

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

_____	)	
In re:	)	Chapter 11
	)	
GULF PACKAGING, INC., <sup>1</sup>	)	Case No. 15-15249 (PSH)
	)	
Debtor.	)	
_____	)	
GULF PACKAGING, INC.,	)	
	)	
Plaintiff,	)	Adversary No. 15-_____
	)	
v.	)	
	)	
GULF ARIZONA PACKAGING CORP. and	)	
GULF-PACIFIC PACKAGING CORP.,	)	
	)	
Defendants.	)	
_____	)	

**COMPLAINT**

Gulf Packaging, Inc., the above-captioned debtor and debtor in possession (“GPI” or the “Debtor”), for its complaint against Gulf-Arizona Packaging Corp. (“Gulf Arizona”) and Gulf-Pacific Packaging Corp. (“Gulf Pacific,” together with Gulf Arizona, the “Defendants”), alleges as follows:

**SUMMARY OF ACTION**

1. This action seeks to recover unpaid prepetition and postpetition receivables owing from the Defendants to GPI in an aggregate amount exceeding \$350,000. The postpetition receivables owing to GPI are on account of the Defendants’ postpetition depletion of the estate by selling the Debtor’s assets (which also constitutes the collateral of GPI’s secured lender, FCC, LLC d/b/a First Capital (“FCC”) but not paying or reimbursing the estate therefor.

<sup>1</sup> The last four digits of the Debtor’s tax identification number are 5030.

## **JURISDICTION AND VENUE**

2. The United States Bankruptcy Court for the Northern District of Illinois (this “Court” or the “Bankruptcy Court”) has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157(b) and 1334(b) and (e).

3. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B), (E) and (O). To the extent this proceeding is determined to be non-core, the Debtor consents to entry of a final order or judgment by this Court.

4. Venue for this matter is proper in this district pursuant to 28 U.S.C. § 1409.

## **THE PARTIES**

5. GPI is a Texas corporation with its principal place of business in Dolton, Illinois. GPI is the above-captioned chapter 11 debtor, and is operating its business and managing its properties as a debtor in possession. No chapter 11 trustee or examiner has been appointed in the Debtor’s chapter 11 case.

6. Defendant Gulf Arizona is an Arizona corporation, with its principal place of business in or around Phoenix, Arizona. Pursuant to Rule 7004(b)(3) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Gulf Arizona may be served with process by serving its registered agent as listed on the Arizona Corporation Commission (“ACC”) website, Phillis H. Parise, at 4425 E. Agave Rd., Suite 106, Phoenix, AZ 85044. A copy of this Complaint was also served on Gulf Arizona’s President (as listed on the ACC website), Paul Albert, P.O. Box 2420 Huntington Beach, CA 92647. Mr. Albert has also been served at 6203 Randolph Street, Commerce, CA 90040, and at the address indicated on Gulf Arizona’s letterhead at 7175 Sherman Street, Phoenix, AZ 85043.

7. Defendant Gulf Pacific is California corporation, with its principal place of business in or around Commerce, California. Pursuant to Bankruptcy Rule 7004(b)(3), Gulf Pacific may be served with process by serving its registered agent as listed on the California Secretary of State's website, Paul Albert, at 6203 Randolph Street, Commerce, CA 90040. Mr. Albert has also been served at P.O. Box 2420 Huntington Beach, CA 92647.

### **FACTUAL ALLEGATIONS**

8. On or about March 31, 2014, Gulf Pacific and Gulf Arizona each entered into a certain Authorized Sales Representative Agreement ("Agency Agreement") with GPI. Pursuant to the terms of the Agency Agreements, in general, Gulf Arizona and Gulf Pacific sold product (inventory) owned by GPI to third parties. The proceeds of such sale were to be paid to GPI, either directly by the customer or by the Defendants if payment was made by customers to the Defendants. In exchange, Defendants were to be paid a commission equal to five percent (5%) of the aggregate amount of payments actually received by GPI in connection with such sales, net of returns, rebates and other allowances. *See* Agency Agreement § 1.6.

9. A copy of the Agency Agreements signed by the Defendants are attached hereto collectively as Exhibit 1. Each of the Agency Agreements are substantially identical.

10. The Agency Agreements are governed by Texas Law. *See* Agency Agreement § 13.9.

11. Pursuant to section 5.7 of the Agency Agreement, each Defendant acknowledged and agreed that all accounts receivable arising from the sale of GPI's product, and all payments from customers with respect thereto, were the sole property of GPI. Defendants also agreed that any amounts received by them in respect of accounts receivable were to be held in trust for the benefit of GPI and promptly remitted to GPI.

12. Further, pursuant to the same section 5.7 of the Agency Agreement, Defendants waived any trust fund claims or rights of setoff or offset with respect to any funds received from third parties on account of product sold, or any accounts arising from the sale of product.

13. As a result, the Defendants have no legal or equitable interest in any sums paid to them in respect of product or inventory sold. Instead, all such legal and equitable rights to such sums belong to the Debtor, and the Defendants hold such sums in trust for the Debtor as beneficiary.

14. On and after April 1, 2015, due to GPI's liquidity problems and its decision to begin winding down the business, GPI stopped purchasing product from third party vendors. Thus, GPI began selling inventory directly to the Defendants and GPI's other "affiliates," for further sale to the affiliates' customers<sup>2</sup>. The majority of the amounts owed by Defendants to GPI arise from inventory purchases made from GPI from and after April 1, 2015.

15. On April 29, 2015 (the "Petition Date"), GPI filed a voluntary chapter 11 petition with this Court.

16. As of the Petition Date, Gulf Arizona had failed to remit \$1,385.41 to GPI pursuant to and in accordance with the terms of its Agency Agreement and the post-April 1, 2015 business practice of the parties (the "Arizona Prepetition AR").

17. As of the Petition Date, Gulf Pacific had failed to remit \$934.99 to GPI pursuant to and in accordance with the terms of its Agency Agreement and the post-April 1, 2015 business practice of the parties (the "Pacific Prepetition AR," together with the Arizona Prepetition AR, the "Prepetition AR").

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<sup>2</sup> As used herein, the term "affiliate" means a company that has a relationship – formal or informal – to the Debtor, and sells packaging products under a variation of the Gulf name. Unless otherwise set forth, use of the term "affiliate" is not intended to have the same meaning as the "affiliate" term of art defined in section 101(2) of the Bankruptcy Code. All rights with respect to this issue are reserved.

18. Further, on and after the Petition Date, both Gulf Arizona and Gulf Pacific continued to purchase inventory from GPI. The resulting accounts receivable in favor of GPI also constitutes FCC's collateral.

19. Gulf Arizona has failed to remit \$123,047.30 to GPI for postpetition purchases of GPI product (the "Arizona Postpetition AR").

20. Gulf Pacific has failed to remit \$259,412.85 to GPI for postpetition purchases of GPI product (the "Pacific Postpetition AR," together with the Arizona Postpetition AR, the "Postpetition AR").

21. In the aggregate, the current total Prepetition AR and Postpetition AR owing by Gulf Arizona is \$124,792.71, all as reflected on the account statement attached hereto as Exhibit 2.

22. In the aggregate, the current total Prepetition AR and Postpetition AR owing by Gulf Pacific is \$261,871.46, all as reflected on the account statement attached hereto as Exhibit 2.

23. The Agency Agreements have yet to be assumed or rejected and, thus, remain executory contracts subject to being assumed or rejected by the Debtor during its chapter 11 case.

#### **FIRST CAUSE OF ACTION**

[Turnover of Property to the Estate Under 11 U.S.C. § 542(a) and (b)]

24. The Debtor realleges and incorporates by reference the allegations of paragraphs 1 through 23, as if fully set forth herein.

25. Pursuant to 11 U.S.C. § 541(a)(1), all product and inventory held by the Debtor as of the Petition Date, which constitutes FCC's collateral, was (and to the extent still held by the Debtor, remains) "property of the estate."

26. Pursuant to 11 U.S.C. § 541(a)(1), the Prepetition AR constitutes “property of the estate.”

27. Pursuant to 11 U.S.C. § 541(a)(6), the Postpetition AR constitutes “property of the estate” because such Postpetition AR constitutes proceeds, product and/or offspring from the Debtor’s product and inventory, which itself was property of the estate (and FCC’s collateral).

28. In addition, pursuant to 11 U.S.C. § 541(a)(7), the Postpetition AR constitutes property of the estate as the Debtor acquired its interest in the Postpetition AR after the Petition Date, as a result of the sale of its product and inventory to Defendants.

29. Pursuant to section 5.7 of the Agency Agreements, all Prepetition AR that arose as a result of Defendants’ sale of the Debtor’s inventory are the Debtor’s “sole property” and, thus, constitute property of the estate under 11 U.S.C. § 541(a).

30. Similarly, pursuant to section 5.7 of the Agency Agreements, any funds received by the Defendants from third parties on account of Defendants’ prepetition sales of the Debtor’s product and inventory are held in trust for the Debtor and, thus, are property of the Debtor’s estate under 11 U.S.C. § 541(a)(1), (6) and (7).

31. Although each Defendant is an “entity” as such term is defined in 11 U.S.C. § 101(15), neither of the Defendants is a “custodian” as such term is defined in 11 U.S.C. § 101(11).

32. The Prepetition AR and Postpetition AR constitute property that the Debtor may use, sell or lease under 11 U.S.C. § 363. The Prepetition AR and Postpetition AR are not of inconsequential value or benefit to the Debtor’s estate.

33. The Prepetition AR and Postpetition AR also constitute debts owing from the Defendants to the Debtor which are property of the estate, which are matured and payable to the

Debtor. By the express terms of the Agency Agreement, any debt owing to GPI as a result of Defendants' sale of GPI's inventory and product may not be offset under 11 U.S.C. § 553.

34. As a result, the Court should order the immediate payment of the Prepetition AR and the Postpetition AR to the Debtor.

### **SECOND CAUSE OF ACTION**

[Breach of Contract and Compelling Compliance with Agency Agreements]

35. The Debtor realleges and incorporates by reference the allegations of paragraphs 1 through 34 as if fully set forth herein.

36. The Agency Agreements constitute executory contracts which may be assumed or rejected pursuant to 11 U.S.C. § 365(a).

37. Until such time as the Agency Agreements are assumed or rejected, the Defendants are required to comply therewith.

38. By taking delivery of the Debtor's product and inventory and selling the same prepetition, but otherwise failing to pay the portion of the Prepetition AR attributable thereto to the Debtor in accordance with the terms of the Agency Agreements, the Defendants have breached the Agency Agreements.

39. Until such time as the Agency Agreements are assumed or rejected, the Defendants are in breach of the Agency Agreements and should be required to comply therewith and should be ordered to pay the Prepetition AR arising from the sale of the Debtor's inventory to third parties.

### **THIRD CAUSE OF ACTION**

[Objection to Claim Under 11 U.S.C. § 502(d)]

40. The Debtor realleges and incorporates by reference the allegations of paragraphs 1 through 39 as if fully set forth herein.

41. The Defendants are listed in the Debtor's schedules as holding matured, liquidated, non-contingent general unsecured claims. The Defendants may have filed other or further claims against the estate on or prior to the last date to file claims, which was July 31, 2015.

42. Pursuant to 11 U.S.C. § 502(d), because property is recoverable from the Defendants under section 542 of the Bankruptcy Code, any and all claims held by the Defendants shall be disallowed unless the Defendants have paid the amounts owing to the Debtor, as set forth herein.

43. The Debtor thus requests that any and claims held by the Defendants be disallowed, including scheduled and unsecured claims, until such time as the Defendants pay the Prepetition AR and Postpetition AR to the Debtor.

**FOURTH CAUSE OF ACTION**  
**[Violation of the Automatic Stay]**

44. The Debtor realleges and incorporates by reference the allegations of paragraphs 1 through 43 as if fully set forth herein.

45. By refusing to pay the Prepetition AR and the Postpetition AR – which are property of the estate – to the Debtor, Defendants are exercising control over property of the estate, in violation of the automatic stay, 11 U.S.C. § 362(a)(5).

46. The remedy for this stay violation is immediate payment of the Prepetition AR and the Postpetition AR to the Debtor..

**FIFTH CAUSE OF ACTION**  
**[Attorneys' Fees]**

47. The Debtor realleges and incorporates by reference the allegations of paragraphs 1 through 46 as if fully set forth herein.



48. In addition to its Prepetition AR and Postpetition AR, the Debtor is entitled to recover its reasonable attorney's fees from the Defendants under section 38.001(1), (7), and (8) of the Texas Civil Practice and Remedies Code. Prior to filing its lawsuit, GPI presented its claim to Defendants and demanded payment. Defendants failed to tender, within thirty (30) days of GPI's demand, payment in full for the balance due and owing. As a consequence of Defendants' failure to tender full payment, GPI was forced to file this Adversary Proceeding.

#### **RESERVATION OF RIGHTS**

49. The Debtor specifically reserves the right to bring any and all other causes of action that it may maintain against the Defendants including, without limitation, causes of action arising out of the same transactions set forth in this Complaint, to the extent discovery in this action or further investigation by the Debtor reveals the existence of such further causes of action.

**WHEREFORE**, the Debtor respectfully requests that the Court (i) enter judgment against the Defendants and in favor of the Debtor pursuant to 11 U.S.C. §§ 542, applicable bankruptcy and nonbankruptcy law, and sections 38.001(1), (7), and (8) of the Texas Civil Practice and Remedies Code in the amount of the Prepetition AR and the Postpetition AR, together with all other interest, costs and attorneys' fees in respect of such amounts, and (ii) grant such other and further relief as the Court may deem just and proper.

Respectfully submitted this 20<sup>th</sup> day of August, 2015.

#### **FRANKGECKER LLP**

/s/ Joseph D. Frank

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-and-

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**COUNSEL TO THE DEBTOR**

**Exhibit 1**

Agency Agreements for Gulf Arizona and Gulf Pacific

GULF PACKAGING, INC.  
AUTHORIZED SALES REPRESENTATIVE AGREEMENT

This Authorized Sales Representative Agreement is entered into on March \_\_\_\_\_, 2014 (the "Effective Date") by and between Gulf Packaging, Inc., a Texas corporation ("GPI"), and Gulf-Pacific Packaging Corporation, a California corporation ("Sales Representative").

RECITALS

GPI is in the business of selling and distributing industrial packaging equipment and materials through various means, including a network of authorized Sales Representatives. Sales Representative has experience selling similar products and has a well established customer-base in the Territory (as defined below). The parties desire to enter into a relationship whereby Sales Representative will offer and sell Products (as defined below) as an authorized GPI Sales Representative in the Territory on the terms and conditions set forth below.

TERMS AND CONDITIONS

In consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **DEFINITIONS**

1.1 **Affiliate or Affiliates.** "affiliate" or "affiliates" or an "Affiliate" of a company or organization shall mean a current or future Person (as defined below) directly or indirectly controlling, controlled by, or under common control with such company or organization. "Control" for this purpose shall, in the case of a corporation with outstanding voting stock, require the direct or indirect ownership of or power to vote with respect to outstanding shares of a corporation's capital stock constituting fifty percent (50%) or more of the votes of any class of such corporation's outstanding voting stock, and with respect to any Person other than a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of such person's management or policies.

1.2 **Agreement.** "Agreement" means this Authorized Sales Representative Agreement and all of the attached appendices.

1.3 **CGL.** "CGL" has the meaning set forth in Section 6.2 of this Agreement.

1.4 **Claims.** "Claims" has the meaning set forth in Section 12.1 of this Agreement.

1.5 **Confidential Information.** "Confidential Information" has the meaning set forth in Section 11.1 of this Agreement.

1.6 **Sale Commission.** "Sale Commission" means an amount equal to five percent (5%) multiplied by the amount of each sale of GPI's Products by Sales Representative in accordance with this Agreement. The Sale Commission will be based only on the aggregate amount of payments actually received by GPI in connection with such sales to customers in the Territory, net of returns, rebates and allowances.

1.7 **Distribution Center.** "Distribution Center" means the property known as "4740 E. 26<sup>th</sup> Street, Vernon, California" and more particularly described and in greater detail in the Distribution Center Lease.

1.8 **Distribution Center Lease.** "Distribution Center Lease" means a lease entered into by and between Sales Representative and KBB Investments.

1.9 **Distribution Management Services.** "Distribution Management Services" has the meaning set forth in Section 6.1 of this Agreement.

1.10 **Sales Representative.** "Sales Representative" has the meaning set forth in the first paragraph of this Agreement.

1.11 **GPI.** "GPI" has the meaning set forth in the first paragraph of this Agreement.

1.12 **Marks.** "Marks" means the trademarks, trade names, company names, service marks, logos and other commercial symbols which GPI from time to time authorizes Sales Representative to use in connection with its Operations, including, but not limited to, "Gulf Packaging," and any derivations thereof and "Gulf" as part of any company name and/or trade name.

1.13 **Operations.** "Operations" means all activities of Sales Representative contemplated by this Agreement.

1.14 **Person.** "Person" means an individual, a corporation, a partnership, a limited liability company, a trust or any other entity or organization.

1.15 **Price.** "Price" for a GPI Product means the price shown in the applicable GPI price list (hardcopy/electronic). Except as otherwise provided herein, the GPI price list may be updated and/or modified at any time without notice at GPI's sole discretion.

1.16 **Products.** "Products" means all of the GPI products, including, without limitation, packaging equipment and materials authorized by GPI for sale by Sales Representative under this Agreement.

1.17 **Territory.** "Territory" has the meaning set forth in Appendix A of this Agreement.

## 2. APPOINTMENT AS AUTHORIZED SALES REPRESENTATIVE

2.1 **Appointment.** GPI hereby appoints Sales Representative as a non-exclusive, authorized GPI Sales Representative for the sale of the Products to customers primarily located in the Territory or such other area in which Sales Representative has historically called upon, and Sales Representative hereby accepts such appointment on the terms and conditions set forth below. Sales Representative agrees to conduct its Operations only within the Territory. Notwithstanding anything in this Agreement to the contrary, the parties acknowledge and agree that the Territory may consist of several different geographic areas. In accordance with the terms with the terms of this Agreement and applicable law of each jurisdiction within the Territory, GPI, may terminate this Agreement in accordance with its terms, in whole or in part, with respect to any one or more of the geographic areas within the Territory and the term "Territory" shall be thereby automatically amended to take into account such termination. For example, if "Territory" includes counties A, B, and C, GPI may terminate Sales Representative's rights to sell Products in county B if Sales Representative breached its obligations under Section 5.2.2 to comply with applicable law in County B (e.g., failure to obtain a proper business license resulting in a suspension of operations in county B). The term "Territory" hereunder would thereby be automatically amended to include counties A and C only.

2.2 **Distribution Methods.** Sales Representative shall promote the sale of Products to customers located in the Territory by the direct sale of Products by GPI to such customers in exchange for the payment of a Sale Commission by GPI to Sales Representative.

2.3 **Distribution Center Management.** Sales Representative will perform the Distribution Center Management Services in connection with this Agreement.

2.4 **Reservation of Rights.** GPI reserves all rights not specifically granted herein, including, without limitation, the right to engage other sales representatives or appoint third party sales representatives to offer and sell Products, whether using the Marks or other trade or service marks, outside the Territory.

## 3. SALES REPRESENTATIVE'S RESPONSIBILITY TO PROMOTE, SELL AND SERVICE PRODUCTS

### 3.1 **Responsibility to Promote and Sell.**

**3.1.1 Sales Representative's Obligations.** Sales Representative agrees to effectively, ethically and lawfully promote and sell Products to customers in the Territory. To achieve this objective, Sales Representative agrees, at Sales Representative's expense, to:

- (1) obtain all required licenses and permits for the conduct of the Operations;
- (2) maintain orderly records of sales of all Products, including the name and address of each purchaser, in order to enable GPI and/or the Sales Representative to comply with applicable laws or regulations;
- (3) maintain and utilize competent sales and technical personnel and staff in order to provide an adequate level of support in the sale of the Products to customers; and
- (4) bear all expenses whatsoever incurred in connection with the performance of its Operations under this Agreement.

**3.1.2 Other Obligations.** In addition, Sales Representative will further the sale of Products by:

- (1) consulting with GPI and cooperating in the preparation of an annual business plan for the marketing and sale of the Products for the succeeding calendar year prior to the conclusion of each calendar year during the term of this Agreement;
- (2) maintaining satisfactory annual sales of Products consistent with Sales Representative's business plan established mutually by GPI and Sales Representative (as described in the preceding paragraph);
- (3) delivering to each purchaser of a Product the GPI Product documentation relevant to such Product (such as a documentation package containing material test reports) and;
- (4) complying with all applicable laws, statutes, regulations and safety standards in all of Sales Representative's conduct pursuant to this Agreement.

**3.1.3 Exclusivity.** Sales Representative hereby covenants and agrees that it shall not engage in any business or operations other than the sale of Products as contemplated hereby and that Sales Representative shall not sell any products other than the Products.

## 4. SALE OF PRODUCTS BY SALES REPRESENTATIVES

4.1 **GPI's Obligations.** In addition to its other obligations herein, GPI shall:

**4.1.1** subject to Section 4.3.1 below, offer Products at list prices (including distribution charges, delivery, taxes and other charges) established by GPI and in effect at the time of acceptance of an order, pursuant to GPI's standard terms and conditions of sale in effect from time to time as published in the most recent Terms of Sale Bulletin;

**4.1.2** provide Sales Representative with such advertising support as GPI shall deem appropriate in its sole discretion; and

4.1.3 reimburse, in its sole discretion, Sales Representative for all reasonable expenses incurred in the ordinary course of business which arise directly from the performance of its Operations under this Agreement

4.2 **Sale of Products, Parts and related Equipment to Sales Representative.** All customer purchase orders for Products shall be submitted by Sales Representative to GPI on a written or electronic purchase order and any purchase resulting there from shall be subject to the terms of this Agreement. GPI's acceptance of a purchase order shall occur when GPI returns a written or electronic acknowledgment of a purchase order or when GPI takes any step in performance of the purchase order.

4.3 **Prices and Other Terms of Sale.** Prices, destination charges, and other terms of sale applicable to purchases of any Products will be those established according to the GPI price lists furnished from time to time to Sales Representative or as agreed upon for custom orders. Prices, destination charges, and other terms of sale applicable to any Products may be changed at any time by GPI. Except as otherwise provided in writing, changes apply to Products not released by GPI for placement in the production or shipping schedule at the time the changes are made effective.

## 5. DISTRIBUTION CENTER MANAGEMENT

5.1 **Importance of Distribution Center.** The Distribution Center contains an inventory of various Products so that customers have ready access to the Products. Accordingly, the proper operation of the Distribution Center is critical to GPI's ability to compete in the market place and sell Products to its customers. Sales Representative hereby agrees to operate the Distribution Center in accordance with the terms of this Agreement and the Distribution Center Lease (the "Distribution Management Services").

5.2 **Management.** Sales Representative shall manage, maintain and operate the Distribution Center in accordance with sound property management and warehouse and distribution practices. Sales Representative shall exercise prudence and diligence in performing its Distribution Center Management Services hereunder and in caring for, storing and protecting the Products, and Sales Representative shall diligently endeavor to protect the rights and interests of GPI in connection with the Distribution Center and the Products.

5.3 **Maintenance & Repair.** Sales Representative shall ensure that the physical facilities at the Distribution Center, including the buildings, parking areas, personal property and grounds are at all times maintained and kept in good order and repair, and are in a proper state of cleanliness. Sales Representative shall make or contract for all repairs, alterations, decorations or replacements which are reasonably required to preserve, maintain and keep the Distribution Center in such condition required under the Distribution Center Lease. Sales Representative shall at all time comply with the terms and conditions of the Distribution Center Lease, a copy of which has been provided to Sales Representative.

5.4 **Reimbursement of Distribution Center Expenses.** GPI shall reimburse Sales Representative for all reasonable costs and expenses related to the Distribution Center including but not limited to rent, personnel and utilities, in each case following GPI's receipt of copies of invoices, employment records or other reasonable evidence of such costs and expenses.

5.4.1 **Emergency Expenditures.** In no event shall Sales Representative make or incur any expenditures unless otherwise approved by GPI in advance in writing, unless the same are immediately required by law or made under circumstances which are an emergency, in which event Sales Representative shall immediately notify GPI of the expenditure and the reasons therefore. GPI reserves the right, in its sole and absolute discretion, to reimburse Sales Representative for any such expenditures or not to provide such reimbursement.

5.5 **Notification of Litigation.** If Sales Representative shall be apprised of any claim, demand, suit or other legal proceeding made or instituted against GPI on account of any matter connected with the Distribution Center, Sales Representative shall notify GPI immediately. Sales Representative shall assist and cooperate with GPI in all reasonable respects in the defense of any such suit or other legal proceeding.

5.6 **Title to and Ownership of Products.** Sales Representative acknowledges and agrees that all Products at the Distribution Center or any other premises owned, leased or otherwise occupied by Sales Representative are and shall be owned by GPI, and GPI shall retain all right, title and interest in and to the Products, in each case until such time as Sales Representative sells the Products on behalf of GPI on an arm's length basis and in the ordinary course of business. Sales Representative shall not grant or suffer to exist any security interest, lien or other encumbrance on any Products.

5.7 **Accounts Arising from Sale of Products.** Sales Representative acknowledges and agrees that all accounts arising from the sale of Products, and all payments by customers with respect thereto, are the sole property of GPI, and Sales Representative shall instruct all customers to make payments for products to or for the benefit of GPI in such manner as GPI shall direct. Any funds received by Sales Representative with respect to any such sales or accounts shall be held in trust for the benefit of GPI and shall be promptly remitted to GPI. Sales Representative shall not demand or otherwise seek payment from any customer or account debtor with respect to any such accounts. Without limiting the generality of the foregoing, Sales Representative acknowledges and agrees that all Sales Commissions and any other amounts owing by GPI to Sales Representative constitute general unsecured claims of Sales Representative, and Sales Representative hereby irrevocably waives any "trust fund" claims or rights of offset or setoff with respect to any accounts arising from the sale of Products or any funds received with respect thereto.

5.8 **Customer Lists and Related Information.** Without limiting the generality of the provisions set forth below regarding Confidential Information, Sales Representative hereby acknowledges and agrees that all customer lists, sales records and similar information regarding sales and potential sales of Products (collectively, "Customer Information") are the sole property of GPI. Sales Representative shall use Customer Information only for the purpose of selling Products pursuant to this Agreement and shall turn over to GPI all Customer Information upon the termination of this Agreement. Notwithstanding any termination of this Agreement, Sales Representative shall not use any Customer Information to sell any product which is similar to the Products or otherwise in competition with GPI.

6. INSURANCE

6.1 **Comprehensive General Liability.** Sales Representative shall maintain Comprehensive General Liability – Bodily Injury/Property Damage (including coverage for products liability) in the amount of \$1,000,000 combined single limit per occurrence.

6.2 **Commercial General Liability.** Sales Representative shall maintain commercial general liability (“CGL”) and, if necessary, commercial excess/umbrella insurance, with a minimum limit of not less than US\$1,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this Contract. CGL insurance shall cover liability arising from premises (including the Distribution Center), operations, independent contractors, personal injury and advertising injury, and blanket contractual liability coverage.

6.3 **Business Auto Liability.** Sales Representative shall maintain business auto liability and, if necessary, commercial umbrella liability insurance, with a minimum limit of not less than US\$2,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos).

6.4 **Workers Compensation and Employer’s Liability.** Sales Representative shall maintain employers' liability insurance as well as workers compensation insurance that complies with the legal requirements of each state in which the Operations are conducted. The commercial umbrella and/or employers liability minimum limits shall not be less than US\$1,000,000 each accident. Sales Representative shall include an "alternate employer endorsement" in favor of GPI.

6.5 **Evidence of Insurance.** Upon request of GPI, Sales Representative shall furnish GPI with a certificate(s) of insurance, on a form that is satisfactory to GPI or provided by GPI, executed by a duly authorized representative of each insurer, evidencing compliance with the insurance requirements of this Section. Acceptance by GPI of an incomplete or improper certificate, or failure of GPI to identify a deficiency in coverage from the certificate submitted, shall not be construed as a waiver of Sales Representative's obligation to maintain in effect the coverages required by this Section. All certificates shall provide for 30 days' written notice to GPI prior to the cancellation or material change of any insurance referred to therein.

6.6 **General Insurance Provisions.**

6.6.1 To the maximum extent permitted by law, all insurance policies of Sales Representative in any way related to, or providing any coverage in connection with the Operations, whether or not required by this Agreement, shall be endorsed to waive all rights of subrogation against GPI, and (except worker's compensation coverage) shall, to the extent of the risks and liabilities assumed by Sales Representative, name GPI as an additional insured on a broad form endorsement.

6.6.2 All insurance policies of Sales Representative in any way related to or providing any coverage in connection with the Operations, whether or not required by this Agreement, shall to the extent of the risks and liabilities assumed by Sales Representative be primary as respects any other policies held by GPI or any other policies providing any coverage in favor of any GPI affiliate. The coverage afforded GPI under such policies shall delete any excess clause or co-insurance clause that requires sharing or renders any insurance in favor of GPI as primary. Such policies shall afford primary coverage to GPI and its affiliates without any contributions or reimbursement, in whole or in part, by any insurance, or self-insured retention or account maintained by or in favor of GPI and its affiliates.

6.6.3 The insurance obligations required under this Section are independent from all other obligations of Sales Representative under this Agreement and apply whether or not required by any other provision of this Agreement and shall not in any way limit Sales Representative's indemnity obligations except to the extent mandated by applicable law.

6.6.4 Sales Representative shall immediately notify insurers of and, except for privileged information and trade secrets, shall furnish all necessary information concerning any occurrence which may give rise to a claim. Copies of all correspondence and documents related to any such occurrence or any claim shall be provided promptly to GPI.

6.6.5 The insolvency, liquidation, bankruptcy, or failure of any insurance company providing insurance for Sales Representative or its subcontractors or failure of any such insurance company to pay claims accruing, shall not be considered a waiver of, nor shall it excuse Sales Representative from complying with, any of the provisions of this Agreement.

7. SALES REPRESENTATIVE’S OTHER OBLIGATIONS

7.1 **Notifications.** Sales Representative will promptly notify GPI of:

7.1.1 any claim of injury or damage, whether oral or in writing, made by any person or entity regarding Products or of the need for abnormally repetitive repairs to any Product; and

7.1.2 any infringement of any GPI copyright or Mark.

7.2 **Prohibited Activities.** Sales Representative agrees that it will not:

7.2.1 make claims or give warranties on Products not authorized by GPI; or

7.2.2 engage in any illegal, deceptive, misleading or unethical practices.

7.2.3 during the term and for a period of twelve (12) months thereafter, directly or indirectly recruit or otherwise solicit or induce any employee of GPI to terminate employment with GPI or its affiliates.

8. MARKS

8.1 **Marks.** GPI or its affiliates or their subsidiaries are the owners or licensees of the Marks.

8.2 **Right to Use Marks.** Sales Representative is granted the non-exclusive right to display Marks in the form and manner approved by GPI in the conduct of its Operations hereunder. Sales Representative's license to use the Marks is non-exclusive, contains no right to sub-license such Marks, except as may be authorized in writing by GPI, and is restricted solely and exclusively to use in connection with the Operations related to the sale of Products within the Territory as set forth herein.

8.3 **Sales Representative's Use of Marks.**

**8.3.1** Sales Representative will not apply to register any Marks either alone or as part of another mark, and will not take any action which may adversely affect the validity of the Marks or the goodwill associated with them.

**8.3.2** Sales Representative agrees to purchase and sell goods bearing Marks only from GPI or parties authorized or licensed by GPI.

**8.3.3** Sales Representative agrees to change or discontinue the use of any Marks upon GPI's request.

**8.3.4** Sales Representative agrees that no Person owned by or affiliated with Sales Representative or any of its owners may use any Mark to identify a business without GPI's prior written permission.

8.4 **Ownership of Marks.** Sales Representative shall not obtain any rights in the Marks and agrees that all goodwill which accrues because of its use of any such Marks will become the property of GPI, its affiliates or their subsidiaries. Sales Representative agrees not to use, employ or attempt to register any trademarks, service marks, or trade names which are confusingly similar to any Marks.

8.5 **Duties on Expiration or Termination.** The permission granted with respect to Sales Representative's use of the Marks will terminate upon the termination or expiration of this Agreement. Upon expiration or termination of this Agreement, Sales Representative agrees to immediately discontinue, at its expense, all use of the Marks. Thereafter, Sales Representative will not use, either directly or indirectly, any Marks or any other confusingly similar marks in a manner that GPI determines is likely to cause confusion or mistake or deceive the public. In such event, Sales Representative will immediately: (i) cease using or displaying any Mark in any manner whatsoever; and (ii) take all necessary steps to remove all references to any Marks or to Sales Representative being an authorized GPI Sales Representative in all advertising. Sales Representative acknowledges that GPI has no adequate remedy at law should Sales Representative fail to honor its obligations upon termination with respect to GPI's Marks, and therefore consents to entry of an injunction without bond or security by any court of competent jurisdiction in the event Sales Representative does not promptly comply with any of its obligations hereunder.

8.6 **No Alterations.** Sales Representative shall not effect or permit the removal or alteration of any patent numbers, trade names or trademarks, notices nameplates, or serial numbers affixed to the Products or the affixation of any additional trade names or trademarks, notices or nameplates to the Products without GPI's written permission.

8.7 **Reporting of Infringement.** Sales Representative agrees to report to GPI any attempt to infringe upon the patent, trademark, or other industrial or intellectual property rights of GPI of which Sales Representative may become aware. Sales Representative agrees to notify GPI after any claim of infringement against GPI is raised to Sales Representative or any action is brought against Sales Representative, to the extent it is based on a claim that the Products (or any part thereof) as furnished hereunder infringe a United States patent or copyright.

9. **Non-Infringement.** Subject to **Section 12.2**, GPI shall indemnify and hold harmless Sales Representative, its owners, parents, affiliates, subsidiaries, agents, directors, employees, customers and all persons claiming under Sales Representative from and against all judgments, orders, awards, claims, damages, losses, liabilities, costs and expenses, including, but not limited to, court costs and reasonable attorneys' fees and liabilities that may result by reason of any infringement or claim of infringement of any patent, trademark, copyright, trade secret or other proprietary right relating to Products and/or the use thereof to the extent such claim is not based upon Sales Representative's specifications. GPI will defend and/or settle at its own expense any action brought against Sales Representative to the extent that it is based on a claim that the Products and/or the use thereof, infringe any patent, trademark, copyright, trade secret or other proprietary right.

**TERM AND TERMINATION**

9.1 **Term.** This Agreement shall become effective on the date hereof and will continue in force for three (3) years thereafter unless earlier terminated as provided herein. This Agreement shall automatically be renewed for successive one year periods thereafter unless GPI notifies Sales Representative at least thirty (30) days prior to the original expiration date, or any annual renewal date, that this Agreement will not be renewed, or unless this Agreement is sooner terminated as provided in this **Section 9**.

9.2 **Breaches with Right to Cure.** GPI may terminate this Agreement by written notice to Sales Representative, effective thirty (30) days from delivery of written notice, if Sales Representative does not cure any of the following breaches within five (5) days of delivery of written notice from GPI:

**9.2.1** Failure of Sales Representative to timely pay its obligations to GPI.

**9.2.2** Any other breach of Sales Representative's obligations under this Agreement not otherwise specifically identified in **Section 9.3**.



9.3 **Breaches Causing Immediate Termination.** GPI may terminate this Agreement by giving Sales Representative written notice of termination, termination to be effective immediately or on the date specified in the notice, upon the occurrence of any of the following events:

9.3.1 Any unauthorized transfer of this Agreement or the Operations.

9.3.2 Any undertaking by Sales Representative to conduct, either directly or indirectly, any of the Operations outside the Territory.

9.3.3 A finding by a government agency or court of original jurisdiction or a settlement arising from charges that Sales Representative has committed a misdemeanor, felony, or unfair or deceptive business practice which, in GPI's opinion, may adversely affect the reputation or interests of Sales Representative or GPI.

9.3.4 Failure of Sales Representative to comply with the provisions of any laws or regulations relating to the sale of Products or the conduct of Operations.

9.3.5 Failure of Sales Representative to maintain satisfactory sales of Products as provided in Section 3.1.2(2).

9.3.6 Failure by Sales Representative to maintain any license required for the performance of its obligations under this agreement or the suspension or revocation of such license.

9.4 **Automatic Termination.** This Agreement will automatically terminate if: (a) Sales Representative becomes insolvent or there is a filing by or against Sales Representative of a petition in bankruptcy; (b) filing of a proceeding for the appointment of a receiver or trustee for Sales Representative; (c) Sales Representative makes an assignment for the benefit of creditors; or (d) there is any foreclosure or other due process of law whereby a third party acquires rights to the operation, ownership or assets of Sales Representative.

9.5 **Termination By Agreement.** This Agreement may be terminated at any time by written agreement between GPI and Sales Representative.

9.6 **Reliance on Any Applicable Termination Provision.** The terminating party may select the provision under which it elects to terminate without reference in its notice to any other provision that may also be applicable. The terminating party subsequently also may assert other grounds for termination. Termination shall not be a party's exclusive remedy or constitute a waiver of any other remedy.

9.7 **Transactions After Expiration or Termination.**

9.7.1 **Effect of Transactions After Termination.** Neither the sale of Products to Sales Representative nor any other act by GPI or Sales Representative after termination of this Agreement will be construed as a waiver of the termination.

9.7.2 **Return of Property.** Upon termination or expiration, Sales Representative shall immediately return to GPI all inventory, sales and marketing materials, price lists, GPI Product lists, customer lists and any other proprietary or Confidential Information of GPI, its affiliates, or their subsidiaries.

## 10. TERMINATION ASSISTANCE

10.1 **Mutual Cooperation.** If this Agreement expires or is terminated, the parties will cooperate in good faith to ensure the orderly transition of sales of the Products in the Territory from Sales Representative to GPI or a third party designated by GPI. GPI will endeavor to cooperate with Sales Representative to employ a method of transition including either the re-purchase of Products or taking possession of Products for sale on a consignment basis.

10.2 **Sales Representative's Obligations.** If this Agreement expires or is terminated, the Sales Representative will ship the Products, transportation charges prepaid, to the destinations specified in the instructions provided by GPI.

## 11. CONFIDENTIAL INFORMATION

11.1 **Confidential Information.** GPI, its affiliates, and their subsidiaries possess (and will continue to develop and acquire) certain confidential information ("Confidential Information") relating to developing, manufacturing, selling and servicing Products. Confidential Information includes, without limitation, all price lists, customer lists, GPI Product specifications, books, records, manuals, policies, methods, processes, techniques, procedures, systems, trade secrets, correspondence, product literature, advertising and promotional programs, and other data pertaining to the conduct of GPI's business. Notwithstanding the foregoing, Confidential Information does not include any data or information which: (a) is known to the public prior to its receipt by Sales Representative; (b) after such receipt, becomes available to the public other than as a result of a disclosure by Sales Representative or any of its directors, officers, employees or agents; or (c) except as otherwise provided herein can be shown by Sales Representative to have been independently developed by Sales Representative prior to execution of this Agreement.

11.2 **Use of Confidential Information.** Sales Representative agrees that it will not acquire any interest in Confidential Information, other than the right to use it in connection with its Operations during the term of this Agreement. Sales Representative further agrees that Confidential Information is proprietary, includes GPI's trade secrets, and is disclosed to Sales Representative only on the condition that Sales Representative agrees, and Sales Representative does hereby agree, that it: (a) will not use Confidential Information in any other business or capacity; (b) will keep Confidential Information absolutely confidential during and after this Agreement's term; (c) will not make unauthorized copies of any Confidential Information disclosed via electronic medium or in written or other tangible form; and (d) will adopt and implement all reasonable procedures that GPI prescribes to prevent unauthorized use or disclosure of Confidential Information.

12. INDEMNIFICATION

12.1 **Sales Representative's Indemnification.** Sales Representative agrees to indemnify and hold GPI, its affiliates, and their respective officers, managers, owners, employees, agents, successors and assigns harmless from and against, and to reimburse them for, any and all claims, losses, damages, obligations, judgments, settlements, expenses or costs (including reasonable attorneys' fees) (collectively "Claims"), directly or indirectly arising out of or relating to Operations, including, without limitation, unauthorized warranties or representations made by Sales Representative, or any breach of this Agreement by Sales Representative.

12.2 **GPI Indemnification.** GPI agrees to indemnify, defend and hold Sales Representative and its officers, directors, employees and agents harmless from and against, and reimburse them for, Claims, less any offset recovered by Sales Representative, arising from (i) a breach of a GPI warranty related to an GPI Product, or (ii) bodily injury or property damage claimed to have been caused solely and proximately by a defect in the design or manufacture of a Product by GPI (other than a defect which should have been detected by Sales Representative in a reasonable inspection of the Product). Notwithstanding the foregoing, GPI's indemnification obligations hereunder will not include any Claims resulting from a Product which (i) has been altered or modified by any party other than GPI, or (ii) has not been used for its intended purposes and in accordance with any GPI operating instructions. GPI's indemnification obligations under this Agreement shall be limited to One Million Dollars (\$1,000,000) in the aggregate for all Claims.

13. GENERAL PROVISIONS

13.1 **No Agent or Legal Representative Status.** This Agreement does not make either party the agent or legal representative of the other for any purpose, nor does it grant either party authority to assume or create any obligation on behalf of or in the name of the other. Nothing in this Agreement shall create the relationship of employer and employee, principal and agent, franchisor and franchisee, or any other relationship between the parties except as stated herein. No fiduciary obligations are created by this Agreement. Sales Representative is an independent contractor and solely responsible for all expenditures, liabilities and obligations incurred or assumed by Sales Representative for the establishment and conduct of its operations hereunder.

13.2 **Taxes.** Sales Representative is responsible for all local, state, federal or other applicable taxes and tax returns related to its Operations (including payroll taxes). Sales Representative shall pay all such taxes as they become due and payable and will indemnify, defend and hold GPI harmless from any related claims or demands made by any taxing authority therefor.

13.3 **Notices.** Any notice required to be given by either party to the other in connection with this Agreement will be in writing and deemed delivered at the time of personal delivery by hand, three (3) business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, one (1) business day after being placed in the hands of a commercial overnight courier service, or one (1) business day after transmission by facsimile (a confirming notice shall be mailed if served only by facsimile). Notices shall be provided to the addresses or facsimile numbers set forth below, or at such other place or facsimile number as may be designated by a party by a notice given in accordance with this provision.

13.4 **No Implied Waivers.** The delay or failure of either party to require performance by the other party of the waiver by either party of a breach of any provision of this Agreement will not affect the right to subsequently require such performance.

13.5 **Assignment of Rights or Delegation of Duties.** Neither this Agreement nor any right granted by this Agreement is a property right. Neither this Agreement nor the rights or obligations of Sales Representative may be sold, assigned, delegated or otherwise transferred. GPI may assign this Agreement and any rights, or delegate any obligations, under this Agreement, to any affiliate and will provide Sales Representative prior written notice of such assignment or delegation. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns. Notwithstanding the foregoing, each party hereto hereby acknowledges and agrees that it has granted a security interest to FCC, LLC, d/b/a First Capital (together with its successors and assigns, "Lender"), in substantially all of its assets, including, without limitation, all of each such party's rights and remedies hereunder. Lender may (but shall not be obligated to), in its own name or in the name of any party hereto, enforce such rights and remedies while any default exists under or in connection with any financing arrangement provided by Lender to any party hereto. Sales Representative hereby agrees to provide Lender with access to the Distribution Center and any other premises where any Products are held in order to enable Lender to conduct inspections, audits and field examinations of the Product, and Sales Representative hereby agrees that, while any default exists under or in connection with any financing arrangement between Lender and GPI, Lender may repossess, sell or otherwise realize upon the Products in accordance with applicable law.

13.6 **No Third Party Benefit Intended.** Subject to the rights of Lender set forth above and in the loan documents, security agreements and other agreements between Lender and one or more parties hereto, this Agreement is not enforceable by any third parties and is not intended to convey any rights or benefits to anyone who is not a party to this Agreement.

13.7 **Set-Off.** GPI may deduct any amounts due or to become due from Sales Representative to GPI, or any amounts held by GPI, from any sums or accounts due or to become due from GPI, its affiliates, or their subsidiaries.

13.8 **Attorneys' Fees.** If GPI incurs expenses due to Sales Representative's failure to pay when due amounts owed to GPI or otherwise to comply with this Agreement, Sales Representative agrees, whether or not GPI initiates a legal proceeding, to reimburse GPI for any of the costs and expenses which GPI incurs, including, without limitation, reasonable accounting, attorneys', arbitrators', and related fees.

13.9 **Applicable Law.** This Agreement is governed by the laws of the State of Texas, without giving effect to its conflicts of law principles. However, if performance under this Agreement is illegal under a valid law of any jurisdiction where such performance is to take place, performance will be modified to the minimum extent necessary to comply with such law if it was effective as of the effective date of this Agreement.

13.10 **Jurisdiction and Venue.** If GPI seeks to obtain injunctive relief against Sales Representative, Sales Representative agrees that the federal or state courts of Houston, Texas shall have venue and jurisdiction of any such legal proceedings, and Sales Representative hereby submits to the jurisdiction of any state or federal court in Houston, Texas where any such lawsuit might be pending.

13.11 **No Course of Dealing.** The Agreement will not be supplemented or modified by any course of dealing or trade usage. No amendment or modifications of this Agreement shall be deemed effective unless and until executed in writing by both parties.

13.12 **Severability.** If any provision, clause or sentence of this Agreement is determined to be void, unlawful or unenforceable by any court of competent jurisdiction, such provision, clause or sentence shall be deemed to be severed, and the remainder of this Agreement will continue in all other respects to be valid, binding and enforceable.

13.13 **Survival.** The following provisions shall survive the termination or expiration of this Agreement: 9, 11, 12, and 13.

13.14 **Amendment.** Except as otherwise provided herein, this Agreement may not be modified or amended without the mutual written consent of both parties and Lender.

13.15 **Counterparts.** This Agreement may be executed in counterparts, and by facsimile, all of which together shall constitute a single, binding instrument.

13.16 **Entire Agreement.** Except as provided in this Agreement, GPI has made no promises to Sales Representative and there are no other agreements or understandings, either oral or written, between the parties affecting this Agreement or relating to any of the subject matters covered by this Agreement. This is the entire agreement between the parties and this Agreement cancels and supersedes all previous agreements between the parties that relate to any matters covered herein.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date and year set forth below.

GPI:

GULF PACKAGING, INC.

By:   
ARMAN SARKISIAN, CEO

Date: 3 3 1 10

SALES REPRESENTATIVE:

GULF-PACIFIC PACKAGING CORPORATION

By:   
Jeff Cutshall

Title: President

GULF-PACIFIC PACKAGING CORPORATION  
4740 E. 26<sup>th</sup> Street  
Vernon, California 90058

SALES REPRESENTATIVE TERRITORY

- 1. Southern California

GULF PACKAGING, INC.  
AUTHORIZED SALES REPRESENTATIVE AGREEMENT

This Authorized Sales Representative Agreement is entered into on March \_\_\_\_\_, 2014 (the "Effective Date") by and between Gulf Packaging, Inc., a Texas corporation ("GPI"), and Gulf Arizona Packaging Corporation, an Arizona corporation ("Sales Representative").

RECITALS

GPI is in the business of selling and distributing industrial packaging equipment and materials through various means, including a network of authorized Sales Representatives. Sales Representative has experience selling similar products and has a well established customer-base in the Territory (as defined below). The parties desire to enter into a relationship whereby Sales Representative will offer and sell Products (as defined below) as an authorized GPI Sales Representative in the Territory on the terms and conditions set forth below.

TERMS AND CONDITIONS

In consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **DEFINITIONS**

1.1 **Affiliate or Affiliates.** "affiliate" or "affiliates" or an "Affiliate" of a company or organization shall mean a current or future Person (as defined below) directly or indirectly controlling, controlled by, or under common control with such company or organization. "Control" for this purpose shall, in the case of a corporation with outstanding voting stock, require the direct or indirect ownership of or power to vote with respect to outstanding shares of a corporation's capital stock constituting fifty percent (50%) or more of the votes of any class of such corporation's outstanding voting stock, and with respect to any Person other than a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of such person's management or policies.

1.2 **Agreement.** "Agreement" means this Authorized Sales Representative Agreement and all of the attached appendices.

1.3 **CGL.** "CGL" has the meaning set forth in Section 6.2 of this Agreement.

1.4 **Claims.** "Claims" has the meaning set forth in Section 12.1 of this Agreement.

1.5 **Confidential Information.** "Confidential Information" has the meaning set forth in Section 11.1 of this Agreement.

1.6 **Sale Commission.** "Sale Commission" means an amount equal to five percent (5%) multiplied by the amount of each sale of GPI's Products by Sales Representative in accordance with this Agreement. The Sale Commission will be based only on the aggregate amount of payments actually received by GPI in connection with such sales to customers in the Territory, net of returns, rebates and allowances.

1.7 **Distribution Center.** "Distribution Center" means the property known as "7175 Sherman Street, Phoenix, Arizona" and more particularly described and in greater detail in the Distribution Center Lease.

1.8 **Distribution Center Lease.** "Distribution Center Lease" means a lease entered into by and between Sales Representative and Sienna Gulf, LLC.

1.9 **Distribution Management Services.** "Distribution Management Services" has the meaning set forth in Section 6.1 of this Agreement.

1.10 **Sales Representative.** "Sales Representative" has the meaning set forth in the first paragraph of this Agreement.

1.11 **GPI.** "GPI" has the meaning set forth in the first paragraph of this Agreement.

1.12 **Marks.** "Marks" means the trademarks, trade names, company names, service marks, logos and other commercial symbols which GPI from time to time authorizes Sales Representative to use in connection with its Operations, including, but not limited to, "Gulf Packaging," and any derivations thereof and "Gulf" as part of any company name and/or trade name.

1.13 **Operations.** "Operations" means all activities of Sales Representative contemplated by this Agreement.

1.14 **Person.** "Person" means an individual, a corporation, a partnership, a limited liability company, a trust or any other entity or organization.

1.15 **Price.** "Price" for a GPI Product means the price shown in the applicable GPI price list (hardcopy/electronic). Except as otherwise provided herein, the GPI price list may be updated and/or modified at any time without notice at GPI's sole discretion.

1.16 **Products.** "Products" means all of the GPI products, including, without limitation, packaging equipment and materials authorized by GPI for sale by Sales Representative under this Agreement.

1.17 **Territory.** "Territory" has the meaning set forth in Appendix A of this Agreement.

## 2. APPOINTMENT AS AUTHORIZED SALES REPRESENTATIVE

2.1 **Appointment.** GPI hereby appoints Sales Representative as a non-exclusive, authorized GPI Sales Representative for the sale of the Products to customers primarily located in the Territory or such other area in which Sales Representative has historically called upon, and Sales Representative hereby accepts such appointment on the terms and conditions set forth below. Sales Representative agrees to conduct its Operations only within the Territory. Notwithstanding anything in this Agreement to the contrary, the parties acknowledge and agree that the Territory may consist of several different geographic areas. In accordance with the terms with the terms of this Agreement and applicable law of each jurisdiction within the Territory, GPI, may terminate this Agreement in accordance with its terms, in whole or in part, with respect to any one or more of the geographic areas within the Territory and the term "Territory" shall be thereby automatically amended to take into account such termination. For example, if "Territory" includes counties A, B, and C, GPI may terminate Sales Representative's rights to sell Products in county B if Sales Representative breached its obligations under Section 5.2.2 to comply with applicable law in County B (e.g., failure to obtain a proper business license resulting in a suspension of operations in county B). The term "Territory" hereunder would thereby be automatically amended to include counties A and C only.

2.2 **Distribution Methods.** Sales Representative shall promote the sale of Products to customers located in the Territory by the direct sale of Products by GPI to such customers in exchange for the payment of a Sale Commission by GPI to Sales Representative.

2.3 **Distribution Center Management.** Sales Representative will perform the Distribution Center Management Services in connection with this Agreement.

2.4 **Reservation of Rights.** GPI reserves all rights not specifically granted herein, including, without limitation, the right to engage other sales representatives or appoint third party sales representatives to offer and sell Products, whether using the Marks or other trade or service marks, outside the Territory.

## 3. SALES REPRESENTATIVE'S RESPONSIBILITY TO PROMOTE, SELL AND SERVICE PRODUCTS

### 3.1 **Responsibility to Promote and Sell.**

**3.1.1 Sales Representative's Obligations.** Sales Representative agrees to effectively, ethically and lawfully promote and sell Products to customers in the Territory. To achieve this objective, Sales Representative agrees, at Sales Representative's expense, to:

- (1) obtain all required licenses and permits for the conduct of the Operations;
- (2) maintain orderly records of sales of all Products, including the name and address of each purchaser, in order to enable GPI and/or the Sales Representative to comply with applicable laws or regulations;
- (3) maintain and utilize competent sales and technical personnel and staff in order to provide an adequate level of support in the sale of the Products to customers; and
- (4) bear all expenses whatsoever incurred in connection with the performance of its Operations under this Agreement.

**3.1.2 Other Obligations.** In addition, Sales Representative will further the sale of Products by:

- (1) consulting with GPI and cooperating in the preparation of an annual business plan for the marketing and sale of the Products for the succeeding calendar year prior to the conclusion of each calendar year during the term of this Agreement;
- (2) maintaining satisfactory annual sales of Products consistent with Sales Representative's business plan established mutually by GPI and Sales Representative (as described in the preceding paragraph);
- (3) delivering to each purchaser of a Product the GPI Product documentation relevant to such Product (such as a documentation package containing material test reports) and;
- (4) complying with all applicable laws, statutes, regulations and safety standards in all of Sales Representative's conduct pursuant to this Agreement.

**3.1.3 Exclusivity.** Sales Representative hereby covenants and agrees that it shall not engage in any business or operations other than the sale of Products as contemplated hereby and that Sales Representative shall not sell any products other than the Products.

## 4. SALE OF PRODUCTS BY SALES REPRESENTATIVES

4.1 **GPI's Obligations.** In addition to its other obligations herein, GPI shall:

**4.1.1** subject to Section 4.3.1 below, offer Products at list prices (including distribution charges, delivery, taxes and other charges) established by GPI and in effect at the time of acceptance of an order, pursuant to GPI's standard terms and conditions of sale in effect from time to time as published in the most recent Terms of Sale Bulletin;

**4.1.2** provide Sales Representative with such advertising support as GPI shall deem appropriate in its sole discretion; and

4.1.3 reimburse, in its sole discretion, Sales Representative for all reasonable expenses incurred in the ordinary course of business which arise directly from the performance of its Operations under this Agreement

4.2 **Sale of Products, Parts and related Equipment to Sales Representative.** All customer purchase orders for Products shall be submitted by Sales Representative to GPI on a written or electronic purchase order and any purchase resulting there from shall be subject to the terms of this Agreement. GPI's acceptance of a purchase order shall occur when GPI returns a written or electronic acknowledgment of a purchase order or when GPI takes any step in performance of the purchase order.

4.3 **Prices and Other Terms of Sale.** Prices, destination charges, and other terms of sale applicable to purchases of any Products will be those established according to the GPI price lists furnished from time to time to Sales Representative or as agreed upon for custom orders. Prices, destination charges, and other terms of sale applicable to any Products may be changed at any time by GPI. Except as otherwise provided in writing, changes apply to Products not released by GPI for placement in the production or shipping schedule at the time the changes are made effective.

## 5. DISTRIBUTION CENTER MANAGEMENT

5.1 **Importance of Distribution Center.** The Distribution Center contains an inventory of various Products so that customers have ready access to the Products. Accordingly, the proper operation of the Distribution Center is critical to GPI's ability to compete in the market place and sell Products to its customers. Sales Representative hereby agrees to operate the Distribution Center in accordance with the terms of this Agreement and the Distribution Center Lease (the "Distribution Management Services").

5.2 **Management.** Sales Representative shall manage, maintain and operate the Distribution Center in accordance with sound property management and warehouse and distribution practices. Sales Representative shall exercise prudence and diligence in performing its Distribution Center Management Services hereunder and in caring for, storing and protecting the Products, and Sales Representative shall diligently endeavor to protect the rights and interests of GPI in connection with the Distribution Center and the Products.

5.3 **Maintenance & Repair.** Sales Representative shall ensure that the physical facilities at the Distribution Center, including the buildings, parking areas, personal property and grounds are at all times maintained and kept in good order and repair, and are in a proper state of cleanliness. Sales Representative shall make or contract for all repairs, alterations, decorations or replacements which are reasonably required to preserve, maintain and keep the Distribution Center in such condition required under the Distribution Center Lease. Sales Representative shall at all time comply with the terms and conditions of the Distribution Center Lease, a copy of which has been provided to Sales Representative.

5.4 **Reimbursement of Distribution Center Expenses.** GPI shall reimburse Sales Representative for all reasonable costs and expenses related to the Distribution Center including but not limited to rent, personnel and utilities, in each case following GPI's receipt of copies of invoices, employment records or other reasonable evidence of such costs and expenses.

5.4.1 **Emergency Expenditures.** In no event shall Sales Representative make or incur any expenditures unless otherwise approved by GPI in advance in writing, unless the same are immediately required by law or made under circumstances which are an emergency, in which event Sales Representative shall immediately notify GPI of the expenditure and the reasons therefore. GPI reserves the right, in its sole and absolute discretion, to reimburse Sales Representative for any such expenditures or not to provide such reimbursement.

5.5 **Notification of Litigation.** If Sales Representative shall be apprised of any claim, demand, suit or other legal proceeding made or instituted against GPI on account of any matter connected with the Distribution Center, Sales Representative shall notify GPI immediately. Sales Representative shall assist and cooperate with GPI in all reasonable respects in the defense of any such suit or other legal proceeding.

5.6 **Title to and Ownership of Products.** Sales Representative acknowledges and agrees that all Products at the Distribution Center or any other premises owned, leased or otherwise occupied by Sales Representative are and shall be owned by GPI, and GPI shall retain all right, title and interest in and to the Products, in each case until such time as Sales Representative sells the Products on behalf of GPI on an arm's length basis and in the ordinary course of business. Sales Representative shall not grant or suffer to exist any security interest, lien or other encumbrance on any Products.

5.7 **Accounts Arising from Sale of Products.** Sales Representative acknowledges and agrees that all accounts arising from the sale of Products, and all payments by customers with respect thereto, are the sole property of GPI, and Sales Representative shall instruct all customers to make payments for products to or for the benefit of GPI in such manner as GPI shall direct. Any funds received by Sales Representative with respect to any such sales or accounts shall be held in trust for the benefit of GPI and shall be promptly remitted to GPI. Sales Representative shall not demand or otherwise seek payment from any customer or account debtor with respect to any such accounts. Without limiting the generality of the foregoing, Sales Representative acknowledges and agrees that all Sales Commissions and any other amounts owing by GPI to Sales Representative constitute general unsecured claims of Sales Representative, and Sales Representative hereby irrevocably waives any "trust fund" claims or rights of offset or setoff with respect to any accounts arising from the sale of Products or any funds received with respect thereto.

5.8 **Customer Lists and Related Information.** Without limiting the generality of the provisions set forth below regarding Confidential Information, Sales Representative hereby acknowledges and agrees that all customer lists, sales records and similar information regarding sales and potential sales of Products (collectively, "Customer Information") are the sole property of GPI. Sales Representative shall use Customer Information only for the purpose of selling Products pursuant to this Agreement and shall turn over to GPI all Customer Information upon the termination of this Agreement. Notwithstanding any termination of this Agreement, Sales Representative shall not use any Customer Information to sell any product which is similar to the Products or otherwise in competition with GPI.

6. INSURANCE

6.1 **Comprehensive General Liability.** Sales Representative shall maintain Comprehensive General Liability – Bodily Injury/Property Damage (including coverage for products liability) in the amount of \$1,000,000 combined single limit per occurrence.

6.2 **Commercial General Liability.** Sales Representative shall maintain commercial general liability (“CGL”) and, if necessary, commercial excess/umbrella insurance, with a minimum limit of not less than US\$1,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this Contract. CGL insurance shall cover liability arising from premises (including the Distribution Center), operations, independent contractors, personal injury and advertising injury, and blanket contractual liability coverage.

6.3 **Business Auto Liability.** Sales Representative shall maintain business auto liability and, if necessary, commercial umbrella liability insurance, with a minimum limit of not less than US\$2,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos).

6.4 **Workers Compensation and Employer’s Liability.** Sales Representative shall maintain employers' liability insurance as well as workers compensation insurance that complies with the legal requirements of each state in which the Operations are conducted. The commercial umbrella and/or employers liability minimum limits shall not be less than US\$1,000,000 each accident. Sales Representative shall include an "alternate employer endorsement" in favor of GPI.

6.5 **Evidence of Insurance.** Upon request of GPI, Sales Representative shall furnish GPI with a certificate(s) of insurance, on a form that is satisfactory to GPI or provided by GPI, executed by a duly authorized representative of each insurer, evidencing compliance with the insurance requirements of this Section. Acceptance by GPI of an incomplete or improper certificate, or failure of GPI to identify a deficiency in coverage from the certificate submitted, shall not be construed as a waiver of Sales Representative's obligation to maintain in effect the coverages required by this Section. All certificates shall provide for 30 days' written notice to GPI prior to the cancellation or material change of any insurance referred to therein.

6.6 **General Insurance Provisions.**

6.6.1 To the maximum extent permitted by law, all insurance policies of Sales Representative in any way related to, or providing any coverage in connection with the Operations, whether or not required by this Agreement, shall be endorsed to waive all rights of subrogation against GPI, and (except worker's compensation coverage) shall, to the extent of the risks and liabilities assumed by Sales Representative, name GPI as an additional insured on a broad form endorsement.

6.6.2 All insurance policies of Sales Representative in any way related to or providing any coverage in connection with the Operations, whether or not required by this Agreement, shall to the extent of the risks and liabilities assumed by Sales Representative be primary as respects any other policies held by GPI or any other policies providing any coverage in favor of any GPI affiliate. The coverage afforded GPI under such policies shall delete any excess clause or co-insurance clause that requires sharing or renders any insurance in favor of GPI as primary. Such policies shall afford primary coverage to GPI and its affiliates without any contributions or reimbursement, in whole or in part, by any insurance, or self-insured retention or account maintained by or in favor of GPI and its affiliates.

6.6.3 The insurance obligations required under this Section are independent from all other obligations of Sales Representative under this Agreement and apply whether or not required by any other provision of this Agreement and shall not in any way limit Sales Representative's indemnity obligations except to the extent mandated by applicable law.

6.6.4 Sales Representative shall immediately notify insurers of and, except for privileged information and trade secrets, shall furnish all necessary information concerning any occurrence which may give rise to a claim. Copies of all correspondence and documents related to any such occurrence or any claim shall be provided promptly to GPI.

6.6.5 The insolvency, liquidation, bankruptcy, or failure of any insurance company providing insurance for Sales Representative or its subcontractors or failure of any such insurance company to pay claims accruing, shall not be considered a waiver of, nor shall it excuse Sales Representative from complying with, any of the provisions of this Agreement.

7. SALES REPRESENTATIVE’S OTHER OBLIGATIONS

7.1 **Notifications.** Sales Representative will promptly notify GPI of:

7.1.1 any claim of injury or damage, whether oral or in writing, made by any person or entity regarding Products or of the need for abnormally repetitive repairs to any Product; and

7.1.2 any infringement of any GPI copyright or Mark.

7.2 **Prohibited Activities.** Sales Representative agrees that it will not:

7.2.1 make claims or give warranties on Products not authorized by GPI; or

7.2.2 engage in any illegal, deceptive, misleading or unethical practices.

7.2.3 during the term and for a period of twelve (12) months thereafter, directly or indirectly recruit or otherwise solicit or induce any employee of GPI to terminate employment with GPI or its affiliates.



8. MARKS

8.1 **Marks.** GPI or its affiliates or their subsidiaries are the owners or licensees of the Marks.

8.2 **Right to Use Marks.** Sales Representative is granted the non-exclusive right to display Marks in the form and manner approved by GPI in the conduct of its Operations hereunder. Sales Representative's license to use the Marks is non-exclusive, contains no right to sub-license such Marks, except as may be authorized in writing by GPI, and is restricted solely and exclusively to use in connection with the Operations related to the sale of Products within the Territory as set forth herein.

8.3 **Sales Representative's Use of Marks.**

**8.3.1** Sales Representative will not apply to register any Marks either alone or as part of another mark, and will not take any action which may adversely affect the validity of the Marks or the goodwill associated with them.

**8.3.2** Sales Representative agrees to purchase and sell goods bearing Marks only from GPI or parties authorized or licensed by GPI.

**8.3.3** Sales Representative agrees to change or discontinue the use of any Marks upon GPI's request.

**8.3.4** Sales Representative agrees that no Person owned by or affiliated with Sales Representative or any of its owners may use any Mark to identify a business without GPI's prior written permission.

8.4 **Ownership of Marks.** Sales Representative shall not obtain any rights in the Marks and agrees that all goodwill which accrues because of its use of any such Marks will become the property of GPI, its affiliates or their subsidiaries. Sales Representative agrees not to use, employ or attempt to register any trademarks, service marks, or trade names which are confusingly similar to any Marks.

8.5 **Duties on Expiration or Termination.** The permission granted with respect to Sales Representative's use of the Marks will terminate upon the termination or expiration of this Agreement. Upon expiration or termination of this Agreement, Sales Representative agrees to immediately discontinue, at its expense, all use of the Marks. Thereafter, Sales Representative will not use, either directly or indirectly, any Marks or any other confusingly similar marks in a manner that GPI determines is likely to cause confusion or mistake or deceive the public. In such event, Sales Representative will immediately: (i) cease using or displaying any Mark in any manner whatsoever; and (ii) take all necessary steps to remove all references to any Marks or to Sales Representative being an authorized GPI Sales Representative in all advertising. Sales Representative acknowledges that GPI has no adequate remedy at law should Sales Representative fail to honor its obligations upon termination with respect to GPI's Marks, and therefore consents to entry of an injunction without bond or security by any court of competent jurisdiction in the event Sales Representative does not promptly comply with any of its obligations hereunder.

8.6 **No Alterations.** Sales Representative shall not effect or permit the removal or alteration of any patent numbers, trade names or trademarks, notices nameplates, or serial numbers affixed to the Products or the affixation of any additional trade names or trademarks, notices or nameplates to the Products without GPI's written permission.

8.7 **Reporting of Infringement.** Sales Representative agrees to report to GPI any attempt to infringe upon the patent, trademark, or other industrial or intellectual property rights of GPI of which Sales Representative may become aware. Sales Representative agrees to notify GPI after any claim of infringement against GPI is raised to Sales Representative or any action is brought against Sales Representative, to the extent it is based on a claim that the Products (or any part thereof) as furnished hereunder infringe a United States patent or copyright.

9. **Non-Infringement.** Subject to **Section 12.2**, GPI shall indemnify and hold harmless Sales Representative, its owners, parents, affiliates, subsidiaries, agents, directors, employees, customers and all persons claiming under Sales Representative from and against all judgments, orders, awards, claims, damages, losses, liabilities, costs and expenses, including, but not limited to, court costs and reasonable attorneys' fees and liabilities that may result by reason of any infringement or claim of infringement of any patent, trademark, copyright, trade secret or other proprietary right relating to Products and/or the use thereof to the extent such claim is not based upon Sales Representative's specifications. GPI will defend and/or settle at its own expense any action brought against Sales Representative to the extent that it is based on a claim that the Products and/or the use thereof, infringe any patent, trademark, copyright, trade secret or other proprietary right.

**TERM AND TERMINATION**

9.1 **Term.** This Agreement shall become effective on the date hereof and will continue in force for three (3) years thereafter unless earlier terminated as provided herein. This Agreement shall automatically be renewed for successive one year periods thereafter unless GPI notifies Sales Representative at least thirty (30) days prior to the original expiration date, or any annual renewal date, that this Agreement will not be renewed, or unless this Agreement is sooner terminated as provided in this **Section 9**.

9.2 **Breaches with Right to Cure.** GPI may terminate this Agreement by written notice to Sales Representative, effective thirty (30) days from delivery of written notice, if Sales Representative does not cure any of the following breaches within five (5) days of delivery of written notice from GPI:

**9.2.1** Failure of Sales Representative to timely pay its obligations to GPI.

**9.2.2** Any other breach of Sales Representative's obligations under this Agreement not otherwise specifically identified in **Section 9.3**.

9.3 **Breaches Causing Immediate Termination.** GPI may terminate this Agreement by giving Sales Representative written notice of termination, termination to be effective immediately or on the date specified in the notice, upon the occurrence of any of the following events:

9.3.1 Any unauthorized transfer of this Agreement or the Operations.

9.3.2 Any undertaking by Sales Representative to conduct, either directly or indirectly, any of the Operations outside the Territory.

9.3.3 A finding by a government agency or court of original jurisdiction or a settlement arising from charges that Sales Representative has committed a misdemeanor, felony, or unfair or deceptive business practice which, in GPI's opinion, may adversely affect the reputation or interests of Sales Representative or GPI.

9.3.4 Failure of Sales Representative to comply with the provisions of any laws or regulations relating to the sale of Products or the conduct of Operations.

9.3.5 Failure of Sales Representative to maintain satisfactory sales of Products as provided in Section 3.1.2(2).

9.3.6 Failure by Sales Representative to maintain any license required for the performance of its obligations under this agreement or the suspension or revocation of such license.

9.4 **Automatic Termination.** This Agreement will automatically terminate if: (a) Sales Representative becomes insolvent or there is a filing by or against Sales Representative of a petition in bankruptcy; (b) filing of a proceeding for the appointment of a receiver or trustee for Sales Representative; (c) Sales Representative makes an assignment for the benefit of creditors; or (d) there is any foreclosure or other due process of law whereby a third party acquires rights to the operation, ownership or assets of Sales Representative.

9.5 **Termination By Agreement.** This Agreement may be terminated at any time by written agreement between GPI and Sales Representative.

9.6 **Reliance on Any Applicable Termination Provision.** The terminating party may select the provision under which it elects to terminate without reference in its notice to any other provision that may also be applicable. The terminating party subsequently also may assert other grounds for termination. Termination shall not be a party's exclusive remedy or constitute a waiver of any other remedy.

9.7 **Transactions After Expiration or Termination.**

9.7.1 **Effect of Transactions After Termination.** Neither the sale of Products to Sales Representative nor any other act by GPI or Sales Representative after termination of this Agreement will be construed as a waiver of the termination.

9.7.2 **Return of Property.** Upon termination or expiration, Sales Representative shall immediately return to GPI all inventory, sales and marketing materials, price lists, GPI Product lists, customer lists and any other proprietary or Confidential Information of GPI, its affiliates, or their subsidiaries.

## 10. TERMINATION ASSISTANCE

10.1 **Mutual Cooperation.** If this Agreement expires or is terminated, the parties will cooperate in good faith to ensure the orderly transition of sales of the Products in the Territory from Sales Representative to GPI or a third party designated by GPI. GPI will endeavor to cooperate with Sales Representative to employ a method of transition including either the re-purchase of Products or taking possession of Products for sale on a consignment basis.

10.2 **Sales Representative's Obligations.** If this Agreement expires or is terminated, the Sales Representative will ship the Products, transportation charges prepaid, to the destinations specified in the instructions provided by GPI.

## 11. CONFIDENTIAL INFORMATION

11.1 **Confidential Information.** GPI, its affiliates, and their subsidiaries possess (and will continue to develop and acquire) certain confidential information ("Confidential Information") relating to developing, manufacturing, selling and servicing Products. Confidential Information includes, without limitation, all price lists, customer lists, GPI Product specifications, books, records, manuals, policies, methods, processes, techniques, procedures, systems, trade secrets, correspondence, product literature, advertising and promotional programs, and other data pertaining to the conduct of GPI's business. Notwithstanding the foregoing, Confidential Information does not include any data or information which: (a) is known to the public prior to its receipt by Sales Representative; (b) after such receipt, becomes available to the public other than as a result of a disclosure by Sales Representative or any of its directors, officers, employees or agents; or (c) except as otherwise provided herein can be shown by Sales Representative to have been independently developed by Sales Representative prior to execution of this Agreement.

11.2 **Use of Confidential Information.** Sales Representative agrees that it will not acquire any interest in Confidential Information, other than the right to use it in connection with its Operations during the term of this Agreement. Sales Representative further agrees that Confidential Information is proprietary, includes GPI's trade secrets, and is disclosed to Sales Representative only on the condition that Sales Representative agrees, and Sales Representative does hereby agree, that it: (a) will not use Confidential Information in any other business or capacity; (b) will keep Confidential Information absolutely confidential during and after this Agreement's term; (c) will not make unauthorized copies of any Confidential Information disclosed via electronic medium or in written or other tangible form; and (d) will adopt and implement all reasonable procedures that GPI prescribes to prevent unauthorized use or disclosure of Confidential Information.

12. INDEMNIFICATION

12.1 **Sales Representative's Indemnification.** Sales Representative agrees to indemnify and hold GPI, its affiliates, and their respective officers, managers, owners, employees, agents, successors and assigns harmless from and against, and to reimburse them for, any and all claims, losses, damages, obligations, judgments, settlements, expenses or costs (including reasonable attorneys' fees) (collectively "Claims"), directly or indirectly arising out of or relating to Operations, including, without limitation, unauthorized warranties or representations made by Sales Representative, or any breach of this Agreement by Sales Representative.

12.2 **GPI Indemnification.** GPI agrees to indemnify, defend and hold Sales Representative and its officers, directors, employees and agents harmless from and against, and reimburse them for, Claims, less any offset recovered by Sales Representative, arising from (i) a breach of a GPI warranty related to an GPI Product, or (ii) bodily injury or property damage claimed to have been caused solely and proximately by a defect in the design or manufacture of a Product by GPI (other than a defect which should have been detected by Sales Representative in a reasonable inspection of the Product). Notwithstanding the foregoing, GPI's indemnification obligations hereunder will not include any Claims resulting from a Product which (i) has been altered or modified by any party other than GPI, or (ii) has not been used for its intended purposes and in accordance with any GPI operating instructions. GPI's indemnification obligations under this Agreement shall be limited to One Million Dollars (\$1,000,000) in the aggregate for all Claims.

13. GENERAL PROVISIONS

13.1 **No Agent or Legal Representative Status.** This Agreement does not make either party the agent or legal representative of the other for any purpose, nor does it grant either party authority to assume or create any obligation on behalf of or in the name of the other. Nothing in this Agreement shall create the relationship of employer and employee, principal and agent, franchisor and franchisee, or any other relationship between the parties except as stated herein. No fiduciary obligations are created by this Agreement. Sales Representative is an independent contractor and solely responsible for all expenditures, liabilities and obligations incurred or assumed by Sales Representative for the establishment and conduct of its operations hereunder.

13.2 **Taxes.** Sales Representative is responsible for all local, state, federal or other applicable taxes and tax returns related to its Operations (including payroll taxes). Sales Representative shall pay all such taxes as they become due and payable and will indemnify, defend and hold GPI harmless from any related claims or demands made by any taxing authority therefor.

13.3 **Notices.** Any notice required to be given by either party to the other in connection with this Agreement will be in writing and deemed delivered at the time of personal delivery by hand, three (3) business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, one (1) business day after being placed in the hands of a commercial overnight courier service, or one (1) business day after transmission by facsimile (a confirming notice shall be mailed if served only by facsimile). Notices shall be provided to the addresses or facsimile numbers set forth below, or at such other place or facsimile number as may be designated by a party by a notice given in accordance with this provision.

13.4 **No Implied Waivers.** The delay or failure of either party to require performance by the other party of the waiver by either party of a breach of any provision of this Agreement will not affect the right to subsequently require such performance.

13.5 **Assignment of Rights or Delegation of Duties.** Neither this Agreement nor any right granted by this Agreement is a property right. Neither this Agreement nor the rights or obligations of Sales Representative may be sold, assigned, delegated or otherwise transferred. GPI may assign this Agreement and any rights, or delegate any obligations, under this Agreement, to any affiliate and will provide Sales Representative prior written notice of such assignment or delegation. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns. Notwithstanding the foregoing, each party hereto hereby acknowledges and agrees that it has granted a security interest to FCC, LLC, d/b/a First Capital (together with its successors and assigns, "Lender"), in substantially all of its assets, including, without limitation, all of each such party's rights and remedies hereunder. Lender may (but shall not be obligated to), in its own name or in the name of any party hereto, enforce such rights and remedies while any default exists under or in connection with any financing arrangement provided by Lender to any party hereto. Sales Representative hereby agrees to provide Lender with access to the Distribution Center and any other premises where any Products are held in order to enable Lender to conduct inspections, audits and field examinations of the Product, and Sales Representative hereby agrees that, while any default exists under or in connection with any financing arrangement between Lender and GPI, Lender may repossess, sell or otherwise realize upon the Products in accordance with applicable law.

13.6 **No Third Party Benefit Intended.** Subject to the rights of Lender set forth above and in the loan documents, security agreements and other agreements between Lender and one or more parties hereto, this Agreement is not enforceable by any third parties and is not intended to convey any rights or benefits to anyone who is not a party to this Agreement.

13.7 **Set-Off.** GPI may deduct any amounts due or to become due from Sales Representative to GPI, or any amounts held by GPI, from any sums or accounts due or to become due from GPI, its affiliates, or their subsidiaries.

13.8 **Attorneys' Fees.** If GPI incurs expenses due to Sales Representative's failure to pay when due amounts owed to GPI or otherwise to comply with this Agreement, Sales Representative agrees, whether or not GPI initiates a legal proceeding, to reimburse GPI for any of the costs and expenses which GPI incurs, including, without limitation, reasonable accounting, attorneys', arbitrators', and related fees.

13.9 **Applicable Law.** This Agreement is governed by the laws of the State of Texas, without giving effect to its conflicts of law principles. However, if performance under this Agreement is illegal under a valid law of any jurisdiction where such performance is to take place, performance will be modified to the minimum extent necessary to comply with such law if it was effective as of the effective date of this Agreement.

13.10 **Jurisdiction and Venue.** If GPI seeks to obtain injunctive relief against Sales Representative, Sales Representative agrees that the federal or state courts of Houston, Texas shall have venue and jurisdiction of any such legal proceedings, and Sales Representative hereby submits to the jurisdiction of any state or federal court in Houston, Texas where any such lawsuit might be pending.

13.11 **No Course of Dealing.** The Agreement will not be supplemented or modified by any course of dealing or trade usage. No amendment or modifications of this Agreement shall be deemed effective unless and until executed in writing by both parties.

13.12 **Severability.** If any provision, clause or sentence of this Agreement is determined to be void, unlawful or unenforceable by any court of competent jurisdiction, such provision, clause or sentence shall be deemed to be severed, and the remainder of this Agreement will continue in all other respects to be valid, binding and enforceable.

13.13 **Survival.** The following provisions shall survive the termination or expiration of this Agreement: 9, 11, 12, and 13.

13.14 **Amendment.** Except as otherwise provided herein, this Agreement may not be modified or amended without the mutual written consent of both parties and Lender.

13.15 **Counterparts.** This Agreement may be executed in counterparts, and by facsimile, all of which together shall constitute a single, binding instrument.

13.16 **Entire Agreement.** Except as provided in this Agreement, GPI has made no promises to Sales Representative and there are no other agreements or understandings, either oral or written, between the parties affecting this Agreement or relating to any of the subject matters covered by this Agreement. This is the entire agreement between the parties and this Agreement cancels and supersedes all previous agreements between the parties that relate to any matters covered herein.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date and year set forth below.

GPI:


GULF PACKAGING, INC.

By:   
ARMAN SARKISIAN, CEO

Date: 3.31.14

SALES REPRESENTATIVE:

GULF ARIZONA PACKAGING CORPORATION

By:   
Print Name: Jeff Cotshall  
Title: President

GULF ARIZONA PACKAGING CORPORATION  
7175 Sherman Street  
Phoenix, Arizona

SALES REPRESENTATIVE TERRITORY

- 1. Arizona

**Exhibit 2**

Account Statement

Gulf Packaging, Inc.  
Affiliate Receivable Detail  
Aged as of: 8/18/2015

	Total	Pre-petition	Post-Petition	Pre 4/1/15	Post 4/1/15
Gulf Pacific	261,871.46	934.99	259,412.85	1,523.62	260,347.84
Gulf Arizona	127,119.85	1,385.41	123,407.30	2,327.14	124,792.71

Division	Vendor #	Vendor Name	Consolidated Name	Invoice Date	Invoice Number	Invoice Due Date	Discount Amt.	Invoice Balance	Current	30 Days	45 Days	60 Days	90 Days	Dals Deliq	Age		
30 Houston	71219	GULF PACIFIC PACKAGING CORP.*	Gulf Pacific	10/23/2014	9153	11/22/2014	2.25	449.40	-	-	-	-	449.40	269	299		
20 Arizona	GULFPACIFICP	GULF-PACIFIC PACKAGING CORP.	Gulf Pacific	01/30/2015	27693	03/01/2015	-	599.49	-	-	-	-	599.49	170	200		
30 Houston	71219	GULF PACIFIC PACKAGING CORP.*	Gulf Pacific	02/09/2015	29354	03/11/2015	0.23	46.47	-	-	-	-	46.47	160	190		
20 Arizona	GULFPACIFICP	GULF-PACIFIC PACKAGING CORP.	Gulf Pacific	02/10/2015	29862	03/12/2015	-	428.26	-	-	-	-	428.26	159	189		
30 Houston	71219	GULF PACIFIC PACKAGING CORP.*	Gulf Pacific	03/13/2015	36205	04/12/2015	0.41	81.60	-	-	-	-	81.60	128	158		
30 Houston	71219	GULF PACIFIC PACKAGING CORP.*	Gulf Pacific	03/13/2015	36215	04/12/2015	0.23	46.35	-	-	-	-	46.35	128	158		
20 Arizona	GULFPACIFICP	GULF-PACIFIC PACKAGING CORP.	Gulf Pacific	03/26/2015	38748	04/25/2015	-	807.04	-	-	-	-	807.04	115	145		
30 Houston	71219	GULF PACIFIC PACKAGING CORP.*	Gulf Pacific	04/03/2015	42279	05/08/2015	99.48	19,896.44	-	-	-	-	19,896.44	102	132		
30 Houston	71219	GULF PACIFIC PACKAGING CORP.*	Gulf Pacific	04/18/2015	42280	05/18/2015	131.69	26,338.60	-	-	-	-	26,338.60	92	122		
30 Houston	71219	GULF PACIFIC PACKAGING CORP.*	Gulf Pacific	04/18/2015	42284	05/18/2015	41.44	8,287.55	-	-	-	-	8,287.55	92	122		
30 Houston	71219	GULF PACIFIC PACKAGING CORP.*	Gulf Pacific	04/22/2015	42282	05/22/2015	114.78	22,956.72	-	-	-	-	22,956.72	88	118		
50 Great Lakes	GULPAC	GULF PACIFIC PACKAGING	Gulf Pacific	04/22/2015	41829	06/21/2015	-	2,154.50	-	-	-	-	2,154.50	58	118		
30 Houston	71219	GULF PACIFIC PACKAGING CORP.*	Gulf Pacific	04/25/2015	42281	05/25/2015	155.38	31,076.62	-	-	-	-	31,076.62	85	115		
30 Houston	71219	GULF PACIFIC PACKAGING CORP.*	Gulf Pacific	05/05/2015	42734	06/04/2015	179.47	35,893.74	-	-	-	-	35,893.74	75	105		
30 Houston	71219	GULF PACIFIC PACKAGING CORP.*	Gulf Pacific	05/05/2015	42735	06/04/2015	15.52	3,104.13	-	-	-	-	3,104.13	75	105		
30 Houston	71219	GULF PACIFIC PACKAGING CORP.*	Gulf Pacific	05/13/2015	42736	06/12/2015	69.00	13,800.07	-	-	-	-	13,800.07	67	97		
30 Houston	71219	GULF PACIFIC PACKAGING CORP.*	Gulf Pacific	05/16/2015	42737	06/15/2015	65.01	13,001.52	-	-	-	-	13,001.52	64	94		
30 Houston	71219	GULF PACIFIC PACKAGING CORP.*	Gulf Pacific	05/18/2015	42738	06/17/2015	27.51	5,501.65	-	-	-	-	5,501.65	62	92		
30 Houston	71219	GULF PACIFIC PACKAGING CORP.*	Gulf Pacific	05/19/2015	42739	06/18/2015	21.51	4,301.42	-	-	-	-	4,301.42	61	91		
30 Houston	71219	GULF PACIFIC PACKAGING CORP.*	Gulf Pacific	06/01/2015	42990	07/01/2015	18.93	3,786.03	-	-	-	3,786.03	-	48	78		
30 Houston	71219	GULF PACIFIC PACKAGING CORP.*	Gulf Pacific	06/01/2015	42991	07/01/2015	36.89	7,377.06	-	-	-	-	7,377.06	-	48	78	
30 Houston	71219	GULF PACIFIC PACKAGING CORP.*	Gulf Pacific	06/12/2015	42988	07/12/2015	1.06	211.12	-	-	-	211.12	-	37	67		
30 Houston	71219	GULF PACIFIC PACKAGING CORP.*	Gulf Pacific	06/12/2015	42989	07/12/2015	9.56	1,912.41	-	-	-	1,912.41	-	37	67		
30 Houston	71219	GULF PACIFIC PACKAGING CORP.*	Gulf Pacific	06/12/2015	42993	07/12/2015	61.26	12,252.24	-	-	-	12,252.24	-	37	67		
30 Houston	71219	GULF PACIFIC PACKAGING CORP.*	Gulf Pacific	06/15/2015	43000	07/12/2015	5.94	1,188.35	-	-	-	1,188.35	-	37	67		
30 Houston	71219	GULF PACIFIC PACKAGING CORP.*	Gulf Pacific	06/15/2015	42992	07/15/2015	0.54	108.92	-	-	-	108.92	-	34	64		
30 Houston	71219	GULF PACIFIC PACKAGING CORP.*	Gulf Pacific	06/15/2015	42994	07/15/2015	54.22	10,843.61	-	-	-	10,843.61	-	34	64		
30 Houston	71219	GULF PACIFIC PACKAGING CORP.*	Gulf Pacific	06/15/2015	42999	07/15/2015	0.08	16.80	-	-	-	16.80	-	34	64		
30 Houston	71219	GULF PACIFIC PACKAGING CORP.*	Gulf Pacific	06/22/2015	43066	07/22/2015	4.35	870.60	-	-	870.60	-	-	27	57		
30 Houston	71219	GULF PACIFIC PACKAGING CORP.*	Gulf Pacific	07/10/2015	43307	08/09/2015	172.66	34,532.75	-	-	34,532.75	-	-	9	39		
								<b>1,289.40</b>	<b>261,871.46</b>	-	-	<b>34,532.75</b>	<b>870.60</b>	<b>37,696.54</b>	<b>188,771.57</b>		

Division	Vendor #	Vendor Name	Consolidated Name	Invoice Date	Invoice Number	Invoice Due Date	Discount Amt.	Invoice Balance	Current	30 Days	45 Days	60 Days	90 Days	Dals Deliq	Age	
30 Houston	71368	GULF ARIZONA*	Gulf Arizona	09/08/2014	1840	10/08/2014	-	81.79	-	-	-	-	81.79	314	344	
30 Houston	71368	GULF ARIZONA*	Gulf Arizona	10/03/2014	5876	11/02/2014	0.18	35.96	-	-	-	-	35.96	289	319	
30 Houston	71368	GULF ARIZONA*	Gulf Arizona	10/07/2014	6370	11/06/2014	0.05	10.91	-	-	-	-	10.91	285	315	
30 Houston	71368	GULF ARIZONA*	Gulf Arizona	10/22/2014	8921	11/21/2014	0.95	190.38	-	-	-	-	190.38	270	300	
30 Houston	71368	GULF ARIZONA*	Gulf Arizona	10/23/2014	9041	11/22/2014	2.60	519.56	-	-	-	-	519.56	269	299	
30 Houston	71368	GULF ARIZONA*	Gulf Arizona	12/11/2014	18910	01/10/2015	5.81	1,162.94	-	-	-	-	1,162.94	220	250	
30 Houston	71368	GULF ARIZONA*	Gulf Arizona	01/27/2015	26833	02/26/2015	1.63	325.60	-	-	-	-	325.60	173	203	
20 Pacific	GULFARIZONA	GULF ARIZONA PACKAGING CORP.*	Gulf Arizona	02/14/2015	30796	04/15/2015	-	1,385.41	-	-	-	-	1,385.41	125	185	
30 Houston	71368	GULF ARIZONA*	Gulf Arizona	04/27/2015	42283	05/27/2015	389.46	77,891.08	-	-	-	-	77,891.08	83	113	
30 Houston	71368	GULF ARIZONA*	Gulf Arizona	05/13/2015	42721	06/12/2015	52.17	10,433.25	-	-	-	-	10,433.25	67	97	
30 Houston	71368	GULF ARIZONA*	Gulf Arizona	05/13/2015	42722	06/12/2015	13.63	2,726.74	-	-	-	-	2,726.74	67	97	
30 Houston	71368	GULF ARIZONA*	Gulf Arizona	05/14/2015	42723	06/13/2015	161.59	32,318.70	-	-	-	-	32,318.70	66	96	
30 Houston	71368	GULF ARIZONA*	Gulf Arizona	05/15/2015	42588	06/14/2015	0.06	12.51	-	-	-	-	12.51	65	95	
30 Houston	71368	GULF ARIZONA*	Gulf Arizona	06/30/2015	43166	07/30/2015	0.13	25.02	-	-	25.02	-	-	19	49	
								<b>628.26</b>	<b>127,119.85</b>	-	-	<b>25.02</b>	-	<b>127,094.83</b>		