



102335086

1-13-03

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Nations Express, Inc.  
1328B Crossbeam Drive  
Charlotte, NC 28217

1-13-03

- Individual(s)
- General Partnership
- Corporation-State — North Carolina
- Other \_\_\_\_\_
- Association
- Limited Partnership

Additional name(s) of conveying party(ies) attached?  Yes  No

2. Name and address of receiving party(ies):

Name: Livingston Company

Internal Address: \_\_\_\_\_

Street Address: 735 Broad Street, Suite 1204

City: Chattanooga State: Tennessee ZIP: 37402

- Individual(s) citizenship \_\_\_\_\_
- Association \_\_\_\_\_
- General Partnership \_\_\_\_\_
- Limited Partnership \_\_\_\_\_
- Corporation-State Delaware
- Other \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic representative designation is attached.  Yes  No

(Designations must be a separate document from Assignment)  
Additional name(s) & address(es) attached?  Yes  No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other \_\_\_\_\_
- Merger
- Change of Name

Execution Date: January 10, 2003

4. Application number(s) or patent number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2,276,864

Additional numbers attached  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: J. Patrick Murphy

Internal Address: Chambliss, Bahner & Stophel, P.C.

Street Address: 1000 Tallan Building

Two Union Square

City: Chattanooga State: Tennessee ZIP: 37402

6. Total number of applications and registrations involved:

1

7. Total fee (37 CFR 3.41) ..... \$ 40.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number

20-0052

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

J. Patrick Murphy  
Name of Person Signing

J. Patrick Murphy  
Signature

January 10, 2003  
Date

Total number of pages including cover sheet, attachments, and document: 11

David Adams

David Adams

Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patents & Trademarks, Box Assignments  
Washington, D.C. 20231

**SUBORDINATE SECURITY AGREEMENT**

10th THIS SUBORDINATE SECURITY AGREEMENT ("Agreement") is made as of the day of January, 2003 by and between NATIONS EXPRESS, INC., a North Carolina corporation ("Borrower"), and LIVINGSTON COMPANY, a Delaware corporation ("Lender").

**RECITALS:**

WHEREAS, Lender is making a subordinate loan (the "Loan") in the amount of \$1,500,000 to Borrower, pursuant to that certain Subordinate Loan Agreement of even date herewith by and between Borrower and Lender, as it may be amended, modified or extended from time to time (the "Loan Agreement"); and

WHEREAS, in connection with the making of the Loan, Lender desires to obtain from Borrower and Borrower desires to grant to Lender a subordinate security interest in certain collateral more particularly described below.

**AGREEMENT:**

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Grant of Security Interest.** Borrower hereby grants to Lender a subordinate security interest in the following described property (collectively, the "Collateral"):

(a) presently existing and hereafter arising accounts, contract rights, and all other forms of obligations owing to Borrower arising out of the sale or lease of goods or the rendition of services by Borrower, whether or not earned by performance, and any and all credit insurance, guaranties, and other security therefor, as well as all merchandise returned to or reclaimed by Borrower and Borrower's Books relating to any of the foregoing (collectively, "Accounts");

(b) present and future general intangibles and other personal property (including payment intangibles, choses or things in action, goodwill, patents, trade names, trademarks (including the U.S. trademark "Nations Express", Reg. No. 2,276,864 registered on September 7, 1999), servicemarks, copyrights, blueprints, drawings, purchase orders, customer lists, monies due or recoverable from pension funds, route lists, monies due under any royalty or licensing agreements, infringement claims, software, computer programs, computer discs, computer tapes, literature, reports, catalogs deposit accounts, insurance premium rebates, tax refunds, and tax refund claims) other than goods and Accounts, and Borrower's Books relating to any of the foregoing (collectively, "General Intangibles");

(c) present and future letters of credit, letter-of-credit rights (whether or not evidenced by a writing) and other supporting obligations, notes, drafts, instruments (including promissory notes), certificated and uncertificated securities, documents, leases, and chattel paper (whether tangible or electronic), and Borrower's Books relating to any of the foregoing (collectively, "Negotiable Collateral");

(d) present and future inventory in which Borrower has any interest, including goods held for sale or lease or to be furnished under a contract of service and all of Borrower's present and future raw materials, work in process, finished goods, and packing and shipping materials, wherever located, and any documents of title representing any of the above, and Borrower's Books relating to any of the foregoing (collectively, "Inventory");

(e) present and hereafter acquired equipment, furniture, furnishings, fixtures, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing, and all attachments, accessories, accessions, replacements, substitutions, additions, and improvements to any of the foregoing, wherever located (collectively, "Equipment");

(f) present and hereafter acquired books and records including: ledgers; records indicating, summarizing, or evidencing Borrower's assets or liabilities, or the collateral; all information relating to Borrower's business operations or financial condition; and all computer programs, disc or tape files, printouts, funds or other computer prepared information, and the equipment containing such information (collectively, "Borrower's Books");

(g) present and hereafter acquired securities (whether certificated or uncertificated), securities accounts, commodity contracts and accounts, securities entitlements and other investment property (collectively "Investment Property");

(h) present and hereafter acquired deposit accounts (collectively "Deposit Accounts");

(i) present and hereafter acquired commercial tort claims (collectively "Tort Claims");

(j) substitutions, replacements, additions, accessions, proceeds, products to or of any of the foregoing, including, but not limited to, proceeds of insurance covering any of the foregoing, or any portion thereof, and any and all Accounts, General Intangibles, Negotiable Collateral, Inventory, Equipment, Deposit Accounts, Tort Claims, money, deposits, accounts, or other tangible or intangible property resulting from the sale or other disposition of the Accounts, General Intangibles, Negotiable Collateral, Inventory, Equipment, Deposit Accounts, Tort Claims, or any portion thereof or interest therein and the proceeds thereof.

2. **Perfection by Filing.** Borrower hereby specifically authorizes Lender at any time and from time to time to file financing statements, continuation statements and amendments thereto that describe the Collateral and contain any other information required by Article 9 of the Uniform Commercial Code, as enacted in North Carolina (the "UCC") for the sufficiency or filing office acceptance of any financing statement, continuation statement or amendment, including whether Borrower is an organization, the type of organization and any organization

identification number issued to Borrower. Borrower agrees to furnish any such the Lender promptly upon request. Borrower hereby ratifies all that Lender shall do cause to be done by virtue hereof. All powers, authorizations and agencies contained in subsection are coupled with an interest and are irrevocable until all of the Obligations (as defined in the Loan Documents) have been paid and satisfied in full.

3. **Perfection Other Than by Filing, etc.** At any time and from time to time, Borrower shall take such steps as the Lender may reasonably request for Borrower (a) to obtain an acknowledgment, in form and substance reasonably satisfactory to Lender, of any bailee having possession of any of the Collateral, that such bailee holds such Collateral for the Lender, (b) to obtain control of any investment property, deposit accounts, letter-of-credit rights or electronic chattel paper (as such terms are defined in Article 9 of the UCC) as set forth in Article 9 of the UCC, and, where control is established by written agreement, such agreement shall be in form and substance reasonably satisfactory to Lender, and (c) otherwise to insure the continued perfection and priority of Lender's security interest in any of the Collateral and of the preservation of its rights therein.

4. **Secured Indebtedness.** The security interest granted hereby shall secure the prompt payment of the Obligations (as defined in the Loan Agreement) and the prompt performance of each of the covenants and duties under the Loan Documents (as defined in the Loan Agreement).

5. **Representations and Warranties of Borrower.** Borrower represents, warrants and agrees as follows:

(a) Except as set forth on Schedule 5(a) hereto (the "Permitted Encumbrances"), Borrower is the owner of the Collateral free and clear of any liens and security interests. Borrower will defend the Collateral against the claims and demands of all persons other than the holders of the Permitted Encumbrances.

(b) The address set forth on Schedule 5(b) hereto is Borrower's principal place(s) of business and the location of all tangible Collateral and the place where the records concerning all intangible Collateral are kept and/or maintained.

(c) Borrower will pay all costs of filing of financing, continuation and termination statements with respect to the security interests created hereby, and Lender is authorized to do all things that it deems necessary to perfect and continue perfection of the security interests created hereby and to protect the Collateral.

6. **Agreements With Respect to the Collateral.** Borrower covenants and agrees with Lender as follows:

(a) Borrower shall notify Lender in writing of any change in the location of Borrower's corporate office or the location of any tangible Collateral or the place(s) where the records concerning all intangible Collateral are kept or maintained.

(b) Borrower will keep the Collateral in good condition and repair and will pay and discharge all taxes, levies and other impositions levied thereon as well as the cost of

identification number issued to Borrower. Borrower agrees to furnish any such information to the Lender promptly upon request. Borrower hereby ratifies all that Lender shall lawfully do or cause to be done by virtue hereof. All powers, authorizations and agencies contained in this subsection are coupled with an interest and are irrevocable until all of the Obligations (as defined in the Loan Documents) have been paid and satisfied in full.

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(b) Borrower will keep the Collateral in good condition and repair and will pay and discharge all taxes, levies and other impositions levied thereon as well as the cost of

repairs to or maintenance of same, and will not permit anything to be done that may impair the value of any of the Collateral. If Borrower fails to pay such sums and if such sums due remain unpaid or uncured for a period in excess of 60 days, Lender may do so for Borrower's account and add the amount thereof to the Obligations.

(c) Borrower will not sell, exchange, lease or otherwise dispose of any of the Collateral or any interest therein (except in the normal course of business) without the prior written consent of Lender. Lender's security interest hereunder shall attach to all proceeds of all sales or other dispositions of the Collateral. If at any time any such proceeds shall be represented by any instruments, chattel paper or documents of title, then such instruments, chattel paper or documents of title shall be promptly delivered to Lender and subject to the security interest granted hereby. If at any time any of Borrower's inventory is represented by any document of title, such document of title will be delivered promptly to Lender and subject to the security interest granted hereby.

(d) Borrower will not allow the Collateral to be attached to real estate in such manner as to become a fixture or a part of any real estate.

(e) Borrower will at all times keep the Collateral insured against all insurable hazards in accordance with the Loan Agreement.

(f) Borrower will not permit any liens or security interests other than those created by this Agreement and the Permitted Encumbrances to attach to any of the Collateral, nor permit any of the Collateral to be levied upon under any legal process, nor permit anything to be done that may impair the security intended to be afforded by this Agreement, nor permit any tangible Collateral to become attached to or commingled with other goods without the prior written consent of Lender.

7. **Remedies Upon Default.** Upon an Event of Default under and as defined in the Loan Agreement, Lender may pursue any or all of the following remedies, without any notice to Borrower except as required below:

(a) Lender may give written notice of default to Borrower, following which Borrower shall not dispose of, conceal, transfer, sell or encumber any of the Collateral (including, but not limited to, cash proceeds) without Lender's prior written consent, even if such disposition is otherwise permitted hereunder in the ordinary course of business. Any such disposition, concealment, transfer or sale after the giving of such notice shall constitute a wrongful conversion of the Collateral. Lender may obtain a temporary restraining order or other equitable relief to enforce Borrower's obligation to refrain from so impairing Lender's Collateral.

(b) Lender may take possession of any or all of the Collateral. Borrower hereby consents to Lender's entry into any of Borrower's premises to repossess Collateral, and specifically consents to Lender's forcible entry thereto as long as Lender causes no significant damage to the premises in the process of entry (drilling of locks, cutting of chains and the like do not in themselves cause "significant" damage for the purposes hereof) and provided that Lender accomplishes such entry without a breach of the peace.

(c) Lender may dispose of the Collateral at private or public sale. Any required notice of sale shall be deemed commercially reasonable if given at least five days prior to sale. Lender may adjourn any public or private sale to a different time or place without notice or publication of such adjournment, and may adjourn any sale either before or after offers are received. The Collateral may be sold in such lots as Lender may elect, in its sole discretion. Lender may take such action as it may deem necessary to repair, protect, or maintain the Collateral pending its disposition.

(d) Lender may recover any or all proceeds of accounts from any bank or other custodian who may have possession thereof. Borrower hereby authorizes and directs all custodians of Borrower's assets to comply with any demand for payment made by Lender pursuant to this Agreement, without the need of confirmation from Borrower and without making any inquiry as to the existence of an Event of Default or any other matter. Lender may engage a collection agent to collect accounts for a reasonable percentage commission or for any other reasonable compensation arrangement.

(e) Lender may notify any or all account debtors that subsequent payments must be made directly to Lender or its designated agent. Such notice may be made over Lender's signature or over Borrower's name with no signature or both, in Lender's discretion. Borrower hereby authorizes and directs all existing or future account debtors to comply with any such notice given by Lender, without the need of confirmation from Borrower and without making any inquiry as to the existence of an Event of Default or as to any other matter.

(f) Lender may, but shall not be obligated to, take such measures as Lender may deem necessary in order to collect any or all of the accounts. Without limiting the foregoing, Lender may institute any administrative or judicial action that it may deem necessary in the course of collecting and enforcing any or all of the accounts. Any administrative or judicial action or other action taken by Lender in the course of collecting the accounts may be taken by Lender in its own name or in Borrower's name. Lender may compromise any disputed claims and may otherwise enter into settlements with account debtors or obligors under the accounts, which compromises or settlements shall be binding upon Borrower. Lender shall have no duty to pursue collection of any account, and may abandon efforts to collect any account after such efforts are initiated.

(g) Lender may, with respect to any account involving uncompleted performance by Borrower, and with respect to any general intangible or other Collateral whose value may be preserved by additional performance on Borrower's part, take such action as Lender may deem appropriate including, but not limited, to performing or causing the performance of any obligation of Borrower thereunder, the making of payments to prevent defaults thereunder, and the granting of adequate assurances to other parties thereto with respect to future performance. Lender's action with respect to any such accounts or general intangibles shall not render Lender liable for further performance thereunder unless Lender so agrees in writing.

(h) Lender may exercise its lien upon and right of setoff against any monies, items, credits, deposits or instruments that Lender may have in its possession and that belong to Borrower or to any other person or entity liable for the payment of any or all of the Obligations.

(i) Lender may exercise any right that it may have under any other document evidencing or securing the Obligations or otherwise available to Lender at law or equity.

8. **Audits and Examinations.** Lender shall have the right, at any time, by its own auditors, accountants or other agents, to examine or audit any of the books and records of Borrower, or the Collateral, all of which will be made available upon request. Such accountants or other representatives of Lender will be permitted to make any verification of the existence of the Collateral or accuracy of the records that Lender deems necessary or proper. Any reasonable expenses incurred by Lender in making such examination, inspection, verification or audit shall be paid by Borrower promptly on demand and shall constitute part of the Obligations.

9. **Termination Statement.** Upon receipt of proper written demand following the payment in full of the Obligations and termination of any commitment of Lender to make any future advances to Borrower, Lender shall promptly send a termination statement with respect to any financing statement filed to perfect Lender's security interests in any of the Collateral to Borrower or cause such termination statement to be filed with the appropriate filing officer(s).

10. **Power of Attorney.** Borrower hereby constitutes Lender or its designee, as Borrower's attorney-in-fact with power, upon the occurrence and during the continuance of an Event of Default, to endorse Borrower's name upon any notes, acceptances, checks, drafts, money orders, or other evidences of payment or Collateral that may come into either its or Lender's possession; to sign the name of Borrower on any invoice or bill of lading relating to any of the accounts receivable, drafts against customers, assignments and verifications of accounts receivable and notices to customers; to send verifications of accounts receivable; to notify the Post Office authorities to change the address for delivery of mail addressed to Borrower to such address as Lender may designate; to execute any of the documents referred to in Section 5(c) hereof in order to perfect and/or maintain the security interests and liens granted herein by Borrower to Lender; to do all other acts and things necessary to carry out the purposes of and remedies provided under this Agreement. All acts of said attorney or designee are hereby ratified and approved, and said attorney or designee shall not be liable for any acts of commission or omission (other than acts of gross negligence or willful misconduct), nor for any error of judgment or mistake of fact or law. This power being coupled with an interest is irrevocable until all of the Obligations are paid in full and any and all promissory notes executed in connection therewith are terminated and satisfied.

11. **Binding Effect.** This Agreement shall inure to the benefit of Lender's successors and assigns and shall bind Borrower's heirs, representatives, successors and assigns.

12. **Severability.** If any provision of this Agreement is held invalid, such invalidity shall not affect the validity or enforceability of the remaining provisions of this Agreement.

13. **Governing Law and Amendments.** This Agreement shall be construed and enforced under the laws of the State of North Carolina applicable to contracts to be wholly performed in such State. No amendment or modification hereof shall be effective except in a writing executed by each of the parties hereto.



14. **Survival of Representations and Warranties.** All representations and warranties contained herein or made by or furnished on behalf of Borrower in connection herewith shall survive the execution and delivery of this Agreement.

15. **Counterparts.** This Agreement may be executed in any number of counterparts and by different parties to this Agreement in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement.

16. **Construction and Interpretation.** Should any provision of this Agreement require judicial interpretation, the parties hereto agree that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be more strictly construed against the party that itself or through its agent prepared the same, it being agreed that Borrower, Lender and their respective agents have participated in the preparation hereof.

17. **Consent to Jurisdiction; Exclusive Venue.** Borrower hereby irrevocably consents to the Jurisdiction of the United States District Court for the District covering Mecklenburg County, North Carolina and of all North Carolina state courts sitting in Mecklenburg County, North Carolina, for the purpose of any litigation to which Lender may be a party and which concerns this Agreement or the Obligations. It is further agreed that venue for any such action shall lie exclusively with courts sitting in Mecklenburg County, North Carolina, unless Lender agrees to the contrary in writing.

18. **Notice.** Any notice under this Agreement shall be made in accordance with the terms of the Loan Agreement.

IN WITNESS WHEREOF, Borrower and Lender have executed this Agreement, or have caused this Agreement to be executed as of the date first above written.

**BORROWER:**

NATIONS EXPRESS, INC., a North Carolina corporation

By: William K. McGill  
Title: EXECUTIVE VICE-PRESIDENT & CFO

**LENDER:**

LIVINGSTON COMPANY, a Delaware corporation

By: Rory F. Bowman  
Title: V-P

## **SCHEDULE 5(a)**

### PERMITTED ENCUMBRANCES

"Permitted Liens" as defined in the Loan Agreement.

## **SCHEDULE 5(b)**

### **PRINCIPAL PLACE(S) OF BUSINESS AND LOCATION(S) OF COLLATERAL**

Schedule 2.1(ab) to the Loan Agreement is hereby incorporated by reference.