

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

DATE OF REPORT (DATE OF EARLIEST EVENT REPORTED): **September 16, 2009**

TGC INDUSTRIES, INC.

(Exact name of registrant as specified in its charter)

Texas
(State of incorporation)

001-32472
(Commission File No.)

74-2095844
(IRS Employer Identification No.)

101 E. Park Blvd., Suite 955
Plano, TX 75074
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: **(972) 881-1099**

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))

Item 1.01 – Entry into a Material Definitive Agreement

Amendment to Credit Facility

On September 16, 2009, TGC Industries, Inc. (“TGC” or the “Company”) entered into an Amended and Restated Loan and Security Agreement (the “Loan Agreement”) for the purpose of renewing and extending the Company’s line of credit with its lender, Sovereign Bank, a Texas state bank. In connection with such Loan Agreement, TGC signed an Amended and Restated Promissory Note (the “Note”). The Note allows TGC to borrow, repay, and re-borrow from time to time until September 16, 2010, up to the lesser of \$5,000,000 or 80% of the Company’s eligible accounts receivable, and provides for an interest rate of the greater of the prime rate as quoted in the *Wall Street Journal* or five percent (5%). As collateral for such indebtedness, the Loan Agreement grants to Sovereign Bank a security interest covering all of the Company’s accounts receivable. The Loan Agreement provides for non-financial and financial covenants, including a minimum debt service coverage ratio in excess of 2.0 to 1.0 and a ratio of debt to worth not in excess of 1.25 to 1.0. As of this date, the Company has not drawn down any amounts under this line of credit. Copies of the Loan Agreement and the Note are being filed as Exhibits 10.1 and 10.2, respectively, to this Current Report on Form 8-K.

Item 9.01 Financial Statements and Exhibits.

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|------------|--|
| (d) | Exhibits. |
| 10.1 | Amended and Restated Loan and Security Agreement by and between TGC Industries, Inc. and Sovereign Bank, dated September 16, 2009. |
| 10.2 | Amended and Restated Promissory Note by and between TGC Industries, Inc. and Sovereign Bank, dated September 16, 2009. |

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.

TGC INDUSTRIES, INC.

Date: September 22, 2009

By: /s/ Wayne A. Whitener
Wayne A. Whitener
President and CEO
(Principal Executive Officer)

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EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
10.1	Amended and Restated Loan and Security Agreement by and between TGC Industries, Inc. and Sovereign Bank, dated September 16, 2009.
10.2	Amended and Restated Promissory Note by and between TGC Industries, Inc. and Sovereign Bank, dated September 16, 2009.

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AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT

THIS AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT (as amended, modified or restated from time to time, this "Agreement") dated as of **SEPTEMBER 16, 2009** (the "Closing Date"), will serve to set forth the terms of the Credit Facility by and between **SOVEREIGN BANK**, a Texas state bank (together with its successors and assigns, "Lender") and **TGC INDUSTRIES, INC.**, a Texas corporation ("Debtor").

RECITALS

WHEREAS, Lender and Debtor entered into that certain (1) **BUSINESS LOAN AGREEMENT** dated as of **SEPTEMBER 16, 2008**, pursuant to which Lender agreed to make a credit facility available to Debtor on the terms and conditions set forth therein (as amended, modified and restated from time to time, the "Original Loan Agreement"), and (2) **COMMERCIAL SECURITY AGREEMENT** dated as of **SEPTEMBER 16, 2008** (as amended, modified and restated from time to time, the "Original Security Agreement," and together with the Original Loan Agreement, the "Original Agreements"), and together with the other agreements, notes, instruments and documents evidencing, securing, governing, guaranteeing or pertaining thereto, the "Original Loan Documents"); and

WHEREAS, the parties hereto desire to amend the Original Loan Agreement and the Original Security Agreement as hereinafter provided and have agreed for purposes of clarity and ease of administration, to amend the Original Loan Agreement and the Original Security Agreement and then restate and supersede such agreements in their entirety by means of this Agreement; and

NOW THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

1. **Definitions.** As used in this Agreement, all exhibits, appendices and schedules hereto, and in any other Loan Documents made or delivered pursuant to this Agreement, the following terms will have the meanings given such terms in this Section 1 or in the provisions, sections or recitals herein:

(a) "Affiliate" means, with respect to a specified Person, another Person that directly or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

(b) "Business Day" means any day other than a Saturday, Sunday, or any other day on which the Federal Reserve Bank of Dallas, Texas, is closed.

(c) "Code" means the Uniform Commercial Code as the same may, from time to time, be enacted and in effect in the State of Texas; provided, that to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different articles or divisions of the Code, the definition of such term contained in Article 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, 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 Texas, 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 and for purposes of definitions related to such provisions.

(d) "Collateral" means:

(i) All present and future accounts now owned or hereafter acquired; and

(ii) All books, records, data, plans, manuals, computer software, computer tapes, computer systems, computer disks, computer programs, source codes and object codes containing any

information, pertaining directly or indirectly to the Collateral and all rights to retrieve data and other information pertaining directly or indirectly to the Collateral from third parties.

The term "Collateral," as used herein, shall also include all **SUPPORTING OBLIGATIONS, PRODUCTS** and **PROCEEDS** of all of the foregoing (including without limitation, insurance payable by reason of loss or damage to the foregoing property).

(e) "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.

(f) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

(g) "Debt" means as to any Person at any time (without duplication) all items of indebtedness, obligation or liability of a Person, whether mature or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, joint or several, that should be classified as liabilities in accordance with GAAP.

(h) "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.

(i) “*Governmental Authority*” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

(j) “*Indebtedness*” means (i) all indebtedness, obligations and liabilities of Debtor to Lender of any kind or character, now existing or hereafter arising, now existing or hereafter arising under the Note, this Agreement, the other Loan Documents, (ii) all accrued but unpaid interest on any of the indebtedness described in (i) above, (iii) all 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 (i) and (ii) 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 (iv) all renewals, extensions, modifications and rearrangements of the indebtedness and obligations described in (i), (ii), and (iii) above.

(k) “*Loan Documents*” means this Agreement, the Note and the other agreements, instruments and documents evidencing, securing, governing, guaranteeing or pertaining to the Loans.

(l) “*Loans*” means all advances under the Credit Facility as established pursuant to the Loan Documents from time to time.

(m) “*Material Adverse Effect*” means a material adverse effect on (i) the business, assets, property, operations, condition (financial or otherwise), or prospects, of Debtor, (ii) the ability of Debtor to pay or perform the Indebtedness, (iii) any of the rights of or benefits available to Lender under the Loan Documents, or (iv) the validity or enforceability of the Loan Documents.

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(n) “*Note*” means that certain **AMENDED AND RESTATED PROMISSORY NOTE** of even date herewith in the principal amount of **FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00)** executed by Debtor and payable to the order of Lender (as such Note may be amended, modified or restated from time to time).

(o) “*Permitted Encumbrances*” means the following encumbrances: (i) liens for taxes, assessments or governmental charges or levies not yet due and payable or liens for taxes, assessments or governmental charges or levies being contested in good faith and by appropriate proceedings for which adequate reserves have been established in accordance with GAAP; (ii) liens in existence on the Closing Date which are listed, and the property subject thereto described, on Schedule 1(o), without giving effect to any extensions or renewals thereof; (iii) liens arising from judgments, decrees, awards or attachments in circumstances not constituting an Event of Default; and (iv) liens in favor of Lender.

(p) “*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.

All words and phrases used herein shall have the meaning specified in the Code except to the extent such meaning is inconsistent with this Agreement. 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. Any accounting term used in the Loan Documents shall have, unless otherwise specifically provided therein, the meaning customarily given such term in accordance with GAAP, and all financial computations thereunder shall be computed, unless otherwise specifically provided therein, in accordance with GAAP consistently applied; provided, that all financial covenants and calculations in the Loan Documents shall be made in accordance with GAAP as in effect on the Closing Date unless Debtor and Lender shall otherwise specifically agree in writing. That certain items or computations are explicitly modified by the phrase “in accordance with GAAP” shall in no way be construed to limit the foregoing.

2. **Credit Facility.**

(a) **Establishment of Credit Facility.** Subject to the terms and conditions set forth in this Agreement and the other Loan Documents, Lender hereby agrees to lend to Debtor an aggregate sum not to exceed the *lesser* of (i) an amount equal to the Borrowing Base, or (ii) **FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00)** (the “*Credit Facility*”), on a revolving basis from time to time during the period commencing on the date hereof and continuing until: (i) the acceleration of the Indebtedness pursuant to the terms of the Loan Documents; (ii) **SEPTEMBER 16, 2010**; or (iii) such other date as may be established by a written instrument between Debtor and Lender from time to time (the “*Revolving Credit Maturity Date*”). If at any time the sum of the aggregate principal amount of Loans outstanding hereunder exceeds *lesser* of the Credit Facility or the Borrowing Base, such amounts shall be deemed an “*Overadvance*.” Debtor shall immediately repay the amount of such Overadvance *plus* all accrued and unpaid interest thereon upon written demand from Lender. Notwithstanding anything contained herein to the contrary, an Overadvance shall be considered a Loan and shall bear interest at the Rate as set forth in the Note and be secured by this Agreement. Subject to the terms and conditions hereof, Debtor may borrow, repay and reborrow funds under the Credit Facility.

(b) **Certain Defined Terms Relating to the Credit Facility.** With respect to Loans under Credit Facility, the following terms shall have the following meanings:

(i) “*Borrowing Base*” means a sum equal to up to: **EIGHTY PERCENT (80.00%)** of the amount of Debtor’s Eligible Accounts, provided, however, Lender shall have the right to create and adjust eligibility standards and related reserves from time to time in its reasonable credit judgment with respect to Debtor’s Eligible Accounts.

(ii) “*Eligible Accounts*” means, at any time, all accounts receivable of Debtor, created in the ordinary course of business that are acceptable to the Lender in its sole discretion and satisfy the following conditions:

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- (1) The account complies with all applicable laws, rules, and regulations;
- (2) The account has not been outstanding for more than **NINETY (90)** days past the original date of invoice;
- (3) The account does not represent a commission and the account was created under an enforceable contract in connection with (A) the sale of goods by Debtor in the ordinary course of business and such sale has been consummated and such goods have been shipped and delivered and received by the account debtor, or (B) the performance of services by Debtor in the ordinary course of business and such account was created in accordance with the terms of the contract between Debtor and the account debtor and accepted by the account debtor;
- (4) The account does not arise from the sale of any good that is on a bill-and-hold, guaranteed sale, sale-or-return, sale on approval, consignment, or any other repurchase or return basis;
- (5) Debtor has good and indefeasible title to the account and the account is not subject to any lien except liens in favor of the Lender;
- (6) The account does not arise out of a contract with or order from, an account debtor that, by its terms, prohibits or makes void or unenforceable the grant of a security interest by Debtor to the Lender in and to such account;
- (7) The account is not subject to any setoff, counterclaim, defense, dispute, recoupment, or adjustment other than normal discounts for prompt payment;
- (8) The account debtor is not insolvent or the subject of any bankruptcy or insolvency proceeding and has not made an assignment for the benefit of creditors, suspended normal business operations, dissolved, liquidated, terminated its existence, ceased to pay its debts as they become due, or suffered a receiver or trustee to be appointed for any of its assets or affairs;
- (9) The account is not evidenced by chattel paper or an instrument;
- (10) No default exists under the account by any party thereto;
- (11) The account debtor has not returned or refused to retain, or otherwise notified Debtor of any dispute concerning, or claimed nonconformity of, any of the goods from the sale of which the account arose;
- (12) The account is not owed by an Affiliate, employee, officer, director or equity holder of Debtor;
- (13) The account is payable in U.S. Dollars by the account debtor;
- (14) The account shall be ineligible if the account debtor is domiciled in any country other than the United States of America;
- (15) The account shall be ineligible if the account debtor is the United States of America or any department, agency, or instrumentality thereof, and the Federal Assignment of Claims Act of 1940, as amended, shall not have been complied with;
- (16) The account is otherwise acceptable in the sole discretion of the Lender.

The amount of the Eligible Accounts owed by an account debtor to Debtor shall be reduced by the amount of all “contra accounts” and other obligations owed by Debtor to such account debtor. In the event that Lender, at any time in its reasonable discretion, determines that the dollar amount of Eligible Accounts collectable by Debtor is reduced or diluted as a result of discounts or rebates granted by Debtor, returned,

rejected or disputed goods or services, or such other reasons or factors as Lender deems applicable, Lender may reduce or otherwise modify the percentage of Eligible Accounts included within Borrowing Base, and/or reduce the dollar amount of Debtor’s Eligible Accounts by an amount determined by Lender in its reasonable discretion.

(c) **Funding.** Lender reserves the right to require not less than **ONE (1)** Business Day prior notice of each Loan under the Credit Facility, specifying the aggregate amount of such Loan together with any documentation relating thereto as Lender may reasonably request; including, but not limited to, a Borrowing Base report. Debtor shall give Lender notice of each Loan under the Credit Facility by no later than 1:00 p.m. (Dallas, Texas time) on the date provided herein. Lender at its option may accept telephonic requests for such Loan, provided that such acceptance shall not constitute a waiver of Lender’s right to require delivery of a written request in connection with subsequent Loans. Lender shall have no liability to Debtor for any loss or damage suffered by Debtor 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 Debtor 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 Loan under this section shall be made available to Debtor by depositing the same, in immediately available funds, in an account of Debtor designated by Debtor or by paying the proceeds of such Loan to a third party designated by Debtor.

(d) **Use of Proceeds.** The Loans under the Credit Facility shall be used by Debtor solely for business operations.

3. **Note, Rate and Computation of Interest.** The Credit Facility shall be evidenced by the Note. The principal of and interest on the Note shall be due and payable in accordance with the respective terms and conditions set forth in the Note and in this Agreement.

4. **Collateral.**

(a) **Grant of Security Interest.** As collateral security for the prompt payment in full when due (whether at stated maturity, by acceleration or otherwise) of the Indebtedness, Debtor hereby pledges to and grants Lender, a security interest in, all of Debtor's right, title and interest in the Collateral, whether now owned by Debtor or hereafter acquired and whether now existing or hereafter coming into existence.

(b) **Additional Documents.** To secure full and complete payment and performance of the Indebtedness, Debtor shall execute and deliver or cause to be executed and delivered all of the Loan Documents reasonably required by Lender covering the Collateral. Debtor shall execute and cause to be executed such further documents and instruments, as Lender, in its reasonable discretion, deems necessary or desirable to create, evidence, preserve, and perfect its liens and security interests in the Collateral. In the event any of the Loan Documents evidencing or securing the Indebtedness misrepresents or inaccurately reflects the correct terms and/or provisions of the Indebtedness, Debtor shall upon request by Lender and in order to correct such mistake, execute such new documents or initial corrected, original documents as Lender may deem necessary to remedy said errors or mistakes. Debtor shall execute such other documents as Lender shall deem reasonably necessary to correct any defects or deficiencies in the Loan Documents. Debtor's failure to execute such documents as requested shall constitute an Event of Default under this Agreement.

(c) **Setoff.** If an Event of Default shall have occurred and be continuing, Lender shall have the right to set off and apply against the Indebtedness in such manner as Lender may determine, at any time and without notice to Debtor, 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 Debtor whether or not the Indebtedness is then due. Debtor hereby grants to Lender as lien and security interest in all deposit accounts of Debtor with Lender. The rights and remedies of Lender hereunder are in addition to any other rights and remedies (including, without limitation, other rights of setoff) which Lender may have.

(d) **Satisfaction of Indebtedness.** Until the Indebtedness has been indefeasibly paid and fully satisfied (other than contingent indemnification obligations to the extent no unsatisfied claim has been

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asserted) and the commitments of Lender under the Credit Facility have been terminated, Lender shall be entitled to retain the security interests in the Collateral granted under the Loan Documents and the ability to exercise all rights and remedies available to Lender under the Loan Documents and applicable laws.

5. **Conditions Precedent.**

(a) **Initial Loan.** The obligation of Lender to make the initial Loan under the Credit Facility, is subject to the condition precedent that Lender shall have received on or before the day of such Loan all of the following, each dated (unless otherwise indicated) as of the Closing Date, in form and substance satisfactory to Lender:

(i) **Resolutions.** Resolutions of the governing body of Debtor certified by an authorized officer or representative of Lender which authorize the execution, delivery, and performance of the Loan Documents that Lender is a party to;

(ii) **Incumbency Certificate.** A certificate of incumbency certified by an authorized officer or representative of Debtor certifying the names of the individuals or other Persons authorized to sign the Loan Documents to which Debtor that is not a natural Person is to be a party (including the certificates contemplated herein) together with specimen signatures of such Persons;

(iii) **Constituent Documents.** The Constituent Documents of Debtor that is not a natural Person certified to Lender as being true and correct as of the date of this Agreement;

(iv) **Loan Documents.** The Loan Documents executed by Debtor;

(v) **Fees and Expenses.** Evidence that the costs and expenses of Lender (including reasonable attorneys' fees) and all fees owing to Lender, shall have been paid in full by Debtor;

(vi) **Other Matters.** Such other documents and agreements as may be required by Lender in its reasonable discretion.

(b) **All Loans.** The obligation of Lender to make any Loan shall be subject to the following additional conditions precedent:

(i) **Request for Loan.** Lender shall have received in accordance with this Agreement, a request for a Loan in form and content satisfactory to Lender in its reasonable discretion dated as of the date of request and executed by an authorized officer of Debtor;

(ii) **No Event of Default, Etc.** No Event of Default, event which with the passage of time and/or notice would be an Event of Default, or event which would reasonably be expected to have a Material Adverse Effect shall have occurred and be continuing, or would result from or after giving effect to such Loan; and

(iii) **Representations and Warranties.** All of the representations and warranties contained in the Loan Documents shall be true and correct in material respects 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.

6. **Representations and Warranties.** Debtor hereby represents and warrants, and upon each request for a Loan represents and warrants to Lender as follows:

(a) **Existence.** Debtor (i) is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization; (ii) has all requisite power and authority to own its assets and carry on its business as now being or as proposed to be conducted; and (iii) 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 would have a Material Adverse Effect. Debtor has the power and authority to execute, deliver, and

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perform its obligations under the Loan Documents to which it is or may become a party. The federal tax identification number and state organizational number for Debtor are set forth below:

Federal Tax Identification Number	State Filing Number
74-2095844	0051318400

(b) **Binding Obligations.** The execution, delivery, and performance of the Loan Documents by Debtor have been duly authorized by all necessary action by Debtor, and constitute legal, valid and binding obligations of Debtor, enforceable in accordance with their respective terms, except as limited by bankruptcy, insolvency or similar laws of general application relating to the enforcement of creditors' rights and except to the extent specific remedies may generally be limited by equitable principles.

(c) **No Consent.** The execution, delivery and performance of the Loan Documents, and the consummation of the transactions contemplated thereby, do not (i) conflict with, result in a violation of, or constitute a default under (1) any provision of the Constituent Documents (if any) or other instrument binding upon Debtor, (2) any law, governmental regulation, court decree or order applicable to Debtor, or (3) any contractual obligation, agreement, judgment, license, order or permit applicable to or binding upon Debtor, (ii) require the consent, approval or authorization of any third party, or (iii) result in or require the creation of any lien, charge or encumbrance upon any property of Debtor except as may be expressly contemplated in the Loan Documents.

(d) **Financial Condition.** Each financial statement of Debtor supplied to Lender truly discloses and fairly presents such Person's financial condition as of the date of each such statement. There has been no material adverse change in such financial condition or results of operations of Debtor subsequent to the date of the most recent financial statement supplied to Lender.

(e) **Operation of Business.** Debtor possesses all contracts, licenses, permits, franchises, patents, copyrights, trademarks, and tradenames, or rights thereto, necessary to conduct its businesses substantially as now conducted and as presently proposed to be conducted, and Debtor and is not in violation of any valid rights of others with respect to any of the foregoing, except any violations that would not reasonably be expected to have a Material Adverse Effect.

(f) **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 Debtor, threatened against or affecting Debtor that would, if adversely determined, have a Material Adverse Effect. There are no outstanding judgments against Debtor.

(g) **Rights in Properties; Liens.** Debtor has good title to or valid leasehold interests in its properties and assets, including the properties and assets reflected in the financial statements provided to Lender, and none of the Collateral is subject to any lien, except Permitted Encumbrances.

(h) **Disclosure.** No statement, information, report, representation, or warranty made by Debtor in the Loan Documents or furnished to Lender in connection with the Loan Documents or any of the transactions contemplated hereby contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements herein or therein not misleading. There is no fact known to Debtor which would reasonably be expected to have a Material Adverse Effect that has not been disclosed in writing to Lender.

(i) **Agreements.** Debtor is not 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 would reasonably be expected to have a Material Adverse Effect. Debtor is not in default in any material 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.

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(j) **Compliance with Laws.** Debtor is not in violation of any law, rule, regulation, order, or decree of any Governmental Authority or arbitrator, the violation of which would reasonably be expected to have a Material Adverse Effect.

(k) **Taxes; Governmental Charges.** Debtor has filed all federal, state and local tax reports and returns required by any law or regulation to be filed by it and has either duly paid all taxes, duties and charges indicated due on the basis of such returns and reports, or made adequate provision for the payment thereof, and the assessment of any material amount of additional taxes in excess of those paid and reported is not reasonably expected.

(l) **Security Interest.** Debtor has and will have at all times full right, power and authority to grant a security interest in the Collateral to Lender in the manner provided herein, free and clear of any lien, security interest or other charge or encumbrance other than for the Permitted Encumbrances. This Agreement creates a legal, valid and binding first priority security interest (subject to Permitted Encumbrances) in favor of Lender in the Collateral securing the Indebtedness.

(m) **Location.** Debtor's chief executive office and the office where the records concerning the Collateral are kept are at its address set forth on the signature page hereof.

(n) **Solvency.** On the Closing Date and on the date of each Loan, Debtor will be and after giving effect to the requested Loan, will be, solvent.

7. **Covenants.** Until all Indebtedness of Debtor under the Loan Documents is indefeasibly paid or performed, and Lender has no further commitment to lend under the Credit Facility, Debtor agrees and covenants as follows:

(a) **Payment of Obligations.** Debtor will pay its obligations, including tax liabilities, that, if not paid, could become a lien on any of its property, before the same shall become delinquent or in default, except where (i) the validity or amount thereof is being contested in good faith by

appropriate proceedings, and (ii) Debtor has set aside on its books adequate reserves with respect thereto in accordance with GAAP.

(b) **Maintenance and Conduct of Business.** Debtor will (i) keep, maintain and preserve all property (tangible and intangible) material to the conduct of its business in good working order and condition, ordinary wear and tear excepted, (ii) do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges, agreements and franchises material to the conduct of its business, and (iii) engage in an efficient and economical manner in a business of the same general type and within Debtor's powers under Constituent Documents.

(c) **Books and Records; Inspection Rights.** Debtor will keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. Debtor will permit any representatives designated by Lender, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested.

(d) **Insurance.** Debtor will maintain insurance, including but not limited to, fire insurance, comprehensive property damage, public liability, worker's compensation, business interruption and other insurance deemed reasonably necessary. Debtor will, at its own expense, maintain insurance with respect to all Collateral in such amounts, against such risks, in such form and with such insurers, as shall be satisfactory to Lender from time to time. Each policy of insurance maintained by Debtor shall (i) name Debtor and Lender as insured parties thereunder (without any representation or warranty by or obligation upon Lender) as their interests may appear, (ii) contain the agreement by the insurer that any loss thereunder shall be payable to Lender notwithstanding any action, inaction or breach of representation or warranty by Debtor, (iii) provide that there shall be no recourse against Lender for payment of premiums or other amounts with respect thereto, and (iv) provide prior written notice of cancellation or of lapse shall be given to Lender by the insurer in accordance with the insurer's commercial practices as adopted from time

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to time. Debtor will deliver to Lender original or duplicate policies of such insurance. Debtor will also, at the request of Lender, duly execute and deliver instruments of assignment of such insurance policies and cause the respective insurers to acknowledge notice of such assignment. All insurance payments in respect of loss of or damage to any Collateral shall be paid to Lender and applied by Lender in accordance with the Loan Documents, provided, however, that so long as no Event of Default or event which with notice and/or the passage of time would be an Event of Default exists, Debtor may use such insurance payments for the repair or replacement of such lost or damaged property.

(e) **Compliance with Laws.** Debtor will comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(f) **Compliance with Agreements.** Debtor will comply, in all material respects with all material agreements, contracts, and instruments binding on it or affecting its properties or business.

(g) **Notice of Indebtedness.** Debtor will promptly inform Lender of the creation, incurrence or assumption by Debtor of any actual or contingent liabilities not permitted under this Agreement.

(h) **Notices of Material Events.** Debtor will furnish to Lender prompt written notice of the following:

(i) the occurrence of any Event of Default;

(ii) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting Debtor thereof that, if adversely determined, would reasonably be expected to result in a Material Adverse Effect;

(iii) any and all material adverse changes in Debtor's condition and all claims made against Debtor that would materially affect the financial condition of Debtor.

Each notice delivered under this Section shall be accompanied by a statement of an executive officer of Debtor setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

(i) **Ownership and Liens.** Debtor will maintain good and indefeasible title to the Collateral free and clear of all liens, security interests, encumbrances or adverse claims, except for Permitted Encumbrances. Debtor will cause any financing statement or other security instrument with respect to the Collateral to be terminated, except for Permitted Encumbrances. Debtor will defend at its expense Lender's right, title and security interest in and to the Collateral against the claims of any third party.

(j) **Accounts.** Debtor will, except as otherwise provided herein, collect, at Debtor's own expense, all amounts due or to become due under each of the accounts. In connection with such collections, Debtor may and, at Lender's direction, will take such action not otherwise forbidden herein as Debtor or Lender may deem reasonably necessary or advisable to enforce collection or performance of each of the accounts. Debtor will also duly perform and cause to be performed all of its material obligations with respect to the goods or services, the sale or lease or rendition of which gave rise or will give rise to each account. Debtor also covenants and agrees to take any action and/or execute any documents that Lender may reasonably request in order to comply with law relating to the assignment of the accounts.

(k) **Fundamental Change.** Debtor will not (i) make any material change in the nature of its business as carried on as of the date hereof, (ii) liquidate, merge or consolidate with or into any other Person, or (iii) make a change in organizational structure or the jurisdiction in which it is organized, unless it has provided Lender with **THIRTY (30)** days prior written notice.

(l) **Loans.** Debtor will not make loans or guarantee any obligation of any other Person or entity other (i) than loans or advances to employees of Debtor not to exceed **FIFTY THOUSAND AND**

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NO/100 DOLLARS (\$50,000.00) in the aggregate outstanding at any time, including such loans and advances outstanding on the Closing Date, (ii) accounts receivable for sales of inventory and other products and services provided by Debtor to its respective customers in the ordinary course of business of Debtor, and (iii) bridge loans (not to exceed a term of **ONE (1)** year) to Persons who are an acquisition candidate of Debtor not to exceed in the aggregate **FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00)**.

(m) **Transactions With Affiliates.** Debtor will not enter into any transaction, including, without limitation, the purchase, sale or exchange of property or the rendering of any service, with any Affiliate of Debtor, except in the ordinary course of and pursuant to the reasonable requirements of Debtor's business (upon prior written notice to Lender) and upon fair and reasonable terms no less favorable to Debtor than would be obtained in a comparable arm's-length transaction with a Person or entity not an Affiliate of Debtor.

(n) **Transfer or Encumbrance.** Debtor will not (i) sell, assign (by operation of law or otherwise), transfer, exchange, lease or otherwise dispose of any of the Collateral, or (ii) grant a lien or security interest in or execute, file or record any financing statement or other security instrument with respect to the Collateral other than the Permitted Encumbrances.

(o) **Impairment of Security Interest.** Debtor will not take any action that would in any manner impair the enforceability of Lender's security interest in any Collateral.

(p) **Compromise of Collateral.** Debtor will not adjust, settle, compromise, amend or modify any Collateral, except an adjustment, settlement, compromise, amendment or modification in good faith and in the ordinary course of business; provided, however, this exception shall terminate following written notice from Lender upon the occurrence and during the continuation of an Event of Default. Debtor shall provide to Lender such information concerning (i) any adjustment, settlement, compromise, amendment or modification of any Collateral, and (ii) any claim asserted by any account debtor for credit, allowance, adjustment, dispute, setoff or counterclaim, as Lender may reasonably request from time to time.

8. **Financial Covenants.** Until all Indebtedness of Debtor under the Loan Documents is indefeasibly paid or satisfied and Lender has no further commitment to lend under the Credit Facility, Debtor agrees and covenants that it will, unless Lender shall otherwise consent in writing:

(a) **Liabilities/Tangible Net Worth.** Debtor will maintain a ratio of (i) total liabilities (as determined by GAAP) minus Subordinated Debt, to (ii) Tangible Net Worth plus Subordinated Debt of not greater than 1.25 to 1.00 (as of the end of each calendar quarter). As soon as available and in any event within **FORTY-FIVE (45)** days of the end of each calendar quarter, Debtor shall provide Lender with a certificate of compliance together with such supporting information as Lender may reasonable require. "Subordinated Debt" means any indebtedness owing by Debtor which has been subordinated by written agreement to all indebtedness now or hereafter owing by Debtor to Lender, such agreement to be in form and substance acceptable to Lender. "Tangible Net Worth" means, as of any date, Debtor's total asset excluding all intangible assets, less total liabilities excluding any Subordinated Debt.

(b) **Debt Service Coverage Ratio.** Debtor shall maintain a Debt Service Coverage Ratio of not less than 2.00 to 1.00 (as of the end of each calendar quarter). As soon as available and in any event within **FORTY-FIVE (45)** days of the end of each calendar quarter, Debtor shall provide Lender with a certificate of compliance together with such supporting information as Lender may reasonable require. "Debt Service Coverage Ratio" means, for any period, the ratio of Debtor's earnings before interest, taxes, depreciation and amortization expense (EBITDA), for the last four quarters divided by total capital lease obligations plus notes payable, including accrued interest expense due within one year on the Credit Facility.

9. **Reporting Requirements.** Until all Indebtedness of Debtor under the Loan Documents is indefeasibly paid and satisfied, and Lender has no further commitment to lend under the Credit Facility, Debtor agrees and covenants that it will furnish or cause to be furnished the following:

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(a) **Quarterly Financial Statements.** As soon as available, and in any event within **FORTY-FIVE (45)** days after the end of each calendar quarter, financial statements to include a balance sheet, income statement and cash flow statement of Debtor, as of the end of such calendar quarter all in form and substance and in reasonable detail satisfactory to Lender and duly certified (subject to year-end review adjustments) by an appropriate officer of Debtor (i) as being true and correct in all material aspects to the best of such officer's knowledge (subject to year end adjustments), and (ii) as having been prepared in accordance with GAAP.

(b) **Annual Financial Statements.** As soon as available and in any event within **NINETY (90)** days after the end of each fiscal year, a financial statement to include a balance sheet, income statement and cash flow statement of Debtor, as of the end of such fiscal year, audited by independent certified public accountants of recognized standing satisfactory to the Lender.

(c) **Notice of Default and Events of Default.** As soon as possible and in any event within **FIVE (5)** Business Days after the occurrence of each Event of Default, a written notice setting forth the details of such Event of Default and the action which is proposed to be taken by Debtor with respect thereto.

(d) **Accounts Receivable Aging.** As soon as available, and in any event within **TWENTY (20)** days after the end of each calendar month, an account receivable aging, classifying Debtor's accounts receivable in categories of 0-30, 31-60, 61-90 and over 90 days from date of invoice, and in such form and detail as Lender shall require, certified by the chief financial officer of Debtor.

(e) **Borrowing Base.** As soon as available and in any event within **TWENTY (20)** days after the end of each calendar month or more often as may be required by Lender, a Borrowing Base report in form and content satisfactory to Lender in its reasonable discretion.

(f) **General Information.** Debtor shall promptly deliver such other information concerning Debtor as Lender may request.

10. **Rights of Lender.** Lender shall have the rights contained in this Section at all times that this Agreement is effective.

(a) **Financing Statements.** Debtor hereby authorizes Lender to file, without the signature of Debtor, one or more financing or continuation statements, and amendments thereto, relating to the Collateral. Debtor hereby irrevocably authorizes Lender at any time and from time to time to file in any Code jurisdiction any initial financing statements and amendments thereto that (i) indicate the Collateral (1) 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 9 of the Code, or (2) as being of an equal or lesser scope or with greater detail, and (ii) contain any other information required by Article 9 of the Code for the sufficiency or filing office acceptance of any financing statement or amendment.

(b) **Power of Attorney.** Debtor hereby irrevocably appoints Lender as Debtor's attorney-in-fact, such power of attorney being coupled with an interest, with full authority in the place and stead of Debtor and in the name of Debtor or otherwise, from time to time following the occurrence and during the continuation of an Event of Default in Lender's reasonable discretion, to take any action and to execute any instrument which Lender may deem necessary or appropriate to accomplish the purposes of this Agreement.

(c) **Performance by Lender.** If Debtor fails to perform any agreement or obligation provided for in any Loan Document, Lender may itself perform, or cause performance of, such agreement or obligation, and the expenses of Lender incurred in connection therewith shall be a part of the Indebtedness, secured by the Collateral and payable by Debtor on demand.

(d) **Debtor's Receipt of Proceeds.** Upon the occurrence and during the continuation of an Event of Default, all amounts and proceeds (including instruments and writings) received by Debtor in respect of the Collateral shall be received in trust for the benefit of Lender hereunder and, upon the written

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request of Lender, shall be segregated from other property of Debtor and shall be forthwith delivered to Lender in the same form as so received (with any necessary endorsement) and applied to the Indebtedness in accordance with the Loan Documents.

(e) **Notification of Account Debtors.** Lender may at its reasonable discretion from time to time during the continuation of an Event of Default notify any or all obligors under any accounts (i) of Lender's security interest in such accounts and direct such obligors to make payment of all amounts due or to become due to Debtor thereunder directly to Lender, and (ii) to verify the accounts with such obligors. Lender shall have the right, at the expense of Debtor, to enforce collection of any such accounts and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as Debtor.

11. **Events of Default.** Each of the following shall constitute an "*Event of Default*" under this Agreement:

(a) **Payment Default.** The failure, refusal or neglect of Debtor to pay when due any part of the principal of, or interest on the Indebtedness owing to Lender by Debtor from time to time and such failure, refusal or neglect shall continue unremedied for a period of **TEN (10) Days** from the date such payment is due.

(b) **Performance or Warranty Default.** The failure of Debtor to timely and properly observe, keep or perform any covenant, agreement, warranty or condition required herein or in any of the other Loan Documents other than with respect to a payment default as set forth in **Section 11(a)**, which is not cured within **FIVE (5) Business Days** following written notice from Lender to Debtor; provided, that (i) if such default cannot be cured within **FIVE (5) Business Days**, (ii) Debtor has, within such period, taken such actions as deemed reasonably necessary and appropriate by Lender to cure such default, and (iii) Debtor shall continue to diligently pursue such actions, such cure period shall be extended for a period of **THIRTY (30) days**.

(c) **Representations.** Any representation contained herein or in any of the other Loan Documents made by Debtor is false or misleading in any material respect.

(d) **Default Under Other Indebtedness.** The occurrence of any event which results in the acceleration of the maturity of any indebtedness for borrowed money in an aggregate principal amount in excess of **TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00)** owing by Debtor to any third party under any agreement or understanding.

(e) **Insolvency.** If Debtor (i) becomes insolvent, or makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they become due; (ii) generally is not paying its debts as such debts become due; (iii) has a receiver, trustee or custodian appointed for, or take possession of, all or substantially all of its assets, either in a proceeding brought by it or in a proceeding brought against it and such appointment is not discharged or such possession is not terminated within **SIXTY (60) days** after the effective date thereof or it consents to or acquiesces in such appointment or possession; (iv) files a petition for relief under the United States Bankruptcy Code or any other present or future federal or state insolvency, Bankruptcy or similar laws (all of the foregoing hereinafter collectively called "*Applicable Bankruptcy Law*") or an involuntary petition for relief is filed against it under any Applicable Bankruptcy Law and such involuntary petition is not dismissed within **SIXTY (60) days** after the filing thereof, or an order for relief naming it is entered under any Applicable Bankruptcy Law, or any composition, rearrangement, extension, reorganization or other relief of debtors now or hereafter existing is requested or consented to by it; or (v) fails to have discharged within a period of **SIXTY (60) days** any attachment, sequestration or similar writ levied upon any property of it.

(f) **Judgment.** The entry of any judgment against Debtor or the issuance or entry of any attachments or other liens against any of the property of Debtor for an amount in excess of **TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00)** (individually or in the

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aggregate) if uninsured, undischarged, unbonded or undischarged on the date on which such judgment could be executed upon.

(g) **Action Against Collateral.** The Collateral or any portion thereof is taken on execution or other process of law in any action.

(h) **Action of Lien Holder.** The holder of any lien or security interest the Collateral (without hereby implying the consent of Lender to the existence or creation of any such lien or security interest on the Collateral), declares a default thereunder or institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

(i) **Material Adverse Effect.** Any event shall have occurred or is continuing which shall have had a Material Adverse Effect.

(j) **Loan Documents.** The Loan Documents shall at any time after their execution and delivery and for any reason cease (i) to create a valid and perfected first priority security interest (subject to Permitted Encumbrances) in and to the Collateral; or (ii) to be in full force and effect or shall be declared null and void. The validity of enforceability the Loan Documents shall be contested by Debtor or any other Person party thereto or Debtor shall deny it has any further liability or obligation under the Loan Documents.

Nothing contained in this Agreement shall be construed to limit the events of default enumerated in any of the other Loan Documents and all such events of default shall be cumulative.

12. **Remedies and Related Rights.** If an Event of Default shall have occurred, and without limiting any other rights and remedies provided herein, under any of the Loan Documents or otherwise available to Lender, Lender may exercise one or more of the rights and remedies provided in this Section.

(a) **Remedies.** Upon the occurrence of any one or more of the foregoing Events of Default, (i) the entire unpaid balance of principal of the Note, together with all accrued but unpaid interest thereon, and all other Indebtedness owing to Lender by Debtor at such time shall, at the option of Lender, become immediately due and payable without further notice, demand, presentation, notice of dishonor, notice of intent to accelerate, notice of acceleration, protest or notice of protest of any kind, all of which are expressly waived by Debtor, and (ii) Lender may, at its option, cease further advances under the Note and this Agreement; provided, however, concurrently and automatically with the occurrence of an Event of Default under Subsection 11(e) further advances under the Loan Documents shall automatically cease, the Indebtedness at such time shall, without any action by Lender, become due and payable, without further notice, demand, presentation, notice of dishonor, notice of acceleration, notice of intent to accelerate, protest or notice of protest of any kind, all of which are expressly waived by Debtor. All rights and remedies of Lender set forth in this Agreement and in any of the other Loan Documents may also be exercised by Lender, at its option to be exercised in its sole discretion, upon the occurrence of an Event of Default, and not in substitution or diminution of any rights now or hereafter held by Lender under the terms of any other agreement.

(b) **Other Remedies.** Lender may from time to time at its discretion, without limitation and without notice except as expressly provided in any of the Loan Documents:

(i) Exercise in respect of the Collateral all the rights and remedies of a secured party under the Code (whether or not the Code applies to the affected Collateral);

(ii) Require Debtor to, and Debtor hereby agrees that it will at its expense and upon request of Lender, assemble the Collateral as directed by Lender and make it available to Lender at a place to be designated by Lender which is reasonably convenient to both parties;

(iii) Reduce its claim to judgment or foreclose or otherwise enforce, in whole or in part, the security interest granted hereunder by any available judicial procedure;

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(iv) Sell or otherwise dispose of, at its office, on the premises of Debtor or elsewhere, 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 or other disposition of any part of the Collateral shall not exhaust Lender's power of sale, but sales or other dispositions may be made from time to time until all of the Collateral has been sold or disposed of or until the Indebtedness has been paid and performed in full), and at any such sale or other disposition it shall not be necessary to exhibit any of the Collateral;

(v) Buy the Collateral, or any portion thereof, at any public sale;

(vi) Buy the Collateral, or any portion 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;

(vii) Apply for the appointment of a receiver for the Collateral, and Debtor hereby consents to any such appointment; and

(viii) At its option, retain the Collateral in satisfaction of the Indebtedness whenever the circumstances are such that Lender is entitled to do so under the Code or otherwise.

Debtor agrees that in the event Debtor is entitled to receive any notice under the Code, as it exists in the state governing any such notice, of the sale or other disposition of any Collateral, reasonable notice shall be deemed given when such notice is deposited in a depository receptacle under the care and custody of the United States Postal Service, postage prepaid, at Debtor's address set forth on the signature page hereof, **TEN (10)** days prior to the date of any public sale, or after which a private sale, of any of such Collateral is to be held. Lender shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. 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.

(c) **Application of Proceeds.** If any Event of Default shall have occurred, Lender may at its discretion apply or use any cash held by Lender as Collateral, and any cash proceeds received by Lender in respect of any sale or other disposition of, collection from, or other realization upon, all or any part of the Collateral as follows in such order and manner as Lender may elect:

(i) to the repayment or reimbursement of the reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Lender in connection with (1) the administration of the Loan Documents, (2) the custody, preservation, use or operation of, or the sale of, collection from, or other realization upon, the Collateral, and (3) the exercise or enforcement of any of the rights and remedies of Lender hereunder;

(ii) to the payment or other satisfaction of any liens and other encumbrances upon the Collateral;

(iii) to the satisfaction of the Indebtedness;

(iv) by holding such cash and proceeds as Collateral;

(v) to the payment of any other amounts required by applicable law; and

(vi) by delivery to Debtor or any other party lawfully entitled to receive such cash or proceeds whether by direction of a court of competent jurisdiction or otherwise.

(d) **License.** Lender 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 labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trademarks, service marks, customer lists and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in completing

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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 and all franchise agreements shall inure to Lender's benefit. In addition, Debtor hereby irrevocably agrees that Lender 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 Lender's rights under this 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 Lender may finish any work in process and affix any trademark owned by or licensed to Debtor and sell such inventory as provided herein.

(e) **Deficiency.** In the event that the proceeds of any sale of, collection from, or other realization upon, all or any part of the Collateral by Lender are insufficient to pay all amounts to which Lender is legally entitled, Debtor (unless otherwise provided) shall be liable for the deficiency, together with interest thereon as provided in the Loan Documents.

(f) **Non-Judicial Remedies.** In granting to Lender 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 Lender to enforce its rights by judicial process. Debtor recognizes and concedes that non-judicial 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 to prevent Lender or Debtor from resorting to judicial process at either party's option.

(g) **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 shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement 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.

(h) **Equitable Relief.** Debtor recognizes that in the event Debtor fails to pay, perform, observe, or discharge any or all of the Indebtedness, any remedy at law may prove to be inadequate relief to Lender. Debtor 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.

13. **Indemnity.** Debtor hereby indemnifies and agrees to hold harmless Lender, and its officers, directors, employees, agents and representatives (each an "Indemnified Person") from and against any and all liabilities, obligations, claims, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature (collectively, the "Claims") which may be imposed on, incurred by, or asserted against, any Indemnified Person arising in connection with the Loan Documents, the Indebtedness or the Collateral (including without limitation, the enforcement of the Loan Documents and the defense of any Indemnified Person's actions and/or inactions in connection with the Loan Documents). **WITHOUT LIMITATION, THE FOREGOING INDEMNITIES SHALL APPLY TO EACH INDEMNIFIED PERSON WITH RESPECT TO ANY CLAIMS WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF THE NEGLIGENCE OF SUCH AND/OR ANY OTHER INDEMNIFIED PERSON, EXCEPT TO THE LIMITED EXTENT THE CLAIMS AGAINST AN INDEMNIFIED PERSON ARE PROXIMATELY CAUSED BY SUCH INDEMNIFIED PERSON'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.** If Debtor or any third party ever alleges such gross negligence or willful misconduct by any Indemnified Person, the indemnification provided for in this Section shall nonetheless be paid upon demand, subject to later adjustment or reimbursement, until such time as (a) a court of competent jurisdiction enters a final judgment as to the extent and effect of the alleged gross negligence or willful misconduct, or (b) Lender has expressly agrees in writing with Debtor that such Claim is proximately caused by such Indemnified Person's gross negligence or willful misconduct. The indemnification provided for in this Section shall survive the termination of this Agreement and shall extend and continue to benefit each individual or entity that is or has at any time been an Indemnified Person hereunder.

14. **Limitation of Liability.** Neither the Lender nor any officer, director, employee, attorney, or agent of the Lender shall have any liability with respect to, and Debtor 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

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Debtor 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. Debtor hereby waives, releases, and agrees not to sue the Lender or any of the 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.

15. **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 Debtor or any of Debtor's equity holders or any other Person.

16. **Lender Not Fiduciary.** The relationship between Debtor and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Debtor, and no term or condition of any of the Loan Documents shall be construed so as to deem the relationship between Debtor and Lender to be other than that of debtor and creditor.

17. **Waiver and Agreement.** Neither the failure nor any delay on the part of Lender to exercise any right, power or privilege herein or under any of the other Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. No waiver of any provision in this Agreement or in any of the other Loan Documents and no departure by Debtor therefrom shall be effective unless the same shall be in writing and signed by Lender, and then shall be effective only in the specific instance and for the purpose for which given and to the extent specified in such writing. No modification or amendment to this Agreement or to any of the other Loan Documents shall be valid or effective unless the same is signed by the party against whom it is sought to be enforced.

18. **Benefits.** This Agreement shall be binding upon and inure to the benefit of Lender and Debtor, and their respective successors and assigns, provided, however, that Debtor may not, without the prior written consent of Lender, assign any rights, powers, duties or obligations under this Agreement or any of the other Loan Documents.

19. **Notices.** All notices, requests, demands or other communications required or permitted to be given pursuant to this Agreement shall be in writing and given by (a) personal delivery, (b) expedited delivery service with proof of delivery, or (c) United States mail, postage prepaid, registered or certified mail, return receipt requested, sent to the intended addressee at the address set forth on the signature page hereof and shall be deemed to have been received either, in the case of personal delivery, as of the time of personal delivery, in the case of expedited delivery service, as of the time of the expedited delivery and in the manner provided herein, or in the case of mail, upon the **THIRD (3rd)** day after deposit in a depository receptacle under the care and custody of the United States Postal Service. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by notice to the other party of such new address.

20. **Construction; Venue; Service of Process.** The Loan Documents have been executed and delivered in the State of Texas, shall be governed by and construed in accordance with the laws of the State of Texas, and shall be performable by the parties hereto in the county in Texas where Lender's address set forth on the signature page hereof is located (the "**Venue Site**"). Any action or proceeding against Debtor under or in connection with any of the Loan Documents may be brought in any state or federal court within the Venue Site. Debtor hereby irrevocably (a) submits to the nonexclusive jurisdiction of such courts, and (b) waives any objection it may now or hereafter have as to the venue of any such action or proceeding brought in any such court or that any such court is an inconvenient forum. Debtor agrees that service of process upon it may be made by certified or registered mail, return receipt requested, at its address specified or determined in accordance with the provisions this Agreement. Nothing in any of the other Loan Documents 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 Debtor or with respect to any of its property in courts in other jurisdictions. Any action or proceeding by Debtor against Lender shall be brought only in a court located in the Venue Site.

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21. **Invalid Provisions.** If any provision of the Loan Documents are held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and the remaining provisions of the Loan Documents shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance.

22. **Expenses.** Debtor shall pay all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees) in connection with (a) the drafting and execution of the Loan Documents and the transactions contemplated therein, (b) any action required in the course of administration of the indebtedness and obligations evidenced by the Loan Documents, and (c) any action in the enforcement of Lender's rights upon the occurrence of an Event of Default.

23. **Participation of the Loans.** Debtor agrees that Lender may, at its option, sell interests in the Loans and its rights under this Agreement to a financial institution or institutions and, in connection with each such sale, Lender may disclose any financial and other information available to Lender concerning Debtor to each perspective purchaser subject to obtaining a confidentiality agreement with each prospective purchaser prior to disclosing Debtor's confidential information.

24. **Conflicts.** Except as otherwise expressly provided in the Note, in the event any term or provision of this Agreement is inconsistent with or conflicts with any provision of the other Loan Documents, the terms and provisions contained in this Agreement shall be controlling.

25. **Counterparts.** The Loan Documents may be separately executed in any number of counterparts, each of which shall be an original, but all of which, taken together, shall be deemed to constitute one and the same instrument.

26. **Survival.** All representations and warranties made in the Loan Documents or in any document, statement, or certificate furnished in connection with this Agreement shall survive the execution and delivery of the 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.

27. **Certain Acknowledgements.** Debtor hereby acknowledges and agrees that there are no defenses, counterclaims, offsets, cross-complaints, claims or demands of any kind or nature whatsoever to or against Lender or the terms and provisions of or the obligations of Debtor under the Original Loan Agreements and the other agreements, instruments and documents evidencing, securing, governing, guaranteeing or pertaining thereto, and that Debtor has no right to seek affirmative relief or damages of any kind or nature from Lender. To the extent any such defenses, counterclaims, offsets, cross-complaints,

claims, demands or rights exist, Debtor hereby waives, and hereby knowingly and voluntarily releases and forever discharges Lender and its predecessors, officers, directors, agents, attorneys, employees, successors and assigns, from all possible claims, demands, actions, causes of action, defenses, counterclaims, offsets, cross-complaints, damages, costs, expenses and liabilities whatsoever, whether known or unknown, such waiver and release being with full knowledge and understanding of the circumstances and effects of such waiver and release and after having consulted legal counsel with respect thereto.

28. **Waiver of Right to Trial by Jury.** THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM THAT RELATES TO OR ARISES OUT OF THE LOAN DOCUMENTS OR THE ACTS OR FAILURE TO ACT OF OR BY LENDER IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THE LOAN DOCUMENTS.

29. **Patriot Act Notice.** Lender hereby notifies Debtor that pursuant to the requirements of Section 326 of the USA Patriot Act of 2001, 31 U.S.C. § 5318 (the "Act"), that Lender is required to obtain, verify and record information that identifies Debtor, which information includes the name and address of Debtor and other information that will allow such Lender to identify Debtor in accordance with the Act.

30. **Disclosure Relating to Collateral Protection Insurance.** As of the date of this disclosure, Debtor and Lender have or shall have consummated a transaction pursuant to which Lender has agreed to make Loans to Debtor. Debtor has pledged Collateral to secure the Indebtedness in accordance with the Loan Documents.

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This notice relates to Debtor's obligations with respect to insuring the Collateral against damage. To this end, Debtor must do the following:

- (a) Keep the Collateral insured against damage in the amount equal to the Indebtedness or as otherwise required by the Loan Documents;
- (b) Purchase the insurance from an insurer that is authorized to do business in Texas or an eligible surplus lines insurer;
- (c) Name Lender the person to be paid under the policy in the event of loss; and
- (d) Deliver to Lender a copy of the policy and proof of the payment of premiums.

Lender may obtain collateral protection insurance on behalf of Debtor at Debtor's expense if Debtor fails to meet any of the foregoing requirements.

31. **Amendment and Restatement.** On the Closing Date, the Original Agreements shall be amended and restated in its entirety by this Agreement. This Agreement is not in any way intended to constitute a novation of the obligations and liabilities existing under the Original Agreements or evidence payment of all or any portion of such obligations and liabilities. The terms and conditions of this Agreement and Lender's rights and remedies under this Agreement and the other Loan Documents shall apply to all of the Indebtedness incurred under the Original Agreements. Debtor reaffirms the liens granted pursuant to the Loan Documents (as such term is defined in the Original Loan Agreement, the "Original Loan Documents") to Lender, which liens shall continue in full force and effect during the term of this Agreement and any renewals thereof and shall continue to secure the Indebtedness. On and after the Closing Date, (a) all references to any Original Agreement in the Original Loan Documents (other than this Agreement) shall be deemed to refer to such Original Agreement, as amended and restated hereby, (b) all references to any section (or subsection) of any Original Agreement in any Original Loan Document (but not herein) shall be amended to become, *mutatis mutandis*, references to the corresponding provisions of this Agreement and (c) except as the context otherwise provides, on or after the Closing Date, all references to this Agreement herein (including for purposes of indemnification and reimbursement of fees) shall be deemed to be references to the Original Agreements, as amended and restated hereby.

32. **Notice of Final Agreement.** It is the intention of Debtor and Lender that the following **NOTICE OF FINAL AGREEMENT** be incorporated by reference into each of the Loan Documents (as the same may be amended, modified or restated from time to time). Debtor and Lender warrant and represent that the entire agreement made and existing by or among Debtor and Lender with respect to the Loans is and shall be contained within the Loan Documents, and that no agreements or promises exist or shall exist by or among, Debtor and Lender that are not reflected in the Loan Documents.

NOTICE OF FINAL AGREEMENT

THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES, AND THE SAME 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.

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AGREED as of the date first written above.

LENDER:

SOVEREIGN BANK

By: /s/ Stephanie Baird Velasquez

Name: Stephanie Baird Velasquez

Title: Area President

ADDRESS:

6060 Sherry Lane
Dallas, TX 75225

With copies of notices to:

Gardere Wynne Sewell LLP

1601 Elm Street, Suite 3000
Dallas, TX 75201-4761
Attention: Steven S. Camp

DEBTOR:

TGC INDUSTRIES, INC.

ADDRESS:

101 E. Park Blvd., Suite 955
Plano, TX 75074

By: /s/ Wayne Whitener
Name: Wayne Whitener
Title: President & CEO

SCHEDULE 1(t)
TO
LOAN AND SECURITY AGREEMENT

Existing Liens

SOVEREIGN BANK — LOAN NO. 17003864

**AMENDED AND RESTATED
PROMISSORY NOTE**

\$5,000,000.00

SEPTEMBER 16, 2009

FOR VALUE RECEIVED, TGC INDUSTRIES, INC., a Texas corporation ("**Debtor**") unconditionally promises to pay to the order of **SOVEREIGN BANK**, a Texas state bank (together with its successors and assigns, "**Lender**"), without setoff, at its offices at 6060 Sherry Lane, Dallas (Dallas County), TX 75225, or at such other place as may be designated by Lender, the principal amount of **FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00)**, or so much thereof as may be advanced from time to time in immediately available funds, together with interest computed daily on the outstanding principal balance hereunder, at an annual interest rate (the "**Rate**"), and in accordance with the payment schedule, indicated below. This **AMENDED AND RESTATED PROMISSORY NOTE** (this "**Note**") is executed pursuant to and evidences the Loans funded and to be funded by Lender under the Revolving Credit Facility pursuant to that certain **AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT** between Debtor and Lender dated as of even date herewith (as the same may be amended, supplemented, renewed or extended from time to time, the "**Loan Agreement**") to which reference is made for a statement of the collateral, rights and obligations of Debtor and Lender in relation thereto; but neither this reference to the Loan Agreement nor any provision thereof shall affect or impair the absolute and unconditional obligation of Debtor to pay unpaid principal of and interest on this Note when due. Capitalized terms not otherwise defined herein shall have the same meanings as in the Loan Agreement.

1. **Rate.** The Rate shall be the **LESSER** of: (a) the **MAXIMUM RATE**, or (b) the **GREATER** of (i) the **PRIME RATE**, or (ii) **FIVE PERCENT (5.00%)**. The term "**Prime Rate**" means a variable rate of interest per annum equal to the prime rate as published from time to time in the "**Bonds, Rates & Yields**" table of *The Wall Street Journal*. If such prime rate, as so quoted, is split between two or more different interest rates, then the Prime Rate shall be the highest of such interest rates. If the prime rate is no longer published in the "**Bonds, Rates & Yields**" table of *The Wall Street Journal*, then the Prime Rate shall be (i) 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 rate charged by Lender and is set by Lender in its sole discretion, or (ii) if Lender does not publish or announce a base or prime rate, or does so infrequently or sporadically, then the Prime Rate shall be determined by reference to another base rate, prime rate, or similar lending rate index, generally accepted on a national basis, as selected by Lender in its sole and absolute discretion. Notwithstanding any provision of this Note or any other agreement or commitment between Debtor and Lender, whether written or oral, express or implied, Lender shall never be entitled to charge, receive, or collect, nor shall amounts received hereunder be credited so that Lender shall be paid, as interest a sum greater than interest at the Maximum Rate. It is the intention of the parties that this Note, and all instruments securing the payment of this Note or executed or delivered in connection therewith, shall comply with applicable law. If Lender ever contracts for, charges, receives or collects anything of value which is deemed to be interest under applicable law, and if the occurrence of any circumstance or contingency, whether acceleration of maturity of this Note, prepayment of this Note, delay in advancing proceeds of this Note, or any other event, should cause such interest to exceed the maximum lawful amount, any amount which exceeds interest at the Maximum Rate shall be applied to the reduction of the unpaid principal balance of this Note or any other indebtedness owed to Lender by Debtor, and if this Note and such other indebtedness are paid in full, any remaining excess shall be paid to Debtor. In determining whether the interest exceeds interest at the Maximum Rate, the total amount of interest shall be spread, prorated and amortized throughout the entire term of this Note until its payment in full. The term "**Maximum Rate**" as used in this Note means the maximum nonusurious rate of interest per annum permitted by whichever of applicable United States federal law or Texas law permits the higher interest rate, including to the extent permitted by applicable law, any amendments thereof hereafter or any new law hereafter coming into effect to the extent a higher Maximum Rate is permitted thereby. If at any time the Rate shall exceed the Maximum Rate, the Rate shall be automatically limited to the Maximum Rate until the total amount of interest accrued hereunder equals the amount of interest which would have accrued if there had been no limitation to the Maximum Rate. To the extent, if any, that Chapter 303 of the Texas Finance Code, as amended, (the "**Act**") is relevant to Lender for purposes of determining the Maximum Rate, the parties elect to determine the Maximum Rate under the Act pursuant to the "weekly ceiling" from time to time in effect, as referred to and defined in §303.001-303.016 of the Act; subject,

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however, to any right Lender subsequently may have under applicable law to change the method of determining the Maximum Rate.

2. **Accrual Method.** 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 herein.

3. **Rate Change Date.** The Rate will change unless otherwise provided each time and as of the date that the Prime Rate changes.

4. **Payment Schedule.** Except as expressly provided herein to the contrary, all payments on this Note shall be applied in the following order of priority: (a) the payment or reimbursement of any expenses, costs or obligations (other than the outstanding principal balance hereof and interest hereon) for which either Debtor shall be obligated or Lender shall be entitled pursuant to the provisions of this Note or the other Loan Documents, (b) the payment of accrued but unpaid interest hereon, and (c) 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 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 (a), (b) or (c) above without regard to the order of priority otherwise specified herein and any application to the outstanding principal balance hereof may be made in either direct or inverse order of maturity. If any payment of principal or interest on this Note shall become due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in computing interest in connection with such payment. The outstanding principal balance of this Note, plus accrued and unpaid interest thereon shall be due and payable on the earlier of (i) the acceleration of the Indebtedness pursuant to the terms of the Loan Documents; (ii) **SEPTEMBER 16, 2010**; or (iii) such other date as may be established by a written instrument between Debtor and Lender, from time to time (the "**Maturity Date**"). Accrued and unpaid interest on the outstanding principal balance of this Note shall be due and payable monthly commencing on **OCTOBER 16, 2009** and continuing on the **SAME** day of each calendar month thereafter (or if no such corresponding date, on the **LAST** date of such calendar month) and on the Maturity Date. Debtor may borrow, repay and reborrow hereunder at any time, up to a maximum aggregate amount outstanding at any one time equal to the principal amount of this Note, provided that Debtor is not in default under any provision of this Note, any other documents executed in connection with this Note, or any other Loan Documents now or hereafter executed in connection with any other obligation of Debtor to Lender,

and provided that the borrowings hereunder do not exceed any borrowing base or other limitation on borrowings by Debtor. Lender shall incur no liability for its refusal to advance funds based upon its determination that any conditions of such further advances have not been met. Lender's records of the amounts borrowed from time to time and accrued and unpaid interest on such sum shall be conclusive proof thereof absent manifest error. Lender and Debtor expressly agree that Chapter 346 ("Chapter 346") of the Texas Finance Code shall not apply to this Note or to any advances under this Note and that neither this Note or any such advances shall be governed by or subject to the provisions of Chapter 346 in any manner whatsoever.

5. **Delinquency Charge.** To the extent permitted by law, a delinquency charge will be imposed in an amount not to exceed **FIVE PERCENT (5.00%)** of any payment that is more than **TEN (10)** days late.

6. **Waivers, Consents and Covenants.** Debtor, any endorser or guarantor hereof, or any other party hereto (individually an "Obligor" and collectively "Obligors") and each of them jointly and severally: (a) waives presentment, demand, protest, notice of demand, notice of intent to accelerate, notice of acceleration of maturity, notice of protest, notice of nonpayment, notice of dishonor, and any other notice required to be given under the law (except notices that cannot lawfully be waived) to any Obligor in connection with the delivery, acceptance, performance, default or enforcement of this Note, any endorsement or guaranty of this Note, or any other documents executed in connection with this Note or any other Loan Documents now or hereafter executed in connection with any obligation of Debtor to Lender; and (b) agrees to pay, on demand, all costs and expenses of collection or defense of this Note or of any endorsement or guaranty hereof and/or the enforcement or defense of Lender's rights with respect to, or the administration, supervision, preservation, or protection of, or realization upon, any property securing payment hereof, including, without limitation, reasonable attorneys' fees, including fees related to any suit, mediation or arbitration

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proceeding, out of court payment agreement, trial, appeal, bankruptcy proceedings or other proceeding, in such amount as may be determined reasonable by any arbitrator or court, whichever is applicable. Each Obligor other than Debtor (a) consents to all delays, extensions, renewals or other modifications of this Note or the Loan Documents, or waivers of any term hereof or of the Loan Documents, or release or discharge by Lender of any of Obligors, or release, substitution or exchange of any security for the payment hereof, or the failure to act on the part of Lender, or any indulgence shown by Lender (without notice to or further assent from any of Obligors); and (b) agrees that no such action, failure to act or failure to exercise any right or remedy by Lender shall in any way affect or impair the obligations of any Obligors or be construed as a waiver by Lender of, or otherwise affect, any of Lender's rights under this Note, under any endorsement or guaranty of this Note or under any of the Loan Documents.

7. **Prepayments.** Prepayments may be made in whole or in part at any time in whole or in part without premium or penalty.

8. **Remedies Upon Default.** Whenever there is an Event of Default under the Loan Documents (a) the entire balance outstanding hereunder and all other obligations of any Obligor to Lender (however acquired or evidenced) shall, at the option of Lender, become immediately due and payable and any obligation of Lender to permit further borrowing under this Note shall immediately cease and terminate, and/or (b) to the extent permitted by law, the Rate of interest on the unpaid principal shall be increased at Lender's discretion up to the Maximum Rate, or if none, **FIFTEEN PERCENT (15.00%)** per annum (the "Default Rate"). The provisions herein for a Default Rate shall not be deemed to extend the time for any payment hereunder or to constitute a "grace period" giving Obligors a right to cure any default. At Lender's option, any accrued and unpaid interest, fees or charges may, for purposes of computing and accruing interest on a daily basis after the due date of this Note or any installment thereof, be deemed to be a part of the principal balance, and interest shall accrue on a daily compounded basis after such date at the Default Rate provided in this Note until the entire outstanding balance of principal and interest is paid in full. Upon an Event of Default, Lender is hereby authorized at any time, at its option and without notice or demand, to set off and charge against any deposit accounts of any Obligor (as well as any money, instruments, securities, documents, chattel paper, credits, claims, demands, income and any other property, rights and interests of any Obligor), which at any time shall come into the possession or custody or under the control of Lender or any of its agents, affiliates or correspondents, any and all obligations due hereunder. Additionally, Lender shall have all rights and remedies available under each of the Loan Documents, as well as all rights and remedies available at law or in equity.

9. **Waiver.** The failure at any time of Lender to exercise any of its options or any other rights hereunder shall not constitute a waiver thereof, nor shall it be a bar to the exercise of any of its options or rights at a later date. All rights and remedies of Lender shall be cumulative and may be pursued singly, successively or together, at the option of Lender. The acceptance by Lender of any partial payment shall not constitute a waiver of any default or of any of Lender's rights under this Note. No waiver of any of its rights hereunder, and no modification or amendment of this Note, shall be deemed to be made by Lender unless the same shall be in writing, duly signed on behalf of Lender; each such waiver shall apply only with respect to the specific instance involved, and shall in no way impair the rights of Lender or the obligations of Obligors to Lender in any other respect at any other time.

10. **Applicable Law, Venue and Jurisdiction.** Debtor agrees that this Note shall be deemed to have been made in the State of Texas and shall be governed by, and construed in accordance with, the laws of the State of Texas and is performable in Dallas (Dallas County), Texas indicated at the beginning of this Note. In any litigation in connection with or to enforce this Note or any endorsement or guaranty of this Note or any Loan Documents, Obligors, and each of them, irrevocably consent to and confer personal jurisdiction on the courts of the State of Texas or the United States courts located within Dallas (Dallas County), Texas. Nothing contained herein shall, however, prevent Lender from bringing any action or exercising any rights within any other state or jurisdiction or from obtaining personal jurisdiction by any other means available under applicable law.

11. **Partial Invalidity.** The unenforceability or invalidity of any provision of this Note shall not affect the enforceability or validity of any other provision herein and the invalidity or unenforceability of any provision of this Note or of the Loan Documents to any person or circumstance shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

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12. **Binding Effect.** This Note shall be binding upon and inure to the benefit of Debtor, Obligors and Lender and their respective successors, assigns, heirs and personal representatives, provided, however, that no obligations of Debtor or Obligors hereunder can be assigned without prior written consent of Lender.

13. **Controlling Document.** To the extent that this Note conflicts with or is in any way incompatible with any other document related specifically to the loan evidenced by this Note, this Note shall control over any other such document, and if this Note does not address an issue, then each other such document shall control to the extent that it deals most specifically with an issue.

14. **Commercial Purpose.** DEBTOR REPRESENTS TO LENDER THAT THE PROCEEDS OF THIS LOAN ARE TO BE USED PRIMARILY FOR BUSINESS, COMMERCIAL OR AGRICULTURAL PURPOSES. DEBTOR ACKNOWLEDGES HAVING READ AND UNDERSTOOD, AND AGREES TO BE BOUND BY, ALL TERMS AND CONDITIONS OF THIS NOTE.

15. **Collection.** If this Note is placed in the hands of an attorney for collection, or if it is collected through any legal proceeding at law or in equity or in bankruptcy, receivership or other court proceedings, Debtor agrees to pay all costs of collection, including, but not limited to, court costs and reasonable attorneys' fees.

16. **Notice of Balloon Payment.** At maturity (whether by acceleration or otherwise), Debtor must repay the entire principal balance of this Note and unpaid interest then due. Lender is under no obligation to refinance the outstanding principal balance of this Note (if any) at that time. Debtor will, therefore, be required to make payment out of other assets Debtor may own; or Debtor will have to find a lender willing to lend Debtor the money at prevailing market rates, which may be higher than the interest rate on the outstanding principal balance of this Note. If Obligors have guaranteed payment of this Note, Obligors may be required to perform under such guaranty.

17. **AMENDMENT AND RESTATEMENT.** THIS NOTE IS EXECUTED AND DELIVERED BY DEBTOR TO AMEND AND RESTATE IN ITS ENTIRETY THAT CERTAIN PROMISSORY NOTE DATED AS OF SEPTEMBER 16, 2008 IN THE ORIGINAL NOTATIONAL AMOUNT OF FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00) EXECUTED AND DELIVERED BY DEBTOR, AND PAYABLE TO THE ORDER OF LENDER; WHICH PROMISSORY NOTE AMENDED AND RESTATED IN ITS ENTIRETY THAT CERTAIN PROMISSORY NOTE DATED AS OF SEPTEMBER 16, 2007 IN THE ORIGINAL NOTATIONAL AMOUNT OF FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00) EXECUTED AND DELIVERED BY DEBTOR, AND PAYABLE TO THE ORDER OF LENDER; WHICH PROMISSORY NOTE AMENDED AND RESTATED IN ITS ENTIRETY THAT CERTAIN PROMISSORY NOTE DATED AS OF SEPTEMBER 16, 2006 IN THE ORIGINAL NOTATIONAL AMOUNT OF FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00) EXECUTED AND DELIVERED BY DEBTOR, AND PAYABLE TO THE ORDER OF LENDER; WHICH PROMISSORY NOTE AMENDED AND RESTATED IN ITS ENTIRETY THAT CERTAIN PROMISSORY NOTE DATED AS OF SEPTEMBER 16, 2005 IN THE ORIGINAL NOTATIONAL AMOUNT OF THREE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$3,500,000.00) EXECUTED AND DELIVERED BY DEBTOR, AND PAYABLE TO THE ORDER OF LENDER; WHICH PROMISSORY NOTE AMENDED AND RESTATED IN ITS ENTIRETY THAT CERTAIN PROMISSORY NOTE DATED AS OF APRIL 26, 2005 IN THE ORIGINAL NOTATIONAL AMOUNT OF FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) EXECUTED AND DELIVERED BY DEBTOR, AND PAYABLE TO THE ORDER OF LENDER (SUCH PROMISSORY NOTES, BEING COLLECTIVELY REFERRED TO AS, THE "ORIGINAL NOTE"). NEITHER THE EXECUTION NOR DELIVERY OF THIS NOTE OR THE AMENDMENT AND RESTATEMENT OF THE ORIGINAL NOTE CONSTITUTES A NOVATION OR PAYMENT OF ANY PART OF THE INDEBTEDNESS EVIDENCED BY THE ORIGINAL NOTE. FURTHER, DEBTOR AGREES THAT THIS NOTE SHALL IN NO WAY AFFECT OR IMPAIR THE LIENS AND/OR SECURITY INTERESTS SECURING REPAYMENT OF THE ORIGINAL NOTE, WHICH LIENS AND/OR SECURITY INTERESTS DEBTOR ACKNOWLEDGES TO BE VALID AND SUBSISTING, AND DEBTOR SPECIFICALLY AGREES THAT THE LIENS SECURING THE ORIGINAL NOTE SHALL NOT IN ANY MANNER BE RELEASED OR WAIVED BUT SHALL INSTEAD BE AND REMAIN IN FULL FORCE AND EFFECT TO SECURE REPAYMENT OF THE INDEBTEDNESS.

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18. **WAIVER OF JURY TRIAL.** DEBTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM THAT RELATES TO OR ARISES OUT OF THIS NOTE OR ANY OF THE LOAN DOCUMENTS OR THE ACTS OR FAILURE TO ACT OF OR BY LENDER IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS NOTE OR THE OTHER LOAN DOCUMENTS.

NOTICE OF FINAL AGREEMENT

THIS PROMISSORY NOTE REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES, AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

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EXECUTED as of the date first written above.

DEBTOR:

TGC INDUSTRIES, INC.

By: /s/ Wayne Whitener

Name: Wayne Whitener

Title: President & CEO

ADDRESS:

101 E. Park Blvd., Suite 955

Plano, TX 75074

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