

## SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "Agreement") is made this \_\_\_\_\_, 2024, by JEANERI, Ltd., a Wisconsin corporation ("Jeaneri"), DALE BERG, a single individual ("Dale"), DALE D. BERG, also known as DALE B. BERG a single individual ("Dale Berg"), and D.B. Berg, Inc., a Wisconsin corporation all located at 121 4th Street South, La Crosse, WI ("DB Berg"), as debtor (collectively the "**Borrower**"), in favor of the City of La Crosse, a Wisconsin municipal corporation with an address of 400 La Crosse Street, La Crosse, WI, as secured party ("**Lender**").

### Introduction

Lender has made a loan to Borrower (the "Loan"), as evidenced by the **Promissory Note#1, Promissory Note#2, and Promissory Note#3 all dated January 16, 2018 and amended by a Change in Terms Agreement and Loan Modification Agreement** dated this day, all by Borrower in the principal amount of **Six Hundred Thousand Dollars (\$600,000.00)** (together with all other modifications, amendments, replacements, substitutions, extensions, or renewals thereof, together, the "Note").

The Note is secured in part by **three Mortgages all dated January 16, 2018, executed in favor of Lender, and all recorded on February 26, 2018, as Documents No. 1706744, 1706745, and 1706746 in the Office of the La Crosse County, Wisconsin Register of Deeds, as amended by an Amended Mortgage** amending and restating these mortgages as a single document executed concurrently herewith, and a separate original mortgage for a second property, all dated this day, by Borrower to Lender, granting a second-position lien (**behind only a mortgage lien from Citizens Bank of La Crosse**) on the lands described as:

#### **Parcel A**

Lot 1 of La Crosse County Certified Survey Map recorded on 03/29/2018 in Volume 17 of Certified Survey Maps, page 100 as Document No. 1708034, being part of Lots 4 and 5 of Block 34 of the Town of La Crosse Addition, now City of La Crosse, being part of the SE 1/4 of the SE 1/4 of Section 31, Township 16 North, Range 7 West, and Part of Lot 1 of Block 13 of C & F.J. Dunn, H.L. Dousman & Peter Cameron's Addition to the Town of La Crosse, Now City of La Crosse, being part of the NE 1/4 of the NE 1/4 of Section 6, Township 15 North, Range 7 West, City of La Crosse, La Crosse County, Wisconsin.

**Property Address: 119-127 4th Street South, La Crosse**

**Tax Parcel No.: 17-20023-035**

and

#### **Parcel B**

Lot 1 and the South ½ of Lot 2 in Block 11 of Burn's Addition to the City of La Crosse, La Crosse County, Wisconsin.

**Property Address: 1305 South Avenue, La Crosse**

**Tax Parcel No.: 17-30094-10**

and all improvements situated thereon (such land and improvements are collectively called the "Property"), which Amended and Restated Mortgage for Parcel A and separate Mortgage for Parcel B is intended to be recorded among the land records of La Crosse County, Wisconsin (together with any modifications, amendments, or supplements thereto, the "Mortgage").

As a condition precedent to making the Loan, Lender has required that Borrower further secure the payment and performance of all the obligations of Borrower in connection with the Loan by entering into this Agreement.

### Agreement

In consideration of the foregoing and to induce Lender to make the Loan to Borrower, Borrower hereby

covenants, warrants, represents, and agrees with Lender as follows:

1. **Defined Terms.** The capitalized terms used but not defined in this Agreement shall have the meanings given to them in the Mortgage.

2. **Security.** As security for (a) the payment of the indebtedness evidenced by the Note; (b) the payment of all other sums with interest thereon becoming due and payable to Lender under the provisions of this Assignment or under the provisions of any other document evidencing or securing the Loan (this Agreement, the Note, the Mortgage, and such other documents evidencing or securing the Loan, together with any amendments, modifications, and supplements thereto, are collectively called the "Loan Documents"); and (c) the performance and fulfillment of each and every term, covenant, and condition set forth in the Loan Documents, Borrower hereby grants to Lender a security interest in all of Borrower's now owned and hereafter acquired personal property used in connection with the Property, including but not limited to (a) all of Borrower's now owned and hereafter acquired equipment, and all replacements and substitutions therefor and thereof, and all accessions thereto (the "Equipment"); (b) all of Borrower's now owned and hereafter acquired inventory, and all products, replacements, and substitutions therefor and thereof, and all accessions thereto (the "Inventory"); (c) all of Borrower's now owned and hereafter acquired general intangibles, including without limitation, all licenses, permits, things in action, contractual rights, goodwill, literary rights, rights to performance, copyrights, trademark, and patents (the "General Intangibles"); (d) all of Borrower's now owned and hereafter acquired rights to payment for goods sold or leased or for services rendered (the "Accounts"); (e) all of Borrower's now owned and hereafter acquired chattel paper (the "Chattel Paper"); and (f) all of Borrower's now owned and hereafter acquired instruments, notes, items of payment, negotiable documents, and documents of title (the "Instruments"); together with all cash and non-cash proceeds (including insurance proceeds) of the Equipment, Inventory, General Intangibles, Accounts, Chattel Paper, and Instruments (the "Proceeds") (such Equipment, Inventory, General Intangibles, Accounts, Chattel Paper, Instruments, and Proceeds are collectively referred to as the "Collateral"). Lender shall have all of the rights and remedies of a secured party under the Uniform Commercial Code of the state where the Collateral is located.

3. **Borrower's Representations.** Borrower hereby represents to Lender that:

(a) Borrower consists of two corporations and an individual person, both duly organized and in good standing under the laws of the State of Wisconsin, and authorized to do business in the State of Wisconsin;

(b) This Agreement constitutes the legal, valid, and binding obligation of Borrower enforceable in accordance with its terms, Borrower has full power and authority to grant a security interest in the Collateral and to enter into and perform the terms and conditions of this Agreement, Borrower has obtained all necessary approvals and consents to the granting of a security interest in the Collateral as contemplated by this Agreement, and the person executing this Agreement for Borrower is fully and duly empowered and authorized so to act;

(c) The compliance with or fulfillment of the terms and conditions of this Agreement will not conflict with, violate, constitute a default under, or result in a breach of the terms, conditions, or provisions of any of Borrower's organizational documents or any contract or agreement to which Borrower is a party or by which Borrower is otherwise bound;

(d) Borrower is the legal and beneficial owner and holder of all of the Collateral absolutely free and clear of any lien, security interest, pledge, option, or other charge or encumbrance other than the security interests of Lender under this Agreement. No Uniform Commercial Code Financing Statement that names Borrower as a debtor, other than those which name Lender as the secured party, has been filed in any place, and Borrower has not signed any financing statement or any security agreement authorizing any other secured party thereunder to file any such financing statement;

(e) To the knowledge of Borrower, Borrower is not in breach of any law or regulation, or the order of any court or federal, state, municipal, or other governmental authority, in connection with the Collateral;

(f) Borrower is not (i) a party to any action, suit, or proceeding at law or in equity, or by or before any governmental instrumentality or agency, (ii) aware of any facts, allegations, claims, or circumstances that may result in Borrower becoming a party to any action, suit, or proceeding at law or in equity, or by or before any governmental instrumentality or agency, (iii) engaged in any settlement negotiations relating to any claim or allegation, or (iv) a judgment debtor;

(g) Borrower, at Borrower's sole cost and expense, will defend Lender's title or interest in and to the Collateral against any and all attachments, liens, claims, encumbrances, security interests, or other impediments of any nature, however arising, of all persons whomsoever;

(h) Borrower, at Borrower's sole cost and expense, shall appear in and defend any action or proceeding arising under, growing out of, or in any manner connected with the Collateral, and pay all costs and expenses of Lender, including attorneys' fees, in any such action or proceeding in which Lender may appear; and

(i) The address for Borrower on the first page of this Agreement is Borrower's principal place of business.

**4. Covenants of Borrower.** Borrower covenants and agrees as follows:

(a) Borrower shall maintain Borrower's sole place of business in the State of Wisconsin. Borrower shall not change the location of Borrower's sole place of business without Lender's prior written consent;

(b) Borrower shall keep all tangible items of the Collateral and all books and records relating to all of the Collateral in the State of Wisconsin;

(c) Borrower shall not sell, assign, transfer an interest in, or otherwise dispose of or further encumber its right, title, and interest in and to the Collateral without the prior written consent of Lender; provided, however, that Borrower shall be permitted to sell Inventory in the ordinary course of Borrower's business for fair consideration in cash or on account at normal and customary trade terms;

(d) Borrower shall pay all taxes and fees relating to the ownership of the Collateral, shall keep and maintain the Equipment and the Inventory in good condition, and shall provide all maintenance and service and make all repairs necessary for such purpose. If any parts or accessories forming part of the Equipment or the Inventory become worn out, lost, destroyed, damaged beyond repair, or otherwise permanently rendered unfit for use, Borrower, at its sole cost and expense, shall within a reasonable time replace such parts or accessories, or cause the same to be replaced, by replacement parts or accessories which are free and clear of all liens, encumbrances, or rights of others and have a value and utility at least equal to the parts or accessories replaced. All Equipment, Inventory, accessories, parts, and replacements which are added to or become attached to the Equipment or Inventory shall immediately be deemed incorporated in the Equipment or Inventory, as the case may be, and subject to the security interest granted by Borrower in this Agreement. Lender shall have the right to inspect the Equipment and the Inventory and all maintenance records relating thereto at all reasonable times;

(e) Borrower shall maintain the Collateral free from all claims, liens, encumbrances, and legal processes and shall notify Lender within ten (10) days after receipt of notice of any lien, attachment, or judicial proceeding affecting the Collateral in whole or in part;

(f) Borrower, at its sole cost and expense, shall obtain and maintain all-risk insurance covering the Equipment and Inventory for the full replacement value thereof. The insurance shall be by insurers and in form and substance satisfactory to Lender. All insurance for loss or damage shall provide that losses, if any, shall be payable to Lender. Borrower shall pay the premiums for all such insurance and deliver to Lender the policies of insurance or duplicates thereof, or other evidence satisfactory to Lender of such insurance coverage. Each insurer shall agree, by endorsement upon the policy or policies issued by it, or by independent instrument furnished to Lender, that (i) it will give Lender thirty (30) days' prior written notice of the effective date of any material alteration or cancellation of such policy; and (ii) the coverage of Lender shall not be terminated, reduced, or affected in any manner regardless of any breach or violation by Borrower of any warranties, declarations, or conditions of such insurance policy or policies. The proceeds of such insurance payable as a result of loss of or damage to the Equipment or Inventory shall be applied, at Lender's option, toward (i) the replacement, restoration, or repair of the Equipment or Inventory which may be lost, stolen, destroyed, or damaged; or (ii) payment of the Loan, in the order provided by the Note. Borrower irrevocably appoints Lender as Borrower's attorney-in-fact to make claim for, receive payment of, and execute and endorse all documents, checks, or drafts received in payment for loss or damage under any of such insurance policies;

(g) Borrower shall promptly execute and deliver any Uniform Commercial Code Financing Statement or other document reasonably required, or procure any document reasonably required (including Uniform Commercial Code Financing Statement releases, as necessary), and pay all costs to file or record such documents, including but not limited to any documentary or stamp tax or filing or recording fee, to perfect and maintain the perfection and the priority of the security interest granted under this Agreement. If any part of the Collateral is of a type as to which it is necessary or desirable for Lender to take possession of such part of the Collateral in order to perfect, or maintain the priority of, Lender's security interest, then upon Lender's request, Borrower shall deliver such part of the Collateral to Lender; and

(h) Borrower, upon request of Lender, shall make available to Lender or its designees, for inspection and copying, all of Borrower's records in connection with the Collateral.

**5. Account Covenants.**

(a) Upon request by Lender, Borrower shall deliver to Lender within fifteen (15) days after the end of each calendar month a listing and aging report for the Accounts, in form and substance reasonably satisfactory to Lender, together with such other information and financial reports as Lender may request in Lender's reasonable discretion from time to time.

(b) Upon the request of Lender, Borrower shall deposit, or cause to be deposited, all checks, drafts, cash, and other remittances in payment of, or on account of payment of, any and all Accounts (all of the foregoing

herein collectively referred to as “items of payment”) to an account (the “Collateral Account”) designated by Lender at a bank or other financial institution designated by Lender. Lender shall not be responsible for the solvency of any such bank or other financial institution or the management and administration of the Collateral Account. Lender shall have the sole right to access and make withdrawals from the Collateral Account. Borrower shall deposit such items of payment for credit to the Collateral Account within one (1) banking day after the receipt thereof and in precisely the form received, except for the endorsement of Borrower where necessary to permit the collection of such items of payment, which endorsement Borrower hereby agrees to make. Pending such deposit, Borrower will not commingle any such items of payment with any of its other funds or property, but will hold them separate and apart. Lender shall be entitled to apply the funds in the Collateral Account against Borrower’s obligations secured by this Agreement from time to time.

**6. Additional Rights of Lender and Duties of Borrower.**

(a) In addition to all other rights which Lender may have under this Agreement or under the other Loan Documents, at law, in equity, or otherwise, upon the occurrence of a default under this Agreement or any of the other Loan Documents and upon Borrower’s failure to cure such default within any applicable cure period or grace period (an “Event of Default”), Lender shall have the rights set forth in this Section 6(a). Borrower hereby irrevocably appoints Lender as Borrower’s attorney-in-fact, with power of substitution, to do each of the following in the name of Borrower or in the name of Lender or otherwise, for the use and benefit of Lender, but at the sole cost and expense of Borrower, and without notice to Borrower, upon the occurrence of an Event of Default:

- (i) Notify the account debtors obligated on any Accounts to make payments thereon directly to Lender, and take control of the cash and noncash proceeds of any Collateral;
- (ii) Compromise, extend, or renew any of the Collateral or deal with the same as Lender may deem advisable;
- (iii) Release, make exchanges in or substitutions to, or surrender all or any part of the Collateral;
- (iv) Remove from Borrower’s place(s) of business all books, records, ledger sheets, correspondence, invoices, and documents relating to or evidencing any of the Collateral, without cost or expense to Lender, and make such use of Borrower’s place(s) of business as may be reasonably necessary to administer, control, and collect the Collateral;
- (v) Repair, alter, or supply goods, if any, necessary to fulfill in whole or in part the purchase order of any account debtor;
- (vi) Demand, collect, receipt for, and give renewals, extensions, discharges, and releases of any of the Collateral;
- (vii) Institute and prosecute legal and equitable proceedings to enforce collection of, or realize upon, any of the Collateral;
- (viii) Settle, renew, extend, compromise, compound, exchange, or adjust claims with respect to any of the Collateral or any legal proceedings brought with respect thereto;
- (ix) Endorse the name of Borrower upon any items or payment relating to the Collateral or upon any proof of claim in bankruptcy against an account debtor; and
- (x) Receive and open all mail addressed to Borrower and notify the postal authorities to change the address for the delivery of mail to Borrower to such address as Lender may designate.

(b) Borrower shall:

- (i) Make no material change to the terms of any Account, Chattel Paper, or Instrument without the prior written permission of Lender;
- (ii) On demand, make available in form acceptable to Lender proof of the sale or lease of goods or satisfactory performance of services which gave rise to the Accounts; and
- (iii) When requested, regularly advise Lender of any delay in delivery or performance, or claims made, in regard to any Collateral.

**7. Remedies.**

(a) Upon the occurrence of an Event of Default, Lender may exercise any one or more of its remedies under common or statutory law, including but not limited to the Uniform Commercial Code of the jurisdiction in which the Collateral is located, and at any time thereafter may do any one or more of the following, all of which are hereby authorized by Borrower:

- (i) Exercise Lender’s rights of enforcement under common or statutory law and in addition to those rights, at Lender’s sole discretion, require Borrower (at Borrower’s sole cost and expense) to forward promptly any or all of the Equipment and Inventory to Lender at such location as shall be reasonably required by Lender, or, without breach of the peace, enter upon the premises where any such Equipment or Inventory is located and

take immediate possession of and remove the Equipment or Inventory by summary proceedings or otherwise, all without liability from Lender to Borrower for or by reason of such entry or taking of possession, whether for the restoration of damage to property caused by such taking or otherwise;

(ii) Sell or otherwise dispose of the Collateral at a commercially reasonable public or private sale or otherwise at such price as Lender may deem best, for cash, credit, or otherwise, with the right of Lender to purchase and to apply the proceeds: first, to the settlement of all liens or claims on the Collateral prior to the security interest of Lender; second, to the payment of all expenses connected with the taking and selling of the Collateral; and third, to the payment of all indebtedness of Borrower to Lender under this Agreement and the other Loan Documents; and, in case of any deficiency, Lender may collect such deficiency from Borrower; or

(iii) Exercise any other right or remedy which may be available to Lender under this Agreement, the other Loan Documents, or applicable law, or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof or to rescind this Agreement in whole or in part.

(b) In addition, Borrower shall be liable for any and all unpaid additional sums due under this Agreement or under the other Loan Documents, before, after, or during the exercise of any of the foregoing remedies, and for all legal fees and other costs and expenses incurred by reason of any Event of Default or the exercise of Lender's remedies with respect thereto. No remedy referred to in this Section 7 is intended to be exclusive, but each shall be cumulative, and shall be in addition to any other remedy referred to in this Agreement or in any of the other Loan Documents, or otherwise available at law or in equity. To the extent permitted by applicable law, Borrower hereby waives any notice or other mandatory requirements of law, now or hereafter in effect, which might require Lender to sell or use any part of the Collateral in mitigation of Lender's damages; provided, however, that Borrower does not waive any requirement of law that Lender act in a commercially reasonable manner. Borrower hereby waives any and all existing or future claims to any offset against the sums due under this Agreement or under the other Loan Documents, and agrees to make the payments of such sums regardless of any offset or claim which may be asserted by Borrower or on its behalf in connection with this Agreement or the other Loan Documents. The failure of Lender to exercise, or any delay by Lender in the exercise of, the rights granted under this Agreement upon the occurrence of an Event of Default shall not constitute a waiver of any such right upon the continuation or recurrence of any such Event of Default. Lender may take or release other security, may release any party primarily or secondarily liable for the Loan, may grant extensions, renewals, or indulgences with respect to the Loan, and may apply any other security held by it with respect to the Loan to the satisfaction of the Loan without prejudice to any of Lender's rights under this Agreement.

#### **8. Notices.**

(a) All notices, elections, deliveries, and other communications between the parties required or desired to be given in connection with this Agreement, to be effective hereunder, shall be given as provided by the Mortgage.

(b) Borrower agrees that five (5) days' prior notice of the time and place of any public sale of the Collateral, or of the time after which a private sale of the Collateral will be made, is commercially reasonable notice.

**9. Further Assurances.** Borrower will promptly and duly execute and deliver to Lender such further documents and assurances and take such further action as Lender may from time to time reasonably request in order to carry out the intent and purpose of this Agreement and to establish and protect the rights and remedies created or intended to be created in favor of Lender under this Agreement.

**10. Successors and Assigns.** This Agreement shall inure to the benefit of Lender and its successors and assigns, and shall be binding upon the [successors] [heirs, personal representatives,] and permitted assigns of Borrower. This Agreement may not be assigned by Borrower without the prior written consent of Lender.

#### **11. Miscellaneous.**

(a) Neither Borrower nor any direct or indirect owner of an interest in Borrower shall have personal liability for payment of the Principal Amount, interest thereon, Late Charges, or any other costs, expenses, or other charges due to Lender as provided by the Loan Documents and, in the event of any default, Lender's sole recourse shall be against the Property and any other collateral securing the Loan and under the Guarantee; provided, however, that Borrower and such direct and indirect owners shall remain personally liable as otherwise provided by the Loan Documents or applicable law for the following: (i) as provided by the Guarantee, with respect to the Guarantors; (ii) Borrower's failure to pay real estate taxes or assessments against the Property, to the extent that funds are available; (iii) Borrower's failure to insure the Property as required by the Loan Documents; (iv) rent or other income from the Property received after a default under the Loan Documents and which is not applied as provided by the Loan Documents or to the expenses of operating or maintaining the Property; (v) conversion, diversion, misapplication, or misappropriation of security deposits, reserve accounts,

insurance proceeds, or condemnation awards in connection with the Property; (vi) waste; (vii) amounts due under the Environmental Indemnity (as defined in the Loan Commitment); and (viii) fraud or intentional misrepresentation in connection with the transactions contemplated by the Commitment or any of the Loan Documents.

(b) This Agreement shall not be amended or modified in any manner except by a document in writing executed by Lender.

(c) Borrower hereby waives trial by jury in any action or proceeding to which Borrower and Lender or any holder of the Collateral may be parties, arising out of or in connection with this Agreement or the Collateral. This waiver constitutes a waiver of trial by jury of all claims against all parties to such actions or proceedings, including claims against parties who are not parties to this Agreement.

(d) This Agreement, together with the other Loan Documents, is the entire agreement between the parties with respect to the matters set forth herein and therein, and all prior statements, discussions, negotiations, and agreements, oral or written, are superseded by this Agreement and the other Loan Documents and merged herein and therein.

(e) Time is of the essence of this Agreement.

(f) This Agreement shall be governed by the laws of the State of Wisconsin, regardless of any choice of law principles, regardless of the location of the Collateral.

IN WITNESS WHEREOF, Borrower has duly executed and delivered this Security Agreement under seal on the date first written above.

**BY: JEANERI, LTD.**

**BY: DALE D. BERG**

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**Dale D. Berg, Member**

\_\_\_\_\_  
**Dale D. Berg, individually**

**BY: D.B. Berg, Inc.**

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**Dale D. Berg, Member**

WITNESS:

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