as applicable, or any other Person.

Section 10.2 Lender Not Fiduciary. The relationship between the Obligated Parties and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with the Obligated Parties, and no term or condition of any of the Loan Documents shall be construed so as to deem the relationship between the Obligated Parties and Lender to be other than that of debtor and creditor.

Section 10.3 Equitable Relief. Borrower recognizes that in the event Borrower fails to pay, perform, observe, or discharge any or all of the Obligations, any remedy at law may prove to be inadequate relief to Lender. Borrower therefore agrees that Lender, if Lender so requests, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

Section 10.4 No Waiver; Cumulative Remedies. No failure on the part of Lender to exercise and no delay in exercising, and no course of dealing with respect to, any right, power, or privilege under this Agreement or any of the other Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement or any of the other Loan Documents preclude any other or further exercise thereof or the exercise of any other right, power, or privilege. The rights and remedies provided for in this Agreement and the other Loan Documents are cumulative and not exclusive of any rights and remedies provided by law.

Section 10.5 Successors and Assigns. This Agreement is binding upon and shall inure to the benefit of Lender and Borrower and their respective successors and assigns, except that Borrower may not assign or transfer any of its rights or obligations under this Agreement or any of the other Loan Documents without the prior written consent of Lender.

Section 10.6 Survival. All representations and warranties made in any of the Loan Documents or in any document, statement, or certificate furnished in connection with any of the Loan Documents shall survive the execution and delivery of this Agreement and the other Loan Documents, and no investigation by Lender or any closing shall affect the representations and warranties or the right of Lender to rely upon them. Without prejudice to the survival of any other obligation of Borrower hereunder, the obligations of Borrower under Sections 9.1, 9.2 and 9.3 shall survive repayment of the Obligations and termination of the Commitment.

Section 10.7 Amendment. The provisions of this Agreement and the other Loan Documents to which Borrower or any other Obligated Party is a party may be amended or waived only by an instrument in writing signed by the parties thereto.

Section 10.8 Notices. Unless otherwise expressly provided herein, all notices and other communications provided for hereunder shall be in writing (including by facsimile transmission) and mailed, faxed or delivered, to the address, facsimile number or subject to the last sentence hereof electronic mail address specified for notices below the signatures hereon or to such other address as shall be designated by such party in a notice to the other parties. All such other notices and other communications shall be deemed to have been given or made upon the earliest to occur of (a) actual receipt by the intended recipient or (b)(i) if delivered by hand or courier, when signed for by the designated recipient; (ii) if delivered by mail, four (4) business days after deposit in the mail, postage prepaid; (iii) if delivered by facsimile, when sent; and (iv) if delivered by electronic mail (which form of delivery is subject to the provisions of the last sentence below), when delivered; provided, however, that notices and other communications pursuant to Section 2 shall not be effective until actually received by

Lender. Electronic mail and intranet websites may be used only to distribute routine communications, such as financial statements and other information, and to distribute Loan Documents for execution by the parties thereto, and may not be used for any other purpose.

Section 10.9 Governing Law; Venue; Service of Process. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas; *provided that* Lender shall retain all rights under federal law. This Agreement has been entered into in Dallas County, Texas, and is performable for all purposes in Dallas County, Texas. The parties hereby agree that any lawsuit, action, or proceeding that is brought (whether in contract, tort or otherwise) arising out of or relating to any of the Loan Documents, the transactions contemplated thereby, or the actions of the Lender in the negotiation, administration or enforcement of any of the Loan Documents shall be brought in a state or federal court of competent jurisdiction located in Dallas County, Texas. Borrower hereby irrevocably and unconditionally (a) submits to the exclusive jurisdiction of such courts, (b) waives any objection it may now or hereafter have as to the venue of any such lawsuit, action, or proceeding brought in any such court, and (c) further waives any claim that it may now or hereafter have that any such court is an inconvenient forum. Each of the parties hereto agree that service of process upon it may be made by certified or registered mail, return receipt requested at the address for notices referenced in Section 10.8 hereof.

Section 10.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. If this Agreement or any other Loan Documents is transmitted by telecopy, emailed “.pdf,” “.tif,” or any other electronic means that reproduces an image of the actual executed signature page it shall be effective as delivery of a manually executed counterpart of such document and shall constitute a covenant to deliver an executed original counterpart, but the failure to do so shall not affect the validity, enforceability and binding effect of such document. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to any document to be signed in connection with the Loan and the transactions contemplated thereby shall be deemed to include electronic signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act. The foregoing shall apply to each other Loan Document *mutatis mutandis*.

Section 10.11 Severability. Any provision of this Agreement held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Agreement and the effect thereof shall be confined to the provision held to be invalid or illegal.

Section 10.12 Headings. The headings, captions, and arrangements used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

Section 10.13 Participations; Etc. Lender shall have the right at any time and from time to time to grant participations in, and sell and transfer, the Obligations and any Loan Documents. Each actual or proposed participant or assignee, as the case may be, shall be entitled to receive all information received by Lender regarding Borrower and the other Related Parties, including, without limitation, information required to be disclosed to a participant or assignee pursuant to Banking Circular 181 (Rev., August 2, 1984), issued by the Comptroller of the Currency (whether the actual or proposed participant or assignee is subject to the circular or not).

Section 10.14 Construction. Borrower and Lender acknowledge that each of them has had the benefit of legal counsel of its own choice and has been afforded an opportunity to review this Agreement

and the other Loan Documents with its legal counsel and that this Agreement and the other Loan Documents shall be construed as if jointly drafted by Borrower and Lender. All indemnification and release provisions of this Agreement and the other Loan Documents shall be construed broadly (and not narrowly) in favor of the Persons receiving indemnification or being released.

Section 10.15 Independence of Covenants. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or be otherwise within the limitations of, another covenant shall not avoid the occurrence of a Default if such action is taken or such condition exists.

Section 10.16 WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY IRREVOCABLY AND EXPRESSLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO ANY OF THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY OR THE ACTIONS OF LENDER IN THE NEGOTIATION, ADMINISTRATION, OR ENFORCEMENT THEREOF.

Section 10.17 Authorization to File Financing Statements. Lender is authorized to complete and file financing statements in any state to perfect the security interests granted by any of the Loan Documents.

Section 10.18 Additional Interest Provision. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply strictly with the applicable Texas law governing the maximum rate or amount of interest payable on the indebtedness evidenced by any Note, any Loan Document, and the Related Indebtedness (as defined in the Revolving Note) (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If the applicable law is ever judicially interpreted so as to render usurious any amount (a) contracted for, charged, taken, reserved or received pursuant to any Note, any of the other Loan Documents or any other communication or writing by or between Borrower and Lender related to the transaction or transactions that are the subject matter of the Loan Documents, (b) contracted for, charged, taken, reserved or received by reason of Lender's exercise of the option to accelerate the maturity of any Note and/or any and all indebtedness paid or payable by Borrower to Lender pursuant to any Loan Document other than any Note (such other indebtedness being referred to in this Section as the "Related Indebtedness"), or (c) Borrower will have paid or Lender will have received by reason of any voluntary prepayment by Borrower of any Note and/or the Related Indebtedness, then it is Borrower's and Lender's express intent that all amounts charged in excess of the Maximum Rate shall be automatically canceled, ab initio, and all amounts in excess of the Maximum Rate theretofore collected by Lender shall be credited on the principal balance of any Note and/or the Related Indebtedness (or, if any Note and all Related Indebtedness have been or would thereby be paid in full, refunded to Borrower), and the provisions of any Note and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder; provided, however, if any Note has been paid in full before the end of the stated term of any such Note, then Borrower and Lender agree that Lender shall, with reasonable promptness after Lender discovers or is advised by Borrower that interest was received in an amount in excess of the Maximum Rate, either refund such excess interest to Borrower and/or credit such excess interest against such Note and/or any Related Indebtedness then owing by Borrower to Lender. Borrower hereby agrees that as a condition precedent to any claim seeking usury penalties against Lender, Borrower will provide written notice to Lender, advising Lender in reasonable detail of the nature and amount of the violation, and Lender shall have sixty (60) days after receipt of such



notice in which to correct such usury violation, if any, by either refunding such excess interest to Borrower or crediting such excess interest against the Note to which the alleged violation relates and/or the Related Indebtedness then owing by Borrower to Lender. All sums contracted for, charged, taken, reserved or received by Lender for the use, forbearance or detention of any debt evidenced by any Note and/or the Related Indebtedness shall, to the extent permitted by applicable law, be amortized or spread, using the actuarial method, throughout the stated term of such Note and/or the Related Indebtedness (including any and all renewal and extension periods) until payment in full so that the rate or amount of interest on account of any Note and/or the Related Indebtedness does not exceed the Maximum Rate from time to time in effect and applicable to such Note and/or the Related Indebtedness for so long as debt is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the Notes and/or any of the Related Indebtedness. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

Section 10.19 Ceiling Election. To the extent that Lender is relying on Chapter 303 of the Texas Finance Code to determine the Maximum Rate payable on any Note and/or any other portion of the Related Indebtedness, Lender will utilize the weekly ceiling from time to time in effect as provided in such Chapter 303, as amended. To the extent United States federal law permits Lender to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law, Lender will rely on United States federal law instead of such Chapter 303 for the purpose of determining the Maximum Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Lender may, at its option and from time to time, utilize any other method of establishing the Maximum Rate under such Chapter 303 or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect.

Section 10.20 USA Patriot Act Notice. Lender hereby notifies Borrower that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies Borrower and each other Obligated Party, which information includes the name and address of Borrower and each other Obligated Party and other information that will allow Lender to identify Borrower and each other Obligated Party in accordance with the Patriot Act. In addition, Borrower agrees to (a) ensure that no Person who owns a controlling interest in or otherwise Controls Borrower or any Subsidiary of Borrower is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the OFAC, the Department of the Treasury or included in any Executive Order, (b) not to use or permit the use of proceeds of the Obligations to violate any of the foreign asset control regulations of the OFAC or any enabling statute or Executive Order relating thereto, and (c) comply, or cause its Subsidiaries to comply, with the applicable laws.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

**BORROWER:**

INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

*Address for Notices:*  
28411 Race Track Road  
Bonita Springs, FL 34135  
Attention: Samuel Klepfish

**LENDER:**

MAPLEMARK BANK

By: \_\_\_\_\_  
Elizabeth Nebergall, Vice President

*Address for Notices:*  
MapleMark Bank  
4143 Maple Ave., Suite 100  
Dallas, Texas 75219  
Telephone No.: (972) 698-5706  
Attention: Kendall Scott  
e-mail: Kendall.Scott@MapleMarkBank.com

LOAN AGREEMENT –  
Signature Page

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**INDEX TO EXHIBITS**

Exhibit A	Borrowing Request
Exhibit B	Borrowing Base Report
Exhibit C	Compliance Certificate

LOAN AGREEMENT

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**EXHIBIT A**

**BORROWING REQUEST**

Reference is made to that certain Loan Agreement dated as of June 6, 2022 (as from time to time amended, the "Agreement"), by and between INNOVATIVE FOOD HOLDINGS, INC., a Florida corporation ("Borrower"), and MAPLEMARK BANK ("Lender"). Terms which are defined in the Agreement are used herein with the meanings given them in the Agreement. Pursuant to the terms of the Agreement, Borrower hereby requests Lender to make a Revolving Loan in the amount set forth below in Item 4 under the heading "Borrowing Information". To induce Lender to make the requested Loan, Borrower hereby represents, warrants, acknowledges, and agrees to and with Lender that:

- (a) The officer of Borrower signing this instrument is the duly elected, qualified and acting officer of Borrower as indicated below such officer's signature hereto having all necessary authority to act for Borrower in making the request herein contained.
- (b) All representations and warranties contained in the Agreement and in each of the other Loan Documents are true and correct in all material respects on and as of the date hereof with the same force and effect as if made on and as of such date.
- (c) All covenants and agreements contained in the Agreement and in each of the other Loan Documents to have been complied with and performed on or prior to the making of the requested Revolving Loan have been fully complied with and performed.
- (d) No Default or Event of Default has occurred and is continuing or would result from the requested Loan.
- (e) All applicable conditions precedent to the advance of the requested Loan set forth in Article VII of the Agreement have been satisfied.
- (f) Since \_\_\_\_\_, there has been no material adverse change in the Collateral or in the business, assets, operations, prospects or condition, financial or otherwise, of any Related Party.
- (g) The amount of the requested Revolving Loan, when added to the aggregate principal amount of all outstanding Revolving Loans will not exceed an amount equal to the lesser of (i) the Borrowing Base or (ii) the Revolving Commitment.
- (h) All information supplied below is true, correct and complete as of the date hereof.

LOAN AGREEMENT

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**BORROWING INFORMATION**

A. Revolving Loan

- 1. Maximum Amount of Revolving Loan \$ \_\_\_\_\_  
(lesser of Borrowing Base or Revolving Commitment)
- 2. Outstanding principal amount of Revolving Loans prior to requested Revolving Loan \$ \_\_\_\_\_
- 3. Net availability of credit: \$ \_\_\_\_\_  
line (1) minus line (2)

**IN WITNESS WHEREOF**, this instrument is executed as of \_\_\_\_\_.

INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation

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

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

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

LOAN AGREEMENT

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**EXHIBIT B**

**BORROWING BASE REPORT**

FOR QUARTER ENDED \_\_\_\_\_ (THE "SUBJECT QUARTER")

LENDER: MAPLEMARK BANK

BORROWER: INNOVATIVE FOOD HOLDINGS, INC., a Florida corporation

This certificate is delivered under the Loan Agreement (the "Agreement") dated as of June 6, 2022, between Borrower and Lender. Capitalized terms used in this certificate shall, unless otherwise indicated, have the meanings set forth in the Agreement. On behalf of Borrower, the undersigned certifies to Lender on the date hereof that (a) no Default or Event of Default has occurred and is continuing, (b) the Accounts and Inventory included in the Borrowing Base below meet all conditions to qualify for inclusion therein as set forth in the Agreement, and all representations and warranties set forth in the Loan Documents with respect thereto are true and correct in all material respects, (c) attached hereto is a detailed aged schedule of all Eligible Accounts listing the face amount and date of invoices of each Eligible Account and the name and address of each Account Debtor (and upon request by Lender, copies of invoices, credit reports and any other matters and information relating to Eligible Accounts), and a schedule of Eligible Inventory, setting forth the locations of Eligible Inventory including Eligible Inventory not in the possession of Borrowers and the names of Persons in possession of the Eligible Inventory and (d) the information set forth below hereto is true and correct as of the last day of the Subject Quarter.

<u>LINE</u>		<u>AT END OF SUBJECT MONTH</u>
1.	Total Accounts (less discounts)	\$ _____
2.	Ineligible Accounts	\$ _____
	(a) Accounts that are unpaid more than ninety (90) days after the date of the original invoice,	\$ _____
	(b) Accounts that are the obligation of an Account Debtor if twenty five percent (25%) or more of the dollar amount of all Accounts owing by that Account Debtor are ineligible under the other criteria set forth herein,	\$ _____
	(c) Accounts that arise from a sale to any director, officer, other employee, supplier, trade creditor or other creditor or Affiliate of Borrower, or to any Person (other than a natural person) which has any common officer or director with Borrower,	\$ _____

LOAN AGREEMENT

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- (d) Accounts that are the obligation of an Account Debtor located in a foreign country \$ \_\_\_\_\_ unless (i) the Account Debtor has delivered to, and for the benefit of, Borrower an irrevocable letter of credit issued or confirmed by a bank satisfactory to Lender and payable only in the United States and in Dollars, sufficient to cover such Account, in form and substance satisfactory to Lender and, if required by Lender, the original of such letter of credit has been delivered to Lender, and Borrower has assigned the proceeds of such letter of credit to Lender pursuant to documentation in form and substance acceptable to Lender or otherwise named Lender as transferee beneficiary thereunder, as Lender may specify, (ii) such Account is subject to credit insurance payable to Lender and issued by an insurer and on terms and in an amount acceptable to Lender, (iii) such Account is guaranteed under the Working Capital Guarantee Program of The Export-Import Bank of the United States on terms and documentation acceptable to Lender, or (iv) such Account is otherwise acceptable in all respects to Lender (subject to such limits or lending formulae with respect thereto as Lender may determine),
- (e) an Account Debtor that is the United States government or a political subdivision thereof, \$ \_\_\_\_\_
- (f) Accounts that are an obligation of a sovereign nation, \$ \_\_\_\_\_
- (g) Accounts as to which any proceedings or actions known to Borrower (or to Lender) are threatened or pending against the Account Debtor with respect to such Account which could reasonably be expected to have a material adverse change in any such Account Debtor's financial condition (including, without limitation, any bankruptcy, dissolution, liquidation, reorganization or similar proceeding), \$ \_\_\_\_\_
- (h) Accounts that consist of credit card billings, sales tax, use tax, commissions, pre-billings, future billings, service charges, management fees, rebates, progress billings or bill and hold accounts, \$ \_\_\_\_\_

LOAN AGREEMENT

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- (i) Accounts owed by an Account Debtor obligated in respect of Accounts constituting \$ \_\_\_\_\_ more than thirty twenty five percent (25%) of the aggregate amount of all Accounts (but the portion of the Accounts not in excess of the applicable percentages may be deemed Eligible Accounts),
- (j) Accounts to the extent such Accounts are subject to any defense, counterclaim, setoff or dispute, \$ \_\_\_\_\_
- (k) Accounts evidenced by a judgment, promissory note, factored receivable, Instrument\$ \_\_\_\_\_ or Chattel Paper,
- (l) Accounts as to which Lender's Lien therein is not a first priority perfected security \$ \_\_\_\_\_ interest, or as to which the goods giving rise thereto are not, and were not at the time of the applicable sale, subject to a first priority perfected security interest in favor of Lender,
- (m) Accounts that (i) are not owned by Borrower or (ii) are subject to any right, claim, Lien or other interest of any other Person, other than Liens in favor of Lender, \$ \_\_\_\_\_
- (n) Accounts upon which (i) Borrower's right to receive payment is not absolute or is contingent upon the fulfillment of any condition whatsoever (including any Account that arises from a sale on consignment, guaranteed sale, sale and return, sale on approval or other terms under which payment by the Account Debtor may be conditioned or contingent) or (ii) Borrower is not able to bring suit or otherwise enforce its remedies against the Account Debtor through judicial process, \$ \_\_\_\_\_
- (o) Accounts that do not arise from the actual and bona fide sale and delivery of goods \$ \_\_\_\_\_ or the performance of services by Borrower in the ordinary course of business, which transactions are completed in accordance with the terms and provisions contained in any documents related thereto,
- (p) Accounts that are payable in any currency other than Dollars, \$ \_\_\_\_\_

LOAN AGREEMENT

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- (q) Accounts to the extent constituting the obligation of an Account Debtor in respect of \$ \_\_\_\_\_ interest, service or similar charges or fees
- (r) Accounts that are reissued in respect of partial payment, including without limitation \$ \_\_\_\_\_ debit memos and charge backs
- (s) Accounts that arise, in connection with cash on delivery or other cash sales \$ \_\_\_\_\_
- (t) Accounts to the extent such Account exceeds any credit limit established by Lender, \$ \_\_\_\_\_ in its reasonable discretion,
- (u) Accounts owed by an Account Debtor having a credit standing unsatisfactory to Lender, in its reasonable discretion \$ \_\_\_\_\_
- (v) Accounts to the extent credits are due to the applicable Account Debtor, or to the \$ \_\_\_\_\_ extent Borrower is liable for goods sold or services rendered by the applicable Account Debtor to Borrower, but only to the extent of the potential offset
- (w) Accounts as to which any facts, events or occurrences exist which could reasonably \$ \_\_\_\_\_ be expected to impair the validity, enforceability or collectability of such Account or reduce the amount payable or delay payment thereunder
- (x) Accounts as to which any of the representations or warranties pertaining to such \$ \_\_\_\_\_ Account set forth in any Loan Document is untrue
- (y) Accounts with respect to which an invoice, acceptable to Lender in form and \$ \_\_\_\_\_ substance, has not been sent to the applicable Account Debtor; and
- (z) Accounts that are otherwise unacceptable to Lender in its reasonable credit \$ \_\_\_\_\_ judgment

3. Total Ineligible Accounts \$ \_\_\_\_\_  
*add Lines 2(a) through 2(z)*

4. Total Eligible Accounts \$ \_\_\_\_\_  
*Line 1 minus Line 3*

LOAN AGREEMENT

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5. Multiplied by: Borrowing Base Factor 80%
6. Total Accounts Component of Borrowing Base \$ \_\_\_\_\_  
*Line 4 x Line 5*
7. Total Inventory \$ \_\_\_\_\_
8. Ineligible Inventory
- (a) Inventory that consists of work-in-process, \$ \_\_\_\_\_
  - (b) Inventory that in Lender's reasonable determination or in the determination of Borrower's management is excess, obsolete, unsaleable, shopworn, seconds, damaged or unfit for sale, \$ \_\_\_\_\_
  - (c) Inventory that is not of a type held for sale by Borrower in the ordinary course of business \$ \_\_\_\_\_
  - (d) Inventory as to which Lender's security interest therein is not a first priority perfected security interest, \$ \_\_\_\_\_
  - (e) Inventory that is not owned by Borrower free and clear of all Liens and rights of any other Person (including goods subject to a patent held by a third party, goods subject to a license, or which are otherwise restricted from general liquidation, or goods that are subject to the rights of a purchaser that has made progress payments or goods that are subject to the rights of a surety that has issued a bond to assure performance with respect to that Inventory), except the Liens in favor of Lender, \$ \_\_\_\_\_
  - (f) Inventory that is located on premises leased by Borrower, or stored with a bailee, warehouseman, processor or similar Person, unless (aa) Lender has given its prior consent thereto, (bb) a Lien waiver and collateral access agreement, in form and substance satisfactory to Lender has been delivered to Lender, together with any and all duly authorized UCC financing statements required by Lender naming such Person as debtor, Borrower as secured creditor and Lender as assignee or (cc) reserves satisfactory to Lender have been established with respect thereto, \$ \_\_\_\_\_

LOAN AGREEMENT

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- (g) Inventory that is placed on consignment, is in transit, is outside the possession or control of Borrower (other than as described in the preceding clause (f)) or is in possession of Borrower on a sale-on-approval or sale-on-return basis or subject to any other repurchase or return agreement \$ \_\_\_\_\_
- (h) Inventory that is manufactured, assembled or otherwise produced in violation of the Fair Labor Standards Act and subject to the "hot goods" provisions contained in Title 25 U.S.C. 215(a)(i), \$ \_\_\_\_\_
- (i) Inventory that is not covered by casualty insurance acceptable to Lender, \$ \_\_\_\_\_
- (j) Inventory that consists of display items, samples or packing or shipping materials, packaging, manufacturing supplies or replacement or spare parts \$ \_\_\_\_\_
- (k) Inventory that consists of goods which have been returned by the buyer, \$ \_\_\_\_\_
- (l) Inventory that consists of any costs associated with "freight in" charges, \$ \_\_\_\_\_
- (m) Inventory as to which any of the representations or warranties pertaining to such Inventory set forth in any Loan Document is untrue, \$ \_\_\_\_\_
- (n) Inventory that consists of Hazardous Materials or goods that can be transported or sold only with licenses that are not readily available, \$ \_\_\_\_\_
- (o) Inventory that is covered by a negotiable document of title, unless such document has been delivered to Lender, \$ \_\_\_\_\_
- (p) Inventory that is bill and hold Inventory, \$ \_\_\_\_\_
- (q) Inventory that is located outside the United States of America; and \$ \_\_\_\_\_
- (r) Inventory that is otherwise unacceptable to Lender in its reasonable credit judgment. \$ \_\_\_\_\_

LOAN AGREEMENT

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9.	Total Ineligible Inventory <i>add Lines 8(a) through 8(r)</i>	\$ _____
10.	Total Eligible Inventory <i>Line 7 minus Line 8</i>	\$ _____
11.	Multiplied by: Borrowing Base factor	60%
12.	Total Inventory Component of Borrowing Base <i>Line 10 times Line 11</i>	\$ _____
13.	Amount of Revolving Commitment	\$ _____
14.	Principal balance of Revolving Loans (NTE amount of Revolving Commitment)	\$ _____
15.	Line 12 plus Line 6	\$ _____
16.	Amount available for Revolving Loans, <i>if Line 15 is greater than Line 14</i> or amount to be repaid, <i>if Line 15 is less than Line 14</i>	\$ _____

**BORROWER:**

INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation

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

LOAN AGREEMENT

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**EXHIBIT C**

**COMPLIANCE CERTIFICATE**

FOR QUARTER ENDED \_\_\_\_\_ (THE "SUBJECT QUARTER")

LENDER: MAPLEMARK BANK

BORROWER: INNOVATIVE FOOD HOLDINGS, INC., a Florida corporation

This Certificate is delivered under the Loan Agreement (the "Agreement") dated as of June 6, 2022 between Borrower and Lender as such may have been amended, supplemented or replaced. Capitalized terms used in this Certificate shall, unless otherwise indicated, have the meanings set forth in the Agreement. On behalf of Borrower, the undersigned certifies to Lender on the date hereof that (a) no Default or Event of Default has occurred and is continuing, (b) all representations and warranties of Borrowers and Obligated Parties contained in the Agreement and in the other Loan Documents are true and correct in all material respects, and (c) the information set forth below hereto is true and correct as of the last day of the Subject Quarter, and supporting information as necessary is attached hereto.

- (a) Fixed Charge Coverage Ratio (calculations attached)

INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation

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

LOAN AGREEMENT

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SCHEDULE 3.14  
LIST OF SUBSIDIARIES

**[TO BE PROVIDED BY BORROWER]**

LOAN AGREEMENT

## PROMISSORY NOTE

\$3,000,000

Effective Date: June 6, 2022

FOR VALUE RECEIVED, INNOVATIVE FOOD HOLDINGS, INC., a Florida corporation (the "Borrower"), having an address at 28411 Race Track Road, Bonita Springs, FL 34135 hereby promises to pay to the order of MAPLEMARK BANK (together with its successors and assigns and any subsequent holders of this Promissory Note, the "Lender"), as hereinafter provided, the principal sum of THREE MILLION AND 00/100 DOLLARS (\$3,000,000), or so much thereof as may be advanced by Lender from time to time hereunder to or for the benefit or account of Borrower, together with interest thereon at the Note Rate (as hereinafter defined), and otherwise in strict accordance with the terms and provisions hereof. This Promissory Note is a Note evidencing the Loan under the Loan Agreement.

**ARTICLE I  
DEFINITIONS**

Section 1.1. Definitions. As used in this Promissory Note, the following terms shall have the following meanings:

Applicable Rate: The greater of (a) the Base Rate plus 0.25% per annum and (b) 3.50% per annum.

Base Rate: The rate of interest per annum quoted in the "Money Rates" section of The Wall Street Journal from time to time and designated as the "Prime Rate." Without notice to the Borrower, such Base Rate shall change automatically from time to time, as and in the amount, by which such rate shall fluctuate, with each such change to be effective as of the date of each change in such rate. The Base Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer of Lender. If such Base Rate, as so quoted is split between two or more different interest rates, then the Base Rate shall be the highest of such interest rates. If such Base Rate shall cease to be published or is published infrequently or sporadically, then the Base Rate shall be the rate of interest per annum established from time to time by Lender and designated as its base or prime rate, which may not necessarily be the lowest interest rate charged by Lender and is set by Lender in its sole discretion.

Borrower: As identified in the introductory paragraph of this Note.

Business Day: A weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in Dallas, Texas are authorized or required by law to be closed. Unless otherwise provided, the term "days" when used herein shall mean calendar days.

Charges: All fees, charges and/or any other things of value, if any, contracted for, charged, taken, received or reserved by Lender in connection with the transactions relating to this Note and the other Loan Documents, which are treated as interest under applicable law.

Debtor Relief Laws: Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts, or similar laws affecting the rights of creditors.

Default Rate: A rate per annum equal to the Note Rate plus five percent (5%), but in no event in excess of the Maximum Lawful Rate.

Event of Default: Any event or occurrence described under Section 3.1 hereof.

Lender: As identified in the introductory paragraph of this Note.

Loan Agreement: That certain Loan Agreement dated as of June 6, 2022 executed by Borrower and Lender, as may be amended, restated, supplemented or otherwise modified from time to time.

Loan Documents: As defined in the Loan Agreement.

Maturity Date: November 28, 2022.

Maximum Lawful Rate: The maximum lawful rate of interest which may be contracted for, charged, taken, received or reserved by Lender in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that such law permits Lender to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law), taking into account all Charges made in connection with the transaction evidenced by this Note and the other Loan Documents.

Note: This Promissory Note as may be amended, restated, renewed, or extended from time to time.

Note Rate: The rate equal to the lesser of (a) the Maximum Lawful Rate and (b) the Applicable Rate.

Payment Date: The first day of each and every calendar month during the term of this Note.

Related Indebtedness: Any and all indebtedness paid or payable by Borrower to Lender pursuant to the Loan Documents or any other communication or writing by or between Borrower and Lender related to the transaction or transactions that are the subject matter of the Loan Documents, except such indebtedness which has been paid or is payable by Borrower to Lender under this Note.

Any capitalized term used in this Note and not otherwise defined herein shall have the meaning ascribed to each such term in the Loan Agreement. All terms used herein, whether or not defined in Section 1.1 hereof, and whether used in singular or plural form, shall be deemed to refer to the object of such term whether such is singular or plural in nature, as the context may suggest or require. All personal pronouns used herein, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural and vice versa. Definitions contained herein or in the other Loan Documents which identify documents, instruments or agreements shall be deemed to include all amendments, modifications and supplements to such documents, instruments or agreements and all future amendments, modifications, and supplements thereto entered into from time to time.

## **ARTICLE II PAYMENT TERMS**

Section 2.1. Payment of Principal and Interest. All accrued but unpaid interest on the outstanding principal balance of this Note shall be due and payable in monthly installments beginning on July 1, 2022, and continuing on each Payment Date. The outstanding principal balance of this Note and any and all accrued but unpaid interest hereon shall be due and payable in full on the Maturity Date or upon the earlier maturity hereof, whether by acceleration or otherwise. Borrower may from time to time during the term of this Note borrow, partially or wholly repay its outstanding borrowings, and reborrow, subject to all of the limitations, terms and conditions of the Loan Agreement; provided, however, that the total outstanding borrowings under this Note shall not at any time exceed the lesser of the principal amount stated above and the Borrowing Base. The unpaid principal balance of this Note at any time shall be the total amount advanced hereunder by Lender less the amount of principal payments made hereon by or for Borrower, which balance may be endorsed hereon from time to time by Lender or otherwise noted



in Lender's records, which notations shall be, absent manifest error, conclusive evidence of the amounts owing hereunder from time to time.

Section 2.2. Application. Except as expressly provided herein to the contrary, all payments on this Note shall be applied in the following order of priority: (i) the payment or reimbursement of any expenses, costs or obligations (other than the outstanding principal balance hereof and interest hereon) for which either Borrower shall be obligated or Lender shall be entitled pursuant to the provisions of this Note or the other Loan Documents, (ii) the payment of accrued but unpaid interest hereon, and (iii) the payment of all or any portion of the principal balance hereof then outstanding hereunder, in the direct order of maturity. If an Event of Default exists under this Note or under any of the other Loan Documents, then Lender may, at the sole option of Lender, apply any such payments, at any time and from time to time, to any of the items specified in clauses (i), (ii) or (iii) above without regard to the order of priority otherwise specified in this Section 2.2 and any application to the outstanding principal balance hereof may be made in either direct or inverse order of maturity.

Section 2.3. Payments. All payments under this Note made to Lender shall be made in immediately available funds at 4143 Maple Avenue, Suite 100, Dallas, Texas 75219 (or at such other place as Lender, in Lender's sole discretion, may have established by delivery of written notice thereof to Borrower from time to time), without offset, in lawful money of the United States of America, which shall at the time of payment be legal tender in payment of all debts and dues, public and private. Payments by check or draft shall not constitute payment in immediately available funds until the required amount is actually received by Lender in full. Payments in immediately available funds received by Lender in the place designated for payment on a Business Day prior to 3:00 p.m. Dallas, Texas time at said place of payment shall be credited prior to the close of business on the Business Day received, while payments received by Lender on a day other than a Business Day or after 3:00 p.m. Dallas, Texas time on a Business Day shall not be credited until the next succeeding Business Day. If any payment of principal or interest on this Note shall become due and payable on a day other than a Business Day, such payment shall be made on the next succeeding Business Day. Any such extension of time for payment shall be included in computing interest which has accrued and shall be payable in connection with such payment. Borrower has elected to authorize the Lender to effect payment of sums due under this Note by means of debiting the Borrower's account or accounts at Lender. This authorization shall not affect the obligation of the Borrower to pay such sums when due, without notice, if there are insufficient funds in such account or accounts to make such payment in full on the due date thereof, or if the Lender fails, or elects in its discretion not, to debit such account or accounts.

Section 2.4. Computation Period. Interest on the indebtedness evidenced by this Note shall be computed on the basis of a three hundred sixty (360) day year and shall accrue on the actual number of days elapsed for any whole or partial month in which interest is being calculated. In computing the number of days during which interest accrues, the day on which funds are initially advanced shall be included regardless of the time of day such advance is made, and the day on which funds are repaid shall be included unless repayment is credited prior to the close of business on the Business Day received as provided in Section 2.3 hereof.

Section 2.5. Prepayment. Borrower shall have the right to prepay, at any time and from time to time upon at least five (5) Business Days prior written notice to Lender, without fee, premium or penalty, all or any portion of the outstanding principal balance hereof; provided, however, that such prepayment shall also include any and all accrued but unpaid interest on the amount of principal being so repaid through and including the date of prepayment, plus any other sums which have become due to Lender under the other Loan Documents on or before the date of prepayment, but which have not been fully paid. Borrower agrees that all fees and other prepaid finance charges are fair and reasonable and are earned fully when due and are not subject to refund upon early payment (whether voluntarily or involuntarily), except as otherwise required by law. Prepayments of principal shall be applied in inverse

order of maturity. If at any time, the principal amount hereof exceeds the principal amount stated above, Borrower shall immediately make a payment to Lender in an amount of not less than such excess.

Section 2.6. Unconditional Payment. Borrower is and shall be obligated to pay all principal, interest and any and all other amounts which become payable under this Note or under any of the other Loan Documents absolutely and unconditionally and without any abatement, postponement, diminution or deduction whatsoever and without any reduction for counterclaim or setoff whatsoever. If at any time any payment received by Lender hereunder shall be deemed by a court of competent jurisdiction to have been a voidable preference or fraudulent conveyance under any Debtor Relief Law, then the obligation to make such payment shall survive any cancellation or satisfaction of this Note or return thereof to Borrower and shall not be discharged or satisfied with any prior payment thereof or cancellation of this Note, but shall remain a valid and binding obligation enforceable in accordance with the terms and provisions hereof, and such payment shall be immediately due and payable upon demand.

Section 2.7. Partial or Incomplete Payments. Remittances in payment of any part of this Note other than in the required amount in immediately available funds at the place where this Note is payable shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Lender in full in accordance herewith and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Lender of any payment in an amount less than the full amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an Event of Default in the payment of this Note.

Section 2.8. Default Rate, etc. For so long as any Event of Default exists under this Note or under any of the other Loan Documents, regardless of whether or not there has been an acceleration of the indebtedness evidenced by this Note, and at all times after the maturity of the indebtedness evidenced by this Note (whether by acceleration or otherwise), and in addition to all other rights and remedies of Lender hereunder, interest shall accrue on the outstanding principal balance hereof at the Default Rate, and such accrued interest shall be immediately due and payable. At the option of Lender, Borrower will pay Lender, on demand, (i) a "late charge" equal to five percent (5%) of the amount of any installment on this Note when such installment is not paid within ten (10) days following the date such installment is due and (ii) a processing fee in the amount of \$25.00 for each check which is provided to Lender by Borrower in payment for an obligation owing to Lender under any Loan Document but is returned or dishonored for any reason, in order to cover the additional expenses involved in handling delinquent and returned or dishonored payments. Borrower acknowledges that it would be extremely difficult or impracticable to determine Lender's actual damages resulting from any late payment or Event of Default, and such late charges and accrued interest are reasonable estimates of those damages and do not constitute a penalty.

### **ARTICLE III EVENT OF DEFAULT AND REMEDIES**

Section 3.1. Event of Default. The occurrence or happening, at any time and from time to time, of any one or more of the following shall constitute an "Event of Default" under this Note:

- (a) Borrower shall fail, refuse or neglect to pay and satisfy, in full and in the applicable method and manner required, any required payment of principal or interest or any other portion of the indebtedness evidenced by this Note on the date when the same shall become due and payable, whether at the stipulated due date thereof, at a date fixed for payment, or at maturity, by acceleration or otherwise; or
- (b) Subject to any applicable notice, cure and/or grace periods, the occurrence of any other Default, breach or Event of Default as defined in or under this Note, the Loan Agreement or

any other Loan Document that remains uncured under and pursuant to the provisions of this Note, the Loan Agreement or any other Loan Document.

Section 3.2. **Remedies.** Upon the occurrence of an Event of Default, Lender shall have the immediate right, at the sole discretion of Lender and without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action (**ALL OF WHICH BORROWER HEREBY EXPRESSLY WAIVES AND RELINQUISHES**) (i) to declare the entire unpaid balance of the indebtedness evidenced by this Note (including, without limitation, the outstanding principal balance hereof, including all sums advanced or accrued hereunder or under any other Loan Document, and all accrued but unpaid interest thereon) at once immediately due and payable (and upon such declaration, the same shall be at once immediately due and payable) and may be collected forthwith, whether or not there has been a prior demand for payment and regardless of the stipulated date of maturity, (ii) to foreclose any liens and security interests securing payment hereof or thereof (including, without limitation, any liens and security interests), and (iii) to exercise any of Lender's other rights, powers, recourses and remedies under this Note, under any other Loan Document, or at law or in equity, and the same (w) shall be cumulative and concurrent, (x) may be pursued separately, singly, successively, or concurrently against Borrower or others obligated for the repayment of this Note or any part hereof, or against any one or more of them, or against the Property at the sole discretion of Lender, (y) may be exercised as often as occasion therefor shall arise, it being agreed by Borrower that the exercise, discontinuance of the exercise of or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse, and (z) are intended to be, and shall be, nonexclusive. All rights and remedies of Lender hereunder and under the other Loan Documents shall extend to any period after the initiation of foreclosure proceedings, judicial or otherwise. Without limiting the provisions of Section 4.17 hereof, if this Note, or any part hereof, is collected by or through an attorney-at-law, Borrower agrees to pay all costs and expenses of collection, including, but not limited to, Lender's reasonable attorneys' fees, whether or not any legal action shall be instituted to enforce this Note. This Note is also subject to acceleration as provided in the Loan Agreement.

#### **ARTICLE IV GENERAL PROVISIONS**

Section 4.1. **No Waiver; Amendment.** No failure to accelerate the indebtedness evidenced by this Note by reason of an Event of Default hereunder, acceptance of a partial or past due payment, or indulgences granted from time to time shall be construed (i) as a novation of this Note or as a reinstatement of the indebtedness evidenced by this Note or as a waiver of such right of acceleration or of the right of Lender thereafter to insist upon strict compliance with the terms of this Note, or (ii) to prevent the exercise of such right of acceleration or any other right granted under this Note, under any of the other Loan Documents or by any applicable laws. Borrower hereby expressly waives and relinquishes the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing. The failure to exercise any remedy available to Lender shall not be deemed to be a waiver of any rights or remedies of Lender under this Note or under any of the other Loan Documents, or at law or in equity. No extension of the time for the payment of this Note or any installment due hereunder, made by agreement with any person now or hereafter liable for the payment of this Note, shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part, unless Lender specifically, unequivocally and expressly agrees otherwise in writing. This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, or modification is sought.

Section 4.2. **Waivers.** EXCEPT AS SPECIFICALLY PROVIDED IN THE LOAN DOCUMENTS TO THE CONTRARY, BORROWER AND ANY ENDORSERS OR GUARANTORS HEREOF SEVERALLY WAIVE AND RELINQUISH PRESENTMENT FOR PAYMENT, DEMAND,

NOTICE OF NONPAYMENT OR NONPERFORMANCE, PROTEST, NOTICE OF PROTEST, NOTICE OF INTENT TO ACCELERATE, NOTICE OF ACCELERATION OR ANY OTHER NOTICES OR ANY OTHER ACTION. BORROWER AND ANY ENDORSERS OR GUARANTORS HEREOF SEVERALLY WAIVE AND RELINQUISH, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO THE BENEFITS OF ANY MORATORIUM, REINSTATEMENT, MARSHALING, FORBEARANCE, VALUATION, STAY, EXTENSION, REDEMPTION, APPRAISEMENT, EXEMPTION AND HOMESTEAD NOW OR HEREAFTER PROVIDED BY THE CONSTITUTION AND LAWS OF THE UNITED STATES OF AMERICA AND OF EACH STATE THEREOF, BOTH AS TO ITSELF AND IN AND TO ALL OF ITS PROPERTY, REAL AND PERSONAL, AGAINST THE ENFORCEMENT AND COLLECTION OF THE OBLIGATIONS EVIDENCED BY THIS NOTE OR BY THE OTHER LOAN DOCUMENTS.

Section 4.3. Interest Provisions.

(a) Savings Clause. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply strictly with the applicable Texas law governing the maximum rate or amount of interest payable on the indebtedness evidenced by this Note and the Related Indebtedness (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If the applicable law is ever judicially interpreted so as to render usurious any amount (i) contracted for, charged, taken, reserved or received pursuant to this Note, any of the other Loan Documents or any other communication or writing by or between Borrower and Lender related to the transaction or transactions that are the subject matter of the Loan Documents, (ii) contracted for, charged, taken, reserved or received by reason of Lender's exercise of the option to accelerate the maturity of this Note and/or the Related Indebtedness, or (iii) Borrower will have paid or Lender will have received by reason of any voluntary prepayment by Borrower of this Note and/or the Related Indebtedness, then it is Borrower's and Lender's express intent that all amounts charged in excess of the Maximum Lawful Rate shall be automatically canceled, *ab initio*, and all amounts in excess of the Maximum Lawful Rate theretofore collected by Lender shall be credited on the principal balance of this Note and/or the Related Indebtedness (or, if this Note and all Related Indebtedness have been or would thereby be paid in full, refunded to Borrower), and the provisions of this Note and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder; provided, however, if this Note has been paid in full before the end of the stated term of this Note, then Borrower and Lender agree that Lender shall, with reasonable promptness after Lender discovers or is advised by Borrower that interest was received in an amount in excess of the Maximum Lawful Rate, either refund such excess interest to Borrower and/or credit such excess interest against this Note and/or any Related Indebtedness then owing by Borrower to Lender. Borrower hereby agrees that as a condition precedent to any claim seeking usury penalties against Lender, Borrower will provide written notice to Lender, advising Lender in reasonable detail of the nature and amount of the violation, and Lender shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Borrower or crediting such excess interest against this Note and/or the Related Indebtedness then owing by Borrower to Lender. All sums contracted for, charged, taken, reserved or received by Lender for the use, forbearance or detention of any debt evidenced by this Note and/or the Related Indebtedness shall, to the extent permitted by applicable law, be amortized or spread, using the actuarial method, throughout the stated term of this Note and/or the Related Indebtedness (including any and all renewal and extension periods) until payment in full so that the rate or amount of interest on account of this Note and/or the Related Indebtedness does not exceed the Maximum Lawful Rate from time to time in effect and applicable to this Note and/or the Related Indebtedness for so long as debt is outstanding. In no event shall the

provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to this Note and/or any of the Related Indebtedness. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

(b) Ceiling Election. To the extent that Lender is relying on Chapter 303 of the Texas Finance Code to determine the Maximum Lawful Rate payable on the Note and/or any other portion of the Indebtedness, Lender will utilize the weekly ceiling from time to time in effect as provided in such Chapter 303, as amended. To the extent United States federal law permits Lender to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law, Lender will rely on United States federal law instead of such Chapter 303 for the purpose of determining the Maximum Lawful Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Lender may, at its option and from time to time, utilize any other method of establishing the Maximum Lawful Rate under such Chapter 303 or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect.

Section 4.4. Use of Funds. Borrower hereby warrants, represents and covenants that (i) the loan evidenced by this Note is made to Borrower solely for the purpose of acquiring or carrying on a business or commercial enterprise, (ii) all proceeds of this Note shall be used only for business and commercial purposes, and (iii) no funds disbursed hereunder shall be used for personal, family, agricultural or household purposes.

Section 4.5. Further Assurances and Corrections. From time to time, at the written request of Lender, Borrower will (i) promptly correct any defect, error or omission which may be discovered in the contents of this Note or in any other Loan Document or in the execution or acknowledgment thereof; (ii) execute, acknowledge, deliver, record and/or file (or cause to be executed, acknowledged, delivered, recorded and/or filed) such further documents and instruments (including, without limitation, further deeds of trust, security agreements, financing statements, continuation statements and assignments of rents) and perform such further acts and provide such further assurances as may be necessary, desirable, or proper, in Lender's opinion, (A) to carry out more effectively the purposes of this Note and the Loan Documents and the transactions contemplated hereunder and thereunder, (B) to confirm the rights created under this Note and the other Loan Documents, (C) to protect and further the validity, priority and enforceability of this Note and the other Loan Documents and the liens and security interests created thereby, and (D) to subject to the Loan Documents any property of Borrower intended by the terms of any one or more of the Loan Documents to be encumbered by the Loan Documents; and (iii) pay all costs in connection with any of the foregoing.

Section 4.6. Waiver of Jury Trial. BORROWER, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY KNOWINGLY, INTENTIONALLY, IRREVOCABLY, UNCONDITIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS NOTE OR ANY CONDUCT, ACT OR OMISSION OF LENDER OR BORROWER, OR ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH LENDER OR BORROWER, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

Section 4.7. Governing Law; Submission to Jurisdiction. This Note is executed and delivered as an incident to a lending transaction negotiated and consummated in Dallas County, Texas, and shall be

governed by and construed in accordance with the laws of the State of Texas. Borrower, for itself and its successors and assigns, hereby irrevocably (i) submits to the nonexclusive jurisdiction of the state and federal courts in Texas, (ii) waives, to the fullest extent permitted by law, any objection that it may now or in the future have to the laying of venue of any litigation arising out of or in connection with this Note or any Loan Document brought in Dallas County, Texas, (iii) waives any objection it may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum, and (iv) agrees that any legal proceeding against any party to any of the Loan Documents arising out of or in connection with any of the Loan Documents may be brought in one of the foregoing courts. Borrower hereby agrees that service of process upon Borrower may be made by certified or registered mail, return receipt requested, at its address specified herein. Nothing herein shall affect the right of Lender to serve process in any other manner permitted by law or shall limit the right of Lender to bring any action or proceeding against Borrower or with respect to any of Borrower's property in courts in other jurisdictions. The scope of each of the foregoing waivers is intended to be all encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including, without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims. Borrower acknowledges that these waivers are a material inducement to Lender's agreement to enter into the agreements and obligations evidenced by the Loan Documents, that Lender has already relied on these waivers and will continue to rely on each of these waivers in related future dealings. The waivers in this Section 4.7 are irrevocable, meaning that they may not be modified either orally or in writing, and these waivers apply to any future renewals, extensions, amendments, modifications, or replacements in respect of any and all of the applicable Loan Documents. In connection with any litigation, this Note may be filed as a written consent to a trial by the court.

Section 4.8. Counting of Days. If any time period referenced hereunder ends on a day other than a Business Day, such time period shall be deemed to end on the next succeeding Business Day.

Section 4.9. Relationship of the Parties. Notwithstanding any prior business or personal relationship between Borrower and Lender, or any officer, director or employee of Lender, that may exist or have existed, the relationship between Borrower and Lender is solely that of debtor and creditor. Lender has no fiduciary or other special relationship with Borrower. Borrower and Lender are not partners or joint venturers, and no term or condition of any of the Loan Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

Section 4.10. Successors and Assigns. The terms and provisions hereof shall be binding upon and inure to the benefit of Borrower and Lender and their respective heirs, executors, legal representatives, successors, successors-in-title and assigns, whether by voluntary action of the parties, by operation of law or otherwise, and all other persons claiming by, through or under them. The terms "Borrower" and "Lender" as used hereunder shall be deemed to include their respective heirs, executors, legal representatives, successors, successors-in-title and assigns, whether by voluntary action of the parties, by operation of law or otherwise, and all other persons claiming by, through or under them.

Section 4.11. Time is of the Essence. Time is of the essence with respect to all provisions of this Note and the other Loan Documents.

Section 4.12. Headings. The Article, Section, and Subsection entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify, define, limit, amplify or be used in construing the text, scope or intent of such Articles, Sections, or Subsections or any provisions hereof.

Section 4.13. Controlling Agreement. In the event of any conflict between the provisions of this Note and the Loan Agreement, it is the intent of the parties hereto that the provisions of the Loan Agreement shall control. In the event of any conflict between the provisions of this Note and any of the other Loan Documents (other than the Loan Agreement), it is the intent of the parties hereto that the provisions of this Note shall control. The parties hereto acknowledge that they were represented by

competent counsel in connection with the negotiation, drafting and execution of this Note and the other Loan Documents and that this Note and the other Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same.

Section 4.14. Notices. All notices or other communications required or permitted to be given pursuant to this Note shall be in writing and shall be considered as properly given if given in accordance with the terms of the Loan Agreement.

Section 4.15. Severability. If any provision of this Note or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, then neither the remainder of this Note nor the application of such provision to other persons or circumstances nor the other instruments referred to herein shall be affected thereby, but rather shall be enforced to the greatest extent permitted by applicable law.

Section 4.16. Right of Setoff. In addition to all liens upon and rights of setoff against the money, securities, or other property of Borrower given to Lender that may exist under applicable law, Lender shall have and Borrower hereby grants to Lender a lien upon and a right of setoff against all money, securities, and other property of Borrower, now or hereafter in possession of or on deposit with Lender, whether held in a general or special account or deposit, for safe-keeping or otherwise, and every such lien and right of setoff may be exercised without demand upon or notice to Borrower. No lien or right of setoff shall be deemed to have been waived by any act or conduct on the part of Lender, or by any neglect to exercise such right of setoff or to enforce such lien, or by any delay in so doing, and every right of setoff and lien shall continue in full force and effect until such right of setoff or lien is specifically waived or released by an instrument in writing executed by Lender.

Section 4.17. Costs of Collection. If any holder of this Note retains an attorney-at-law in connection with any Event of Default or at maturity or to collect, enforce or defend this Note or any part hereof, or any other Loan Document in any lawsuit or in any probate, reorganization, bankruptcy or other proceeding, or if Borrower sues any holder in connection with this Note or any other Loan Document and does not prevail, then Borrower agrees to pay to each such holder, in addition to the principal balance hereof and all interest hereon, all costs and expenses of collection or incurred by such holder or in any such suit or proceeding, including, but not limited to, reasonable attorneys' fees.

Section 4.18. Statement of Unpaid Balance. At any time and from time to time, Borrower will furnish promptly, upon the request of Lender, a written statement or affidavit, in form satisfactory to Lender, stating the unpaid balance of the indebtedness evidenced by this Note and the Related Indebtedness and that there are no offsets or defenses against full payment of the indebtedness evidenced by this Note and the Related Indebtedness and the terms hereof, or if there are any such offsets or defenses, specifying them.

Section 4.19. Entire Agreement. THIS NOTE AND THE OTHER LOAN DOCUMENTS CONTAIN THE FINAL, ENTIRE AGREEMENT BETWEEN THE PARTIES HERETO RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND ALL PRIOR AGREEMENTS, WHETHER WRITTEN OR ORAL, RELATIVE HERETO AND THERETO WHICH ARE NOT CONTAINED HEREIN OR THEREIN ARE SUPERSEDED AND TERMINATED HEREBY, AND THIS NOTE AND THE OTHER LOAN DOCUMENTS MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES HERETO.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, Borrower, intending to be legally bound hereby, has duly executed this Note as of the day and year first written above.

**BORROWER:**

INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer



**PLEDGE AND SECURITY AGREEMENT**

THIS PLEDGE AND SECURITY AGREEMENT is entered into as of June 6, 2022 by and among INNOVATIVE FOOD HOLDINGS, INC., a Florida corporation (the "Borrower"), each of the undersigned Guarantors (collectively with Borrower, the "Grantor") and MAPLEMARK BANK (together with its successors and assigns, the "Lender") on behalf of itself and its Affiliates ("Secured Party").

**RECITAL**

Borrower and Lender are entering into a Loan Agreement dated of even date herewith (as it may be amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"). Borrower and each other Grantor is entering into this Pledge and Security Agreement (as it may be amended, restated, supplemented or otherwise modified from time to time, this "Security Agreement") in order to, among other things, induce Lender to enter into and extend credit to Grantor under the Loan Agreement.

**AGREEMENT**

ACCORDINGLY, Debtor and Secured Party hereby agree as follows:

**ARTICLE I  
DEFINITIONS**

1.1 Terms Defined in Loan Agreement. All capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Loan Agreement.

1.2 Terms Defined in Texas Uniform Commercial Code. Terms defined in the UCC which are not otherwise defined in this Security Agreement are used herein as defined in the UCC as in effect on the date hereof.

1.3 Definitions of Certain Terms Used Herein. As used in this Security Agreement, in addition to the terms defined in the Preliminary Statement, the following terms shall have the following meanings:

"Accounts" mean any "account," as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor, and, in any event, shall include, without limitation, each of the following, whether now owned or hereafter acquired by Debtor: (a) all rights of Debtor to payment for goods sold or leased or services rendered or the license of Intellectual Property, whether or not earned by performance, (b) all accounts receivable of Debtor, (c) all rights of Debtor to receive any payment of money or other form of consideration, (d) all security pledged, assigned, or granted to or held by Debtor to secure any of the foregoing, (e) all guaranties of, or indemnifications with respect to, any of the foregoing, (f) all Chattel Paper, (g) all Instruments, and (h) all rights of Debtor as unpaid sellers of goods or services, including, but not limited to, all rights of stoppage in transit, replevin, reclamation, and resale.

"Account Debtor" means any Person who is or who may become obligated to Debtor under, with respect to, or on account of an Account.

"Article" means a numbered article of this Security Agreement, unless another document is specifically referenced.

“Books and Records” means any and all presently existing and hereafter acquired or created books and records of Debtor respecting Debtor’s business, including, without limitation all records (including maintenance and warranty records), ledgers, computer programs, software, disc or tape files, printouts, runs, and other computer prepared information indicating, summarizing, or evidencing the Collateral or that is otherwise used to access and process the Collateral.

“Chattel Paper” means any “chattel paper”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor and, in any event, shall include, without limitation, all Electronic Chattel Paper, Tangible Chattel Paper and all records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, or a lease of specific goods, now owned or hereafter acquired by Debtor.

“Collateral” means all Accounts, Books and Records, Chattel Paper, Commercial Tort Claims, Deposit Accounts (including all funds, certificates, checks, drafts, wire transfers, receipts and other earnings, profits, or other proceeds from time to time representing, evidencing, deposited into or held in Deposit Accounts), Documents, Equipment, Financial Assets, Fixtures, General Intangibles, Instruments, Intellectual Property, Inventory, Investment Property, Letter of Credit Rights, Marks, Pledged Equity, Stock Rights, and all other personal property, wherever located, in which Debtor now has or hereafter acquires any right or interest, and the Proceeds, insurance proceeds and products thereof, and any accessories thereto, substitutions therefor and replacements thereof, together with all books and records, customer lists, credit files, computer files, programs, printouts and other computer materials and records related thereto. With respect to Intellectual Property, Collateral further includes all applications and registrations related thereto and any reissues, renewals, continuations, continuations-in-part, divisions, substitutions or extensions thereof, all goodwill associated with and symbolized by any of the foregoing, all income, royalties, profits, damages, awards, and payments relating to or payable under any of the foregoing, the right to sue for past, present, and future infringements, dilution or breach of any of the foregoing, and all other rights and benefits relating to any of the foregoing throughout the world; in each case, whether now owned or hereafter acquired or whether now known or subsequently developed, by or for Debtor.

“Commercial Tort Claims” means any “commercial tort claim”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor and in any event, shall include, without limitation, any claim now owned or hereafter acquired by Debtor, arising in tort with respect to which: (a) the claimant is an organization; or (b) the claimant is an individual and the claim (i) arose in the course of the claimant’s business or profession and (ii) does not include damages arising out of personal injury to or the death of an individual.

“Control” shall have the meaning set forth in Section 9.104, 9.105, 9.106 or 9.107 of the UCC, as applicable.

“Debtor” means the Grantor and its successors and assigns.

“Deposit Accounts” means any “deposit account”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor and in any event, shall include, without limitation, any and all deposit accounts or other bank accounts now owned or hereafter acquired or opened by Debtor, and any account which is a replacement or substitute for any of such accounts, including, without limitation, those deposit accounts identified on Exhibit A.

“Documents” means any “document”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor, including without limitation all bills of lading, dock warrants, dock receipts, warehouse receipts and orders for the delivery of goods, and also any other document

which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers.

“Electronic Chattel Paper” means any “electronic chattel paper”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor.

“Equipment” means any “equipment”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor and, in any event, shall include, without limitation, all machinery, equipment, furnishings, Fixtures and vehicles now owned or hereafter acquired by Debtor and any and all additions, substitutions, and replacements of any of the foregoing, wherever located, together with all attachments, components, parts, equipment, and accessories installed thereon or affixed thereto.

“Exhibit” refers to a specific exhibit to this Security Agreement, unless another document is specifically referenced.

“Financial Assets” means any “financial asset”, as such term is defined in Chapter 8 of the UCC, now owned or hereafter acquired by Debtor.

“Fixtures” means all goods, now owned or hereafter acquired by Debtor, which become so related to particular real estate that an interest in such goods arises under any real estate law applicable thereto, including, without limitation, all trade fixtures.

“General Intangibles” means any “general intangibles”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor and, in any event, shall include, without limitation, each of the following, whether now owned or hereafter acquired by Debtor: (a) all of Debtor’s trade secrets, Intellectual Property, registrations, renewal rights, goodwill franchises, licenses, permits, proprietary information, customer lists, designs, and inventions, (b) all of Debtor’s books, records, data, plans, manuals, computer software, and computer programs, (c) all of Debtor’s contract rights, partnership interests, joint venture interests, securities, deposit accounts, investment accounts, certificates of deposit, and investment property, (d) all rights of Debtor to payment under letters of credit and similar agreements, (e) all tax refunds and tax refund claims of Debtor, (f) all choses in action and causes of action of Debtor (whether arising in contract, tort, or otherwise and whether or not currently in litigation) and all judgments in favor of Debtor, (g) all rights and claims of Debtor under warranties and indemnities, and (h) all rights of Debtor under any insurance, surety, or similar contract or arrangement. General Intangibles include payment intangibles.

“Instrument” means any “instrument”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor, other than stock and other securities, and in any event, shall include, without limitation, all promissory notes, drafts, bills of exchange and trade acceptances of Debtor, whether now owned or hereafter acquired.

“Intellectual Property” means all domestic and foreign (a) internet domains and URLs; (b) trademarks, trademark registrations, trademark applications, service marks, service mark registrations, service mark applications, business marks, brand names, trade names, trade dress, names, logos and slogans; (c) patents, patent rights, provisional patent applications, patent applications, designs, registered designs, registered design applications, industrial designs, industrial design applications, industrial design registrations and inventors’ certificates, including any and all divisions, continuations, continuations-in-part, extensions, substitutions, renewals, registrations, revalidations, re-examinations, reissues or additions, including supplementary certificates of protection, of or to any of the foregoing items; (d) copyrights (whether or not registered and including all derivative works, moral rights, renewals, extensions, reversions and restorations associated with such copyrights, now or hereafter provided by

applicable law), copyright registrations, copyright applications, copyright renewals, original works of authorship fixed in any tangible medium of expression or fixation, including literary works (including all forms and types of computer software, including all source code, object code, firmware, development tools, files, records and data, and all documentation related to any of the foregoing), musical, dramatic, pictorial, graphic and sculptured works; (e) trade secrets, technology, discoveries and improvements, know-how, proprietary rights, formulae, confidential and proprietary information, research and development information, technical or other data or information, techniques, customer and vendor lists, unpatented inventions, designs, drawings, procedures, processes, models, materials, methods, developments, formulations, manuals and systems, whether or not patentable or copyrightable and whether or not such has actual or potential commercial value and are not available in the public domain; and (f) all other intellectual property or proprietary rights, in each case whether or not subject to statutory registration or protection and whether now owned or hereafter acquired by Debtor.

“Inventory” means any “inventory”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor, and, in any event, shall include, without limitation, each of the following, whether now owned or hereafter acquired by Debtor: (a) all goods and other personal property of Debtor that are held for sale or lease or to be furnished under any contract of service, (b) all raw materials, work-in-process, finished goods, inventory, supplies, and materials of Debtor, (c) all wrapping, packaging, advertising, and shipping materials of Debtor, (d) all goods that have been returned to, repossessed by, or stopped in transit by Debtor, and (e) all Documents evidencing any of the foregoing.

“Investment Property” means any “investment property”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor, and, in any event, shall include, without limitation, each of the following, whether now owned or hereafter acquired by Debtor: (a) any security, whether certificated or uncertificated; (b) any security entitlement; (c) any securities account (including, without limitation, those described on Exhibit C); (d) any commodity contract; and (e) any commodity account (including, without limitation, those identified on Exhibit C).

“Letter-of-Credit Right” means any “letter-of-credit right”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor, and in any event, shall include, without limitation, any right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance (but shall not include any right of a beneficiary to demand payment or performance under a letter of credit), now owned or hereafter acquired by Debtor.

“Marks” means all registered and unregistered trademarks, service marks, domain names and trade names now or hereafter used by Debtor.

“Obligations” means the Obligations as defined in the Loan Agreement.

“Pledged Equity” means 100% of the issued and outstanding Equity Interests in each Subsidiary, in each case, together with the certificates (or other agreements or instruments), if any, representing such Equity Interests, and all options and other rights, contractual or otherwise, with respect thereto, including, but not limited to, the following: (a) all Equity Interests representing a non-cash dividend thereon, or representing a distribution or return of capital upon or in respect thereof, or resulting from a stock split, revision, reclassification or other exchange therefor, and any subscriptions, warrants, rights or options issued to the holder thereof, or otherwise in respect thereof; and (b) in the event of any consolidation or merger involving the issuer thereof and in which such issuer is not the surviving Person, all shares of each class of the Equity Interests of the successor Person formed by or resulting from such consolidation or merger, to the extent that such successor Person is a direct Subsidiary of Debtor.

“Proceeds” means any “proceeds,” as such term is defined in Chapter 9 of the UCC and, in any event, shall include, but not be limited to, (a) any and all proceeds of any insurance, indemnity, warranty, or guaranty payable to Debtor from time to time with respect to any of the Collateral, (b) any and all payments (in any form whatsoever) made or due and payable to Debtor 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 Authority (or any person 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.

“Receivables” means the Accounts, Chattel Paper, Documents, Investment Property, Instruments, or Commercial Tort Claims, and any other rights or claims to receive money which are General Intangibles or which are otherwise included as Collateral.

“Section” means a numbered Section of this Security Agreement, unless another document is specifically referenced.

“Secured Obligations” means the Obligations, whether or not (a) such Obligations arise or accrue before or after the filing by or against any Debtor of a petition under the Bankruptcy Code, or any similar filing by or against any Debtor under the laws of any jurisdiction, or any bankruptcy, insolvency, receivership or other similar proceeding, (b) such Obligations are allowable under Section 502(b)(2) of the Bankruptcy Code or under any other insolvency proceedings, (c) the right of payment in respect of such Obligations is reduced to judgment, or (d) such Obligations are liquidated, unliquidated, similar, dissimilar, related, unrelated, direct, indirect, fixed, contingent, primary, secondary, joint, several, or joint and several, matured, disputed, undisputed, legal, equitable, secured, or unsecured.

“Security” means any “security,” as such term is defined in Chapter 8 of the UCC, now owned or hereafter acquired by Debtor.

“Stock Rights” means any securities, dividends or other distributions and any other right or property which Debtor shall receive or shall become entitled to receive for any reason whatsoever with respect to, in substitution for or in exchange for any securities or other ownership interests in a corporation, partnership, joint venture or limited liability company constituting Collateral and any securities, any right to receive securities and any right to receive earnings, in which Debtor now has or hereafter acquires any right, issued by an issuer of such securities.

“Tangible Chattel Paper” means any “tangible chattel paper”, as such term is defined in Chapter 9 of the UCC, now owned or hereafter acquired by Debtor.

“UCC” means the Uniform Commercial Code as in effect in the State of Texas, as the same has been or may be amended or revised from time to time, or, if so required with respect to any particular Collateral by mandatory provisions of applicable law, as in effect in the jurisdiction in which such Collateral is located.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms.

## ARTICLE II GRANT OF SECURITY INTEREST

2.1 Security Interest. Debtor hereby pledges, assigns and grants to Secured Party (including their Affiliates), a security interest in all of Debtor’s right, title and interest in and to the Collateral to

secure the prompt and complete payment and performance of the Secured Obligations. If the security interest granted hereby in any rights of Debtor under any contract included in the Collateral is expressly prohibited by such contract, then the security interest hereby granted therein nonetheless remains effective to the extent allowed by Article or Chapter 9 of the UCC or other applicable law but is otherwise limited by that prohibition. Secured Party acknowledges that the attachment of its security interest in any Commercial Tort Claim as Collateral is subject to Debtor's compliance with Section 5.14.

2.2 Debtor Remains Liable. Notwithstanding anything to the contrary contained herein, (a) Debtor shall remain liable under the contracts and agreements included in the Collateral to the extent set forth therein to perform all of its respective duties and obligations thereunder to the same extent as if this Security Agreement had not been executed, (b) the exercise by Secured Party of any of its rights hereunder shall not release Debtor from any of its duties or obligations under the contracts and agreements included in the Collateral, and (c) Secured Party shall not have any obligation or liability under any of the contracts and agreements included in the Collateral by reason of this Security Agreement, nor shall Secured Party be obligated to perform any of the obligations or duties of Debtor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

2.3 Authorization to File Financing Statements. Debtor hereby irrevocably authorizes Secured Party at any time and from time to time to file in any UCC jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral (i) as all assets of Debtor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article or Chapter 9 of the UCC, or (ii) as being of an equal or lesser scope or with greater detail, and (b) contain any other information required by subchapter E of Chapter 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether Debtor is an organization, the type of organization and any organization identification number issued to Debtor and (ii) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Debtor hereby irrevocably authorizes Secured Party at any time and from time to time to file in the United States Patent and Trademark Office, the United States Copyright Office or any other Governmental Authority this Security Agreement or a document of similar import signed by Debtor (including without limitation a short form of security agreement satisfactory to Secured Party and Debtor) or a true and correct copy thereof. Debtor agrees to furnish any such information to Secured Party promptly upon request.

### ARTICLE III REPRESENTATIONS AND WARRANTIES

Debtor represents and warrants to Secured Party that:

3.1 Title, Authorization, Validity and Enforceability. Debtor has good and record and marketable title to the Collateral and none of the Collateral is subject to any Lien, except for Liens permitted under Section 5.1, and has full power and authority to grant to Secured Party the security interest in such Collateral pursuant hereto. The execution and delivery by Debtor of this Security Agreement has been duly authorized by proper corporate, limited liability, or partnership proceedings, as applicable, and this Security Agreement constitutes a legal, valid and binding obligation of Debtor and creates a security interest which is enforceable against Debtor in all now owned and hereafter acquired Collateral. When financing statements have been filed in the appropriate offices against Debtor, Secured Party will have a fully perfected first priority security interest in that Collateral in which a security interest may be perfected by filing, subject only to Liens permitted under Section 5.1.

3.2 Conflicting Laws and Contracts. Neither the execution and delivery by Debtor of this Security Agreement, the creation and perfection of the security interest in the Collateral granted hereunder, nor compliance with the terms and provisions hereof will violate any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on Debtor or Debtor's Constituent Documents, the provisions of any indenture, instrument or agreement to which Debtor is a party or is subject, or by which it, or its Property, is bound, or conflict with or constitute a default thereunder, or result in the creation or imposition of any Lien pursuant to the terms of any such indenture, instrument or agreement (other than any Lien of Secured Party).

3.3 Principal Location. Debtor's mailing address, and the location of its chief executive office and of the books and records relating to the Receivables, are disclosed in Exhibit E; Debtor has no other places of business except those set forth in Exhibit E.

3.4 Property Locations. The Inventory, Equipment and Fixtures are located solely at the locations described in Exhibit E. All of said locations are owned by Debtor except for locations (a) which are leased by Debtor as lessee and designated in Exhibit E and (b) at which Inventory is held in a public warehouse or is otherwise held by a bailee or on consignment as designated in Exhibit E, with respect to which Inventory, Debtor has delivered bailment agreements, warehouse receipts, financing statements or other documents satisfactory to the Secured Party to protect Secured Party's security interest in such Inventory.

3.5 Deposit, Commodity, and Securities Account. Exhibit A correctly identifies all deposit, commodity, and securities accounts owned by Debtor and the institutions holding such accounts. No Person other than Debtor has control over any Investment Property.

3.6 Litigation. There is no litigation, investigation or governmental proceeding threatened against Debtor or any of its Property which could reasonably be expected to have a Material Adverse Event.

3.7 No Other Names. Debtor has not conducted business under any name except the name in which it has executed this Security Agreement.

3.8 No Event of Default. No Event of Default exists.

3.9 Accounts and Chattel Paper. The names of the obligors, amounts owing, due dates and other information with respect to the Accounts and Chattel Paper are and will be correctly stated in all records of Debtor relating thereto and in all invoices and reports with respect thereto furnished to Secured Party by Debtor from time to time. As of the time when each Account or each item of Chattel Paper arises, Debtor shall be deemed to have represented and warranted that such Account or Chattel Paper, as the case may be, and all records relating thereto, are genuine and in all respects what they purport to be.

3.10 No Financing Statements. No financing statement describing all or any portion of the Collateral which has not lapsed or been terminated naming Debtor as debtor has been filed in any jurisdiction except (i) financing statements naming Secured Party as the secured party, and (ii) as permitted by Section 5.1.

3.11 Federal Employer Identification Number. Debtor's Federal employer identification number is listed on Exhibit E.

3.12 Pledged Equity and Other Investment Property. Exhibit C sets forth a complete and accurate list of the Instruments, Securities and other Investment Property owned by Debtor. Debtor is the

direct and beneficial owner of each Instrument, Security and other type of Investment Property listed on Exhibit C as being owned by it, free and clear of any Liens, except for the security interest granted to Secured Party hereunder. Debtor further represents and warrants that (a) all such Instruments, Securities or other types of Investment Property which are shares of stock in a corporation or ownership interests in a partnership or limited liability company have been (to the extent such concepts are relevant with respect to such Instrument, Security or other type of Investment Property) duly and validly issued, are fully paid and non-assessable and (b) with respect to any certificates delivered to Secured Party representing an ownership interest in a partnership or limited liability company, either such certificates are Securities as defined in Chapter 8 of the UCC of the applicable jurisdiction as a result of actions by the issuer or otherwise, or, if such certificates are not Securities, Debtor has so informed Secured Party so that Secured Party may take steps to perfect its security interest therein as a General Intangible. With respect to ownership interests in its Subsidiaries, Debtor represents and warrants that the Pledged Equity constitutes 100% of the issued and outstanding capital stock (as other equity interests) in all its Subsidiaries.

#### ARTICLE IV CONCERNING INTELLECTUAL PROPERTY

4.1 Registrations. Exhibit B sets forth a complete and accurate list of the Intellectual Property owned by Debtor registered with, or subject to an application for registration with, the United States Patent and Trademark Office, United States Copyright Office, or any state trademark offices or other foreign offices or agencies, as applicable. Debtor is the direct and beneficial owner of the Intellectual Property listed on Exhibit B as being owned by it, free and clear of any Liens, except for the Liens permitted under Section 5.1.

4.2 Intellectual Property. To the knowledge and belief of Debtor, all Marks listed on Exhibit B for Debtor and all licenses held by such Debtor related to such Marks constitute all such rights that are required or reasonably necessary for the conduct of the business of Debtor as currently conducted. All such Marks (and all applications and registrations therefor) are currently in compliance in all material respects with all legal requirements (including, without limitation, timely filings, proofs and payments of all fees), and are valid and enforceable, and are not subject to any filings, fees or other actions falling due within ninety (90) days after the date hereof. Debtor owns or otherwise possesses adequate licenses or other valid rights to use, sell and license, free and clear of any and all adverse claims (including by current and former employees and contractors), liens, restrictions or other obligation to pay royalties, honoraria or other fees, any and all Intellectual Property (including without limitation the Marks) used in the conduct of the business of Debtor as currently conducted or proposed to be conducted. No Marks have been within the preceding three (3) years or are now the subject of any claims or litigation and, to the knowledge of Debtor, no claims or litigation have been alleged or threatened. Debtor has taken all reasonable steps to maintain, police and protect the Marks owned or used in the operation of Debtor's business. The conduct of Debtor's business as currently conducted or planned to be conducted does not infringe or otherwise impair or conflict with any Intellectual Property or other proprietary or personal rights of any third party, and, to the knowledge of Debtor, the Intellectual Property owned or licensed by Debtor is not being infringed by any third party. There is no litigation or order pending or outstanding, or to the knowledge of Debtor, threatened, that seeks to limit or challenge or that concerns the ownership, use, validity or enforceability of any Marks or any Intellectual Property of Debtor. The consummation of the transactions contemplated hereby will not result in the alteration, loss or impairment of the validity, enforceability or Debtor's right to own or use any of the Intellectual Property used in the conduct of the business of Debtor as currently conducted or proposed to be conducted. Debtor has made available to Secured Party a list of all software (other than generally commercially available, non-custom, off-the-shelf software application programs having a retail acquisition price of less than \$5,000) that is owned or used by Debtor, and identified which software is owned, otherwise used and/or licensed or otherwise distributed by Debtor to any third party, as the case may be.



ARTICLE V  
COVENANTS

From the date of this Security Agreement, and thereafter until this Security Agreement is terminated, Debtor agrees that:

5.1 General.

5.1.1 Inspection. From time to time, Debtor will permit Secured Party, by its representatives and agents, at the expense of Debtor, (a) to inspect the Collateral, (b) to examine and make copies of the records of Debtor relating to the Collateral and (c) to discuss the Collateral and the related records of Debtor with, and to be advised as to the same by, Debtor's officers and employees (and, in the case of any Receivable, with any person or entity which is or may be obligated thereon) subject to the restrictions set forth in the Loan Agreement.

5.1.2 Taxes. Debtor will pay when due all taxes, assessments and governmental charges and levies as set forth in the Loan Agreement.

5.1.3 Exhibits. Debtor shall promptly update any Exhibits if any information therein shall become inaccurate or incomplete. The failure of property descriptions to be accurate or complete on any Exhibits shall not impair Secured Party's security interest in such property.

5.1.4 Records and Reports; Notification of Event of Default. Debtor will maintain complete and accurate books and records with respect to the Collateral, and furnish to Secured Party such reports relating to the Collateral as Secured Party shall from time to time reasonably request in writing. Debtor will give prompt notice in writing to Secured Party of the occurrence of any development, financial or otherwise, which might materially and adversely affect the Collateral. Debtor shall mark its books and records to reflect the security interest of Secured Party under this Security Agreement.

5.1.5 Actions; Defense of Title. Debtor will execute and deliver to Secured Party all statements, amendments and other agreements and documents and take such other actions as may from time to time be reasonably requested in writing by Secured Party in order to maintain a first perfected security interest in and, in the case of Investment Property, Deposit Accounts, Letter-of-Credit-Rights, and Electronic Chattel Paper, Control of, the Collateral. Debtor will take any and all actions necessary to defend title to the Collateral against all Persons and to defend the security interest of Secured Party in the Collateral and the priority thereof against any Lien not expressly permitted hereunder.

5.1.6 Disposition of Collateral. Debtor will not sell, lease, license or otherwise dispose of the Collateral except (a) prior to the occurrence of an Event of Default, dispositions specifically permitted pursuant to the Loan Agreement, (b) until such time following the occurrence and continuance of an Event of Default, as Debtor receives a notice from Secured Party instructing Debtor to cease such transactions, Debtor may make sales or leases of Inventory in the ordinary course of business and (c) until such time as Debtor receives a notice from Secured Party pursuant to Article VIII following the occurrence and continuance of an Event of Default, Debtor may use proceeds of Inventory and Accounts collected in the ordinary course of business.

5.1.7 Liens. Debtor will not create, incur, or suffer to exist any Lien on the Collateral except (a) the security interest created by this Security Agreement, and (b) other Liens permitted pursuant to the Loan Agreement.

5.1.8 Change in Location, Jurisdiction of Organization or Name. Debtor will not (a) have any Inventory, Equipment or Fixtures or Proceeds or products thereof (other than Inventory and proceeds thereof disposed of as permitted by Section 5.1.6) at a location other than a location specified in Exhibit E, (b) maintain records relating to the Receivables at a location other than at the location specified on Exhibit E, (c) maintain a place of business at a location other than a location specified on Exhibit E, (d) change its name or taxpayer identification number, (e) change its mailing address, or (f) change its jurisdiction of organization, unless Debtor shall have given Secured Party not less than 30 days' prior written notice thereof, and Secured Party shall have determined that such change will not adversely affect the validity, perfection or priority of Secured Party's security interest in the Collateral.

5.1.9 Other Financing Statements. Debtor will not file or authorize the filing on its behalf of any financing statement naming it as debtor covering all or any portion of the Collateral, except in favor of Secured Party.

## 5.2 Receivables.

5.2.1 Certain Agreements on Receivables. Debtor will not make or agree to make any discount, credit, rebate or other reduction in the original amount owing on a Receivable or accept in satisfaction of a Receivable less than the original amount thereof, except that, prior to the occurrence of an Event of Default, Debtor may reduce the amount of Accounts arising from the sale of Inventory in accordance with its present policies and in the ordinary course of business.

5.2.2 Collection of Receivables. Except as otherwise provided in this Security Agreement, Debtor will collect and enforce, at Debtor's sole expense, all amounts due or hereafter due to Debtor under the Receivables.

5.2.3 Delivery of Invoices. Debtor will deliver to Secured Party immediately upon its request after the occurrence of an Event of Default duplicate invoices with respect to each Account bearing such language of assignment as Secured Party shall specify.

5.2.4 Disclosure of Counterclaims on Receivables. If (a) any discount, credit or agreement to make a rebate or to otherwise reduce the amount owing on a Receivable exists or (b) if, to the knowledge of Debtor, any dispute, setoff, claim, counterclaim or defense exists or has been asserted or threatened with respect to a Receivable, Debtor will disclose such fact to Secured Party in writing in connection with the inspection by Secured Party of any record of Debtor relating to such Receivable and in connection with any invoice or report furnished by Debtor to Secured Party relating to such Receivable.

## 5.3 Inventory and Equipment.

5.3.1 Maintenance of Goods. Debtor will do all things necessary to maintain, preserve, protect and keep the Inventory and the Equipment in good repair and working and saleable condition.

5.3.2 Insurance. Debtor will maintain insurance in accordance with Section 4.5 of the Loan Agreement.

5.3.3 Inventory Warranties. Debtor warrants and represents that (a) Secured Party may rely, without independent investigation, on all statements or representations made by Debtor on or with respect to any borrowing base report and, (b) unless otherwise indicated in writing by Debtor (in which case any such affected Inventory shall not be considered Eligible Inventory), each of the criteria set forth in the definition of "Eligible Inventory" has been met with respect to all Inventory included as Eligible Inventory on any borrowing base report.

5.3.4 Safekeeping of Inventory; Inventory Covenants. Secured Party shall not be responsible for (a) the safekeeping of the Inventory; (b) any loss or damage thereto or destruction thereof occurring or arising in any manner or fashion from any cause; (c) any diminution in the value of Inventory or (d) any act or default of any carrier, warehouseman, bailee or forwarding agency or any other Person in any way dealing with or handling the Inventory. All risk of loss, damage, distribution or diminution in value of the Inventory shall be borne by Debtor.

5.3.5 Records and Schedules of Inventory. Debtor shall keep correct and accurate records itemizing and describing the kind, type, quality and quantity of Inventory, Debtor's cost therefor and selling price thereof, and the withdrawals therefrom and additions thereto and Inventory then on consignment, and shall, at the request of Secured Party, furnish to Secured Party, daily copies of the working papers related thereto and, at the times required under the Loan Agreement, a current borrowing base report. A physical count of the Inventory shall be conducted no less often than annually and a report based on such count of Inventory shall promptly thereafter be provided to Secured Party together with such supporting information including, without limitation invoices relating to Debtor's purchase of goods listed in said report, as Secured Party shall, in its sole and absolute discretion, request.

5.3.6 Returned and Repossessed Inventory. If at any time prior to the occurrence of an Event of Default, any Account Debtor returns any Inventory to Debtor with a value in excess of \$10,000.00, Debtor shall promptly determine the reason for such return and, if Debtor accepts such return, issue a credit memorandum (with a copy to be sent to Secured Party if Secured Party has so requested) in the appropriate amount to such Account Debtor. After the occurrence of an Event of Default, Debtor shall hold all returned Inventory in trust for Secured Party, shall segregate all returned Inventory from all other property of Debtor or in its possession and shall conspicuously label said returned Inventory as the property of Secured Party. Debtor shall, in all cases, immediately notify Secured Party of the return of any Inventory with a value in excess of \$10,000.00 specifying the reason for such return and the location and condition of the returned Inventory.

5.4 Instruments, Securities, Chattel Paper, and Documents. Debtor will (a) deliver to Secured Party immediately upon execution of this Security Agreement the originals of all Chattel Paper, Securities and Instruments (if any then exist), (b) hold in trust for Secured Party upon receipt and immediately thereafter deliver to Secured Party any Chattel Paper, Securities and Instruments constituting Collateral, and (c) upon Secured Party's request, deliver to Secured Party (and thereafter hold in trust for Secured Party upon receipt and immediately deliver to Secured Party) any Document evidencing or constituting Collateral.

5.5 Uncertificated Securities and Certain Other Investment Property. Debtor will permit Secured Party from time to time to cause the appropriate issuers (and, if held with a securities intermediary, such securities intermediary) of uncertificated securities or other types of Investment Property not represented by certificates which are Collateral to mark their books and records with the numbers and face amounts of all such uncertificated securities or other types of Investment Property not represented by certificates and all rollovers and replacements therefor to reflect the Lien of Secured Party

granted pursuant to this Security Agreement. Debtor will take any actions necessary to cause (a) the issuers of uncertificated securities which are Collateral and which are Securities and (b) any financial intermediary which is the holder of any Investment Property, to cause Secured Party to have and retain Control over such Securities or other Investment Property. Without limiting the foregoing, Debtor will, with respect to Investment Property held with a financial intermediary, cause such financial intermediary to enter into a control agreement with Secured Party in form and substance satisfactory to Secured Party.

#### 5.6 Stock and Other Ownership Interests.

5.6.1 Changes in Capital Structure of Issuers. Except as expressly permitted under the Loan Agreement, Debtor will not (a) permit or suffer any issuer of privately held corporate securities or other ownership interests in a corporation, partnership, joint venture or limited liability company constituting Collateral to dissolve, liquidate, retire any of its capital stock or other Instruments or Securities evidencing ownership, reduce its capital or merge or consolidate with any other entity, or (b) vote any of the Instruments, Securities or other Investment Property in favor of any of the foregoing.

5.6.2 Issuance of Additional Equity. Debtor will not permit or suffer the issuer of privately held corporate securities or other ownership interests in a corporation, partnership, joint venture or limited liability company constituting Collateral to issue any such securities or other ownership interests, any right to receive the same or any right to receive earnings, except to Debtor.

5.6.3 Registration of Pledged Equity and other Investment Property. Debtor will permit any registerable Collateral to be registered in the name of Secured Party or its nominee at any time.

5.6.4 Exercise of Rights in Pledged Equity and other Investment Property. Debtor will permit Secured Party or its nominee at any time after the occurrence of an Event of Default, without notice, to exercise all voting and corporate rights relating to the Collateral, including, without limitation, exchange, subscription or any other rights, privileges, or options pertaining to any corporate securities or other ownership interests or Investment Property in or of a corporation, partnership, joint venture or limited liability company constituting Collateral and the Stock Rights as if it were the absolute owner thereof.

5.6.5 Issuance of Securities. Debtor shall not permit any limited partnership interests or ownership interests in a limited liability company which are included within the Collateral to at any time constitute a Security or consent to the issuer of any such interests taking any action to have such interests treated as a Security unless (a) all certificates or other documents constituting such Security have been delivered to Secured Party and such Security is properly defined as such under Article 8 of the UCC of the applicable jurisdiction, whether as a result of actions by the issuer thereof or otherwise, or (b) Secured Party has entered into a control agreement with the issuer of such Security or with a securities intermediary relating to such Security and such Security is defined as such under Article 8 of the UCC of the applicable jurisdiction, whether as a result of actions by the issuer thereof or otherwise.

#### 5.7 Accounts.

5.7.1 Account Warranties. Debtor warrants and represents that (a) Secured Party may, in determining which Accounts listed on any Borrowing Base Report are Eligible Accounts, rely without independent investigation on all statements or representations made by Debtor on or with

respect to any such Borrowing Base Report and, (b) unless otherwise indicated in writing by Debtor (in which case such Account shall not be considered an Eligible Account), each of the criteria set forth in the definition of "Eligible Accounts" has been met with respect to each Account included as an Eligible Account on any Borrowing Base Report.

5.7.2 Verification of Accounts. Secured Party shall have the right, at any time or times hereafter, in its name or in the name of a nominee of Secured Party, to verify the validity, amount or any other matter relating to any Accounts, by mail, telephone, telegraph or otherwise.

5.7.3 Disputed Accounts; Limitation on Modification of Accounts. Debtor shall give Secured Party prompt written notice of any Account previously shown as Eligible Accounts on a Borrowing Base Report which is in dispute between any Account Debtor and Debtor. Each Borrowing Base Report shall identify all disputed Accounts (which shall not be included as Eligible Accounts), and disclose with respect thereto, in reasonable detail, the reason for the dispute, all claims related thereto and the amount in controversy. Upon the occurrence and during the continuation of an Event of Default, Debtor will not, without Secured Party's prior written consent, grant any extension of the time for payment of any of the Accounts, compromise, compound or settle the same for less than the full amount thereof, release, wholly or partly, any Person liable for the payment thereof, or allow any credit or discount whatsoever thereon other than trade discounts granted in the ordinary course of business of Debtor.

5.7.4 Appointment of the Agent as Attorney-in-Fact. Debtor hereby irrevocably designates, makes, constitutes and appoints Secured Party (and all persons designated by Secured Party), exercisable after the occurrence and during the continuation of an Event of Default, as its true and lawful attorney-in-fact, and authorizes Secured Party, in Debtor's or Secured Party's name, to: (a) demand payment of Accounts; (b) enforce payment of Accounts by legal proceedings or otherwise; (c) exercise all of Debtor's rights and remedies with respect to proceedings brought to collect an Account; (d) sell or assign any Account upon such terms, for such amount and at such time or times as Secured Party deems advisable; (e) settle, adjust, compromise, extend or renew an Account; (f) discharge and release any Account; (g) take control in any manner of any item of payment or proceeds thereof; (h) prepare, file and sign Debtor's name on any proof of claim in bankruptcy or other similar document against an Account Debtor; (i) endorse Debtor's name upon any items of payment or proceeds thereof and deposit the same in Secured Party's account on account of the Secured Obligations; (j) endorse Debtor's name upon any chattel paper, document, instrument, invoice, or similar document or agreement relating to any Account or any goods pertaining thereto; (k) sign Debtor's name on any verification of Accounts and notices thereof to Account Debtor; (l) notify the post office authorities to change the address for delivery of Debtor's mail to an address designated by Secured Party, have access to any lock box or postal box into which any of Debtor's mail is deposited, and open and dispose of all mail addressed Debtor, and (m) do all acts and things which are necessary, in Secured Party's sole discretion, to fulfill Debtor's obligations under this Security Agreement.

5.7.5 Notice to Account Debtor. Secured Party may, in its sole discretion, at any time or times after an Event of Default has occurred and is continuing, and without prior notice to Debtor, notify any or all Account Debtors that the Accounts have been assigned to Secured Party and that Secured Party has a security interest therein. Secured Party may direct any or all Account Debtors to make all payments upon the Accounts directly to Secured Party. Secured Party shall furnish Debtor with a copy of such notice.

5.8 Deposit Accounts. As and to the extent required under the Loan Agreement, Debtor will cause each bank or other financial institution in which it maintains a Deposit Account or other deposit

(general or special, time or demand, provisional or final) to execute and deliver to Secured Party, and at all times maintain in full force and effect, a control agreement in form and substance reasonably satisfactory to Secured Party.

5.9 Federal, State or Municipal Claims. Debtor will notify Secured Party of any Collateral which constitutes a claim against a Governmental Authority, the assignment of which claim is restricted by federal, state or municipal law.

5.10 Warehouse Receipts Non-Negotiable. Debtor agrees that if any warehouse receipt or receipt in the nature of a warehouse receipt is issued with respect to any of its Inventory, such warehouse receipt or receipt in the nature thereof shall not be "negotiable" (as such term is used in Section 7-104 of the UCC).

5.11 Mortgagee's and Landlord Waivers. Debtor shall cause each mortgagee of real property owned by Debtor (upon request by Secured Party) and each landlord of real property leased by Debtor to execute and deliver instruments satisfactory in form and substance to Secured Party by which such mortgagee or landlord waives its rights, if any, in the Collateral.

5.12 Compliance with Agreements. Debtor shall comply in all material respects with all mortgages, deeds of trust, instruments, and other agreements binding on it or affecting its properties or business.

5.13 Compliance with Laws. Debtor shall comply in all material respects with all applicable Laws.

5.14 Commercial Tort Claims. If Debtor at any time holds or acquires a Commercial Tort Claim, Debtor shall immediately notify Secured Party in writing of the details thereof and grant to Secured Party in writing a security interest therein or lien thereon and in the Proceeds thereof, in form and substance satisfactory to Secured Party.

5.15 Letters-of-Credit Rights. If Debtor is at any time a beneficiary under a letter of credit now or hereafter issued in favor of Debtor, Debtor shall promptly notify Secured Party thereof in writing and, at Secured Party's written request, Debtor shall, pursuant to an agreement in form and substance satisfactory to Secured Party, either (a) arrange for the issuer or any confirmer of such letter of credit to consent to an assignment to Secured Party of the proceeds of any drawing under the letter of credit or (b) arrange for Secured Party to become the transferee beneficiary of the letter of credit, with Secured Party agreeing, in each case, that the proceeds of any drawing under the letter of credit are to be applied as provided in the Loan Agreement.

5.16 Further Assurances. At any time and from time to time, upon the written request of Secured Party, and at the sole expense of Debtor, Debtor shall promptly execute and deliver all such further instruments and documents and take such further action as Secured Party may deem reasonably necessary to preserve and perfect its security interest in the Collateral and carry out the provisions and purposes of this Security Agreement, including, without limitation, (a) the filing of such financing statements as Secured Party may require and (b) the deposit of all certificates of title issuable with respect to any of the Collateral and noting thereon the security interest hereunder. A carbon, photographic, or other reproduction of this Security Agreement or of any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement and may be filed as a financing statement. Debtor shall promptly endorse and deliver to Secured Party all documents, instruments, and chattel paper that it now owns or may hereafter acquire.

5.17 Intellectual Property. Debtor will give prompt notice in writing to Secured Party of the occurrence of any development, financial or otherwise, which might materially and adversely affect the Intellectual Property, including, without limitation, of any (a) Lien (other than the Liens permitted under Section 5.1.7) asserted against the Collateral, (b) any infringement, misappropriation, or dilution by a third party of any Intellectual Property, or (c) any abandonment or dedication, or adverse determination or development regarding Debtor's ownership of any rights therein. If Debtor obtains any new registered Intellectual Property, or rights thereto or therein, or becomes entitled to the benefit of any Intellectual Property, which are subject to or arise from this Security Agreement, Debtor shall give Secured Party written notice thereof within twenty (20) days of the end of the calendar month in which Debtor obtains such property or rights, and shall execute and deliver, in form and substance satisfactory to Secured Party, an amendment to this Security Agreement (or any Exhibit hereto) or a security agreement, the terms of which are substantially similar to this Security Agreement, as requested by Secured Party, describing any such new registered Intellectual Property or license granted. Debtor shall: (a) prosecute diligently any patent, copyright or trademark application at any time pending, which is necessary for the conduct of its business; (b) make application on all new patents, copyrights and trademarks as it may reasonably deem appropriate; (c) preserve and maintain all rights in all Intellectual Property that are necessary for the conduct of Debtor's business; and (d) use its best efforts to obtain any consents, waivers, or agreements necessary to enable Secured Party to exercise its remedies with respect to the Collateral. Debtor shall not abandon any pending patent, copyright or trademark application, or patent, copyright or trademark, or any other Intellectual Property that are necessary for the conduct of its business without the prior written consent of Secured Party. Debtor shall not, without Secured Party's consent, amend or otherwise modify any pending application or registration contained in or covering the Collateral, to the extent such amendment or modification would impair the Liens of Secured Party in the Collateral.

#### ARTICLE VI DEFAULT

6.1 Acceleration and Remedies. Upon the occurrence and continuance of an Event of Default under the Loan Agreement or any other Loan Document, Secured Party may exercise any or all of the following rights and remedies:

(a) Exercise any or all of those rights and remedies provided in this Security Agreement, the Loan Agreement, or any other Loan Document, provided that this paragraph shall not be understood to limit any rights or remedies available to Secured Party prior to an Event of Default.

(b) Exercise any or all of those rights and remedies available to a secured party under the UCC (whether or not the UCC applies to the affected Collateral) or under any other applicable law (including, without limitation, any law governing the exercise of a bank's right of setoff or bankers' lien) when a debtor is in default under a security agreement.

(c) Without notice except as specifically provided in Section 6.2 or elsewhere herein, sell, lease, license, assign, grant an option or options to purchase or otherwise dispose of the Collateral or any part thereof in one or more parcels at public or private sale, for cash, on credit or for future delivery, and upon such other terms as Secured Party may deem commercially reasonable.

(d) Require Debtor to, and Debtor hereby agrees that it will at its expense and upon request of Secured Party, assemble and make available to Secured Party the Collateral and all records relating thereto at any place or places specified by Secured Party.

(e) Prior to the disposition of any Collateral, (i) to the extent permitted by applicable law, enter, with or without process of law and without breach of peace, any premises where any of the Collateral is or may be located, and without charge or liability to Secured Party, seize and remove such Collateral from such premises, (ii) have access to and use Debtor's books, records and information relating to the Collateral, and (iii) store or transfer any of the Collateral, without charge in or by means of any storage or transportation facility owned or leased by Debtor, process, repair or recondition any of the Collateral or otherwise prepare it for disposition in any manner and to the extent Secured Party deems appropriate and, in connection with such preparation and disposition, use without charge any copyright, trademark, trade name, patent or technical process used by Debtor.

(f) Reduce its claim to judgment or foreclose or otherwise enforce, in whole or in part, the security interest created hereby by any available judicial procedure.

(g) Dispose of, at its office, on the premises of Debtor or elsewhere, all or any part of the Collateral, as a unit or in parcels, by public or private proceedings, and by way of one or more contracts (it being agreed that the sale of any part of the Collateral shall not exhaust Secured Party's power of sale, but sales may be made from time to time, and at any time, until all of the Collateral has been sold or until all of the Secured Obligations have been paid and performed in full), and at any such sale it shall not be necessary to exhibit any of the Collateral.

(h) Buy the Collateral, or any part thereof, at any public sale.

(i) Buy the Collateral, or any part thereof, at any private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations.

(j) Apply by appropriate judicial proceedings for appointment of a receiver for the Collateral, or any part thereof, and Debtor hereby consents to any such appointment.

(k) Grant or issue any exclusive or non-exclusive license under or with respect to any of Debtor's Intellectual Property (subject to the rights of third parties under pre-existing licenses) included in the Collateral.

(l) Endorse Debtor's name on all applications and other documentation necessary or desirable in order for Secured Party to use any such Intellectual Property included in the Collateral or covered by the Loan Agreement.

6.2 Notice of Disposition of Collateral. Debtor hereby agrees that notice of the time and place of any public sale or the time after which any private sale or other disposition of all or any part of the Collateral may be made shall be deemed reasonable if sent to Debtor, addressed as set forth in Article X, at least ten (10) days prior to (a) the date of any such public sale or (b) the time after which any such private sale or other disposition may be made.

6.3 License. Secured Party is hereby granted a license or other right to use, following the occurrence and during the continuance of an Event of Default, without charge, Debtor's Intellectual Property, customer lists and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral, and, following the occurrence and during the continuance of an Event of Default, Debtor's rights under all licenses shall inure to Secured Party's benefit. In addition, Debtor hereby irrevocably agrees that Secured Party may, following the occurrence and during the continuance of an Event of Default, sell any of Debtor's



Inventory directly to any Person, including without limitation Persons who have previously purchased Debtor's Inventory from Debtor and in connection with any such sale or other enforcement of Secured Party's rights under this Security Agreement, may sell Inventory which bears any trademark owned by or licensed to Debtor and any Inventory that is covered by any copyright owned by or licensed to Debtor and Secured Party may finish any work in process and affix any trademark owned by or licensed to Debtor and sell such Inventory as provided herein.

6.4 Deficiency. In the event that the proceeds of any sale, collection or realization of or upon Collateral by Secured Party are insufficient to pay all Secured Obligations and any other amounts to which Secured Party is legally entitled, Debtor shall be liable for the deficiency, together with interest thereon as provided in the Loan Agreement or (if no interest is so provided) at such other rate as shall be fixed by applicable law, together with the costs of collection and the reasonable fees of any attorneys employed by Secured Party to collect such deficiency.

6.5 Non-Judicial Remedies. In granting to Secured Party the power to enforce its rights hereunder without prior judicial process or judicial hearing, Debtor expressly waives, renounces and knowingly relinquishes any legal right which might otherwise require Secured Party to enforce its rights by judicial process. In so providing for non-judicial remedies, Debtor recognizes and concedes that such remedies are consistent with the usage of trade, are responsive to commercial necessity, and are the result of a bargain at arm's length. Nothing herein is intended, however, to prevent Secured Party from resorting to judicial process at its option.

6.6 Limitation on Duty of Secured Party in Respect of Collateral. Beyond the exercise of reasonable care in the custody thereof, Secured Party shall have no duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or as to the preservation of rights against prior parties or any other rights pertaining thereto. Secured Party shall be deemed to have exercised reasonable care in the custody of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which it accords its own property, and shall not be liable or responsible for any loss or damage to any of the Collateral, or for any diminution in the value thereof, by reason of the act or omission of any warehouseman, carrier, forwarding agency, consignee or other agent or bailee selected by Secured Party in good faith.

#### ARTICLE VII WAIVERS, AMENDMENTS AND REMEDIES

No delay or omission of Secured Party to exercise any right or remedy granted under this Security Agreement shall impair such right or remedy or be construed to be a waiver of any Event of Default, or an acquiescence therein, and any single or partial exercise of any such right or remedy shall not preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver, amendment or other variation of the terms, conditions or provisions of this Security Agreement whatsoever shall be valid unless in writing signed by Secured Party and then only to the extent in such writing specifically set forth. All rights and remedies contained in this Security Agreement or by law afforded shall be cumulative and all shall be available to Secured Party until the Secured Obligations have been paid in full.

#### ARTICLE VIII PROCEEDS; COLLECTION OF RECEIVABLES

8.1 Lockboxes. Upon request of Secured Party, Grantor shall establish a lockbox as set forth in the Loan Agreement.

8.2 Collection of Receivables. Upon the occurrence and continuation of an Event of Default, Secured Party may at any time in its sole discretion, by giving Debtor written notice, elect to require that the Receivables be paid directly to Secured Party. In such event, Debtor shall, and shall permit Secured Party to, promptly notify the Account Debtors or obligors under the Receivables of Secured Party's interest therein and direct such Account Debtors or obligors to make payment of all amounts then or thereafter due under the Receivables directly to Secured Party. Upon receipt of any such notice from Secured Party, Debtor shall thereafter hold in trust for Secured Party, all amounts and proceeds received by it with respect to the Receivables and Other Collateral and immediately and at all times thereafter deliver to Secured Party all such amounts and proceeds in the same form as so received, whether by cash, check, draft or otherwise, with any necessary endorsements. Secured Party shall hold and apply funds so received as provided by the terms of Sections 8.4.

8.3 Special Collateral Account. Secured Party may require all cash proceeds of the Collateral to be deposited in a special non-interest bearing cash collateral account with Secured Party and held there as security for the Secured Obligations. Debtor shall not have control whatsoever over said cash collateral account. If no Event of Default has occurred or is continuing, Secured Party shall from time to time deposit the collected balances in said cash collateral account into Debtor's general operating account with Secured Party. If any Event of Default has occurred and is continuing, Secured Party may, from time to time, apply the collected balances in said cash collateral account to the payment of the Secured Obligations whether or not the Secured Obligations shall then be due.

8.4 Application of Proceeds. After the occurrence and during the continuation of an Event of Default, the proceeds of the Collateral shall be applied by Secured Party to payment of the Secured Obligations in such manner and order as Secured Party may elect in its sole discretion.

#### ARTICLE IX GENERAL PROVISIONS

9.1 Compromises and Collection of Collateral. Debtor and Secured Party recognize that setoffs, counterclaims, defenses and other claims may be asserted by obligors with respect to certain of the Receivables, that certain of the Receivables may be or become uncollectible in whole or in part and that the expense and probability of success in litigating a disputed Receivable may exceed the amount that reasonably may be expected to be recovered with respect to a Receivable. In view of the foregoing, Debtor agrees that Secured Party may at any time and from time to time, if an Event of Default has occurred and is continuing, compromise with the obligor on any Receivable, accept in full payment of any Receivable such amount as Secured Party in its sole discretion shall determine or abandon any Receivable, and any such action by Secured Party shall be commercially reasonable so long as Secured Party acts in good faith based on information known to it at the time it takes any such action.

9.2 Secured Party Performance of Debtor's Obligations. Without having any obligation to do so, Secured Party may perform or pay any obligation which Debtor has agreed to perform or pay in this Security Agreement and Debtor shall reimburse Secured Party for any amounts paid by Secured Party pursuant to this Section 9.2. Debtor's obligation to reimburse Secured Party pursuant to the preceding sentence shall be a Secured Obligation payable on demand.

9.3 Authorization for Secured Party to Take Certain Action. Debtor irrevocably authorizes Secured Party at any time and from time to time in the sole discretion of Secured Party and appoints Secured Party as its attorney in fact (a) to file financing statements necessary or desirable in the Secured Party's sole discretion to perfect and to maintain the perfection and priority of Secured Party's security interest in the Collateral, (b) to indorse and collect any cash proceeds of the Collateral, (c) to file a copy of this Security Agreement or any financing statement with respect to the Collateral as a financing

statement in such offices as Secured Party in its sole discretion deems necessary or desirable to perfect and to maintain the perfection and priority of Secured Party's security interest in the Collateral, (d) to contact and enter into one or more agreements with the issuers of uncertificated securities which are Collateral and which are Securities or with financial intermediaries holding other Investment Property as may be necessary or advisable to give Secured Party Control over such Securities or other Investment Property, (e) subject to the terms of Section 2.2, to enforce payment of the Receivables in the name of Secured Party or Debtor, (f) to apply the proceeds of any Collateral received by Secured Party to the Secured Obligations as provided in Article VIII and (g) to discharge past due taxes, assessments, charges, fees or Liens on the Collateral (except for such Liens as are specifically permitted hereunder), and Debtor agrees to reimburse Secured Party on demand for any payment made or any expense incurred by Secured Party in connection therewith, provided that this authorization shall not relieve Debtor of any of its obligations under this Security Agreement or under the Loan Agreement.

9.4 Specific Performance of Certain Covenants. Debtor acknowledges and agrees that a breach of any of the covenants contained in Sections 5.1.4, 5.1.6, 5.1.7, 5.4, 6.3, 9.5, 9.6 or in Article VIII will cause irreparable injury to Secured Party, that Secured Party has no adequate remedy at law in respect of such breaches and therefore agrees, without limiting the right of Secured Party to seek and obtain specific performance of other obligations of Debtor contained in this Security Agreement, that the covenants of Debtor contained in the Sections referred to in this Section 9.4 shall be specifically enforceable against Debtor.

9.5 Use and Possession of Certain Premises. If an Event of Default has occurred and is continuing, Secured Party shall be entitled to occupy and use any premises owned or leased by Debtor where any of the Collateral or any records relating to the Collateral are located until the Secured Obligations are paid or the Collateral is removed therefrom, whichever first occurs, without any obligation to pay Debtor for such use and occupancy.

9.6 Dispositions Not Authorized. Debtor is not authorized to sell or otherwise dispose of the Collateral except as set forth in Section 5.1.6 and notwithstanding any course of dealing between Debtor and Secured Party or other conduct of Secured Party, no authorization to sell or otherwise dispose of the Collateral (except as set forth in Section 5.1.6) shall be binding upon Secured Party unless such authorization is in writing signed by Secured Party.

9.7 Benefit of Agreement. The terms and provisions of this Security Agreement shall be binding upon and inure to the benefit of Debtor, Secured Party and their respective successors and assigns, except that Debtor shall not have the right to assign its rights or delegate its obligations under this Security Agreement or any interest herein, without the prior written consent of Secured Party.

9.8 Survival of Representations. All representations and warranties of Debtor contained in this Security Agreement shall survive the execution and delivery of this Security Agreement.

9.9 Taxes and Expenses. Any taxes (including income taxes) payable or ruled payable by any Federal or State authority in respect of this Security Agreement shall be paid by Debtor, together with interest and penalties, if any. To the extent permitted by applicable law, Debtor promptly will pay, upon demand, any out-of-pocket expenses incurred by Secured Party in connection herewith, including all costs, expenses, taxes, assessments, insurance premiums, repairs (including repairs to realty or other property to which any Collateral may have been attached), court costs, attorneys' fees, rent, storage costs and expenses of sales incurred in connection with the administration of this Security Agreement, the enforcement of the rights of Secured Party hereunder, whether incurred before or after the occurrence of an Event of Default or incurred in connection with the perfection, preservation, or defense of the security interest created hereunder, or the custody, protection, collection, repossession, enforcement or sale of the

Collateral. All such expenses shall become part of the Secured Obligations and shall bear interest at the Default Rate from the date paid or incurred by Secured Party until paid by Debtor.

9.10 Headings. The title of and section headings in this Security Agreement are for convenience of reference only, and shall not govern the interpretation of any of the terms and provisions of this Security Agreement.

9.11 Termination. This Security Agreement shall continue in effect (notwithstanding the fact that from time to time there may be no Secured Obligations outstanding) until (a) the Loan Agreement has terminated pursuant to its express terms and (b) all of the Secured Obligations have been indefeasibly paid and performed in full and no commitments of Secured Party which would give rise to any Secured Obligations are outstanding.

9.12 Entire Agreement. This Security Agreement embodies the entire agreement and understanding between Debtor and Secured Party relating to the Collateral and supersedes all prior agreements and understandings between Debtor and Secured Party relating to the Collateral.

9.13 Governing Law; Jurisdiction, Etc.

9.13.1 GOVERNING LAW. THIS SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF TEXAS.

9.13.2 SUBMISSION TO JURISDICTION. DEBTOR IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF TEXAS SITTING IN DALLAS COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE NORTHERN DISTRICT OF TEXAS (DALLAS DIVISION), AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH STATE OF TEXAS STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH 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. NOTHING IN THIS SECURITY AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST DEBTOR OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

9.13.3 WAIVER OF VENUE. DEBTOR IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN SECTION 9.13.2. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY

APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

9.13.4 SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN THE LOAN AGREEMENT. NOTHING IN THIS SECURITY AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

9.14 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS SECURITY AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

9.15 INDEMNITY. DEBTOR HEREBY AGREES TO INDEMNIFY SECURED PARTY AND ITS RESPECTIVE SUCCESSORS, ASSIGNS, AGENTS, ATTORNEYS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, PENALTIES, SUITS, COSTS, AND EXPENSES OF ANY KIND AND NATURE (INCLUDING, WITHOUT LIMITATION, ALL EXPENSES OF LITIGATION OR PREPARATION THEREFOR WHETHER OR NOT SECURED PARTY IS A PARTY THERETO) IMPOSED ON, INCURRED BY OR ASSERTED AGAINST SECURED PARTY OR THEIR RESPECTIVE SUCCESSORS, ASSIGNS, AGENTS, ATTORNEYS, AND EMPLOYEES, IN ANY WAY RELATING TO OR ARISING OUT OF THIS SECURITY AGREEMENT, OR THE MANUFACTURE, PURCHASE, ACCEPTANCE, REJECTION, OWNERSHIP, DELIVERY, LEASE, POSSESSION, USE, OPERATION, CONDITION, SALE, RETURN OR OTHER DISPOSITION OF ANY COLLATERAL (INCLUDING, WITHOUT LIMITATION, LATENT AND OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE BY THE SECURED PARTY OR DEBTOR, AND ANY CLAIM FOR PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENT).

ARTICLE X  
NOTICES

10.1 Sending Notices. Any notice required or permitted to be given under this Security Agreement shall be sent (and deemed received) in the manner and to the addresses set forth in the Loan Agreement.

10.2 Change in Address for Notices. Debtor and Secured Party may change the address for service of notice upon it by a notice in writing to the other parties.

IN WITNESS WHEREOF, Debtor and Secured Party have executed this Security Agreement as of the date first above written.

**DEBTOR:**

BORROWER:

INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

GUARANTORS:

INNOVATIVE FOOD PROPERTIES, LLC,  
a Delaware limited liability company

By INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation,  
its sole member

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

FOOD INNOVATIONS, INC.,  
a Florida corporation

By: \_\_\_\_\_  
Samuel Klepfish, Authorized Officer

GOURMET FOODSERVICE GROUP, INC.,  
a Florida corporation

By: \_\_\_\_\_  
Samuel Klepfish, Authorized Officer

ARTISAN SPECIALTY FOODS, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Samuel Klepfish, Authorized Officer

4 THE GOURMET, INC., d.b.a. FOR THE GOURMET, INC.,  
a Florida corporation

By: \_\_\_\_\_  
Samuel Klepfish, Authorized Officer

HALEY FOOD GROUP, INC.,  
a Florida corporation

By: \_\_\_\_\_  
Samuel Klepfish, Authorized Officer

GOURMET FOODSERVICE GROUP WAREHOUSE, INC.,  
a Florida corporation

By: \_\_\_\_\_  
Samuel Klepfish, Authorized Officer

ORGANIC FOOD BROKERS, LLC,  
a Colorado limited liability company

By: \_\_\_\_\_  
Samuel Klepfish, Manager

INNOVATIVE GOURMET, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Samuel Klepfish, Manager

FOOD FUNDING, LLC,  
a Delaware limited liability company

By: INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation,  
its sole member

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

P INNOVATIONS LLC,  
a Florida limited liability company

By: \_\_\_\_\_  
Samuel Klepfish, Manager

M FOODS INNOVATIONS, LLC,  
a Delaware limited liability company

By: M INNOVATIONS, LLC,  
its sole member

By: INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation,  
its sole member

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

FOOD NEW MEDIA GROUP, INC.,  
a New York corporation

By: \_\_\_\_\_  
Samuel Klepfish, Authorized Officer

GOURMETING INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Samuel Klepfish, Authorized Officer

OASIS SALES CORP,  
a Florida corporation

By: \_\_\_\_\_  
Samuel Klepfish, Authorized Officer



LOGISTICS INNOVATIONS, LLC,  
a Delaware limited liability company

By: INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation,  
its sole member

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

M INNOVATIONS, LLC,  
a Delaware limited liability company

By: INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation,  
its sole member

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

MI FOODS, LLC,  
a Delaware limited liability company

By: M INNOVATIONS, LLC,  
sole member

By: INNOVATIVE FOOD HOLDINGS, INC.,  
a Florida corporation,  
its sole member

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

PLANT INNOVATIONS, INC.,  
a Florida Corporation

By: \_\_\_\_\_  
Samuel Klepfish, Authorized Officer

PLANTBELLY, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Samuel Klepfish, Manager

INNOVATIVE FOODS, INC.,  
a Florida Corporation

By: \_\_\_\_\_  
Samuel Klepfish, Authorized Officer

INNOVATIVE GOURMET PARTNERSHIPS, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Samuel Klepfish, Manager

GOURMET FOODSERVICE GROUP REINHART, INC.

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

GOURMET FOODSERVICE GROUP GORDON, INC.

By: \_\_\_\_\_  
Samuel Klepfish, Chief Executive Officer

**SECURED PARTY:**

MAPLEMARK BANK

By: \_\_\_\_\_  
Elizabeth Nebergall, Vice President

PLEDGE AND SECURITY AGREEMENT –  
Signature Page

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**EXHIBIT A**

**DEPOSIT ACCOUNTS**

Those maintained with Secured Party.

PLEDGE AND SECURITY AGREEMENT

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**EXHIBIT B**

**INTELLECTUAL PROPERTY**

PLEDGE AND SECURITY AGREEMENT

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**EXHIBIT C**

**LIST OF INSTRUMENTS, SECURITIES AND OTHER INVESTMENT PROPERTY**

NONE

PLEDGE AND SECURITY AGREEMENT

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**EXHIBIT D**

**UCC FILING JURISDICTIONS**

PLEDGE AND SECURITY AGREEMENT

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**EXHIBIT E**

**LOCATIONS**

Principal Place of Business and Mailing Address:

Location(s) of Receivables Records (if different from Principal Place of Business above):

Same as above

Locations of Inventory and Equipment and Fixtures:

Properties Owned by Debtor (indicate which): NONE

Properties Leased by Debtor (indicate which):

Public Warehouses or other Locations pursuant to Bailment or Consignment Arrangements for Debtor (indicate which) (include name of Warehouse Operator or other Bailee or Consignee): NONE

PLEDGE AND SECURITY AGREEMENT

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**EXHIBIT F**

**FEDERAL EMPLOYER IDENTIFICATION NUMBER**

PLEDGE AND SECURITY AGREEMENT