

Bkr	Date

Secured Promissory Note

\$ _____, 20____
 _____, California

FOR VALUE RECEIVED, _____, (the "Borrower"), hereby promises to pay to the order of _____, (the "Lender"), at such addresses as they or any subsequent holder(s) of this Secured Promissory Note (this "Note") may designate in writing, the principal sum of _____ Dollars (\$ _____) (the "Principal Amount"), in lawful money of the United States, together with interest thereon from the date hereof, at the interest rate hereinafter set forth.

This Note is made and delivered pursuant to the Purchase Agreement dated on or about _____, 20____ (the "Agreement") to purchase the assets of _____ ("Assets") by and among the Borrower (Buyer), the Lender (Seller), and such Agreement is hereby incorporated herein and made a part hererof. Unless otherwise defined herein, all capitalized terms shall have the same meaning ascribed to them in the Agreement. Notwithstanding its incorporation into the Agreement, this Note is enforceable as a stand-alone document.

- INTEREST: Unless in Actual Default, this Note shall bear an interest rate of _____ percent (_____ %) per annum. Notwithstanding anything else to the contrary, the interest rate shall not exceed the maximum rate of interest allowed by law. Any payment paid in excess of the maximum rate of interest shall be deemed to be a prepayment of principal. In the event of an Actual Default, this Note shall accrue interest at a rate of ten percent (10.0%) or the maximum legal rate, whichever is greater.
- PAYMENT SCHEDULE: Payments shall be based on:
 - Fully amortized principal and interest over _____ months. Payments shall commence on _____, 20____ in the monthly amount of \$ _____ for _____ months until paid in full but not later than the Maturity Date defined in Paragraph 3.
 - Interest only for _____ months followed by fully amortized principal and interest payments thereafter for _____ months. Interest-only payments shall commence on _____, 20____ in the monthly amount of \$ _____ for _____ months followed by fully amortized principal and interest monthly payments of \$ _____ for _____ months until paid in full but not later than the Maturity Date defined in Paragraph 3.
 - Interest only for _____ months and a balloon payment of the principal amount on the Maturity Date. Interest-only payments shall commence on _____, 20____ in the monthly amount of \$ _____ for _____ months followed by a balloon payment of \$ _____ (Principal Amount) on the Maturity Date defined in Paragraph 3.

For reference only, payments should match the attached Amortization Schedule, which is incorporated hereto.
- MATURITY: The entire loan balance, including any interest to date, must be repaid on or before _____, 20____.
- PREPAYMENT: The Borrower may, at any time and from time to time, prepay all or any portion of the outstanding principal balance of this Note without premium or penalty, together with the accrued but unpaid interest to the date of such prepayment on the amount so prepaid. The interest on any portion of the outstanding principal balance so prepaid shall cease as of the date of prepayment.

- 5. INSURANCE: Borrower shall provide proof of commercial general liability, fire, business contents and other insurance as necessary to reasonably protect the Assets no later than Closing. Buyer shall maintain such insurance policies continuously and without lapses until Maturity Date defined in Paragraph 3.
- 6. LATE FEES AND DEFAULT: If Borrower is more than 5 days late with any payment, a late fee of _____ percent (_____ %) of the past due amount shall be due and payable within 5 additional days. If any payment or late fee is not received within 10 days of any due date, Lender may email a Notice of Default to Borrower.
- 7. DEFAULT: An Actual Default shall occur if: (i) the Borrower fails to make any payment or late fee within 15 days after its due date or at least 5 days after the Lender's email of a Notice of Default to the Borrower, whichever is later that such payment is due; or, (ii) the Borrower fails within 30 days' email Notice by the Lender, to cure any of the following:
 - a. The Borrower transfers or encumbers any of the Assets, except for those transferred in the ordinary course of business.
 - b. Any equity of the Borrower (i.e., stock or membership of Borrower) is sold or transferred.
 - c. The Borrower or Guarantor files (or is the subject of any voluntary or involuntary petition for) bankruptcy, or other similar form of debtor relief.
 - d. The Borrower makes a general assignment for the benefit of creditors.
 - e. Any Guarantor repudiates any obligation under that certain Guaranty of same date herewith (the "Guaranty").
 - f. The Borrower fails to comply with insurance requirements of Paragraph 5.
 - g. Once any of the applicable cure periods in 7(i) or 7(ii) have expired, an Actual Default is no longer curable.
- 8. REMEDIES UPON ACTUAL DEFAULT: In the event of an Actual Default, the entire unpaid principal balance and all accrued but unpaid interest shall immediately become due and payable after 10 days' notice to the Borrower of acceleration of the debt. If not paid within those 10days, the Lender may place this Note in the hands of an attorney for collection and if the Borrower is judicially determined to have been in default hereunder, then the Borrower shall pay all costs of collection, including court costs and reasonable attorneys' fees. In the event of an Actual Default, any non-compete or non-solicitation provisions in the Agreement shall be rescinded and Lender may immediately resume control of the Business and its Assets. Should Lender make this election, Borrower agrees to fully cooperate with Lender to reassign any Business lease(s) then in effect. In addition to Lender's monetary collection rights above, Lender may also repossess the Assets of the Borrower hereunder. Should Lender repossess the Assets of Borrower and subsequently sell the same, Borrower shall receive a credit toward of any such sale toward the unpaid balance of this Note. All rights of the Lender under an Actual Default are cumulative.
- 9. RIGHT TO OFFSET: In the event Lender (Seller) commits a material breach of the Agreement (or any Addendum or Amendment thereto) so as to cause damages to Borrower (Buyer), then Borrower may offset any payments or balance due under this Note in an amount not to exceed Borrower's damages thereon. Borrower must first give Lender notice of any such breach and proposed offset with reasonable particularity on or before the date that payment is due. If Lender does not agree with: a) Borrower's determination of an uncured material breach; or b) the amount of Borrower's claim for damages, then Lender shall notify Borrower that such claims for offset are in dispute. Within 10 days of such notice of dispute by Lender, Borrower shall make any and all payments subject to dispute into a mutually agreed upon Escrow, where such funds shall remain pending resolution of the dispute. Any payments or portion of those payments not subject to dispute must still be timely made by Borrower to Lender. This right to offset is not an exclusive remedy and shall not preclude Borrower (Buyer) from enforcing any other rights or remedies available to Borrower (Buyer) under the Agreement.
- 10. DISPUTE RESOLUTION: The dispute resolutions provisions of the Agreement shall apply to this Note and its Guaranty.
- 11. NOTE CONTROLLING: In the event of any conflicts between this Note and the Agreement, this Note shall be controlling.
- 12. WAIVER: This Note may be waived, changed, or modified only by an agreement in writing, signed by all parties. No delay by the Payee or any Lender in exercising any power or privilege hereunder, nor any single or partial exercise of any power or privilege hereunder, shall preclude any other or further exercise thereof, the exercise of any other power or privilege hereunder.
- 13. GUARANTY: The obligations of Borrower under this Note are guaranteed by _____ ("Guarantor") pursuant to a separate Guaranty.
- 14. SECURITY INTEREST: Lender shall have a security interest in all of the following: All of Borrowers' Assets, which is broadly defined to include, but not be limited to, those assets purchased under the Agreement, tangible and intangible, including but not limited to tradename, furniture, fixtures, equipment, inventory, cash and receivables.

Lender shall have the option (but not the obligation) to file UCC-1s with the California Secretary of State to perfect their security interest. If any UCC-1s are filed, within 10 business days of Borrower satisfying all obligations under this Note, Lender shall file a UCC-3 terminating the lien (and if Lender fails to timely make such filing, Lender hereby authorizes Borrower to do so).
- 15. NOTICES: All notices and other communications hereunder shall be deemed given and received if delivered pursuant to the notice terms described in the Agreement.
- 16. LAW GOVERNING: This Note was negotiated, executed, and delivered and shall be performed in the State of California, and shall be governed by and construed and enforced in accordance with the laws of the State of California, without regard for its conflict of laws rules. Venue for any disputes shall be the same as in the Agreement.

Business _____ Borrower _____ Date _____

- 17. TIME OF ESSENCE: Time is hereby expressly declared to be of the essence of this Note and of every provision hereof.
- 18. ASSIGNMENT: This Note is not a negotiable instrument. Lender may assign this Note to any shareholder or member. Other than above, neither Borrower nor Lender may assign this Note without mutual consent.

NOTE: LIBERTY BUSINESS ADVISORS OF SAN FRANCISCO, INC. MAKES NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION. A BUSINESS BROKER IS NOT LICENSED OR QUALIFIED TO PROVIDE LEGAL, ACCOUNTING OR TAX ADVICE. SELLER AND BUYER ARE ADVISED TO CONSULT WITH INDEPENDENT ATTORNEYS, ACCOUNTANTS AND OTHER COMPETENT PROFESSIONALS WHEN ENTERING INTO AND COMPLETING THE TRANSACTION.

Subject to attached addendum

IN WITNESS WHEREOF, the Parties have executed this Note as of the date first above written.

BORROWER

LENDER

By: _____

By: _____