

# PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1  
 Stylesheet Version v1.2

EPAS ID: PAT2716629

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT
<b>NATURE OF CONVEYANCE:</b>	SECURITY AGREEMENT
<b>CONVEYING PARTY DATA</b>	
<b>Name</b>	<b>Execution Date</b>
TIMBER TREATMENT TECHNOLOGIES LLC	12/17/2013
KAREN SLIMAK	12/17/2013
<b>RECEIVING PARTY DATA</b>	
<b>Name:</b>	ASM BLACK LLC
<b>Street Address:</b>	7600 JERICHO TURNPIKE
<b>Internal Address:</b>	SUITE 302
<b>City:</b>	WOODBURY
<b>State/Country:</b>	NEW YORK
<b>Postal Code:</b>	11797
<b>PROPERTY NUMBERS Total: 7</b>	
<b>Property Type</b>	<b>Number</b>
Patent Number:	6040057
Patent Number:	6146766
Patent Number:	6303234
Patent Number:	6827984
Patent Number:	7297411
Patent Number:	RE40517
Application Number:	09927062
<b>CORRESPONDENCE DATA</b>	
<b>Fax Number:</b>	(703)415-0788
<b>Email:</b>	Carl@JennisonLaw.com
<i>Correspondence will be sent via US Mail when the email attempt is unsuccessful.</i>	
<b>Correspondent Name:</b>	CARL E. JENNISON
<b>Address Line 1:</b>	JENNISON & SHULTZ, P.C.
<b>Address Line 2:</b>	2001 JEFFERSON DAVIS HWY., SUITE 1102

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**REEL: 032166 FRAME: 0717**

Address Line 4: ARLINGTON, VIRGINIA 22202

NAME OF SUBMITTER: CARL E. JENNISON

Signature: /Carl E. Jennison/

Date: 02/06/2014

**Total Attachments: 28**

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REDACTED

LOAN AND SECURITY AGREEMENT  
AND  
GUARANTY

by and between

ASM Black LLC

a Delaware Limited Liability Company

as Lender

and

Timber Treatment Technologies LLC

a Michigan Limited Liability Company

as Borrower

and

Karen Slimak

an individual

as Guarantor

Dated as of December 17<sup>th</sup> 2013

## LOAN AND SECURITY AGREEMENT

This LOAN AND SECURITY AGREEMENT (this "*Agreement*"), dated as of December 17, 2013 (the "*Closing Date*"), is made and entered into by and among ASM Black LLC, a Delaware limited liability company, (the "*Lender*"), Timber Treatment Technologies LLC, a Michigan limited liability company (the "*Borrower*"), and Karen Slimak, an individual (the "*Guarantor*"). Each of the Lender, Borrower and Guarantor is at times referred to in this Agreement individually as a "*Party*" and collectively as the "*Parties*."

### WITNESSETH:

WHEREAS, the Borrower desires to obtain Advances (as defined herein) to finance Borrower's need for working capital and general corporate purposes as generally described in the Budget (as defined herein);

WHEREAS, the Borrower desires to secure the payment and performance of the Obligations (as defined herein); and

WHEREAS, the Guarantor expects to receive substantial direct and indirect benefits from the Advances made to the Borrower by the Lender;

WHEREAS, the Borrower and Guarantor desire to guaranty the Obligations and to secure payment and performance of the Obligations and her guaranty by granting the Lender a continuing first priority security interest in the Collateral (as defined herein) and consenting to the continuing perfection of Lender's security interest therein;

NOW, THEREFORE, in consideration of the above premises and the mutual agreements hereinafter set forth in this Agreement, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

## ARTICLE I. DEFINITIONS AND CONSTRUCTION

1.1 Rules of Construction. For all purposes of this Agreement, unless the context otherwise requires or except as otherwise expressly provided:

1. Defined Terms. The terms defined in this Agreement have the meanings assigned to them in this Agreement.

2. Plural; Singular. References to the plural include the singular and references to the singular include the plural.

3. Accounting Terms. All accounting terms not otherwise defined herein shall be construed in accordance with GAAP.

4. References to a Person includes Subsidiaries. All accounting terms, unless otherwise specified, used with respect to a Person shall be understood to refer to the Person and its Subsidiaries on a consolidated basis in accordance with GAAP.

5. Financial Statements. The term "financial statements" shall include the notes and schedules thereto.

\* \* \* \* \*

1.3 Defined Terms. The following terms shall have the following meanings:

1. "Act" shall mean the USA PATRIOT Act Pub. L. 107-56 (signed into law October 26, 2001), as amended.

2. "Additional Documents" shall mean any and all fixture filings, security agreements, pledges, assignments, endorsements of certificates of title, and any and all other documents that Lender may request, in form and substance satisfactory to Lender, to create, perfect, and continue to perfect or to better perfect the Lender's Liens in the Collateral (whether now owned or hereafter arising or acquired, tangible or intangible, real or personal), and in order to fully consummate all of the transactions contemplated in this Agreement and the Financing Documents.

3. "Affiliate" shall mean, as applied to any Person, any other Person who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" means the possession, directly or indirectly through one or more intermediaries, of the power to direct the management and policies of a Person, whether through the ownership of Stock, by contract, or otherwise; *provided*, that, for purposes of this Agreement (other than

as expressly stated herein):

(i) any Person which owns directly or indirectly 10% or more of the Stock having ordinary voting power for the election of directors or other members of the governing body of a Person or 10% or more of the partnership or other ownership interests of a Person (other than as a limited partner of such Person) shall be deemed an Affiliate of such Person;

(ii) each director (or comparable manager) of a Person shall be deemed to be an Affiliate of such Person; and

(iii) each partnership or joint venture in which a Person is a general partner or joint venturer shall be deemed an Affiliate of such Person.

4. "Agreement" shall have the meaning specified in the introductory paragraph to this Agreement.

5. "Authorized Officer" with respect to any Party, shall mean the member, manager or other signatory authorized by or pursuant to such Party's organizational documents, membership agreement or by resolution of such Party's members.

6. "Bankruptcy Code" shall mean the United States Bankruptcy Code of 1978, as amended from time to time; or any successor federal statute.

7. "Bankruptcy Proceeding" shall mean, with respect to any Account Debtor, any proceeding under the Bankruptcy Code.

\* \* \* \* \*

9. "Books" shall mean all of Borrower's now owned or hereafter acquired books and Records (including all of the Records indicating, summarizing, or evidencing its assets (including the Collateral) or liabilities, all of Borrower's Records relating to its business operations or financial condition, and all of the goods or General Intangibles related to such information).

10. "Borrower" shall have the meaning specified in the introductory paragraph to this Agreement.

11. "Business Day" shall mean any day other than a Saturday, Sunday or any other day on which banks are required or authorized to be closed in New York City, New York.

16. "Chattel Paper" shall have the meaning specified in 9-102(a)(11) of the Code.
17. "Closing Date" shall have the meaning specified in the introductory paragraph of this Agreement.
18. "Code" shall mean the Virginia Uniform Commercial Code, as in effect from time to time; *provided, however*, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, priority, or remedies with respect to the Lender's Lien on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of Virginia, the term "Code" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies.
19. "Collateral" shall mean all of Borrower's respective now owned or hereafter acquired right, title, and interest in and to all Property, including, without limitation, each of the following (without duplication):
- (i) all of its Accounts and related Account Information;
  - (ii) all General Intangibles (and in any event including, without limitation, each Portfolio Purchase Agreement and all recourse, indemnification, repurchase and other rights of the Borrower thereunder and all other payment intangibles, contract rights, rights to payment, rights arising under common law, statute, rule or regulation, choses or things in action, tax refunds, tax refund claims and interests in a limited liability company or partnership that do not constitute a security under Article 9 of the Code, but excluding intellectual property not within the definition of Intellectual Property);
  - (iii) all Commercial Tort Claims;
  - (iv) all Investment Property;
  - (v) all Negotiable Collateral;
  - (vi) all Supporting Obligations;
  - (vii) all contracts, contract rights, Chattel Paper, instruments and documents of the Borrower;
  - (viii) all rights, claims or choses in action;
  - (ix) all money, cash, Cash Equivalents or other assets of the Borrower or the Guarantor that now or hereafter come into the possession, custody, or control of Lender;
  - (x) all Intellectual Property, including the six (6) Patents owned by Guarantor and licensed to Borrower as listed below;
  - (xi) all Books (including customer lists, credit files, computer print-outs, information contained on harddrives, discs, back-up tapes or similar formats and all other computer materials and records of the Borrower or the Guarantor stored in any media whatsoever) pertaining to any of (i) through (xii) above;
  - (xii) all accessions to, substitutions for and all replacements, products and cash and non-cash proceeds of (i) through (xii) above; and
  - (xiii) the proceeds and products, whether tangible or intangible, of any of the foregoing, and any and all Accounts, Books, Deposit Accounts, General Intangibles, Investment Property, Negotiable Collateral, Supporting Obligations, money, or other tangible or intangible Property resulting from the sale, exchange, collection, or other disposition of any of the foregoing, or any portion thereof or interest therein, and the proceeds thereof, together with all assets and interests in assets and proceeds thereof now owned or hereafter acquired by a Loan Party in or upon which a Lien is granted under any of the Financing Documents.
20. "Commercial Tort Claims" shall have the meaning specified in Section 9-102(a)(13) of the Code.
21. "Continuation Statement" shall have the meaning specified in Section 9-102(a)(27) of the Code.
22. "Default" shall mean an event or condition which, with the passage of time or the giving of notice or court, would constitute an Event of Default.

24. "Deposit Account" shall have the meaning specified in Section 9-102(a)(29) of the Code.

25. "Draw Date" shall mean the date on which the Lender makes an Advance to the Borrower.

\* \* \* \* \*

27. "Event of Default" shall have the meaning set forth in Article VIII of this Agreement.

\* \* \* \* \*

30. "Filing Office" shall have the meaning specified in Section 9-102(a)(37) of the Code.

31. "Final Balance" shall mean the aggregate amount of all Advances made hereunder but in any event not more than the Advances.

32. "Financing Documents" shall mean this Agreement, and any related agreement or document contemplated hereunder or thereunder.

33. "Financing Statement" shall have the meaning specified in Section 9-102(a)(39) of the Code and be substantially in the form to be provided.

\* \* \* \* \*

36. "General Intangibles" shall have the meaning specified in Section 9-102(a)(42) of the Code.

\* \* \* \* \*

40. "Indebtedness" shall mean, with respect to any Person, any amount payable by such Person pursuant to an agreement or instrument involving, relating to or evidencing money borrowed or received, the advance of credit, a conditional sale or a transfer with recourse or with an obligation to repurchase, or pursuant to a Capital Lease to which such Person is a party as debtor, borrower or guarantor, all obligations of such Person to purchase Securities (or other Property) which arise out of or in connection with the sale of the same or substantially similar Securities or Property, all non-contingent obligations of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit or similar instrument, all obligations to advance funds including keep wells, comfort letters and similar arrangements and all liabilities under interest rate cap agreements, interest rate swap agreements, foreign currency exchange agreements and other hedging agreements or arrangements.

41. "Intellectual Property" shall mean ONLY the 6 Patents (herein defined) owned by Guarantor and exclusively licensed by Borrower, any copyrights, trademarks, trade secrets and customer lists, other intellectual property and any rights under or interests in any patent, trademark, copyright or other intellectual property, including software license agreements with any other party, whether the Borrower or the Guarantor is a licensee or licensor under any such license agreement.

\* \* \* \* \*

44. "Investment" shall mean, with respect to any Person:

(i) any investment by such Person in any other Person or its Affiliates in the form of loans, guarantees, advances or capital contributions, excluding (a) commission, travel, and similar advances to officers and employees of such Person made in the ordinary course of business, and (b) bona fide Accounts arising in the ordinary course of business consistent with past practice), purchases or other acquisitions of Indebtedness, Stock, or all or substantially all of the assets of such other Person (or of any division or business line of such other Person); and

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(ii) other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP.

\* \* \* \* \*

46. "Investment Property" shall have the meaning specified in Section 9-102(a)(49) of the Code.

\* \* \* \* \*

49. "Lender" shall have the meaning specified in the introductory paragraph to this Agreement.

50. "Lender Account" shall mean the Account of the Lender into which payments to the Lender shall be made.

51. "Lien" shall mean any mortgage, pledge, hypothecation, assignment, deposit arrangement, security interest, encumbrance, lien (statutory or otherwise) or preference, priority or other kind of security agreement or preferential arrangement or charge of any kind or nature whatsoever (including without limitation, any agreement to give any of the foregoing, any conditional sale or other title retention agreement, or any financing lease having substantially the same economic effect as any of the foregoing) and any financing or similar statement or notice perfecting a security interest under the Code as adopted and in effect in the relevant jurisdiction, or other similar recording or notice statute.

52. "Loan Parties" shall mean the Borrower and the Guarantor, and "Loan Party" shall mean any one of them.

53. "Material Adverse Effect" shall mean a material adverse effect on:

(i) the financial condition, business, operations or properties of any Loan Party;

(ii) the ability of any Loan Party to perform its obligations under this Agreement or the other Financing Documents;

(iii) the legality, validity or enforceability of this Agreement or the other Financing Documents;

(iv) the Collateral or the validity, perfection or priority of the Liens granted in favor of the Lender;

(v) the rights of, or remedies available to, the Lender in respect of any Loan



Party or the Collateral;

(vi) the Lender's ability to enforce the Obligations or realize upon the Collateral; and

\* \* \* \* \*

56. "Maximum Legal Rate" shall mean the maximum rate of interest permitted by applicable state or federal law in effect from time to time hereafter after taking into account, to the extent required by applicable law, any and all payments, fees and other charges deemed to be interest.

57. "Member" shall mean any holder of the membership interests of the Borrower as described in the limited liability company operating agreement of the Borrower dated as of as of the date hereof, as amended from time to time after the date hereof.

58. "Negotiable Collateral" shall mean letters of credit, letter-of-credit rights, instruments, promissory notes, drafts, documents, and Chattel Paper (including electronic Chattel Paper and tangible Chattel Paper).

59. "Obligations" shall mean all loans, Advances, debts, principal, interest (including any interest that, but for the commencement of an Insolvency Proceeding, would have accrued, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), premiums, liabilities, obligations (including indemnification obligations), fees (including but not limited to Lender's commercially reasonable legal fees in drafting and negotiating this Agreement, not to exceed \$15,000), charges, costs, lease payments, guaranties (including the obligations of the Guarantor), covenants, and duties of any kind and description owing by Loan Parties to the Lender pursuant to or evidenced by the Financing Documents and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including all interest not paid when due. Any reference in this Agreement or in the Financing Documents to the Obligations shall include all or any portion thereof and any extensions, modifications, renewals, or alterations thereof, both prior and subsequent to any Insolvency Proceeding.

61. "Operating Expenses" shall have the meaning ascribed thereto in the Borrower's Budget.

62. "Outstanding Balance" shall mean, as of any date of determination and with respect to any Obligation, the amount of such Obligation owed at the end of such day.

63. "Party" shall have the meaning specified in the introductory paragraph of this Agreement.

64. "Permitted Liens" shall mean:

(i) Liens held by the Lender to secure the Obligations;

(ii) Liens for unpaid taxes, assessments, or other governmental charges or levies that are already delinquent and perfected under applicable law and are all known to Lender by the full disclosure by Borrower of all its Liens already in existence as of the Closing Date including the IRS Tax Lien and the Starr Lien;

- (iii) the interests of lessors under operating leases;
- (iv) Liens on amounts deposited in connection with obtaining worker's compensation or other unemployment insurance and not in connection with the borrowing of money;
- (v) judgment Liens that do not constitute an Event of Default under Section 8.8 of this Agreement;

65. "Person" shall mean any legal person, including any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, governmental entity or other entity of similar nature.

\* \* \* \* \*

68. "Principal Balance" shall mean, with respect to each Advance and the Note relating thereto or any other Obligation hereunder as of any date of determination, the outstanding principal amount thereof at the end of such day.

69. "Property" shall mean any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

70. "Record" shall mean information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

71. "Related Party" shall mean a party (individual or group) who is an Affiliate or a family member, to include a Person's brothers, sisters, spouse, ancestors and lineal descendants, of a Loan Party; *provided, however*, that nothing in this Agreement shall preclude any such family member from taking employment with the Borrower.

\* \* \* \* \*

Guarantor, now or hereafter outstanding;

(iv) any payment or prepayment of principal, or redemption, purchase, retirement, defeasance, sinking fund or similar payment with respect to any Indebtedness owing to any person, noteholders (including without limitation the Maturing Notes), officer, Shareholder, any Member or any other Related Party.

73. "Revenue" is defined in Section 2.3(D).

74. "Rules of Construction" shall mean the rules of construction and interpretation set forth in Article I.

\* \* \* \* \*

78. "Shareholder" shall mean any shareholder or Member of the Borrower.

79. "Stock" shall mean all shares, options, warrants, membership interests, units of membership interests, partnership interests, or other ownership interests, participations, or other equivalents (regardless of how designated) of or in a Person, whether voting or nonvoting, including common stock, preferred stock, or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Securities Exchange Act of 1934 (as amended from time to time, or any successor statute, and the regulations promulgated and the rulings issued thereunder)).

80. "Subsidiary" of a Person shall mean a corporation, partnership, limited liability company, or other entity in which that Person directly or indirectly owns or controls the Stock having ordinary voting power to elect a majority of the board of directors (or appoint other comparable managers) of such corporation, partnership, limited liability company, or other entity.

81. "Supporting Obligations" shall have the meaning specified in Section 9-102(a)(77) of the Code.

82. "Termination Statement" shall have the meaning specified in Section 9-102(a)(79) of the Code.

83. "Territory" shall mean the United States of America.

84. "Voidable Transfer" shall mean any payment, transfer of Property or incurred liability which is declared to be void or voidable under any state or federal law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent conveyances, preferences, or other voidable or recoverable payments of money or transfers of Property.

## ARTICLE II. ADVANCES

### 2.1 Advances.

(A) No Default; Conditions Precedent. Subject to the terms and conditions of this Agreement, for so long as no Default or Event of Default has occurred and is continuing and subject to satisfaction of the conditions precedent specified in Article III of this Agreement, the Lender shall, make Advances as listed below.

(B) Frequency. Lender shall loan an aggregate total of the Maximum Available Amount (\$1,000,000.00) (the "Loan") to Borrower, disbursed by electronic funds transfer to the bank account of Borrower's choice, as follows (the "Advances"):

- (i) First Advance. On November, 26, 2013, Lender disbursed Thirty Five Thousand Dollars (\$35,000) to Borrower (the "First Advance").
- (ii) Second Advance. No later than December 17, 2013 Lender shall disburse Four Hundred Sixty-Five Thousand Dollars (\$465,000.00) to Borrower (the "Second Advance").
- (iii) Future Advances. On the fifteenth (15<sup>th</sup>) day of April, 2014; June, 2014; August, 2014; and October, 2014 Lender shall disburse funds up to an additional \$125,000 per advance (the "Future Advances").

\* \* \* \* \*

### ARTICLE III. CONDITIONS TO ADVANCES BY LENDER

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3.1 Conditions Precedent. The effectiveness of this Agreement and the obligation of the Lender to make Advances hereunder are subject to the satisfaction of the following conditions precedent or to the waiver in writing by the Lender of any such conditions precedent.

(A) Closing Deliverables. The Lender shall have received each of the following documents, in form and substance satisfactory to Lender, duly executed, and each such document shall be in full force and effect:

- 1. Note. Notes, substantially in the form attached to this Agreement as Exhibit A;
- 2. Any Financing Statement required by the Code to perfect lender's first lien granted pursuant to Section 4.1 of this Agreement.
- 3. Resolutions of the Borrower and Guarantor. Copies of resolutions of the Borrower's board of directors and Shareholders, which are reasonably satisfactory to the Lender, authorizing the execution, delivery and performance of this Agreement, the Financing Documents and any documents and instruments delivered hereunder or thereunder;
- 4. Guaranty. The Guarantor has duly executed and delivered this Agreement to the Lender.
- 5. Other Documents. Any documents required in this Agreement, contemplated by the items listed in clauses 1 through 4 above, or reasonably requested by the Lender.

\* \* \* \* \*

(D) Collateral. Each of the Borrower and the Guarantor shall have delivered to the Lender duly executed copies of such documents, instruments, and Financing Statements as the Lender shall require to secure payment in full for all amounts due under this Agreement or the Note and such documents, instruments and financing statements shall be sufficient to establish a valid, enforceable, perfected, first priority Lien on the Collateral.

\* \* \* \* \*

#### ARTICLE IV. CREATION OF SECURITY INTEREST AND THE GUARANTY

4.1 Grant of Security Interest. Each of the Borrower and the Guarantor (each, a "Grantor") hereby unconditionally grants, assigns and pledges to the Lender, a continuing first priority Lien on all of such Grantor's Collateral whether now owned or hereafter acquired and wherever located in order to secure prompt repayment of any and all of the Obligations in accordance with the terms and conditions of this Agreement and the other Financing Documents and in order to secure prompt performance by such Grantor of each of its covenants and duties under this Agreement and the other Financing Documents. The Lender's Liens in and to the Collateral shall attach to all Collateral without further act on the part of the Lender or such Grantor. Anything contained in this Agreement or any other Financing Document to the contrary notwithstanding, the Borrower shall have no authority, express or implied, to dispose of any item or portion of the Collateral.

4.2 Security for Obligations. This Agreement and the Liens created hereby secure the payment and performance of the Obligations, whether now existing or arising hereafter. Without limiting the generality of the foregoing, this Agreement secures the payment of all amounts that constitute part of the Obligations and would be owed by Grantors, or any of them, to the Lender but for the fact that they are unenforceable or not allowable due to the existence of an Insolvency Proceeding involving any Grantor.

4.3 Grantors Remain Liable. Anything herein to the contrary notwithstanding, (a) each of the Grantors shall remain liable under the contracts and agreements included in the Collateral to perform all of the duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by the Lender of any of the rights hereunder shall not release any Grantor from any of its duties or obligations under such contracts and agreements included in the Collateral, and (c) the Lender shall not have any obligation or liability under such contracts and agreements included in the Collateral by reason of this Agreement, nor shall the Lender be obligated to perform any of the obligations or duties of any Grantors thereunder or to take any action to collect or enforce any claim for payment assigned

hereunder. Until an Event of Default shall occur and be continuing, except as otherwise provided in this Agreement or any other Financing Document, the Grantors shall have the right to possession and enjoyment of the Collateral for the purpose of conducting the ordinary course of their respective businesses, subject to and upon the terms hereof and the other Financing Documents.

4.4 Covenants of the Grantors.

\* \* \* \* \*

(C) Transfers and other Liens. Grantors shall not (i) sell, assign (by operation of law or otherwise) or otherwise dispose of, or grant any option with respect to, any of the Collateral, except as expressly permitted by this Agreement and the other Financing Documents, or (ii) create or permit to exist any Lien upon or with respect to any of the Collateral of any of the Grantors, except for the Permitted Liens. The inclusion of proceeds in the Collateral shall not be deemed to constitute consent by the Lender to any sale or other disposition of any of the Collateral except as expressly permitted in this Agreement or any other Financing Document.

4.5 Filing of Financing Statements; Additional Documentation.

(A) Filing of Financing Statements. Each Grantor authorizes the Lender to file any Financing Statement necessary or desirable to effectuate the transactions contemplated by this Agreement and the other Financing Documents, and any Continuation Statement or amendment with respect thereto, in any appropriate Filing Office without the signature of the Grantor where permitted by applicable law. Each Grantor hereby ratifies the filing of any Financing Statement without the signature of the Grantor.

(B) Delivery of Additional Documentation. At any time upon the request of the Lender, the Borrower and Grantor shall execute or deliver to the Lender any and all Additional Documents that the Lender may request, in form and substance satisfactory to the Lender, (i) to create, perfect, and continue the perfection of or to better perfect the Lender's Liens in the Collateral, whether now owned or hereafter arising or acquired, tangible or intangible, real or personal and (ii) otherwise in order to fully

consummate all of the transactions contemplated hereby and under this Agreement and the other Financing Documents. To the maximum extent permitted by applicable law, each Borrower and Grantor authorize the Lender to execute any such Additional Documents in such Borrower or Grantor's name and authorizes the Lender to file such executed Additional Documents in any appropriate Filing Office.

#### 4.6 Power of Attorney. Appointment.

In the Event of a Default, each of Borrower and Grantor hereby irrevocably makes, constitutes, and appoints the Lender, and any of the Lender's officers, employees, or agents designated by the Lender, with full power of substitution, as the Borrower's true and lawful attorney-in-fact. The Lender shall have the full authority in the place and stead of Borrower or otherwise, at such time as an Event of Default has occurred and is continuing, to take any action and to execute any Additional Documents or other instruments, documents or agreements that the Lender may reasonably deem necessary or advisable to accomplish the purposes of this Agreement and the other Financing Documents.

4.65 Right to Inspect, Verify and Audit. The Lender and the Lender's officers, employees, or agents shall have the right, from time to time hereafter, at the Lender's sole cost and expense, during normal business hours and upon reasonable prior notice to the Borrower:

1. Inspect and Copy Books. To audit the Books and assets of the Borrower and the Grantor in order to verify the Borrower's financial condition and operations and any other calculation related to any payment regarding the Loan, the Royalty or any other payments relevant to the terms and conditions of this Agreement;

2. Audit, Check, Test and Appraise the Collateral. To audit, check, test, and appraise the Collateral, or any portion thereof, in order to verify the amount, quality, value, condition of, or any other matter relating to, the Collateral.

#### 4.7 Remedies. Upon the occurrence and during the continuance of an Event of Default:

(A) The Lender may exercise in respect of the Collateral, in addition to other rights and remedies provided for herein, in the other Financing Documents, or otherwise available to it, all the rights and remedies of the Lender on default under the Code or any other applicable Law. Without limiting the generality of the foregoing, each Borrower and Grantor expressly agrees that, in any such event, the Lender without any demand, advertisement, or notice of any kind (except a notice specified below of time and place of public or private sale) to or upon any of the Borrower or Grantor or any other Person (all and each of which demands, advertisements and notices are hereby expressly waived to the maximum extent permitted by the Code or by any other applicable Law), may take immediate possession of all or any portion of the Collateral and (i) require Borrower and Grantor to, and of Borrower and Grantor hereby agree that it will at its own expense and upon request of the Lender, assemble all or part of the Collateral as directed by the Lender and make it available to the Lender at one or more locations designated by the Lender, and (ii) without notice except as specified below, sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Lender's offices or elsewhere, for cash, on credit, and upon such other terms as the Lender may deem commercially reasonable. Each Borrower and Grantor agree that, to the extent notice of sale shall be required by Law, at least 10 days' notice to any of the Borrower or Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification and specifically such notice shall constitute a reasonable "authenticated notification of disposition" within the meaning of Section 9-611 of the Code. The Lender shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Lender may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(B) Any cash held by the Lender as Collateral and all proceeds received by the Lender in respect of any sale of, collection from, or other realization upon all or any part of the Collateral shall be applied against the Obligations in the order set forth in Section 4.9 hereof. In the event the proceeds of Collateral are insufficient to satisfy all of the Obligations in full, each Borrower and Grantor shall remain jointly and severally liable for any such deficiency.

(C) Each Borrower and Grantor hereby acknowledges that the Obligations arose out of a commercial transaction, and agrees that if an Event of Default shall occur and be continuing the Lender shall have the right to an immediate writ of possession without notice of a hearing. The Lender shall

have the right to the appointment of a receiver for the properties and assets of each of the Borrower and Grantor, and each Borrower and Grantor hereby consent to such rights and such appointment and hereby waives any objection such Borrower and Grantor may have thereto or the right to have a bond or other security posted by the Lender.

4.8 Application of Proceeds of Collateral. All proceeds of Collateral received by the Lender shall be applied as follows:

(A) first, to pay any reasonable expenses incurred by the Lender (including the reasonable costs and expenses paid or incurred by the Lender to correct any default under or enforce any provision of this Agreement or the other Financing Documents, or after the occurrence of any Event of Default in gaining possession of, maintaining, handling, preserving, storing, shipping, selling, preparing for sale, or advertising to sell the Collateral, or any portion thereof, irrespective of whether a sale is consummated) or indemnities then due to the Lender under this Agreement or any other Financing Document, until paid in full;

(B) second, to pay any fees or premiums then due to the Lender under this Agreement or any other Financing Documents, until paid in full;

(C) third, to pay interest due in respect of the Obligations then due to the Lender, until paid in full;

(D) fourth, to pay any other Obligations then due to the Lender, if any; and

(E) fifth, to Borrower or Grantor or such other Person entitled thereto under applicable law.

4.9 Marshaling. The Lender shall not be required to marshal any present or future collateral security (including but not limited to the Collateral) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of its rights and remedies hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights and remedies, however existing or arising. To the extent that it lawfully may, each Borrower and Grantor hereby agrees that it will not invoke any law relating to the marshaling of collateral which might cause delay in or impede the enforcement of the Lender's rights and remedies under this Agreement or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations is outstanding or by which any of the Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, each Borrower and Grantor hereby irrevocably waives the benefits of all such laws.

4.10 Indemnity and Expenses.

(A) Each Borrower and Grantor agree to indemnify the Lender and its officers, directors and employees from and against all claims, lawsuits and liabilities (including reasonable attorneys fees) growing out of or resulting from this Article IV (including enforcement of this Article IV), except claims, losses or liabilities resulting from the gross negligence or willful misconduct of the party seeking indemnification as determined by a final non-appealable order of a court of competent jurisdiction. This provision shall survive the termination of this Agreement and the Financing Documents and the repayment of the Obligations.

(B) The Borrower and Grantor, jointly and severally, shall, upon demand, pay to the Lender all of the costs and expenses that the Lender may incur in connection with (i) the administration of this Article IV, (ii) the custody, preservation, use or operation of, or, upon an Event of Default, the sale of,

collateral security or the substitution, exchange, surrender, release, loss or destruction of any such collateral security; or (g) any other act or omission that might in any manner or to any extent vary the risk of Guarantor or otherwise operate as a release or discharge of Guarantor, all of which may be done without notice to Guarantor. To the fullest extent permitted by law, Guarantor hereby expressly waives any and all rights or defenses arising by reason of (x) any "one action" or "anti-deficiency" law that would otherwise prevent the Lender from bringing any action, including any claim for a deficiency, or exercising any other right or remedy (including any right of set-off), against Guarantor before or after the Lender's commencement or completion of any foreclosure action, whether judicially, by exercise of power of sale or otherwise or (y) any other law that in any other way would otherwise require any election of remedies by the Lender.

(D) **Unenforceability of Obligations Against Borrower.** If for any reason the Borrower has no legal existence or is under no legal obligation to discharge any of the Obligations, or if any of the Obligations have become irrecoverable from the Borrower by reason of the Borrower's insolvency, bankruptcy or reorganization or by other operation of law or for any other reason, this Guaranty shall nevertheless be binding on Guarantor to the same extent as if Guarantor at all times had been the principal obligor on all such Obligations. In the event that acceleration of the time for payment of any of the Obligations is stayed upon the insolvency, bankruptcy or reorganization of the Borrower, or for any other reason, all such amounts otherwise subject to acceleration under the terms of this Agreement, the other Financing Documents or any other agreement evidencing, securing or otherwise executed in connection with any Obligation shall be immediately due and payable by Guarantor.

(E) **Subrogation; Subordination.**

1. **Waiver of Rights Against Borrower.** Until the final payment and performance in full of all of the Obligations, Guarantor (a) shall not exercise, and hereby waives, any rights against the Borrower arising as a result of payment by Guarantor hereunder, by way of subrogation, reimbursement, restitution, contribution or otherwise, and will not prove any claim in competition with the Lender in respect of any payment hereunder in any bankruptcy, insolvency or reorganization case or proceedings of any nature, (b) will not claim any setoff, recoupment or counterclaim against the Borrower in respect of any liability of Guarantor to the Borrower and (c) waives any benefit of and any right to participate in any collateral security that may be held by the Lender.

2. **Subordination.** The payment of any amounts due with respect to any indebtedness of the Borrower for money borrowed or credit received now or hereafter owed to the Guarantor is hereby subordinated to the prior payment in full of all of the Obligations. Guarantor agrees that, after the occurrence of any default in the payment or performance of any of the Obligations, Guarantor will not demand, sue for or otherwise attempt to collect any such indebtedness until all of the Obligations shall have been paid in full. If, notwithstanding the foregoing, Guarantor shall collect, enforce or receive any amounts in respect of such indebtedness while any Obligations are still outstanding, such amounts shall be collected, enforced and received by Guarantor as trustee for the Lender and be paid over to the Lender on account of the Obligations without affecting in any manner the liability of Guarantor under the other provisions of this Guaranty.

3. **Provisions Supplemental.** The provisions of this Section 4.12(E)(3) shall be supplemental to and not in derogation of any rights and remedies of the Lender under any separate subordination agreement that the Lender may at any time and from time to time enter into with Guarantor.

(F) **Further Assurances.** Guarantor agrees that she will from time to time, at the request of the Lender, do all such things and execute all such documents as the Lender may reasonably request to give full effect to this Guaranty and to perfect and preserve the rights and powers of the Lender hereunder.



collection from, or other realization upon, any of the Collateral in accordance with this Agreement and the Financing Documents, (iii) the exercise or enforcement of any of the rights of the Lender hereunder or (iv) the failure by any Borrower or Grantor to perform or observe any of the provisions hereof.

#### 4.11 Guaranty of Payment and Performance of the Obligations.

(A) Guaranty. Guarantor hereby guarantees to the Lender the full and punctual payment when due (whether at stated maturity, by required pre-payment, by acceleration or otherwise), as well as the performance, of all of the Obligations including all such which would become due but for the operation of the automatic stay pursuant to Section 362(a) of the Bankruptcy Code and the operation of Sections 502(b) and 506(b) of the Bankruptcy Code (the "Guaranty"). The Guaranty is an absolute, unconditional and continuing guaranty of the full and punctual payment and performance of all of the Obligations and not of their collectability only and is in no way conditioned upon any requirement that the Lender first attempt to collect any of the Obligations from the Borrower or resort to any collateral security or other means of obtaining payment. Should the Borrower default in the payment or performance of any of the Obligations, the obligations of Guarantor hereunder with respect to such Obligations in default shall, upon demand by the Lender, become immediately due and payable to the Lender, without notice of any nature, which notice is expressly waived by Guarantor. Payments by Guarantor hereunder may be required by the Lender on any number of occasions. All payments by Guarantor hereunder shall be made to the Lender, in the manner and at the place of payment specified therefor in this Agreement and/or the other Financing Documents.

(B) Guarantor's Agreement to Pay Enforcement Costs, etc. Guarantor further agrees, as the principal obligor and not as a guarantor only, to pay to the Lender, on demand, all costs and expenses (including court costs and reasonable legal expenses) incurred or expended by the Lender in connection with the Obligations, this Guaranty and the enforcement thereof, together with interest on amounts recoverable under this Section 4.14(B) from the time when such amounts become due until payment, whether before or after judgment, at the rate of interest for overdue principal set forth in this Agreement, provided that if such interest exceeds the maximum amount permitted to be paid under applicable law, then such interest shall be reduced to such maximum permitted amount.

(C) Waivers by Guarantor; Lender's Freedom to Act. Guarantor agrees that the Obligations will be paid and performed strictly in accordance with their respective terms, regardless of any law now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Lender with respect thereto. Guarantor waives promptness, diligence, presentment, demand, protest, notice of acceptance, notice of any Obligations incurred and all other notices of any kind, all defenses that may be available by virtue of any valuation, stay, moratorium law or other similar law now or hereafter in effect, any right to require the marshaling of assets of the Borrower or any other Person primarily or secondarily liable with respect to any of the Obligations, and all surety ship defenses generally. Without limiting the generality of the foregoing, Guarantor agrees to the provisions of any instrument evidencing, securing or otherwise executed in connection with any Obligation and agrees that the obligations of Guarantor hereunder shall not be released or discharged, in whole or in part, or otherwise affected by (a) the failure of the Lender to assert any claim or demand or to enforce any right or remedy against the Borrower or any other Person primarily or secondarily liable with respect to any of the Obligations; (b) any extensions, compromise, refinancing, consolidation or renewals of any Obligation; (c) any change in the time, place or manner of payment of any of the Obligations or any rescissions, waivers, compromise, refinancing, consolidation or other amendments or modifications of any of the terms or provisions of this Agreement, any other Financing Document or any other agreement evidencing, securing or otherwise executed in connection with any of the Obligations; (d) the addition, substitution or release of any Person primarily or secondarily liable for any Obligation; (e) the adequacy of any rights that the Lender may have against any collateral security or other means of obtaining repayment of any of the Obligations; (f) the impairment of any collateral securing any of the Obligations, including the failure to perfect or preserve any rights that the Lender might have in such

ARTICLE V. REPRESENTATIONS AND WARRANTIES OF  
THE LOAN PARTIES

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5.1 In order to induce Lender to enter into this Agreement, each of the Borrower and the Guarantor makes the following representations and warranties to Lender which shall be true, correct, and complete as of the date hereof, and shall be true, correct, and complete as of the Closing Date, and at and as of the date of the making of each Advance (or other extension of credit) made thereafter, as though made on and as of the date of such Advance (or other extension of credit) (except to the extent that such representations and warranties relate solely to an earlier date) and such representations and warranties shall survive the execution and delivery of this Agreement:

\* \* \* \* \*

(H) Intellectual Property. Each Loan Party owns, or holds licenses in, all trademarks, trade names, copyrights, patents, patent rights, software, code, computer programs and licenses that are necessary to the conduct of its business as currently conducted.

\* \* \* \* \*

(P) Collateral and Perfection of Liens.

1. The exact legal name of each of Borrower and Grantor is set forth on the signature pages of this Agreement.

2. This Agreement creates a valid security interest in the Collateral of each Borrower and Grantor, to the extent a security interest therein can be created under the Code, securing the payment of the Obligations. Except to the extent a security interest in the Collateral cannot be perfected by the filing of a financing statement under the Code, all filings and other actions necessary or desirable to perfect and protect such security interest have been duly taken or will have been taken upon the filing of the Financing Statements listing each applicable Borrower and/or Grantor, as a debtor, and the Secured Party, as a secured party, in the applicable jurisdictions. Upon the making of such filings, the Lender shall have a first priority perfected Lien on the Collateral of each Borrower and Grantor to the extent such Lien can be perfected by the filing of a financing statement except for Permitted Liens that may have priority to Lender's Lien. All action by any Borrower or Grantor necessary to protect and perfect such security interest on each item of Collateral has been duly taken. The Collateral is located as shown on Schedule \_\_\_\_\_.

3. Except for the Liens created hereby and expressly provided for herein, each Borrower and Grantor is and will at all times be the sole holder of record and the legal and beneficial owner, free and clear of all Liens other than Permitted Liens, of the Collateral owned by such Borrower and/or Grantor.

\* \* \* \* \*

(P) Collateral and Perfection of Liens.

1. The exact legal name of each of Borrower and Grantor is set forth on the signature pages of this Agreement.

2. This Agreement creates a valid security interest in the Collateral of each Borrower and Grantor, to the extent a security interest therein can be created under the Code, securing the payment of the Obligations. Except to the extent a security interest in the Collateral cannot be perfected by the filing of a financing statement under the Code, all filings and other actions necessary or desirable to perfect and protect such security interest have been duly taken or will have been taken upon the filing of the Financing Statements listing each applicable Borrower and/or Grantor, as a debtor, and the Secured Party, as a secured party, in the applicable jurisdictions. Upon the making of such filings, the Lender shall have a first priority perfected Lien on the Collateral of each Borrower and Grantor to the extent such Lien can be perfected by the filing of a financing statement except for Permitted Liens that may have priority to Lender's Lien. All action by any Borrower or Grantor necessary to protect and perfect such security interest on each item of Collateral has been duly taken. The Collateral is located as shown on Schedule \_\_\_\_.

3. Except for the Liens created hereby and expressly provided for herein, each Borrower and Grantor is and will at all times be the sole holder of record and the legal and beneficial owner, free and clear of all Liens other than Permitted Liens, of the Collateral owned by such Borrower and/or Grantor.

\* \* \* \* \*

5.2 Guarantor represents and warrants the following:

a) The Guarantor is an individual.

\* \* \* \* \*

c) That she is the rightful and sole owner of U.S. patents #6,040,057, #6,146,766, #6,303,234, #09/927,062, #6,827,984, and #7,297,411.  
RE 40, 41, 42

ARTICLE VI. AFFIRMATIVE COVENANTS OF LOAN PARTIES

Except as provided in Section 15.17 herein, the Borrower and the Guarantor each hereby covenants and agree that from the date hereof until the payment in full of the Obligations, unless the Lender shall otherwise consent in writing, the Borrower and Guarantor shall

\* \* \* \* \*

6.8 Maintenance of First Priority. Take all such action, as may from time to time be necessary to maintain the security interests of the Lender in the Collateral, including the filing of any Financing Statement or Continuation Statement under the Code upon request by Lender, notifications of Account Debtors or filings in Bankruptcy Proceedings, providing necessary notices, providing necessary waivers and recording, filing, rerecording and refiling of any required documents.

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#### ARTICLE VII. NEGATIVE COVENANTS OF THE BORROWER AND GUARANTOR

7.1 Except as provided in Section 15.17 herein, each of the Borrower and Guarantor covenants and agrees that, from the date hereof until the payment in full of the Obligations (or such other period as may be specified herein), the Borrower and the Guarantor shall not do any of the following:

\* \* \* \* \*

(C) Liens. Create, incur, assume, or suffer to exist, directly or indirectly, any Lien on or with respect to any of its assets, of any kind, whether now owned or hereafter acquired, or any income or profits therefrom, except for Permitted Liens.

(D) Restrictions on Fundamental Changes.

1. Reorganizations. Enter into any merger, consolidation, reorganization, or recapitalization, or reclassify its Stock or equity;
2. Liquidations. Liquidate, wind up, or dissolve itself (or suffer any liquidation or dissolution);
3. Disposition of Assets. Permit the Borrower to convey, sell, lease, license, assign, transfer, or otherwise dispose of, in one transaction or a series of transactions, all or any substantial part of its assets, or
4. Discontinuation of Business. Suspend or go out of a substantial portion of its or their business.

(E) Disposal of Assets. Convey, sell, lease, license, assign, transfer, or otherwise dispose of any of its assets.

(F) Change Name. Change its name, FEIN, organizational identification number, jurisdiction of organization, or organizational identity.

(G) Change of Business. Make any change, without the prior written consent of the Lender, in the principal nature of its business or operations.

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## ARTICLE VIII. EVENTS OF DEFAULT

Any one or more of the following events shall constitute an event of default (each, an "Event of Default") under this Agreement:

8.1 Payment Default. If the Borrower fails to pay when due and payable, or when declared due and payable, all or any portion of the Obligations consisting of principal or interest due the Lender, or other amounts constituting Obligations (including any portion thereof that accrues after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding) or any other indebtedness and such failure continues for a period of five (5) Business Days after the date on which such failure first occurs.

8.2 Failure to Perform, Keep or Observe Covenants. If Borrower or any other Loan Party fails to perform, keep, or observe any affirmative covenant contained in any Section of this Agreement including failure to satisfy a condition subsequent set forth in Section 3.2 within the period stated, or the other Financing Documents (other than as expressly stated therein), and such failure continues for a period of ten (10) days after the date on which such failure first occurs or fails to perform, keep or observe any negative covenant.

8.3 Attachment; Levy. Other than for the Maturing Notes, if any portion of the Borrower's assets are attached, seized, subjected to a writ or distress warrant, or are levied upon, or come into the possession of any third Person and the same is not discharged before the earlier of thirty (30) days after the date it first arises or five (5) days prior to the date on which such Property or asset is subject to forfeiture by the Borrower.

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8.6 Restraint of Business. If any Loan Party is enjoined, restrained, or in any way prevented by court order from continuing to perform all or any part of its obligations under any Financing Document or to conduct all or any part of its business affairs.

8.7 Lien of Governmental Authority. If a notice of Lien, levy, or assessment is filed of record with respect to any of Loan Party's assets by the United States, or any department, agency, or instrumentality thereof, or by any state, county, municipal, or governmental agency, or if any taxes or debts owing at any time hereafter to any one or more of such entities becomes a Lien, whether choate or otherwise, upon any of such assets and the same is not paid before such payment is delinquent, in each case other than Permitted Liens;

8.8 Judgments. Other than the Maturing Notes, if one or more judgments, orders, or awards for an aggregate amount of \$25,000 or more (except to the extent covered by insurance pursuant to which the insurer has been notified and has not denied coverage and neither the Lender nor the Borrower has any good faith reason to believe that the insurer either (i) will deny coverage or (ii) has any basis to deny coverage) shall be entered or filed against any Loan Party or with respect to any of their respective assets, and the same is not released, discharged, bonded against, or stayed pending appeal before the earlier of thirty (30) days after the date it first arises or five (5) days prior to the date on which such asset is subject to being forfeited by such Loan Party;

8.9 Other Defaults. Other than the Maturing Notes, if there is a default in any agreement to which the Borrower is a party and such default (i) occurs at the final maturity of the obligations thereunder, or (ii) results in a right by the other party thereto, irrespective of whether exercised, to accelerate the maturity of Borrower's obligations thereunder, to terminate such agreement or to refuse to renew such agreement in accordance with an automatic renewal right therein;

8.10 Payment on Certain Indebtedness. If any Loan Party makes any payment on account of Indebtedness that has been contractually subordinated in right of payment to the payment of the Obligations, except to the extent such payment is permitted by the terms of the subordination provisions applicable to such Indebtedness or by this Agreement;

8.11 Untrue Representations, Warranties, Statements, Records. If any warranty, representation, statement, or Record made herein or in any other Financing Document or delivered by or on behalf of any Loan Party to the Lender in connection with this Agreement or any other Financing Document proves to be untrue in any material respect as of the date of issuance or making or deemed making thereof or if any such warranty, representation, statement, or Record that is already qualified on the basis of materiality or a dollar threshold or limitation proves to be untrue in any respect as of the date of issuance or making or deemed making thereof;

8.12 Lien on Collateral. If any Financing Document that purports to create a Lien, shall, for any reason, fail or cease to create a valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien on or security interest in the Collateral covered hereby or thereby, except as a result of a disposition of the applicable Collateral in a transaction permitted under this Agreement; unless cured by Borrower within five (5) days of notice thereof from the Lender;

8.13 Invalidity of Provisions. Any provision of any Financing Document shall at any time for any reason be declared to be null and void, or the validity or enforceability thereof shall be contested by any Loan Party, or a proceeding shall be commenced by any Loan Party, or by any Governmental Authority having jurisdiction over any Loan Party, seeking to establish the invalidity or unenforceability thereof, or any Loan Party or any Subsidiary of a Loan Party shall deny that it has any liability or obligation purported to be created under any Financing Document;

8.14 Cessation of Business. If there is any cessation of a substantial part of the business of any Loan Party for a period which could reasonably be expected to result in a Material Adverse Effect;

8.15 Suspension of License. If there occurs a loss, suspension or revocation of, or failure to renew, any license or permit now held or hereafter acquired by any Loan Party and such loss, suspension, revocation or failure to renew could reasonably be expected to result in a Material Adverse Effect;

8.16 Indictments and Certain Civil Proceedings. The indictment of any Loan Party or any principal or officer thereof under any criminal statute, or commencement of criminal or civil proceedings against any Loan Party or any principal or officer thereof, pursuant to which statute or proceedings the penalties or remedies sought or available include forfeiture to any Governmental Authority of a substantial portion of the Property of such Person;

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## ARTICLE IX. LENDER'S RIGHTS AND REMEDIES

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9.1 Rights and Remedies. Upon the occurrence, and during the continuation, of an Event of Default, the Lender (at its election but without notice of its election and without demand) may do any one or more of the following, all of which are authorized by the Loan Parties and which are in addition to any rights and remedies of the Lender set forth in Article IV:

(A) Acceleration. Declare all or any portion of the Obligations, whether evidenced by this Agreement, by any of the other Financing Documents, or otherwise, immediately due and payable, whereupon such Obligations shall forthwith become due and payable without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Loan Parties notwithstanding anything herein or in any other Financing Document to the contrary;

1. Notwithstanding the foregoing, Lender affirms and agrees that it will not accelerate the maturity of the Loan in the case of performance results by the Borrower. Borrower will have until the Maturity Date of the Loan to remedy any issues with performance by Borrower.

(B) Cease Advances. Cease advancing money or extending credit to or for the benefit of the Borrower under this Agreement, under any of the other Financing Documents, or under any other agreement between the Borrower and the Lender;

(C) Refuse to Extend Credit under this Agreement or other Financing Documents. Refuse to extend credit to the Borrower pursuant to this Agreement and any of the other Financing Documents and any other future liability or obligation of Lender hereunder or thereunder, but without affecting any of Lender's Liens in the Collateral and without affecting the Obligations;

(D) Protect Collateral. Without notice to or demand upon any Loan Party, make such payments and do such acts as the Lender considers necessary or reasonable to protect its security interest in the Collateral. The Borrower and Grantor agree to assemble the Collateral and all associated paper and electronic records if the Lender so requires, and to make the Collateral available to the Lender at a place that the Lender may designate. The Borrower and Grantor authorize the Lender, subject to the terms of any applicable lease, to enter the premises where the Collateral is located, to take and maintain possession of the Collateral, or any part of it, and to pay, purchase, contest, or compromise any Lien that in the Lender's determination, appears to conflict with the priority of the Lender's Liens in and to the Collateral and to pay all expenses incurred in connection therewith and to charge the Borrower for such expense. With respect to any of the Borrower's owned or leased premises, the Borrower, subject to the terms of any applicable lease, hereby grants the Lender and any designated agent, including replacement servicers, a license to enter into possession of such premises and to occupy the same, without charge, in order to exercise any of the Lender's rights or remedies

provided herein, at law, in equity, or otherwise;

(E) Set Off. Without notice to the Borrower and Grantor (such notice being expressly waived), and without constituting an acceptance of any Collateral in full or partial satisfaction of an obligation (within the meaning of the Code), set off and apply to the Obligations any and all (i) balances and deposits of any Borrower and Grantor held by the Lender, or (ii) Indebtedness at any time owing to or for the credit or the account of any Borrower and Grantor held by the Lender;

(F) Hold Balances and Deposits. Hold, as cash Collateral, any and all balances and deposits of the Borrower held by the Lender, to secure the full and final repayment of all of the Obligations;

(G) Dispose of the Collateral. Ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell (in the manner provided for herein) the Collateral;

(H) Sell the Collateral in a Commercially Reasonable Manner. Sell the Collateral at either a public or private sale, or both, by way of one or more contracts or transactions, for cash or on terms, in such manner and at such places (including the Borrower's premises) as the Lender determines is commercially reasonable. It is not necessary that the Collateral be present at any such sale;

(I) Credit Bid. The Lender and any of its Affiliates may be the purchaser or recipient of any or all of the Collateral at any sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral to be sold or otherwise disposed of, to use and apply any of the Obligations owed to such person as a credit on account of the purchase price of any Collateral payable by such person in connection with such sale or disposition;

(J) Appointment of Receiver. The Lender may seek the appointment of a receiver or keeper to take possession of all or any portion of the Collateral or to operate same and, to the maximum extent permitted by law, may seek the appointment of such a receiver without the requirement of prior notice or a hearing; and

(K) All other Rights and Remedies. Lender shall have all other rights and remedies available at law or in equity or pursuant to any other Financing Document.

(L) Event of Default under Section 8.4 or 8.5. The foregoing to the contrary notwithstanding, upon the occurrence of any Event of Default described in Section 8.4 or Section 8.5, in addition to the remedies set forth above, without any notice to any Loan Party or any other Person or any act by the Lender, the Obligations then outstanding, together with all accrued and unpaid interest thereon and all fees and all other amounts due under this Agreement and the other Financing Documents, shall automatically and immediately become due and payable, without presentment, demand, protest, or notice of any kind, all of which are expressly waived by each Loan Party.

9.2 Remedies Cumulative. The rights and remedies of the Lender under this Agreement, the other Financing Documents, and all other agreements shall be cumulative. The Lender shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No exercise by the Lender of one right or remedy shall be deemed an election, and no waiver by the Lender of any Event of Default shall be deemed a continuing waiver. No delay by the Lender shall constitute a waiver, election, or acquiescence by it.

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#### ARTICLE XI. WAIVERS; INDEMNIFICATION

11.1 Demand; Protest; etc. Each Loan Party waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, notice of nonpayment at maturity, notice of acceleration, notice of intent to accelerate, and notice of any release, compromise, settlement, extension, or renewal of any Financing Documents, instruments, Chattel Paper, and guarantees at any time held by the Lender on which any such Loan Party may in any way be liable. Each Loan Party further waives any requirement that the Lender first exhaust any right, power or remedy to proceed against any other Loan Party or all or any part of the Collateral before proceeding against it.

11.2 Lender's Liability for Collateral. Each Loan Party hereby agrees that: (a) so long as the Lender complies with its obligations, if any, under the Code, the Lender shall not in any way or manner be liable or responsible for: (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other Person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by Loan Parties. Each Loan Party further agrees that the Lender shall be deemed to have exercised reasonable care in the custody and preservation of any Collateral in its possession if such Collateral is accorded treatment substantially equivalent to that which the Lender, in its individual capacity, would customarily accord its own Property consisting of similar assets.

11.3 Indemnification. Each Party further agrees to reimburse the other for all losses, costs and expenses, including reasonable legal fees at the trial and appellate levels incurred by the losing party as a result of, in connection with, or related to any breach of this Agreement, including without limitation any misrepresentation by a Party and/or litigation arising out of or in connection with this Agreement or in order to enforce any provision of this Agreement.

#### ARTICLE XII. NOTICES

Unless otherwise provided in this Agreement, all notices or demands relating to this Agreement or any other Financing Document shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally

delivered or sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, electronic mail (at such email addresses as the Borrower or the Lender, as applicable, may designate to each other in accordance herewith), or telefacsimile, at the addresses set forth below:

<b>To Borrower or Guarantor:</b>  Karen Slimak CEO TimberSIL 4 Augusta Arbor Way Greenville, SC 29605 Phone: 703-798-2420 Fax: 864-277-0455 E-mail: Karen@timbersilwood.com	<b>With Copy To:</b>  Dan Slone, Esq. McGuireWoods LLP One James Center 901 E. Cary Street Richmond, VA 23219 Phone: 804-775-1041 Fax: 804.698.2175 E-mail: dslone@mcguirewoods.com
<b>To Lender:</b>  Adam Moskowitz -- Managing Member. ASM Black LLC. 7600 Jericho Turnpike -- Suite 302 Woodbury, New York 11797 Phone: (516) 422-7124 Fax: (516) 422-7118 Email: asm@asmcapital.com	<b>With Copy To:</b>  Martin Sklar, Esq. Kleinberg, Kaplan, Wolff & Cohen, P.C. 551 Fifth Avenue New York, New York 10176 Phone: (212) 986-6000 Fax: (212) 986-8866 Email: lhui@kkwc.com

The Parties may change their notice address, by giving notice in writing to all other Parties. All notices or demands sent in accordance with this Paragraph, other than notices by the Lender in connection with enforcement rights against the Collateral under the provisions of the Code, shall be deemed received on the earlier of the date of actual receipt or three (3) Business Days after deposit of the notice in the United States mail, postage prepaid.

#### ARTICLE XIII. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER

THE VALIDITY OF THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER FINANCING DOCUMENT IN RESPECT OF SUCH OTHER FINANCING DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, AND THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF THE STATE OF VIRGINIA WITHOUT APPLICATION OF CONFLICT OF LAW PRINCIPLES.

THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN NEW

YORK COUNTY STATE OF NEW YORK, *PROVIDED, HOWEVER*, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT THE LENDER'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE THE LENDER ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH LOAN PARTY AND THE LENDER WAIVE, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS ARTICLE XIII.

EACH LOAN PARTY AND THE LENDER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE FINANCING DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. EACH LOAN PARTY AND THE LENDER REPRESENT THAT EACH LOAN PARTY AND THE LENDER HAVE REVIEWED THIS WAIVER AND KNOWINGLY AND VOLUNTARILY WAIVE THEIR RESPECTIVE JURY TRIAL RIGHTS FOLLOWING THE OPPORTUNITY FOR CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

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#### ARTICLE XIV. AMENDMENTS; WAIVERS; APPROVALS

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Amendments and Waivers. No amendment or waiver of any provision of this Agreement or any other Financing Document, and no consent with respect to any departure by any Loan Party therefrom, shall be effective unless the same shall be in writing and signed by the Lender and the Borrower and then any such waiver or consent shall be effective, but only in the specific instance and for the specific purpose for which given. No failure to exercise and no delay or omission in exercising any right, remedy or recourse on the part of any Party shall operate or be deemed as a waiver of such right, remedy or recourse hereunder or thereunder or preclude any other or further exercise thereof.

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#### ARTICLE XV. GENERAL PROVISIONS

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15.1 Effectiveness. This Agreement shall be binding and deemed effective when executed by the Borrower, Guarantor and the Lender on the signature pages hereof.

15.2 No Personal Recourse. Other than the Guarantor, no individual shareholder, officer, director, employee, or agent of the Borrower will have personal liability for the repayment of the Obligations of the Borrower or for the performance of any obligation of the Borrower under this Agreement.

15.3 Survival of Representations and Warranties. All representations, warranties and indemnification obligations made herein shall survive the execution and delivery of this Agreement and the other Financing Documents, and shall continue in full force and effect until payment in full by the Borrower of the Obligations.

15.4 Term and Termination. Except as otherwise provided herein, this Agreement shall continue in full force and effect until all obligations and undertakings of the Parties under this Agreement and under any other Financing Document have been fully discharged or performed.

15.5 Transferability of Agreement; Participations. No Party may assign its rights or duties under

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this Agreement without the express written consent of the other Parties. Absent such written consent, any assignment is null and void ab initio. The Parties understand and agree that the Lender may refer to this transaction in general terms in discussions with clients and potential clients.

15.6 Severability of Provisions. Should any one or more of the provisions of this Agreement be determined to be illegal or unenforceable, all other provisions, nevertheless, shall remain effective and binding on the Parties hereto and such provisions shall be deemed revised to the minimum extent necessary to render it enforceable.

15.7 Interpretation. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed against Lender or Loan Parties, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all Parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of all Parties hereto.

15.8 Section Headings. Titles and numbers of the sections of this Agreement are merely for convenience in reading and shall be deemed not to be a part of this Agreement and shall be ignored in construing any provision hereof. Unless the contrary is compelled by the context, everything contained in each Section applies equally to this entire Agreement.

15.9 Integration. This Agreement and the Financing Documents shall constitute the full and entire understanding and agreement of the Parties hereto and there are no further or other agreements or undertakings, written or oral, in effect between the Parties relating to the subject matter hereof unless expressly referred to herein or therein. All prior negotiations, agreements, representations, warranties, statements and undertakings concerning the subject matter hereof between the Parties hereto are superseded by this Agreement and the Financing Documents.

15.10 Counterparts; Electronic Delivery. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute but one and the same instrument. Delivery of this Agreement by any Party may be effected by transmitting an executed counterpart of this Agreement by facsimile or electronic mail in lieu of delivering a counterpart of this Agreement with such Party's original signature affixed thereto. A Party availing itself of electronic delivery intends to bind itself to the terms of this Agreement by its delivery in such manner and acknowledges and agrees that the other Party will and is entitled to rely on such Party's electronic delivery for all purposes. Any Party delivering an executed counterpart of this Agreement by facsimile or electronic mail also shall deliver an original executed counterpart of this Agreement, but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Financing Document.

15.11 Revival and Reinstatement of Obligations. If the incurrence or payment of the Obligations by the Borrower, or the transfer to Lender of any Property should for any reason subsequently be declared to be a Voidable Transfer, and if Lender is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the reasonable advice of its counsel, then, as to any such Voidable Transfer, or the amount thereof that Lender is required or elects to repay or restore, and as to all reasonable costs, expenses, and attorneys fees of Lender related thereto, the liability of the Borrower, shall automatically be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made.

15.12 USA PATRIOT Act. The Lender is subject to the requirements of the Act and hereby notifies Borrower that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies the Borrower and Guarantor, which information includes the name and address of the Borrower and Guarantor and other information that will allow Lender to identify the Borrower in accordance with the Act.

15.14 CHARACTERIZATION OF THE AGREEMENT      It is the intention of the Parties hereto to treat all Advances made under this Agreement as loans for federal, state and local income and franchise tax purposes as Indebtedness of the Borrower.

[The Remainder of This Page Has Been Intentionally Left Blank]

IN WITNESS WHEREOF, each of the Parties to this Agreement has caused its respective Authorized Officers to execute this Agreement as of the date first set forth above.

Lender: ASM Black, LLC

By: 

12/17/13

Borrower: Timber Treatment Technologies LLC

By: 

Karen M. Slimak  
December 17, 2013

Guarantor: Karen Slimak

By: 

Karen M. Slimak  
December 17, 2013