

SECURITIES & EXCHANGE COMMISSION EDGAR FILING

Ecoark Holdings, Inc.

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

FORM 8-K
CURRENT REPORT

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

Date of Report (Date of earliest event reported): **December 28, 2018**

Ecoark Holdings, Inc.

(Exact Name of Registrant as Specified in Charter)

Nevada

(State or other jurisdiction
of incorporation)

000-53361

(Commission File Number)

30-0680177

(IRS Employer
Identification No.)

1010 NW J Street, Suite I, Bentonville, AR

(Address of principal executive offices)

72712

(Zip Code)

Registrant's telephone number, including area code: (479) 259-2977

N/A

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

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

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

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

Emerging growth company

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

Item 1.01 Entry into a Material Definitive Agreement

On December 28, 2018, Ecoark Holdings, Inc. (the "Company") entered into a loan and security agreement (the "Agreement") with Trend Discovery SPV I, LLC, a Delaware limited liability company (the "Lender"), where the Lender agreed to make one or more loans (each a "Loan", and collectively the "Loans") to the Company, and the Company may make a request for a Loan or Loans from the Lender, subject to the terms and conditions as further described therein.

Availability. The Company is required to pay interest biannually on the outstanding principal amount of each Loan calculated at an annual rate of 12%. The loans shall be evidenced by a demand note (the "Demand Note") executed by the Company. The Company shall be able to request draws from the Lender up to \$1,000,000 with a cap of \$10,000,000, including the \$1,000,000 advanced on December 28, 2018. If principal is prepaid, the Loans may not be re-borrowed and the cap of \$10,000,000 shall be reduced.

Maturity. The Company may make a request for a Loan, or Loans from the Lender, at any one time and from time to time, from the date of the Agreement until the earlier of (i) demand by the Lender or (ii) December 27, 2020 or the earlier termination of the Agreement pursuant to the terms thereof (the "Maturity Date").

Security. Loans made pursuant to the Agreement are secured by a security interest in the Company's collateral, held with the Lender and guaranteed by the Company's subsidiary, Zest Labs, Inc., a Delaware corporation (the "Zest"), pursuant to a Security Agreement, by and between Zest and the Lender, dated December 28, 2018.

Interest Rates. Commencing upon execution of the Demand Note and until the Maturity Date, interest on any outstanding principal amount of each Loan shall bear interest at a rate per annum equal to 12%.

Fees. The Company shall pay to the Lender a commitment fee on the principal amount of each Loan requested thereunder in the amount of 3.5% of the amount thereof. The Company shall also pay an arrangement fee of \$300,000 to the Lender which shall be payable upon execution of the Agreement, regardless of whether the Company executes a Demand Note. Furthermore, Zest is a plaintiff in a litigation styled as *Zest Labs, Inc. vs WalMart, Inc., Case Number 4:18-cv-00500* filed in the United States District Court for the Eastern District of Arkansas (the "Zest Litigation"). The Company agrees that within five (5) days of receipt by Zest or the Company of any settlement proceeds from the Zest Litigation, the Company will pay or cause to be paid over to Lender, by wire transfer, an additional fee in an amount equal to (i) 0.50 multiplied by (ii) the highest aggregate principal balance of the Loans over the life of the Loans through the date of the payment from settlement proceeds; provided, however, that such additional fee shall not exceed the amount of the settlement proceeds.

Covenants. Subject to customary carve-outs, the Agreement contains customary negative covenants and restrictions for agreements of this type on actions by the Company including, without limitation, restrictions on indebtedness, liens, investments, loans, consolidation, mergers, dissolution, asset dispositions outside the ordinary course of business, change in business and restriction on use of proceeds. In addition, the Agreement requires compliance by the Company of covenants including, but not limited to, furnishing the Lender with certain financial reports and protecting and maintaining its intellectual property rights.

Events of Default. The Agreement contains customary events of default, including, without limitation, non-payment of principal or interest, violation of covenants, inaccuracy of representations in any material respect and cross defaults with certain other indebtedness and agreements.

The Agreement contains customary representations and warranties, closing conditions and indemnification provisions. The foregoing descriptions of the Agreement, Demand Note and Security Agreement do not purport to be complete and are qualified in their entirety by reference to the full text of each respective agreement, copies of which are attached hereto as Exhibit 10.1, 10.2 and 10.3 and are incorporated by reference.

Item 9.01 Financial Statements and Exhibits

| Exhibit No. | Description |
|-------------|--|
| 10.1 | Loan and Security Agreement, dated December 28, 2018 |
| 10.2 | Demand Note, dated December 28, 2018 |
| 10.3 | Security Agreement, dated December 28, 2018 |

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.

ECOARK HOLDINGS, INC.

Date: January 4, 2019

By: /s/ Randy May
Name: Randy May
Title: Chief Executive Officer

LOAN AND SECURITY AGREEMENT

This **LOAN AND SECURITY AGREEMENT** (this “**Agreement**”) dated as of December 28, 2018 (the “**Effective Date**”) is between **TREND DISCOVERY SPV I, LLC**, a Delaware limited liability company (“**Lender**”), and **ECOARK HOLDINGS, INC.**, a Nevada corporation (“**Borrower**”), and provides the terms on which Lender shall lend to Borrower, and Borrower shall repay Lender. The parties agree as follows:

1 ACCOUNTING AND OTHER TERMS

Accounting terms not defined in this Agreement shall be construed following GAAP. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 13 of this Agreement. All other terms contained in this Agreement, unless otherwise indicated, shall have the meanings provided by the Code to the extent such terms are defined therein.

2 LOAN AND TERMS OF PAYMENT

2.1 Availability. On the Effective Date, Lender agrees, subject to the terms and conditions and relying upon the representations and warranties set forth in this Agreement and within the limits hereof, to make one or more loans (each a “**Loan**”, and collectively the “**Loans**”) to Borrower, and Borrower may make a request for a Loan or Loans from Lender, at any one time and from time to time, from the date hereof until the earlier of (i) DEMAND by Lender or (ii) December 27, 2020 or the earlier termination of this Agreement pursuant to the terms hereof (the “**Maturity Date**”), in total not in excess of a principal amount of \$1,000,000 in the aggregate at any one time outstanding (collectively, the “**Credit**”). If prepaid, the Loans may not be re-borrowed.

2.2 Promissory Note. The obligation of the Borrower to repay the original principal amount of each Loan and to pay interest on the outstanding principal amount of each Loan shall be evidenced by a Demand Note executed by the Borrower in the form of **Exhibit C** hereto (the “**Note**”). The Lender shall set forth on the schedule attached to and made a part of the Note, on any separate similar schedule or on any continuation of such attached schedule or of any such separate similar schedule annotations evidencing the date and original principal amount of each Loan and the date and amount of each payment to be applied to the outstanding principal amount of the Note. The outstanding principal amount set forth on such attached schedule, on any such separate similar schedule or on any such continuation shall be presumptive evidence of the outstanding principal amount of the Note and of the aggregate outstanding principal amounts of all Loans. No failure by the Lender to make, and no error by the Lender in making, any annotation on such attached schedule, on any such separate similar schedule or on any such continuation shall affect the Borrower’s obligation to repay the original principal amount of each Loan, interest on the outstanding principal amount of each Loan or any other of the Borrower’s obligations pursuant to this Agreement.

2.3 Requests for Loans. For each Loan, Borrower shall submit to Lender a Compliance Certificate and a Notice of Loan at least five (5) Business Days (but not more than sixty (60) Business Days) prior to the date of such Loan, specifying the amount of the requested Loan and the date of the requested draw.

2.4 Incremental Loans. Provided that no Event of Default exists, the Borrower may, from time to time, by written notice to Lender elect to request an increase in the loan commitment for Loans under the Credit hereunder in an aggregate amount (for all such requests) not to exceed \$9,000,000. Each such notice shall specify the date on which the Borrower proposes that the increase shall be effective and the amount of the proposed increase being requested (which shall be a minimum of \$1,000,000). The Lender may elect or decline, in its sole discretion, to provide any such increase requested pursuant to this Section 2.4.

2.5 Repayment; Prepayment; Interest Payments.

(a) All outstanding principal and accrued and unpaid interest under each Loan, and all other outstanding Obligations with respect to each Loan, are due and payable in full upon the earlier of (i) on DEMAND by Lender, or (ii) the Maturity Date. Borrower shall have the option to prepay all or any portion of any outstanding Loans at any time, in whole or in part. In the event of any such repayment, Borrower may not re-borrow under any such Loans.

(b) Commencing on June 30, 2019 and continuing every six months thereafter until the Maturity Date, Borrower shall make biannual payments of accrued interest, in arrears, on the principal amount of all outstanding Loans, at the applicable rate set forth in Section 2.6 Commencing on June 30, 2019 and continuing every six months thereafter until the Maturity Date, Borrower shall make biannual payments of accrued interest, in arrears, on the principal amount of all outstanding Loans, at the applicable rate set forth in Section 2.6.

2.6 Interest.

(a) **Interest Rate.** The outstanding principal amount of each Loan shall bear interest at a rate per annum equal to twelve percent (12%).

(b) **Default Rate.** Upon the occurrence and during the continuance of an Event of Default or following acceleration of the Credit, the aggregate outstanding principal amount of all Loans shall bear interest at the Default Rate.

(c) **Computation; 365-Day Year.** Interest with respect to the Term Loan shall be computed on the basis of a 365-day year for the actual number of days elapsed.

2.7 Application of Payments; Payment Method. All payments to be made by Borrower under any Loan Document in respect of the Loans shall be made in immediately available funds in Dollars, without setoff or counterclaim, before 3:00 p.m. Eastern time on the date when due. Payments of principal and/or interest received after 3:00 p.m. Eastern time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment shall be due the next Business Day, and additional fees or interest, as applicable, shall continue to accrue until paid. As to regularly scheduled payments, Borrower agrees to authorize Lender to initiate electronic debit (ACH) entries at Borrower's account at Bank of America which has been designated by Borrower and to credit such electronic ACH payments/transfers to the Term Loan.

2.8 Commitment Fees. Borrower shall pay to Lender a commitment fee on the principal amount of each Loan requested hereunder in the amount of 3.5% of the amount thereof (each a "**Commitment Fee**").

2.9 Lender Expenses. Borrower shall pay all expenses of Lender (including reasonable attorneys' fees and expenses, plus expenses, for documentation and negotiation of this Agreement, accounting, tax preparation, and other reasonable professional expenses) payable under this Agreement and incurred through and after the Effective Date, when due.

3 CONDITIONS PRECEDENT TO EACH CREDIT EXTENSION.

Lender's obligation to make any Loan is subject to the conditions precedent that lender shall have received, in form and substance satisfactory to lender, such documents, and completion of such other matters, as lender may reasonably deem necessary or appropriate, including, without limitation:

(a) Receipt of all documents and information reasonably required by Lender to perform its legal and collateral due diligence to Lender's satisfaction;

(b) Receipt of Borrower's and each Guarantor's Operating Documents and a good standing certificate of Borrower and each Guarantor certified by the Secretary of State of the state of formation, as of a date no earlier than thirty (30) days prior to the Effective Date;

(c) Execution and delivery of the Loan Documents;

(d) Grant of a perfected first priority security interest in all of the Collateral;

(e) Receipt of a duly executed Compliance Certificate and Notice of Loan;

- (f) Receipt of the Commitment Fee pursuant to the terms and conditions of Section 2.8 of this Agreement;
- (g) Timely receipt of payment of all fees pursuant to the terms and conditions of the Fee Letter; and
- (h) A legal opinion from Borrower's counsel in form and substance satisfactory to Lender.

4 CREATION OF SECURITY INTEREST

4.1 Grant of Security Interest. Borrower hereby grants Lender, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Lender, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. Borrower represents, warrants, and covenants that the security interest granted herein shall be and shall at all times continue to be a first priority perfected security interest in the Collateral subject only to Permitted Liens that are permitted to have priority over Lender's Liens hereunder. If this Agreement is terminated, Lender's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are satisfied in full, and at such time, Lender shall, at Borrower's sole cost and expense, terminate its security interest in the Collateral and all rights therein shall revert to Borrower. Notwithstanding the foregoing, Lender's Lien and security interest in the Collateral shall be subject to all agreements dated before the Closing Date that grant any Lien or security interest in the Zest Litigation or any recovery from or proceeds of the Zest Litigation.

4.2 Authorization to File Financing Statements. Borrower hereby authorizes Lender to file financing statements, without notice to Borrower, with all appropriate jurisdictions to perfect or protect Lender's interest or rights hereunder, including a notice that any disposition of the Collateral, by either Borrower or any other Person, shall be deemed to violate the rights of Lender under the Code. Any such financing statements may indicate the Collateral as "all assets of the Debtor" or words of similar effect, or as being of an equal or lesser scope, or with greater detail, all in Lender's discretion.

5 REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants as follows:

5.1 Due Organization and Authorization. Borrower and each of its Subsidiaries are duly existing and in good standing as Registered Organizations in their respective jurisdictions of formation and are qualified and licensed to do business and are in good standing in any other jurisdiction in which the conduct of their respective business or ownership of property requires that they be qualified except where the failure to do so could not reasonably be expected to have a material adverse effect on Borrower's business. The execution, delivery and performance by Borrower of the Loan Documents to which it is a party have been duly authorized, and do not (i) conflict with any of Borrower's organizational documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or any of its Subsidiaries or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect), or (v) constitute an event of default under any material agreement by which Borrower is bound. Borrower is not in default under any agreement to which it is a party or by which it is bound in which the default could have a material adverse effect on Borrower's business.

5.2 Collateral. Borrower has good title to, has rights in, and the power to transfer, each item of the Collateral upon which it purports to grant a Lien hereunder, free and clear of any and all Liens except Permitted Liens.

5.3 Intellectual Property. Borrower and each of its Subsidiaries own, or possess the right to use, all of the Intellectual Property that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person, and Schedule 5.3 sets forth a complete and accurate list of all such Intellectual Property owned or used by each Loan Party and each of its Subsidiaries. No slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by the Borrower or any of its Subsidiaries infringes upon any rights held by any other Person. No material claim or litigation regarding any of the foregoing is pending or threatened. As of the Effective Date, Borrower owns or has good and marketable title to all Patents listed on Schedule 5.3.

5.4 Litigation. Other than the Zest Litigation, there are no actions or proceedings pending or, to the knowledge of Borrower, threatened in writing by or against Borrower or any Subsidiary in which an adverse decision could reasonably be expected to cause a Material Adverse Change. With respect to the Zest Litigation: (i) Borrower believes (and does not have, and has not been informed by any of its Affiliates of, any belief to the contrary) that Zest's claims are meritorious and have a reasonable basis in law, (ii) Zest has the full power and authority to bring such claims, (iii) Borrower has not and has not permitted Zest to dispose of, transfer, encumber or assign all or any portion of its claims (or any interest therein) or any proceeds thereof, whether by way of security, subrogation, assignment to an insurer, or otherwise, (iv) Borrower has not and has not permitted Zest to set off or agree to set off any amounts against Zest's claims, and there exist no rights of set-off or similar rights against the Borrower or any of its Subsidiaries that could permit any set-off of or counterclaim against such claims, and (v) Borrower is not aware (and has not been informed by any of its Affiliates) of any Patents or applications therefore or other Intellectual Property that have been, are likely to be, or should be asserted or claimed in connection with or in support of Zest's claims except those owned by Borrower or its Subsidiaries.

5.5 No Material Deviation in Financial Statements and Deterioration in Financial Condition . The consolidated financial statements for Borrower and any Subsidiary as of and for the fiscal years ended December 31, 2016 and December 31, 2017 and the first three fiscal quarters for the fiscal year ended December 31, 2018 (the "**Most Recent Financial Statements**") fairly present in all material respects Borrower's consolidated financial condition and Borrower's consolidated results of operations as of the dates thereof. There has not been any material deterioration in Borrower's consolidated financial condition since the date of the Most Recent Financial Statements.

5.6 Solvency. The fair salable value of Borrower's assets (including goodwill minus disposition costs) exceeds the fair value of its liabilities; Borrower is not left with unreasonably small capital after giving effect to the transactions in this Agreement; and Borrower is able to pay its debts (including trade debts) as they mature.

5.7 Regulatory Compliance. Borrower is not an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower has complied in all material respects with the Federal Fair Labor Standards Act. Borrower has not violated any laws, ordinances or rules, the violation of which could reasonably be expected to cause a Material Adverse Change. None of Borrower's properties or assets have been used by Borrower or, to the best of Borrower's knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than legally. Borrower has obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted.

5.8 Subsidiaries. Borrower does not own any stock, partnership interest or other equity securities except for (i) the stock, partnership interest or other equity securities of its Subsidiaries set forth on **Schedule 5.8** and (ii) Permitted Investments.

5.9 Tax Returns and Payments; Pension Contributions. Borrower has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower (except for taxes being contested in good faith by Borrower). Borrower is unaware of any claims or adjustments proposed for any of Borrower's prior tax years which could result in additional taxes becoming due and payable by Borrower. Borrower has paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and Borrower has not withdrawn from participation in, and has not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

5.10 Brokerage Fees. Borrower has not engaged a broker nor does it owe any brokerage fees in connection with any debt financing or the transactions contemplated by this Agreement.

6 AFFIRMATIVE COVENANTS

Borrower shall do all of the following:

6.1 Government Compliance

(a) Maintain its and all its Subsidiaries' legal existence and good standing in their respective jurisdictions of formation and maintain qualification in each jurisdiction in which the failure to so qualify would reasonably be expected to have a material adverse effect on Borrower's business or operations. Borrower shall comply, and have each Subsidiary comply, with all laws, ordinances and regulations to which it is subject, noncompliance with which could have a material adverse effect on Borrower's business.

(b) Obtain all of the Governmental Approvals necessary for the performance by Borrower of its obligations under the Loan Documents to which it is a party and the grant of a security interest to Lender in all of its property. Borrower shall promptly provide copies of any such obtained Governmental Approvals to Lender.

6.2 Financial Statements, Reports, Certificates

(a) Deliver to Lender: (i) as soon as available, but no later than thirty (30) days after the last day of each fiscal quarter, quarterly financial statements; (ii) as soon as available, but no later than one hundred twenty (120) days after the last day of Borrower's fiscal year, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm reasonably acceptable to Lender; (iii) within five (5) days of filing, copies of all statements, reports and notices made available to Borrower's security holders and all reports on Form 10-K, 10-Q and 8-K filed with the SEC; (iv) a prompt report of any legal actions pending or threatened against Borrower or any Subsidiary that could result in damages or costs to Borrower or any Subsidiary of One Hundred Thousand Dollars (\$100,000.00) or more; and (v) at least annually, as soon as available, but no later than ten (10) days after approval by Borrower's board of directors, and contemporaneously with any updates or amendments thereto, annual financial projections and operating budgets for the following fiscal year approved by Borrower's board of directors, together with company prepared consolidated balance sheets and income statements and any related business forecasts used in the preparation of such annual financial plans, operating budgets and projections.

(b) Allow Lender to inspect the Collateral and audit and copy Borrower's Books upon reasonable notice to Borrower. The foregoing inspections and audits shall be at Borrower's expense.

(c) Provide Lender, promptly upon receipt, with a copy of each filing with or other pleading or decision filed or received in the Zest Litigation, unless otherwise restricted by the supervising court.

6.3 Taxes. Make, and cause each Subsidiary to make, timely payment of all foreign, federal, state, and local taxes or assessments (other than taxes and assessments which Borrower is contesting in good faith, with adequate reserves maintained in accordance with GAAP) and will deliver to Lender, on demand, appropriate certificates attesting to such payments.

6.4 Insurance. Keep its business and the Collateral insured for risks and in amounts standard for companies in Borrower's industry and location. All property policies shall have a loss payable endorsement showing Lender as a loss payee and waive subrogation against Lender, and all liability policies shall show, or have endorsements showing, Lender as an additional insured. At Lender's request, Borrower shall deliver certified copies of policies and evidence of all premium payments. If Borrower fails to obtain insurance as required under this Section 6.4 or to pay any amount or furnish any required proof of payment to third persons and Lender, Lender may make all or part of such payment or obtain such insurance policies required in this Section 6.4, and take any action under the policies Lender deems prudent.

6.5 Protection of Intellectual Property Rights

(a) (i) Protect, defend and maintain the validity and enforceability of its Intellectual Property; (ii) promptly advise Lender in writing of material infringements of its Intellectual Property; and (iii) not allow any Intellectual Property material to Borrower's business to be abandoned, forfeited or dedicated to the public without Lender's written consent.

(b) Provide written notice to Lender within thirty (30) days of entering or becoming bound by any Restricted License (other than over-the-counter software that is commercially available to the public). Borrower shall take such steps as Lender requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (i) any Restricted License to be deemed "Collateral" and for Lender to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such Restricted License, whether now existing or entered into in the future, and (ii) Lender to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Lender's rights and remedies under this Agreement and the other Loan Documents.

6.6 Litigation Cooperation. From the Effective Date and continuing through the termination of this Agreement, make available to Lender, without expense to Lender, Borrower and its officers, employees and agents and Borrower's Books, to the extent that Lender may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against Lender with respect to any Collateral or relating to Borrower.

6.7 Use of Proceeds. Use the proceeds of the Loans for working capital and general corporate purposes.

6.8 Further Assurances. Execute any further instruments and take further action as Lender reasonably requests to perfect or continue Lender's Lien in the Collateral or to effect the purposes of this Agreement.

7 NEGATIVE COVENANTS

Borrower shall not do any of the following without Lender's prior written consent:

7.1 Dispositions. Convey, sell, lease, transfer, assign, or otherwise dispose of (collectively a " **Transfer**"), or permit any of its Subsidiaries to Transfer, all or any material part of its business or property, except for Transfers (a) of Inventory in the ordinary course of business; (b) of worn-out or obsolete Equipment; and (c) in connection with Permitted Liens and Permitted Investments.

7.2 Changes in Business, Management, Ownership, or Business Locations. (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses currently engaged in by Borrower and such Subsidiary, as applicable, or reasonably related thereto; or (b) liquidate or dissolve. Borrower shall not, without at least thirty (30) days prior written notice to Lender: (1) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than Five Thousand Dollars (\$5,000.00) in Borrower's assets or property), (2) change its jurisdiction of organization, (3) change its organizational structure or type, (4) change its legal name, or (5) change any organizational number (if any) assigned by its jurisdiction of organization.

7.3 Mergers or Acquisitions. Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person. A Subsidiary may merge or consolidate into another Subsidiary or into Borrower.

7.4 Indebtedness. Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

7.5 Encumbrance. Create, incur, allow, or suffer any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens, or permit any Collateral not to be subject to the security interest granted herein, or enter into any agreement, document, instrument or other arrangement (except with or in favor of Lender) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower or any Subsidiary from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower's or any Subsidiary's Intellectual Property, except as is otherwise permitted in Section 7.1 of this Agreement and the definition of "Permitted Liens" herein.

7.6 Distributions; Investments. (a) Directly or indirectly acquire or own any Person, or make any Investment in any Person, other than Permitted Investments, or permit any of its Subsidiaries to do so; or (b) pay any dividends or make any distribution or payment or redeem, retire or purchase any capital stock other than the redemption of shares held by former employees of Borrower in accordance with existing or customary contractual commitments.

7.7 Transactions with Affiliates. Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower, except for transactions that are in the ordinary course of Borrower's business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person.

7.8 Compliance. Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, each as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a material adverse effect on Borrower's business, or permit any of its Subsidiaries to do so; withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

7.9 Material Agreements. Enter into, terminate, amend, restate or otherwise alter the terms of any material agreements to which Borrower or any of its Subsidiaries is a party, except in the ordinary course of business, including but not limited to any litigation funding or investment agreements.

8 EVENTS OF DEFAULT

Any one of the following shall constitute an event of default (an "**Event of Default**") under this Agreement:

8.1 Payment Default. Borrower fails to pay any principal or interest on the Loans within three (3) days of the due date.

8.2 Covenant Default. Borrower fails or neglects to perform any obligation in Section 2.9 or Section 6 of this Agreement or violates any covenant in Section 7 of this Agreement or fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement, any Loan Documents and as to any default under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) days after the occurrence thereof; provided, however, grace and cure periods provided under this Section 8.2 shall not apply to financial covenants or any other covenants that are required to be satisfied, completed or tested by a date certain.

8.3 Material Adverse Change. A Material Adverse Change occurs.

8.4 Attachment; Levy; Restraint on Business. (i) Any material portion of Borrower's assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower from conducting any material part of its business.

8.5 Insolvency. (a) Borrower is unable to pay its debts (including trade debts) as they become due or otherwise becomes insolvent; (b) Borrower begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower and not dismissed or stayed within thirty (30) days.

8.6 Other Agreements. There is, under any agreement to which Borrower is a party with a third party or parties, (a) any default resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount individually or in the aggregate in excess of Fifty Thousand Dollars (\$50,000.00); or (b) any default by Borrower, the result of which could result in a Material Adverse Change to Borrower's business.

8.7 Judgments. One or more final judgments, orders, or decrees for the payment of money in an amount, individually or in the aggregate, of at least Fifty Thousand Dollars (\$50,000.00) (not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Borrower and the same are not, within ten (10) days after the entry thereof, discharged or execution thereof stayed or bonded pending appeal, or such judgments are not discharged prior to the expiration of any such stay.

8.8 Misrepresentations. Borrower or any Person acting for Borrower makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Lender or to induce Lender to enter this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect in any material respect when made.

9 LENDER'S RIGHTS AND REMEDIES

9.1 Rights and Remedies. When an Event of Default occurs and continues beyond any applicable grace period Lender may, without notice or demand, do any or all of the following:

(a) declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 of this Agreement occurs, all Obligations are immediately due and payable without any action by Lender); and

(b) exercise all rights and remedies available to Lender under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

Notwithstanding the inclusion of Events of Default hereunder, the Credit and the principal amount of all Loans, together with all accrued and unpaid interest thereon, shall be due and payable at all times on DEMAND.

9.2 Protective Payments. If Borrower fails to obtain the insurance called for by Section 6.4 of this Agreement or fails to pay any premium thereon or fails to pay any other amount which Borrower is obligated to pay under this Agreement or any other Loan Document, Lender may obtain such insurance or make such payment, and all amounts so paid by Lender immediately due and payable to Lender by Borrower, bearing interest at the then highest rate applicable to the Obligations, and secured by the Collateral. Lender will make reasonable efforts to provide Borrower with notice of Lender obtaining such insurance at the time it is obtained or within a reasonable time thereafter. No payments by Lender are deemed an agreement to make similar payments in the future or Lender's waiver of any Event of Default.

9.3 Lender's Liability for Collateral. So long as Lender complies with reasonable lending practices regarding the safekeeping of the Collateral in the possession or under the control of Lender, Lender shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral.

9.4 No Waiver; Remedies Cumulative. Lender's failure, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Lender thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by the party granting the waiver and then is only effective for the specific instance and purpose for which it is given. Lender's rights and remedies under this Agreement and the other Loan Documents are cumulative. Lender has all rights and remedies provided under the Code, by law, or in equity. Lender's exercise of one right or remedy is not an election and shall not preclude Lender from exercising any other remedy under this Agreement or other remedy available at law or in equity, and Lender's waiver of any Event of Default is not a continuing waiver. Lender's delay in exercising any remedy is not a waiver, election, or acquiescence.

9.5 Demand Waiver. Borrower waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Lender on which Borrower is liable.

10 NOTICES

All notices, consents, requests, approvals, demands, or other communication by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail or facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Lender or Borrower may change its mailing or electronic mail address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Borrower: Ecoark Holdings, Inc.
1010 NW J Street, Suite I
Bentonville, AR 72712
Attn: Randy May; Peter Mehring
Fax:
Email: rmay@ecoarkusa.com; pmehring@zestlabs.com

with a copy to: Carmel, Milazzo & DiChiara LLP
55 West 39th Street, 18th Floor
New York, New York 10018
Attn: Peter DiChiara
Fax:
Email: pdichiara@cmdllp.com

If to Lender: Trend Discovery SVP I, LLC
7 Wells Street, Suite 302D
Saratoga Springs, New York 12866
Attn: Brad Hoagland
Fax:
Email: bhoagland@trenddiscovery.com

with a copy to: Lippes Mathias Wexler Friedman LLP
50 Fountain Plaza, Suite 1700
Buffalo, New York 14202
Attn: John J. Koeppel; Brian J. Bocketti
Fax: (716) 853-5100
Email: jkoeppel@lippes.com; bbockett@lippesc.com

11 CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER

Except as otherwise expressly provided in any of the Loan Documents, New York law governs the Loan Documents without regard to principles of conflicts of law. Borrower and Lender each submit to the exclusive jurisdiction of the State and Federal courts in Erie County, New York; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Lender from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Lender. Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Borrower at the address set forth in, or subsequently provided to Borrower in accordance with, Section 10 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

BORROWER AND LENDER EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

12 GENERAL PROVISIONS

12.1 Successors and Assigns. This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign this Agreement or any rights or obligations under it without Lender's prior written consent (which may be granted or withheld in Lender's discretion). Lender has the right, following the occurrence and during the continuance of an Event of Default without the consent of or notice to Borrower, to sell, transfer, assign, negotiate, or grant participation in all or any part of, or any interest in, Lender's obligations, rights, and benefits under this Agreement and the other Loan Documents.

12.2 Indemnification. Borrower agrees to indemnify, defend and hold Lender and its directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Lender (each, an "**Indemnified Person**") harmless against: (a) all obligations, demands, claims, and liabilities (collectively, "**Claims**") claimed or asserted by any other party in connection with the transactions contemplated by the Loan Documents; and (b) all losses or expenses in any way suffered, incurred, or paid by such Indemnified Person as a result of, following from, consequential to, or arising from transactions between Lender and Borrower (including reasonable attorneys' fees and expenses), except for Claims and/or losses directly caused by such Indemnified Person's fraud, gross negligence or willful misconduct.

12.3 Right of Set-Off. Borrower hereby grants to Lender, a lien, security interest and right of setoff as security for all Obligations to Lender, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Lender or any entity under the control of Lender or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default or acceleration of the Credit, without demand or notice, Lender may set off the same or any part thereof and apply the same to any liability or obligation of Borrower even though unmatured and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE LENDER TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER, ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

12.4 Severability of Provisions. Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

12.5 Amendments in Writing; Waiver; Integration. No purported amendment or modification of any Loan Document, or waiver, discharge or termination of any obligation under any Loan Document, shall be enforceable or admissible unless, and only to the extent, expressly set forth in a writing signed by the party against which enforcement or admission is sought. Without limiting the generality of the foregoing, no oral promise or statement, nor any action, inaction, delay, failure to require performance or course of conduct shall operate as, or evidence, an amendment, supplement or waiver or have any other effect on any Loan Document. Any waiver granted shall be limited to the specific circumstance expressly described in it, and shall not apply to any subsequent or other circumstance, whether similar or dissimilar, or give rise to, or evidence, any obligation or commitment to grant any further waiver. The Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of the Loan Documents merge into the Loan Documents.

12.6 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

12.7 Survival. All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) have been paid in full and satisfied. Without limiting the foregoing, except as otherwise provided in Section 4.1, the grant of a security interest by Borrower in Section 4.1 shall survive until the termination of this Agreement. The obligation of Borrower in Section 12.2 of this Agreement to indemnify Lender shall survive until the statute of limitations with respect to such claim or cause of action shall have run.

12.8 Electronic Execution of Documents. The words "execution," "signed," "signature" and words of like import in any Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

12.9 Captions. The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

12.10 Construction of Agreement. The parties mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Agreement. In cases of uncertainty this Agreement shall be construed without regard to which of the parties caused the uncertainty to exist.

12.11 Relationship. The relationship of the parties to this Agreement is determined solely by the provisions of this Agreement. The parties do not intend to create any agency, partnership, joint venture, trust, fiduciary or other relationship with duties or incidents different from those of parties to an arm's-length contract.

12.12 Third Parties. Nothing in this Agreement, whether express or implied, is intended to: (a) confer any benefits, rights or remedies under or by reason of this Agreement on any persons other than the express parties to it and their respective permitted successors and assigns; (b) relieve or discharge the obligation or liability of any person not an express party to this Agreement; or (c) give any person not an express party to this Agreement any right of subrogation or action against any party to this Agreement.

12.13 Assignment. The Lender shall not transfer or assign any or all of the rights to the Loans without express written approval by Borrower, even during the occurrence and continuation of an Event of Default.

13 DEFINITIONS

13.1 Definitions. As used in the Loan Documents, the word "shall" is mandatory, the word "may" is permissive, the word "or" is not exclusive, the words "includes" and "including" are not limiting, the singular includes the plural, and numbers denoting amounts that are set off in brackets are negative. As used in this Agreement, the following capitalized terms have the following meanings:

"Account" is any "account" as defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to Borrower.

"Affiliate" of any Person is a Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person's senior executive officers, directors, partners, and, for any Person that is a limited liability company, that Person's managers and members.

"Agreement" is defined in the preamble of this Agreement.

"Borrower" is defined in the preamble of this Agreement.

"Borrower's Books" are all Borrower's books and records including ledgers, federal and state tax returns, records regarding Borrower's assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

"Business Day" is any day that is not a Saturday, Sunday, or legal holiday on which commercial banks are authorized or required by law to be closed for business in New York, New York.

"Cash Equivalents" means (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor's Ratings Group or Moody's Investors Service, Inc.; and (c) certificates of deposit maturing no more than one (1) year after issue.

"Change of Control" means any of the following (i) a sale or other disposition by Borrower of all or substantially all of its assets; (ii) a merger or consolidation of Borrower into or with another person or entity, where the holders of Borrower's outstanding voting equity securities as of immediately prior to such merger or consolidation hold less than a majority of the issued and outstanding voting equity securities of the successor or surviving person or entity as of immediately following the consummation of such merger or consolidation; or (iii) any sale, in a single transaction or series of related transactions, by the holders of Borrower's outstanding voting equity securities, to one or more buyers, of such interests or securities, where such holders do not, as of immediately following the consummation of such transaction(s), continue to hold at least a majority of Borrower's issued and outstanding voting equity securities (other than by the sale of Borrower's equity securities in a public offering or to venture capital investors).

"Claims" is defined in Section 12.2 of this Agreement.

"Code" is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of New York; 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 or Division 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 in effect in a jurisdiction other than the State of New York, 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 relating to such provisions.

"Collateral" is any and all properties, rights and assets of Borrower described on **Exhibit A**.

"Commitment Fee" is defined in Section 2.8 of this Agreement.

"Compliance Certificate" is attached as **Exhibit B**.

"Contingent Obligation" is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but "Contingent Obligation" does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

"Copyrights" are any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

"Default Rate" is a per annum rate of interest equal to seventeen percent (17%).

"Dollars," "dollars" or use of the sign "\$" means only lawful money of the United States and not any other currency, regardless of whether that currency uses the "\$" sign to denote its currency or may be readily converted into lawful money of the United States.

"Effective Date" is defined in the preamble hereof.

"Equipment" is all "equipment" as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

"ERISA" is the Employee Retirement Income Security Act of 1974, and its regulations.

"Events of Default" are set forth in Section 8 of this Agreement.

"Exchange Act" is the Securities Exchange Act of 1934, as amended.

"Fee Letter" is that certain fee letter agreement dated as of the date hereof by and between Borrower and Lender.

"GAAP" is generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination.

"Governmental Approval" is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

"Governmental Authority" is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central Lender or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

"Guarantor" means Zest.

"Indebtedness" is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations and (d) Contingent Obligations.

"Indemnified Person" is defined in Section 12.2 of this Agreement.

"Insolvency Proceeding" is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

"Intellectual Property" means all of Borrower's right, title, and interest in and to the following:

- (a) its Copyrights, Trademarks and Patents;
- (b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how, operating manuals;
- (c) any and all source code;
- (d) any and all design rights which may be available to Borrower;
- (e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and
- (f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

"Inventory" is all "inventory" as defined in the Code in effect on the Effective Date with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of Borrower's custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

"Investment" is any beneficial ownership of (including stock, partnership interest or other securities) any Person, or any loan, advance or capital contribution to any Person.

"Lender" is defined in the preamble of this Agreement.

"Lien" is a claim, mortgage, deed of trust, levy, charge, pledge, security interest or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

"Loan Documents" are, collectively, this Agreement, a Guaranty Agreement from the Guarantor in favor of Lender, a Pledge and Security Agreement by the Guarantor in favor of Lender, a Negative Pledge Agreement by each Subsidiary in favor of Lender, the Fee Letter, and all other collateral and ancillary documents as Lender may request in connection herewith and therewith.

"Material Adverse Change" is: (a) a material impairment in the perfection or priority of Lender's Lien in the Collateral or in the value of such Collateral; (b) a material adverse change in the business, operations, or condition (financial or otherwise) of Borrower; or (c) a material impairment of the prospect of repayment of any portion of the Obligations.

"Maturity Date" is defined in Section 2.1 of this Agreement.

"Notice of Loan" is attached as Exhibit D.

"Obligations" are Borrower's obligations to pay when due any debts, principal, interest, and other amounts Borrower owes Lender now or later, whether under this Agreement, the Loan Documents, or otherwise, including, without limitation, any interest accruing after Insolvency Proceedings begin and debts, liabilities, or obligations of Borrower assigned to Lender, and to perform Borrower's duties under the Loan Documents.

"Operating Documents" are, for any Person, such Person's formation documents, as certified with the Secretary of State of such Person's state of formation on a date that is no earlier than thirty (30) days prior to the Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

"Patents" means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

"Permitted Indebtedness" is:

- (a) Borrower's Indebtedness to Lender under this Agreement and the other Loan Documents;
- (b) unsecured Indebtedness to trade creditors incurred in the ordinary course of business;
- (c) Indebtedness secured by Liens permitted under clause (c) of the definition of "Permitted Liens" hereunder;
- (d) Indebtedness existing on the Effective Date which has been heretofore disclosed by Borrower to Lender and which is not otherwise described in the any of the foregoing clauses (a) through (e) above; and
- (e) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (f) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon Borrower or its Subsidiary, as the case may be.

"Permitted Investments" are:

- (a) Investments (including, without limitation, Subsidiaries) existing on the Effective Date (but specifically excluding any future Investments in any Subsidiaries unless otherwise permitted hereunder); and
- (b) Investments consisting of Cash Equivalents.

"Permitted Liens" are:

- (a) Liens existing on the Effective Date, including Liens arising under this Agreement and the other Loan Documents;
- (b) Liens for taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith and for which Borrower maintains adequate reserves on Borrower's Books, provided that no notice of any such Lien has been filed or recorded under the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted thereunder;
- (c) purchase money Liens (including capitalized leases) (i) on Equipment acquired or held by Borrower incurred for financing the acquisition of the Equipment securing no more than One Hundred Thousand Dollars (\$100,000.00) in the aggregate amount outstanding per calendar year, or (ii) existing on Equipment when acquired, if the Lien is confined to the property and improvements and the proceeds of the Equipment; and

(d) Liens incurred in the extension, renewal or refinancing of the Indebtedness secured by Liens described in (a) through (c), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness may not increase.

"Person" is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"Registered Organization" is any "registered organization" as defined in the Code with such additions to such term as may hereafter be made.

"Requirement of Law" is, as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Responsible Officer" is any of the Chief Executive Officer, President, Chief Financial Officer and Controller of Borrower.

"Restricted License" is any material license or other agreement with respect to which Borrower is the licensee (a) that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or agreement or any other property, or (b) for which a default under or termination of could interfere with Lender's right to sell any Collateral.

"SEC" shall mean the Securities and Exchange Commission, any successor thereto, and any analogous Governmental Authority.

"Subsidiary" is, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless the context otherwise requires, each reference to a Subsidiary herein shall be a reference to a Subsidiary of Borrower or Guarantor.

"Trademarks" means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.

"Transfer" is defined in Section 7.1 of this Agreement.

"Zest" is defined in the definition of Zest Litigation.

"Zest Litigation" means that certain action by Borrower's Subsidiary, Zest Labs, Inc. ("**Zest**"), against Wal-Mart Inc., filed on August 1, 2018 in the United States District Court for the Eastern District of Arkansas – Case # 4:18-cv-00500.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

BORROWER

ECOARK HOLDINGS, INC.

By: _____
Name: _____
Title: _____

LENDER

TREND DISCOVERY SPV I, LLC

By: _____
Name: _____
Title: _____

Schedule 5.3
Intellectual Property

Schedule 5.8
Owned Equity Interests

EXHIBIT A

The Collateral consists of all of Borrower's right, title and interest in and to the following:

All goods, equipment, inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, general intangibles (including payment intangibles), accounts (including health-care receivables), documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, all certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), commercial tort claims, securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and any copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, now owned or later acquired; any patents, trademarks, service marks and applications therefor; trade styles, trade names, any trade secret rights, including any rights to unpatented inventions, know-how, operating manuals, license rights and agreements and confidential information, now owned or hereafter acquired; or any claims for damages by way of any past, present and future infringement of any of the foregoing; and

All Borrower's books relating to the foregoing and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

EXHIBIT B

Compliance Certificate

I, an authorized officer of ECOARK HOLDINGS, INC. ("Borrower") certify under the Loan and Security Agreement (as may be amended or modified from time to time, the "Agreement") between Borrower and TREND DISCOVERY SPV I, LLC ("Lender") as follows for the period ending (all capitalized terms used herein shall have the meaning set forth in the Agreement):

Borrower represents and warrants as follows:

Borrower and each Subsidiary is duly existing and in good standing in its state of formation and qualified and licensed to do business in, and in good standing in, any state in which the conduct of its business or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to cause a Material Adverse Change. The execution, delivery and performance of the Loan Documents have been duly authorized, and do not conflict with Borrower's organizational documents, nor constitute an event of default under any material agreement by which Borrower is bound. Borrower is not in default under any agreement to which or by which it is bound in which the default could reasonably be expected to cause a Material Adverse Change.

Borrower has good title to the Collateral, free of Liens except Permitted Liens. All inventory is in all material respects of good and marketable quality, free from material defects. Borrower is not an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower has complied in all material respects with the Federal Fair Labor Standards Act. Borrower has not violated any laws, ordinances or rules, the violation of which could reasonably be expected to cause a Material Adverse Change. None of Borrower's or any Subsidiary's properties or assets have been used by Borrower or any Subsidiary or, to the best of Borrower's knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than legally. Borrower and each Subsidiary has timely filed all required tax returns and paid, or made adequate provision to pay, all material taxes, except those being contested in good faith with adequate reserves under GAAP. Borrower and each Subsidiary has obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all government authorities that are necessary to continue its business as currently conducted except where the failure to obtain or make such consents, declarations, notices or filings would not reasonably be expected to cause a Material Adverse Change. Borrower has satisfied and has caused each Subsidiary to satisfy each of the conditions precedent contained in Section 3 of the Loan Agreement.

The undersigned acknowledges that no borrowings may be requested at any time or date of determination that Borrower is not in compliance with any of the terms of the Agreement, and that compliance is determined not just at the date this certificate is delivered.

All other representations and warranties in the Agreement are true and correct in all material respects on this date, and Borrower represents that there is no existing Event of Default.

Sincerely,

ECOARK HOLDINGS, INC.

Signature

Title

Date

EXHIBIT C

Form of Demand Note

\$()

____, 2018

FOR VALUE RECEIVED, the undersigned, **ECOARK HOLDINGS, INC.** ("Borrower"), a corporation organized under the laws of _____, hereby promises to pay, on the earlier of (i) ON DEMAND or (ii) on the Maturity Date to the order of **Trend Discovery SPV I, LLC** ("Lender") at the payment office of Lender the principal sum of [] 00/100 Dollars (\$[]), or the aggregate unpaid principal amount of all Loans (as defined in the Loan Agreement, as defined herein) made by Lender to Borrower pursuant to the Loan Agreement, whichever is less. Borrower also agrees to pay any additional amount that is required to be paid pursuant to the terms and provisions of the Loan Agreement.

As used herein, "Loan Agreement" means the Loan and Security Agreement dated as of December , 2018, between Borrower and Lender, as the same may from time to time be amended, restated or otherwise modified. Each capitalized term used herein that is defined in the Loan Agreement and not otherwise defined herein shall have the meaning ascribed to it in the Loan Agreement.

Borrower promises to pay interest on the unpaid principal amount hereof from the date hereof until the payment in full hereof, at the rates per annum that shall be determined in accordance with the relevant provisions of the Loan Agreement. Such interest shall be payable on each date as provided for in the Loan Agreement. All payments of principal and interest on this Demand Note shall be made in immediately available funds.

This Demand Note is referred to in the Loan Agreement and is entitled to the benefits thereof. Reference is made to the Loan Agreement for a description of the right of the undersigned to anticipate payments hereof, the right of the holder hereof to declare this Demand Note due prior to its stated maturity, and other terms and conditions upon which this Demand Note is issued.

Except as expressly provided in the Loan Agreement, Borrower expressly waives presentment, demand, protest and notice of any kind. This Demand Note shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflicts of laws provisions.

BORROWER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS DEMAND NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY).

IN WITNESS WHEREOF, and intending to be legally bound hereby, the undersigned has executed this Demand Note by its duly authorized officer as of the date first written above.

ECOARK HOLDINGS, INC.

By: _____
Name:
Title:

EXHIBIT D

Notice of Loan

[Date] _____, 20__

Trend Discovery SPV I, LLC
7 Wells Street, Suite 302D
Saratoga Springs, New York 12866

Attention: _____

Ladies and Gentlemen:

The undersigned, ECOARK HOLDINGS, INC., refers to the Loan Agreement, dated as of December , 2018 (as the same may from time to time be amended, restated or otherwise modified, the "Loan Agreement", the terms defined therein being used herein as therein defined), between the undersigned and TREND DISCOVERY SPV I, LLC, as Lender, and hereby gives you notice, pursuant to Section 2.3 of the Loan Agreement that the undersigned hereby requests a Loan under the Loan Agreement, and in connection therewith sets forth below the information relating to the Loan (the "Proposed Loan") as required by Section 2.3 of the Credit Agreement:

(a) The Business Day of the Proposed Loan is _____, 20__.

(b) The amount of the Proposed Loan is \$ _____.

The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the date of the Proposed Loan:

(i) the representations and warranties contained in each Loan Document are correct in all material respects to the extent not otherwise qualified by a materiality concept, before and after giving effect to the Proposed Loan and the application of the proceeds therefrom, as though made on and as of such date (except to the extent any representation or warranty is stated to relate solely to an earlier date);

(ii) no event has occurred and is continuing, or would result from such Proposed Loan, or the application of proceeds therefrom, that constitutes a Default or Event of Default; and

(iii) the conditions set forth in Section 3 of the Loan Agreement have been satisfied.

Very truly yours,

ECOARK HOLDINGS, INC.

By: _____
Print Name: _____
Title: _____

Demand Note

\$1,000,000

December 28, 2018

FOR VALUE RECEIVED, the undersigned, **ECOARK HOLDINGS, INC.** ("Borrower"), a corporation organized under the laws of the State of Nevada, hereby promises to pay, on the earlier of (i) ON DEMAND or (ii) on the Maturity Date to the order of **Trend Discovery SPV I, LLC** ("Lender") at the payment office of Lender the principal sum of One Million and 00/100 Dollars (\$1,000,000), or the aggregate unpaid principal amount of all Loans (as defined in the Loan Agreement, as defined herein) made by Lender to Borrower pursuant to the Loan Agreement, whichever is less. Borrower also agrees to pay any additional amount that is required to be paid pursuant to the terms and provisions of the Loan Agreement.

As used herein, "Loan Agreement" means the Loan and Security Agreement dated as of December 27, 2018, between Borrower and Lender, as the same may from time to time be amended, restated or otherwise modified. Each capitalized term used herein that is defined in the Loan Agreement and not otherwise defined herein shall have the meaning ascribed to it in the Loan Agreement.

Borrower promises to pay interest on the unpaid principal amount hereof from the date hereof until the payment in full hereof, at the rates per annum that shall be determined in accordance with the relevant provisions of the Loan Agreement. Such interest shall be payable on each date as provided for in the Loan Agreement. All payments of principal and interest on this Demand Note shall be made in immediately available funds.

This Demand Note is referred to in the Loan Agreement and is entitled to the benefits thereof. Reference is made to the Loan Agreement for a description of the right of the undersigned to anticipate payments hereof, the right of the holder hereof to declare this Demand Note due prior to its stated maturity, and other terms and conditions upon which this Demand Note is issued.

Except as expressly provided in the Loan Agreement, Borrower expressly waives presentment, demand, protest and notice of any kind. This Demand Note shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflicts of laws provisions.

BORROWER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS DEMAND NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY).

IN WITNESS WHEREOF, and intending to be legally bound hereby, the undersigned has executed this Demand Note by its duly authorized officer as of the date first written above.

ECOARK HOLDINGS, INC.

By: _____
Name: _____
Title: _____

SECURITY AGREEMENT

This **SECURITY AGREEMENT** (as the same may be amended, restated or otherwise modified, this "Agreement") is made this 28th day of December, 2018, between **ZEST LABS, INC.**, a Delaware corporation, with offices at 2349 Bering Drive, San Jose, CA 95131 ("Grantor"), and **TREND DISCOVERY SPV I, LLC**, a Delaware limited liability company, with offices at 7 Wells Street, Suite 302D, Saratoga Springs, NY 12866, and its successors and assigns ("Lender").

ECOARK HOLDINGS, INC., a Nevada corporation ("Borrower"), and Lender are parties to that certain loan and security agreement dated as of the date hereof (the "Loan Agreement") pursuant to which Lender has advanced or will advance to Borrower a loan (the "Loan") in the maximum principal amount of \$10,000,000 evidenced by that certain demand note, dated as of the date hereof (together with any amendments, restatements, increases or modification, the "Note") executed by Borrower in favor of Lender, (this Agreement and all other instruments, agreements and documents entered into from time to time, evidencing or securing the Loan or any obligation of payment thereof or performance of Borrower's obligations in connection with the transaction contemplated hereunder, each as amended, collectively referred to as "Loan Documents"). Grantor understands that Lender is willing to grant the Loan to Borrower only upon certain conditions, one of which is that Grantor execute and deliver a Guaranty dated of even date herewith in favor of Lender ("Guaranty") and as security for the Guaranty, Grantor and Lender have agreed to enter into this Agreement.

As used herein, "Obligations" shall mean (i) all obligations of Grantor under the Guaranty; (ii) all obligations and liabilities of Grantor now existing or hereafter incurred to Lender under, arising out of, or in connection with any the Note; (iii) every other liability, now or hereafter owing to Lender or any affiliate of Lender ("Lender Affiliate") by Grantor or Borrower, including, without limitation, every liability, whether owing by only Grantor or Borrower, or by Grantor or Borrower with one or more others in a several, joint or joint and several capacity, whether owing absolutely or contingently, whether created by note, overdraft, guaranty of payment or other contract or by a quasi-contract, tort, statute or other operation of law, whether incurred directly to Lender or a Lender Affiliate or acquired by Lender or a Lender Affiliate by purchase, pledge or otherwise and whether participated to or from Lender or a Lender Affiliate in whole or in part; (iv) all reasonable costs and expenses, including attorneys' fees, incurred by Lender or any Lender Affiliate in connection with the Guaranty and the Loan or in connection with the collection of any portion of the indebtedness described in (i), (ii), (iii) and (iv) hereof; (v) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Agreement; and (vi) the performance of the covenants and agreements of Grantor contained in this Agreement.

Grant of Security Interest. Grantor hereby grants to the Lender, to secure the payment and performance in full of the Obligations of the Grantor, a security interest in and pledges to the Lender the following properties, assets and rights of the Grantor, consisting of all corporate and business assets, properties and rights of the Grantor wherever located, whether now owned or hereafter acquired or arising, and all proceeds, products, and accessions thereof (all of the same being hereinafter called the "Collateral"): (a) Accounts (including health care insurance receivables), (b) Chattel Paper (whether tangible or electronic), (c) Commercial Tort Claims, including without limitation the Zest Litigation (as defined in the Loan Agreement), (d) Deposit Accounts, (e) Documents, (f) Equipment, (g) Fixtures, (h) General Intangibles (including payment intangibles and intellectual property), (i) Instruments (including promissory notes), (j) Investment Property (including all securities), (k) Inventory, (l) Letter-of-Credit Rights (whether or not the Letter-of-Credit is evidenced by a writing), (m) Money (including contract rights or rights to the payment of money), (n) Supporting Obligations, (o) to the extent not listed above as original collateral, proceeds and products of the foregoing. Notwithstanding anything to the contrary set forth herein, there is specifically excluded from the security interest granted hereunder any capital stock in any foreign subsidiary that is not a first tier subsidiary of Grantor or any capital stock in any other foreign subsidiary to the extent the same represents more than 65% of the total combined voting power of all classes of capital stock or similar equity interests of such foreign subsidiary which are entitled to vote, if to grant such security interest would subject Grantor to liability for additional United States income taxes by virtue of Section 956 of the Code in an amount Grantor considers material. Notwithstanding the foregoing, Lender's lien and security interest in the Collateral shall be subject to all agreements dated before the Closing Date that grant any lien or security interest in the Zest Litigation or any recovery from or proceeds of the Zest Litigation.

GRANTOR AND LENDER AGREE AS FOLLOWS:

1. Authorization to File Financing Statements. Grantor hereby irrevocably authorizes the Lender at any time and from time to time to file in any filing office in any Uniform Commercial Code ("UCC") jurisdiction any financing statements and amendments thereto that (a) indicate the Collateral (i) as all assets of the Grantor or words of similar effect, regardless of whether any particular asset included in the Collateral falls within the scope of the UCC of the State (as defined below) or such jurisdiction, or (ii) as being of an equal or lesser scope or with greater detail, and (b) provide any other information required by the UCC of the State or such jurisdiction for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether the Grantor is an organization, the type of organization and any organization identification number issued to the Grantor and, (ii) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. The Grantor agrees to furnish any such information to the Lender promptly upon the Lender's request. "State" means the State of Delaware. All terms defined in the UCC of the State and used herein shall have the same definitions herein as specified therein.

2. Other Actions. Further to insure the attachment, perfection and first priority of, and the ability of the Lender to enforce, the Lender's security interest in the Collateral, the Grantor agrees, in each case at the Grantor's expense, to take the following actions with respect to the following Collateral and without limitation on the Grantor's other obligations contained in this Agreement:

(a) Promissory Notes and Tangible Chattel Paper. If the Grantor shall at any time hold or acquire any promissory notes or tangible chattel paper, the Grantor shall forthwith endorse, assign and deliver the same to the Lender, accompanied by such instruments of transfer or assignment duly executed in blank as the Lender may from time to time specify.

(b) Deposit Accounts. For each deposit account that the Grantor at any time opens or maintains, the Grantor shall, at the Lender's request and option, pursuant to an agreement in form and substance satisfactory to the Lender, either (i) cause the depository bank to agree to comply, without further consent of the Grantor, at any time with instructions from the Lender to such depository bank directing the disposition of funds from time to time credited to such deposit account, or (ii) arrange for the Lender to become the customer of the depository bank with respect to the deposit account, with the Grantor being permitted, only with the consent of the Lender, to exercise rights to withdraw funds from such deposit account. The Lender agrees with the Grantor that the Lender shall not give any such instructions or withhold any withdrawal rights from the Grantor, unless an Event of Default (as defined below) has occurred and is continuing, or, if effect were given to any withdrawal not otherwise permitted by the Loan Documents, would occur. The provisions of this paragraph shall not apply to (x) any deposit account for which the Grantor, the depository bank and the Lender have entered into a cash collateral agreement specially negotiated among the Grantor, the depository bank and the Lender for the specific purpose set forth therein, (y) a deposit account for which the Lender is the depository bank and is in automatic control, and (z) any deposit accounts specially and exclusively used for payroll, payroll taxes, escrow of funds in connection with any acquisition, and other employee wage and benefit payments to or for the benefit of the Grantor's salaried employees.

(c) Investment Property. If the Grantor shall at any time hold or acquire any certificated securities, the Grantor shall forthwith endorse, assign and deliver the same to the Lender, accompanied by such instruments of transfer or assignment duly executed in blank as the Lender may from time to time specify. If any securities now or hereafter acquired by the Grantor are uncertificated and are issued to the Grantor or its nominee directly by the issuer thereof, the Grantor shall immediately notify the Lender thereof and, at the Lender's request and option, pursuant to an agreement in form and substance satisfactory to the Lender, either (i) cause the issuer to agree to comply, without further consent of the Grantor or such nominee, at any time with instructions from the Lender as to such securities, or (ii) arrange for the Lender to become the registered owner of the securities. If any securities, whether certificated or uncertificated, or other investment property now or hereafter acquired by the Grantor are held by the Grantor or its nominee through a securities intermediary or commodity intermediary, the Grantor shall immediately notify the Lender thereof and, at the Lender's request and option, pursuant to an agreement in form and substance satisfactory to the Lender, either (y) cause such securities intermediary or (as the case may be) commodity intermediary to agree to comply, in each case without further consent of the Grantor or such nominee, at any time with entitlement orders or other instructions from the Lender to such securities intermediary as to such securities or other investment property, or (as the case may be) to apply any value distributed on account of any commodity contract as directed by the Lender to such commodity intermediary, or (z) in the case of financial assets or other investment property held through a securities intermediary, arrange for the Lender to become the entitlement holder with respect to such investment property, with the Grantor being permitted, only with the consent of the Lender, to exercise rights to withdraw or otherwise deal with such investment property. The Lender agrees with the Grantor that the Lender shall not give any such entitlement orders or instructions or directions to any such issuer, securities intermediary or commodity intermediary, and shall not withhold its consent to the exercise of any withdrawal or dealing rights by the Grantor, unless an Event of Default has occurred and is continuing, or, after giving effect to any such investment and withdrawal rights not otherwise permitted by the Loan Documents, would occur. The provisions of this paragraph shall not apply to any financial assets credited to a securities account for which the Lender is the securities intermediary.

(d) Collateral in the Possession of a Bailee. If any Collateral is at any time in the possession of a bailee, the Grantor shall promptly notify the Lender thereof and, at the Lender's request and option, shall promptly obtain an acknowledgement from the bailee, in form and substance satisfactory to the Lender, that the bailee holds such Collateral for the benefit of the Lender and such bailee's agreement to comply, without further consent of the Grantor, at any time with instructions of the Lender as to such Collateral. The Lender agrees with the Grantor that the Lender shall not give any such instructions unless an Event of Default has occurred and is continuing or would occur after taking into account any action by the Grantor with respect to the bailee.

(e) Electronic Chattel Paper. If the Grantor at any time holds or acquires an interest in any electronic chattel paper, the Grantor shall promptly notify the Lender thereof and, at the request and option of the Lender, shall take such action as the Lender may reasonably request to vest in the Lender control, under the UCC, of such electronic chattel paper. The Lender agrees with the Grantor that the Lender will arrange, pursuant to procedures satisfactory to the Lender amid so long as such procedures will not result in the Lender's loss of control, for the Grantor to make alterations to the electronic chattel paper permitted under the UCC for a party in control to make without loss of control, unless an Event of Default has occurred and is continuing or would occur after taking into account any action by the Grantor with respect to such electronic chattel paper.

(f) Letter-of-Credit Rights. If the Grantor is at any time a beneficiary under a letter of credit now or hereafter, the Grantor shall promptly notify the Lender thereof and, at the request and option of the Lender, the Grantor shall, pursuant to an agreement in form and substance satisfactory to the Lender, either (i) arrange for the issuer and any confirmer or other nominated person of such letter of credit to consent to an assignment to the Lender of the proceeds of the letter of credit or (ii) arrange for the Lender to become the transferee beneficiary of the letter of credit, with the Lender agreeing, in each case, that the proceeds of the letter to credit are to be applied as provided in the Loan Agreement.

(g) Commercial Tort Claims. If the Grantor shall at any time hold or acquire a commercial tort claim, the Grantor shall immediately notify the Lender in a writing signed by the Grantor of the particulars thereof and grant to the Lender in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance satisfactory to the Lender.

(h) Other Actions as to any and all Collateral. The Grantor further agrees, upon the reasonable request of the Lender and at the Lender's option, to take any and all other actions as the Lender may determine to be necessary or useful for the attachment, perfection and first priority of, and the ability of the Lender to enforce, the Lender's security interest in any and all of the Collateral, including, without limitation, (i) executing, delivering and, where appropriate, filing financing statements and amendments relating thereto under the UCC, to the extent, if any, that the Grantor's signature thereon is required therefor, (ii) causing the Lender's name to be noted as secured party on any certificate of title for a titled good if such notation is a condition to attachment, perfection or priority of, or ability of the Lender to enforce, the Lender's security interest in such Collateral, (iii) complying with any provision of any statute, regulation or treaty of the United States as to any Collateral if compliance with such provision is a condition to attachment, perfection or priority of, or ability of the Lender to enforce, the Lender's security interest in such Collateral, (iv) obtaining governmental and other third party waivers, consents and approvals in form and substance satisfactory to the Lender, including, without limitation, any consent of any licensor, lessor or other person obligated on Collateral, (v) obtaining waivers from mortgagees and landlords in form and substance satisfactory to the Lender and (vi) taking all actions under any other law, as reasonably determined by the Lender to be applicable in any relevant jurisdiction, including any foreign jurisdiction.

3. Relation to Other Loan Documents. The provisions of this Agreement supplement the provisions of any real estate mortgage or deed of trust granted by the Grantor to the Lender and which secures the payment or performance of any of the Obligations. Nothing contained in any such real estate mortgage or deed of trust shall derogate from any of the rights or remedies of the Lender hereunder. In addition to the provisions of this Agreement being so read and construed with any such mortgage or deed of trust, the provisions of this Agreement shall be read and construed with the other Loan Documents.

4. Representations and Warranties Concerning Grantor's Legal Status. The Grantor represents and warrants to the Lender as follows: (a) it has full power and authority to own its properties and to transact the businesses in which it is presently engaged or presently proposes to engage; (b) the execution, delivery and performance of this Agreement have been duly authorized by all necessary action of the Grantor; and (c) this Agreement constitutes, and any instrument or agreement required hereunder to be given by the Grantor to the Lender when delivered will constitute, the legal, valid and binding obligation of the Grantor, enforceable against the Grantor in accordance with their respective terms.

5. Covenants Concerning Grantor's Legal Status . The Grantor covenants to and with the Lender as follows: (a) there is no pending or threatened litigation, claim for infringement, proceeding or investigation by any governmental authority or any other person known to the Grantor against or otherwise affecting the Grantor or any of its assets or its officers, directors or agents in their capacities as such, nor does the Grantor know of any ground for any such litigation, infringement claims, proceedings or investigations; (b) no contract or organizational document prohibits any term or condition of this Agreement; (c) the execution and delivery of this Agreement will not violate any law or agreement governing the Grantor or to which the Grantor is a party; and (d) all information and statements furnished in connection with the Loan Documents, and any other documents related to this secured transaction, are true and correct, and contain no false or misleading statement.

6. Representations and Warranties Concerning Collateral. The Grantor further represents and warrants to the Lender as follows: (a) the Grantor is the owner of the Collateral, free from any right or claim of any person or any adverse lien, security interest or other encumbrance, except for the security interest created by this Agreement and other liens permitted by Lender and listed on Schedule 6, attached hereto (the "Permitted Liens"), (b) none of the Collateral constitutes, or is the proceeds of, "farm products" as defined in the UCC of the State, (c) none of the account debtors or other persons obligated on any of the Collateral is a governmental authority covered by the Federal Assignment of Claims Act or like federal, state or local statute or rule in respect of such Collateral, (d) the Grantor holds no commercial tort claim, and (e) the Grantor has at all times operated its business in compliance with all applicable provisions of the federal Fair Labor Standards Act, as amended, and with all applicable provisions of federal, state and local statutes and ordinances dealing with the control, shipment, storage or disposal of hazardous materials or substances, (f) all other information set forth in this Agreement pertaining to the Collateral is accurate and complete, and (g) there has been no change in any of such information since the date on which the Guaranty or this Agreement were signed by the Grantor.

7. Covenants Concerning Collateral. The Grantor further covenants with the Lender as follows: (a) the Collateral, to the extent not delivered to the Lender pursuant to Section 2 above, will be kept at _____ and the Grantor will not remove the Collateral from such locations, without providing at least thirty (30) days prior written notice to the Lender, (b) except for the security interest herein granted and the Permitted Liens, the Grantor shall be the owner of the Collateral free from any right or claim of any other person or any lien, security interest or other encumbrance, and the Grantor shall defend the same against all claims and demands of all persons at any time claiming the same or any interests therein adverse to the Lender, (c) the Grantor shall not pledge, mortgage or create, or suffer to exist any right of any person in or claim by any person to the Collateral, or any security interest, lien or other encumbrance in the Collateral in favor of any person, other than the Lender except for the Permitted Liens, (d) the Grantor will keep the Collateral in good order and repair (normal wear and tear accepted) and will not use the same in violation of law or any policy of insurance thereon, (f) the Grantor will pay promptly when due all taxes, assessments, governmental charges and levies upon the Collateral or incurred in connection with the use or operation of such Collateral or incurred in connection with this Agreement, (g) the Grantor will continue to operate its business in compliance with all applicable provisions of the federal Fair Labor Standards Act, as amended, and with all applicable provisions of federal, state and local statutes and ordinances dealing with the control, shipment, storage or disposal of hazardous materials or substances, and (h) the Grantor will not sell or otherwise dispose, or offer to sell or otherwise dispose, of the Collateral or any interest therein except as otherwise permitted under the Loan Agreement, including (i) sales of inventory in the ordinary course of business and (ii) so long as no Event of Default (as defined below) has occurred and is continuing, sales or other dispositions of obsolete items of equipment consistent with past practices.

8. Special Provisions Concerning Intellectual Property.

(a) Intellectual Property. Grantor represents and warrants that as of the date hereof: (i) it is the true and lawful owner or licensee of the trademarks listed on Schedule 8 attached hereto and that said listed trademarks constitute all the marks registered in the United States Patent and Trademark Office that Grantor now owns or uses in connection with its business; (ii) it is the true and lawful owner or licensee of all rights in the patents listed on Schedule 8 attached hereto and that said patents constitute all the United States patents and applications for United States patents registered or filed in the United States Patent and Trademark Office that Grantor now owns or uses in connection with its business; and (iii) it is the true and lawful owner or licensee of all rights in the copyright registrations listed on Schedule 8 attached hereto and that said copyrights constitute all the registered United States copyrights that Grantor now owns. Grantor further warrants that it is aware of no third party claim that any aspect of Grantor's present or contemplated business operations infringes or will infringe any trademark, service mark, patent or copyright in a manner which could have a material adverse effect on the financial condition, business or property of Grantor.

(b) Collateral Assignments; Further Assurances. Upon reasonable request of the Lender whenever made, any Grantor shall promptly execute and deliver to the Lender such Collateral Assignment Agreements as the Lender shall request in connection with Grantor's intellectual property. Grantor agrees that it will take such action, and deliver such documents or instruments, as the Lender shall reasonably request in connection with the preparation, filing or registration and enforcement of any Collateral Assignment Agreement.

(c) Licenses and Assignments. Grantor hereby agrees not to divest itself of any material right under or with respect to any intellectual property material to its business other than in the ordinary course of business or as expressly permitted pursuant to the Loan Agreement absent prior written approval of the Lender.

(d) Infringements. Grantor agrees, promptly upon learning thereof, to notify the Lender in writing of the name and address of, and to furnish such pertinent information that may be available with respect to, any party who may be infringing or otherwise violating any of Grantor's rights in and to any intellectual property that has a material adverse effect on the financial condition, business or property of Grantor taken as a whole (any such Intellectual Property, "Significant Intellectual Property"), or with respect to any party claiming that Grantor's use of any Significant Intellectual Property violates any property right of that party, to the extent that such infringement or violation could have a material adverse effect on the financial condition, business or property of Grantor. Grantor further agrees, unless otherwise directed by the Lender, diligently to prosecute any person infringing any Significant Intellectual Property in a manner consistent with its past practice and in the ordinary course of business.

(e) Preservation of Trademarks. Grantor agrees to use or license the use of its material trademarks in interstate commerce during the time in which this Agreement is in effect, sufficiently to preserve such trademarks as trademarks or service marks registered under the laws of the United States.

(f) Maintenance of Registration. Grantor shall, at its own expense, diligently process all documents required by the Trademark Act of 1946, 15 U.S.C. §§ 1051, *et seq.* to maintain trademark registration to the extent that the failure of such registration would reasonably be expected to have a material adverse effect, including but not limited to affidavits of use and applications for renewals of registration in the United States Patent and Trademark Office for all of its trademarks pursuant to 15 U.S.C. §§ 1058(a), 1059 and 1065, and shall pay all fees and disbursements in connection therewith, and shall not abandon any such filing of affidavit of use or any such application of renewal prior to the exhaustion of all administrative and judicial remedies without prior written consent of the Lender, which consent shall not be unreasonably withheld.

(g) Future Registered Trademarks. If any mark registration issues hereafter to Grantor as a result of any application now or hereafter pending before the United States Patent and Trademark Office, then, within ten business days thereof Grantor shall deliver to the Lender an updated Schedule 8, and a grant of security in such mark to the Lender, confirming the grant thereof hereunder, the form of such confirmatory grant to be substantially the same as the form hereof.

(h) Maintenance of Patents. At its own expense and in its reasonable business judgment, Grantor shall make timely payment of all post-issuance fees required pursuant to 35 U.S.C. § 41 to maintain in force rights under each material patent.

(i) Prosecution of Patent Applications. At its own expense, Grantor shall, in its reasonable business judgment, diligently prosecute all material applications for United States patents, and shall not abandon any such application, except in favor of a continuation application based on such application, prior to exhaustion of all administrative and judicial remedies, absent written consent of the Lender, which such consent shall not be unreasonably withheld.

(j) Other Patents and Copyrights. Within ten (10) business days of acquisition of a United States patent or copyright, or of filing of an application for a United States patent or copyright, the Grantor shall deliver to the Lender an updated Schedule 8, together with a copy of said patent or copyright, as the case may be, with a grant of security as to such patent or copyright, as the case may be, confirming the grant thereof hereunder, the form of such confirmatory grant to be substantially the same as the form hereof.

(k) Remedies Relating to Intellectual Property. If an Event of Default shall occur and be continuing, the Lender may, by written notice to Grantor, take any or all of the following actions: (i) declare the entire right, title and interest of Grantor in and to each of the copyrights, patents and trademarks, together with all trademark rights and rights of protection to the same, vested, in which event such rights, title and interest shall immediately vest, in the Lender, in which case Grantor agrees to execute an assignment in form and substance reasonably satisfactory to the Lender, of all its rights, title and interest in and to the copyrights, patents and trademarks to the Lender; (ii) take and practice or sell the copyrights or patents and take and use or sell the trademarks and the goodwill of Grantor's business symbolized by the trademarks and the right to carry on the business and use the assets of the Grantor in connection with which the trademarks have been used; and (iii) direct Grantor to refrain, in which event Grantor shall refrain, from using the copyrights, patents and trademarks in any manner whatsoever, directly or indirectly, and, if requested by the Lender, change Grantor's corporate name to eliminate therefrom any use of any mark and execute such other and further documents that the Lender may request to further confirm this and to transfer ownership of the copyrights, patents and trademarks, and registrations and any pending trademark application, to the Lender.

9. Insurance. Grantor shall maintain insurance on the Collateral in connection with the Loan Agreement. The proceeds of any casualty insurance in respect of any casualty loss of any of the Collateral shall, subject to the rights, if any, of other parties with an interest having priority in the property covered thereby shall be applied in accordance with the Loan Agreement. Subject to the Loan Agreement, the Lender may, at its sole option, disburse from time to time all or any part of such proceeds so held as cash collateral, upon such terms and conditions as the Lender may reasonably prescribe, for direct application by the Grantor solely to the repair or replacement of the Grantor's property so damaged or destroyed, or the Lender may apply all or any part of such proceeds to the Obligations.

10. Collateral Protection Expenses; Preservation of Collateral.

(a) Expenses Incurred by Lender. In the Lender's discretion, if the Grantor fails to do so, the Lender may discharge taxes and other encumbrances at any time levied or placed on any of the Collateral, make repairs thereto and pay any necessary filing fees or insurance premiums. The Grantor agrees to reimburse the Lender on demand for all expenditures so made. The Lender shall have no obligation to the Grantor to make any such expenditures, nor shall the making thereof be construed as a waiver or cure any Event of Default.

(b) Lender's Obligations and Duties. Anything herein to the contrary notwithstanding, the Grantor shall remain obligated and liable under each contract or agreement included in the Collateral to be observed or performed by the Grantor thereunder. The Lender shall not have any obligation or liability under any such contract or agreement by reason of or arising out of this Agreement or the receipt by the Lender of any payment relating to any of the Collateral, nor shall the Lender be obligated in any manner to perform any of the obligations of the Grantor under or pursuant to any such contract or agreement, to make inquiry as to the nature or sufficiency of any payment received by the Lender in respect of the Collateral or as to the sufficiency of any performance by any party under any such contract or agreement, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to the Lender or to which the Lender may be entitled at any time or times. The Lender's sole duty with respect to the custody, safe keeping and physical preservation of the Collateral in its possession, under the UCC of the State or otherwise, shall be to deal with such Collateral in the same manner as the Lender deals with similar property for its own account.

11. Securities and Deposits. The Lender may at any time following and during the continuance of an Event of Default, at its option, transfer to itself or any nominee any securities constituting Collateral, receive any income thereon and hold such income as additional Collateral or apply it to the Obligations. Whether or not any Obligations are due, the Lender may following and during the continuance of an Event of Default demand, sue for, collect, or make any settlement or compromise which it deems desirable with respect to the Collateral. Regardless of the adequacy of Collateral or any other security for the Obligations, any deposits or other sums at any time credited by or due from the Lender to the Grantor may at any time be applied to or set off against any of the Obligations then due and owing.

12. Notification to Account Debtors and Other Persons Obligated on Collateral. If an Event of Default shall have occurred and be continuing, the Grantor shall, at the request and option of the Lender, notify account debtors and other persons obligated on any of the Collateral of the security interest of the Lender in any account, chattel paper, general intangible, instrument or other Collateral and that payment thereof is to be made directly to the Lender or to any financial institution designated by the Lender as the Lender's agent therefor, and the Lender may itself, if an Event of Default shall have occurred and be continuing, without notice to or demand upon the Grantor, so notify account debtors and other persons obligated on Collateral. After the making of such a request or the giving of any such notification, the Grantor shall hold any proceeds of collection of accounts, chattel paper, general intangibles, instruments and other Collateral received by the Grantor as trustee for the Lender without commingling the same with other funds of the Grantor and shall turn the same over to the Lender in the identical form received, together with any necessary endorsements or assignments. The Lender shall apply the proceeds of collection of accounts, chattel paper, general intangibles, instruments and other Collateral received by the Lender to the Obligations, such proceeds to be immediately credited after final payment in cash or other immediately available funds of the items giving rise to them.

13. Power of Attorney.

(a) Appointment and Powers of Lender. The Grantor hereby irrevocably constitutes and appoints the Lender and any officer or agent thereof, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of the Grantor or in the Lender's own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments that may be necessary or useful to accomplish the purposes of this Agreement and, without limiting the generality of the foregoing, hereby gives said attorneys the power and right, on behalf of the Grantor, without notice to or assent by the Grantor, to do the following:

(i) upon the occurrence and during the continuance of an Event of Default, generally to sell, transfer, pledge, make any agreement with respect to or otherwise dispose of or deal with any of the Collateral in such manner as is consistent with the UCC of the State, and to do, at the Grantor's expense, at any time, or from time to time, all acts and things which the Lender deems necessary or useful to protect, preserve or realize upon the Collateral and the Lender's security interest therein, in order to effect the intent of this Agreement, all no less fully and effectively as the Grantor might do, including, without limitation, (A) the filing and prosecuting of registration and transfer applications with the appropriate federal, state or local agencies or authorities with respect to trademarks, copyrights and patentable inventions and processes, (B) upon written notice to the Grantor, the exercise of voting rights with respect to voting securities, which rights may be exercised, if the Lender so elects, with a view to causing the liquidation of assets of the issuer of any such securities and (C) the execution, delivery and recording, in connection with any sale or other disposition of any Collateral, of the endorsements, assignments or other instruments of conveyance or transfer with respect to such Collateral; and

(ii) to the extent that the Grantor's authorization given in Section 1 above is not sufficient, to file financing statements with respect hereto, with or without the Grantor's signature, or a photocopy of this Agreement in substitution for a financing statement, as the Lender may deem appropriate and to execute in the Grantor's name such financing statements and amendments thereto and continuation statements which may require the Grantor's signature.

(b) Ratification by Grantor. To the extent permitted by law, the Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and is irrevocable.

(c) No Duty on Lender. The powers conferred on the Lender hereunder are solely to protect its interests in the Collateral and shall not impose any duty upon it to exercise any such powers. The Lender shall be accountable only for the amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its officers, directors, employees or agents shall be responsible to the Grantor for any act or failure to act, except for the Lender's own gross negligence or willful misconduct.

14. Events of Default. The occurrence of an Event of Default (as defined in the Loan Agreement) shall be an Event of Default hereunder.

15. Rights and Remedies. If any Event of Default shall occur, Lender may, at its election, without demand or notice of any kind, and in addition to any rights or remedies Lender may have under the Loan Agreement, do any one or more of the following:

(a) Declare all of the Obligations to Lender to be immediately due and payable, whereupon all unpaid principal, interest and fees in respect of such Obligations, together with all of Lender's costs, expenses and attorneys' fees related thereto, under the terms of the Loan Documents or otherwise, shall be immediately due and payable;

(b) Terminate any commitment to make any additional advances under any Loan;

(c) Exercise any and all rights and remedies available to Lender under any applicable law;

(d) Exercise any and all rights and remedies granted to Lender under the terms of this Agreement or any of the other Loan Documents;

(e) Set off the unpaid balance of the Obligations against any debt owing to Borrower by the Lender or by any Lender Affiliate, including, without limitation, any obligation under a repurchase agreement or any funds held at any time by the Lender or any Lender Affiliate, whether collected or in the process of collection, or in any time or demand deposit account maintained by Borrower at, or evidenced by any certificate of deposit issued by, the Lender or any Lender Affiliate. Borrower agrees, to the fullest extent it may effectively do so under applicable law, that any holder of a participation in the Note may exercise rights of set-off or counterclaim and other rights with respect to such participation as fully as if such holder of a participation were a direct creditor of Borrower pursuant to this Agreement in the amount of such participation;

(f) In any jurisdiction in which enforcement hereof is sought, in addition to all other rights and remedies, Lender shall have the rights and remedies of a secured party under the UCC of the State and additional rights and remedies as may be provided to a secured party in the jurisdiction in which Collateral is located, including, without limitation, the right to take possession of the Collateral, and for that purpose the Lender may, so far as the Grantor can give authority therefor, enter upon premises on which the Collateral may be situated and remove the therefrom. The Lender may in its discretion require the Grantor to assemble all or any part of the Collateral at such location or locations within the jurisdiction(s) of the Grantor's principal office(s) or at such other locations as the Lender may reasonably designate. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type custom sold on a recognized market, the Lender shall give to the Grantor at least at ten (10) days prior written notice of the time and place of any public sale of Collateral or of the time after which any private sale or any other intended disposition is to be made. The Grantor hereby acknowledges that ten (10) days prior written notice of such sale or sales shall be reasonable notice. In addition, the Grantor waives any and all rights that it may have to a judicial hearing in advance of the enforcement of any of the Lender's rights and remedies hereunder, including, without limitation, its right following an Event of Default to take immediate possession of Collateral and to exercise its rights and remedies with respect thereto. The Lender may also have a receiver appointed to take charge of all or any portion of the Collateral and to exercise all rights of Lender under this Agreement.

(g) The remedies in this Section are in addition to, not in limitation of, any other right, power, privilege, or remedy, either in law, in equity, or otherwise, to which the Lender may be entitled. No failure or delay on the part of the Lender in exercising any right, power, or remedy will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right hereunder. The remedies in this Agreement are in addition to, not in limitation of, any other right, power, privilege, or remedy, either in law, in equity, or otherwise, to which the Lender may be entitled. All Lender's rights and remedies, whether evidenced by this Agreement or by any other agreement, instrument or document shall be cumulative and may be exercised singularly or concurrently.

16. Standards for Exercising Rights and Remedies. To the extent that applicable law imposes duties on the Lender to exercise remedies in a commercially reasonable manner, the Grantor acknowledges and agrees that it is not commercially unreasonable for the Lender (a) to fail to incur expenses reasonably deemed significant by the Lender to prepare Collateral for disposition or otherwise to fail to complete raw material or work in process into finished goods or other finished products for disposition, (b) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (c) to fail to exercise collection remedies against account debtors or other persons obligated on Collateral or to fail to remove liens or encumbrances on or any adverse claims against Collateral, (d) to exercise collection remedies against account debtors and other persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (e) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (f) to contact other persons, whether or not in the same business as the Grantor, for expressions of interest in acquiring all or any portion of the Collateral, (g) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the collateral is of a specialized nature, (h) to dispose of Collateral by utilizing Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (i) to dispose of assets in wholesale rather than retail markets, (j) to disclaim disposition warranties, (k) to purchase insurance or credit enhancements to insure the Lender against risks of loss, collection or disposition of Collateral or to provide to the Lender a guaranteed return from the collection or disposition of Collateral, or (l) to the extent deemed appropriate by the Lender, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Lender in the collection or disposition of any of the Collateral. The Grantor acknowledges that the purpose of this Section is to provide non-exhaustive indications of what actions or omissions by the Lender would fulfill the Lender's duties under the UCC of the State or any other relevant jurisdiction in the Lender's exercise of remedies against the Collateral and that other actions or omissions by the Lender shall not be deemed to fail to fulfill such duties solely on account of not being indicated in this Section. Without limitation upon the foregoing, nothing contained in this Section shall be construed to grant any rights to the Grantor or to impose any duties on the Lender that would not have been granted or imposed by this Agreement or by applicable law in the absence of this Section.

17. No Waiver by Lender. The Lender shall not be deemed to have waived any of its rights and remedies in respect of the Obligations or the Collateral unless such waiver shall be in writing and signed by the Lender. No delay or omission on the part of the Lender in exercising any right or remedy shall operate as a waiver of such right or remedy or any other right or remedy. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion. All rights and remedies of the Lender with respect to the Obligations or the Collateral, whether evidenced hereby or by any other instrument or papers, shall be cumulative and may be exercised singularly, alternatively, successively or concurrently at such time or at such times as the Lender deems expedient.

18. Suretyship Waivers by Grantor. The Grantor waives demand, notice, protest, notice of acceptance of this Agreement, notice of loans made, credit extended, Collateral received or delivered or other action taken in reliance hereon and all other demands and notices of any description. With respect to both the Obligations and the Collateral, the Grantor assents to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of or failure to perfect any security interest in any Collateral, to the addition or release of any party or person primarily or secondarily liable, to the acceptance of partial payment thereon and the settlement, compromising or adjusting of any thereof, all in such manner and at such time or times as the Lender may deem advisable. The Lender shall have no duty as to the collection or protection of the Collateral or any income therefrom, the preservation of rights against prior parties, or the preservation of any rights pertaining thereto beyond the safe custody thereof as set forth in Section 9(b) above. The Grantor further waives any and all other suretyship defenses.

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

20. Proceeds of Dispositions; Expenses. The Grantor shall pay to the Lender on demand any and all expenses, including reasonable attorneys' fees and disbursements, incurred or paid by the Lender in protecting, preserving or enforcing the Lender's rights and remedies under or in respect of any of the Obligations or any of the Collateral. After deducting all of said expenses, the residue of any proceeds of collection or sale or other disposition of Collateral shall, to the extent actually received in cash, be applied to the payment of the Obligations in such order or preference as the Lender may determine, proper allowance and provision being made for any Obligations not then due. Upon the final payment and satisfaction in full of all of the Obligations and after making any payments required by the UCC of the State, any excess shall be returned to the Grantor. In the absence of final payment and satisfaction in full of all of the Obligations, the Grantor shall remain liable for any deficiency.

21. Overdue Amounts. Until paid, all amounts due and payable by the Grantor hereunder shall be a debt secured by the Collateral and shall bear, whether before or after judgment, interest at the Default Rate (as that term is defined in the Note).

22. Governing Law; Consent to Jurisdiction. The provisions of this Agreement and the respective rights and duties of Grantor and Lender hereunder shall be governed by and construed in accordance with New York law. Grantor hereby irrevocably submits to the non-exclusive jurisdiction of any New York state or federal court sitting in Erie County, New York, over any action or proceeding arising out of or relating to this Agreement, or any document related to the Obligations, and Grantor hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such New York state or federal court. The Grantor hereby waives any objection that it may now or hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient court.

23. Waiver of Jury Trial. GRANTOR AND LENDER EACH WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, BETWEEN LENDER AND GRANTOR ARISING OUT OF, IN CONNECTION WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THIS AGREEMENT OR ANY NOTE OR OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED THERETO.

24. Notices. All notices, requests, demands or other communications provided for hereunder shall be in writing and, if to Grantor, mailed or delivered to it, addressed to it at the address specified on the signature pages of this Agreement, or if to Lender, mailed or delivered to it, addressed to the address of Lender specified on the signature pages of this Agreement. All notices, statements, requests, demands and other communications provided for hereunder shall be deemed to be given or made when delivered or forty-eight (48) hours after being deposited in the mails with postage prepaid by registered or certified mail, addressed as aforesaid, or sent by facsimile with telephonic confirmation of receipt, except that notices from Grantor to Lender pursuant to any of the provisions hereof shall not be effective until received by Lender.

25. Miscellaneous. The headings of each section of this Agreement are for convenience only and shall not define or limit the provisions thereof. This Agreement and all rights and obligations hereunder shall be binding upon the Grantor and its successors and assigns, and shall inure to the benefit of the Lender and its successors and assigns. If any term of this Agreement shall be held to be invalid, illegal or unenforceable, the validity of all other terms hereof shall in no way be affected thereby, and this Agreement shall be construed and be enforceable as if such invalid, illegal or unenforceable term had not been included herein. The Grantor acknowledges receipt of a copy of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, intending to be legally bound, the Grantor has caused this Agreement to be duly executed as of the date first above written.

Address:

Grantor:

ZEST LABS, INC.

By: _____
Name: _____
Title: _____

Lender:

TREND DISCOVERY SPV I, LLC

By: _____
Name: _____
Title: _____

[Signature page to Security Agreement]

Schedule 6

Permitted Liens

None

Schedule 8

Intellectual Property