

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	SECURITY INTEREST

**CONVEYING PARTY DATA**

Name	Formerly	Execution Date	Entity Type
The Trader Enterprises, Inc.		04/20/2004	CORPORATION: INDIANA

**RECEIVING PARTY DATA**

Name:	The Toronto-Dominion Bank
Street Address:	77 King Street West
Internal Address:	18th Floor
City:	Toronto, Ontario
State/Country:	CANADA
Postal Code:	M5K 1A2
Entity Type:	Bank/Adminstrative Agent: CANADA

**PROPERTY NUMBERS Total: 9**

Property Type	Number	Word Mark
Registration Number:	2099578	PEDDLERS' POST
Registration Number:	2146887	DEALER DIRECTORY
Registration Number:	2084520	ADWATCH
Registration Number:	2171443	THE TRADER PAPER
Registration Number:	2171470	THE TRADER PAPER
Serial Number:	74437425	TRADERS' CONNECTION
Registration Number:	2143955	THE TRADER PAPER
Registration Number:	2186120	THE TRADER PAPER
Serial Number:	74444040	TRADERS' CONNECTION

**CORRESPONDENCE DATA**

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OP \$240.00 2099578

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ATTORNEY DOCKET NUMBER: 031047-0001

**DOMESTIC REPRESENTATIVE**

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Address Line 2: Suite 2000  
Address Line 4: Costa Mesa, CALIFORNIA 92626

NAME OF SUBMITTER: Gregory B. Phillips

**Total Attachments: 71**

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Execution Copy

**PLEDGE AND SECURITY AGREEMENT**

**dated as of April 20, 2004**

**between**

**THE TRADER ENTERPRISES, INC.**

**and**

**THE TORONTO-DOMINION BANK,**

**as the Administration Agent**

NY1886370.2

**TRADEMARK**  
**REEL: 002837 FRAME: 0880**

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This **PLEDGE AND SECURITY AGREEMENT**, dated as of April 20, 2004 (this "**Agreement**"), between **THE TRADER ENTERPRISES, INC.** (the "**Grantor**"), and **THE TORONTO-DOMINION BANK**, as administration agent for the Lenders (as herein defined) (in such capacity as administration agent, the "**Administration Agent**").

**RECITALS:**

**WHEREAS**, reference is made to that certain Senior Secured Credit and Guarantee Agreement, dated as of the date hereof (as it may be amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), by and among **CLASSIFIED MEDIA (CANADA) HOLDINGS, INC.** ("**Company**"), **GRANTOR, THE TRADER'S POST, INC.** ("**TP**"), **THE TRADER ENTERPRISES, INC.** ("**TEI**," together with the Grantor and TP, collectively referred to as "**US Borrowers**"), the lenders party thereto from time to time (the "**Lenders**"), **ADMINISTRATION AGENT, TD SECURITIES INC.** and **CIBC WORLD MARKETS**, as co-lead arrangers and co-book managers and **CIBC WORLD MARKETS**, as syndication agent;

**WHEREAS**, subject to the terms and conditions of the Credit Agreement, Company or any US Borrower may enter into one or more Hedge Agreements (as herein defined) with one or more Hedge Lenders;

**WHEREAS**, in consideration of the extensions of credit and other accommodations of Lenders and Hedge Lenders as set forth in the Credit Agreement and the Hedge Agreements, respectively, Grantor has agreed to secure its obligations under the Loan Documents and the Hedge Agreements as set forth herein; and

**NOW, THEREFORE**, in consideration of the premises and the agreements, provisions and covenants herein contained, Grantor and the Administration Agent agree as follows:

**SECTION 1. DEFINITIONS; GRANT OF SECURITY.**

**1.1 General Definitions.** In this Agreement, the following terms shall have the following meanings:

"**Account Debtor**" shall mean each Person who is obligated on a Receivable or any Supporting Obligation related thereto.

"**Accounts**" shall mean all "accounts" as defined in Article 9 of the UCC.

"**Administration Agent**" shall have the meaning set forth in the preamble.

"**Agreement**" shall have the meaning set forth in the preamble.

"**Bankruptcy Code**" shall mean Title 11 of the United States Code entitled "Bankruptcy", as now and hereafter in effect, or any successor statute.

"**Cash Proceeds**" shall have the meaning assigned in Section 7.7.

**"Chattel Paper"** shall mean all "chattel paper" as defined in Article 9 of the UCC, including, without limitation, "electronic chattel paper" or "tangible chattel paper", as each term is defined in Article 9 of the UCC.

**"Collateral"** shall have the meaning assigned in Section 2.1.

**"Collateral Account"** shall mean any account established by the Administration Agent in accordance with Section 7.7.

**"Collateral Records"** shall mean books, records, ledger cards, files, correspondence, customer lists, blueprints, technical specifications, manuals, computer software, computer printouts, tapes, disks and related data processing software and similar items that at any time evidence or contain information relating to any of the Collateral or are otherwise necessary or helpful in the collection thereof or realization thereupon.

**"Collateral Support"** shall mean all property (real or personal) assigned, hypothecated or otherwise securing any Collateral and shall include any security agreement or other agreement granting a lien or security interest in such real or personal property.

**"Commercial Tort Claims"** shall mean all "commercial tort claims" as defined in Article 9 of the UCC, including, without limitation, all commercial tort claims listed on Schedule 4.8 (as such schedule may be amended or supplemented from time to time).

**"Commodities Accounts"** shall mean all "commodity accounts" as defined in Article 9 of the UCC.

**"Company"** shall have the meaning set forth in the recitals.

**"Controlled Foreign Corporation"** shall mean "controlled foreign corporation" as defined in the Tax Code.

**"Copyright Licenses"** shall mean any and all agreements providing for the granting of any right in or to Copyrights (whether Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.7(B) (as such schedule may be amended or supplemented from time to time).

**"Copyrights"** shall mean all United States, and foreign copyrights (including Community designs), including but not limited to copyrights in software and databases, and all Mask Works (as defined under 17 U.S.C. 901 of the U.S. Copyright Act), whether registered or unregistered, and, with respect to any and all of the foregoing: (i) all registrations and applications therefor including, without limitation, the registrations and applications referred to in Schedule 4.7(A) (as such schedule may be amended or supplemented from time to time), (ii) all extensions and renewals thereof, (iii) all rights corresponding thereto throughout the world, (iv) all rights to sue for past, present and future infringements thereof, and (v) all Proceeds of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages and proceeds of suit.

**"Credit Agreement"** shall have the meaning set forth in the recitals.

**"Deposit Accounts"** shall mean all "deposit accounts" as defined in Article 9 of the UCC.



**"Documents"** shall mean all "documents" as defined in Article 9 of the UCC.

**"Equipment"** shall mean: (i) all "equipment" as defined in Article 9 of the UCC, (ii) all machinery, manufacturing equipment, data processing equipment, computers, office equipment, furnishings, furniture, appliances, fixtures and tools (in each case, regardless of whether characterized as equipment under the UCC) and (iii) all accessions or additions thereto, all parts thereof, whether or not at any time of determination incorporated or installed therein or attached thereto, and all replacements therefor, wherever located, now or hereafter existing, including any fixtures.

**"General Intangibles"** (i) shall mean all "general intangibles" as defined in Article 9 of the UCC, including "payment intangibles" also as defined in Article 9 of the UCC and (ii) shall include, without limitation, all rights under Hedge Agreements, all tax refunds, all licenses, permits, concessions and authorizations and all Intellectual Property (in each case, regardless of whether characterized as general intangibles under the UCC).

**"Goods"** (i) shall mean all "goods" as defined in Article 9 of the UCC and (ii) shall include, without limitation, all Inventory and Equipment (in each case, regardless of whether characterized as goods under the UCC).

**"Grantor"** shall have the meaning set forth in the preamble.

**"Hedge Agreement"** shall mean any (i) interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement, each of which is for the purpose of hedging the interest rate exposure associated with Grantor' operations or (ii) foreign exchange contract, currency swap agreement, futures contract, option contract, synthetic cap or other similar agreement or arrangement, each of which is for the purpose of hedging the foreign currency risk associated with Grantor' operations.

**"Instruments"** shall mean all "instruments" as defined in Article 9 of the UCC.

**"Insurance"** shall mean (i) all insurance policies covering any or all of the Collateral (regardless of whether the Administration Agent is the loss payee thereof) and (ii) any key man life insurance policies.

**"Intellectual Property"** shall mean, collectively, the Copyrights, the Copyright Licenses, the Patents, the Patent Licenses, the Trademarks, the Trademark Licenses, the Trade Secrets, and the Trade Secret Licenses.

**"Inventory"** shall mean (i) all "inventory" as defined in Article 9 of the UCC and (ii) all goods held for sale or lease or to be furnished under contracts of service or so leased or furnished, all raw materials, work in process, finished goods, and materials used or consumed in the manufacture, packing, shipping, advertising, selling, leasing, furnishing or production of such inventory or otherwise used or consumed in Grantor's business; all goods in which Grantor has an interest in mass or a joint or other interest or right of any kind; and all goods which are returned to or repossessed by Grantor, all computer programs embedded in any goods and all accessions thereto and products thereof (in each case, regardless of whether characterized as inventory under the UCC).

**"Investment Accounts"** shall mean the Collateral Account, Securities Accounts, Commodities Accounts and Deposit Accounts.

**"Investment Related Property"** shall mean: (i) all "investment property" (as such term is defined in Article 9 of the UCC) and (ii) all of the following (regardless of whether classified as investment property under the UCC): all Pledged Equity Interests, Pledged Debt, the Investment Accounts and certificates of deposit.

**"Lender"** shall have the meaning set forth in the recitals.

**"Letter of Credit Right"** shall mean "letter-of-credit right" as defined in Article 9 of the UCC.

**"Loan Documents"** shall mean the Credit Agreement and the Guarantee.

**"Money"** shall mean "money" as defined in the UCC.

**"Obligations"** shall mean all obligations of every nature of Grantor from time to time owed to the Secured Parties or any of them under any Loan Document (including, without limitation, with respect to a Hedge Agreement, obligations owed thereunder to any person who was a Lender or an Affiliate of a Lender at the time such Hedge Agreement was entered into), whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to Grantor, would have accrued on any Obligation, whether or not a claim is allowed against Grantor for such interest in the related bankruptcy proceeding), reimbursement of amounts drawn under letters of credit, payments for early termination of Hedge Agreements, fees, expenses, indemnification or otherwise.

**"Patent Licenses"** shall mean all agreements providing for the granting of any right in or to Patents (whether Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.7(D) (as such schedule may be amended or supplemented from time to time).

**"Patents"** shall mean all United States and foreign patents and certificates of invention, or similar industrial property rights, and applications for any of the foregoing, including, but not limited to: (i) each patent and patent application referred to in Schedule 4.7(C) hereto (as such schedule may be amended or supplemented from time to time), (ii) all reissues, divisions, continuations, continuations-in-part, extensions, renewals, and reexaminations thereof, (iii) all rights corresponding thereto throughout the world, (iv) all inventions and improvements described therein, (v) all rights to sue for past, present and future infringements thereof, (vi) all licenses, claims, damages, and proceeds of suit arising therefrom, and (vii) all Proceeds of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages, and proceeds of suit.

**"Pledge Supplement"** shall mean any supplement to this agreement in substantially the form of Exhibit A.

**"Pledged Debt"** shall mean all Debt owed to Grantor, including, without limitation, the instruments evidencing such Debt, and all interest, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Debt.

**"Pledged Equity Interests"** shall mean all Pledged Stock, Pledged LLC Interests, Pledged Partnership Interests and Pledged Trust Interests.

**"Pledged LLC Interests"** shall mean all interests in any limited liability company including, without limitation, all limited liability company interests listed on Schedule 4.4(A) under the heading "Pledged LLC Interests" (as such schedule may be amended or supplemented from time to time) and the certificates, if any, representing such limited liability company interests and any interest of Grantor on the books and records of such limited liability company or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such limited liability company interests.

**"Pledged Partnership Interests"** shall mean all interests in any general partnership, limited partnership, limited liability partnership or other partnership including, without limitation, all partnership interests listed on Schedule 4.4(A) under the heading "Pledged Partnership Interests" (as such schedule may be amended or supplemented from time to time) and the certificates, if any, representing such partnership interests and any interest of Grantor on the books and records of such partnership or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such partnership interests.

**"Pledged Stock"** shall mean all shares of capital stock owned by Grantor, including, without limitation, all shares of capital stock described on Schedule 4.4(A) under the heading "Pledged Stock" (as such schedule may be amended or supplemented from time to time), and the certificates, if any, representing such shares and any interest of Grantor in the entries on the books of the issuer of such shares or on the books of any securities intermediary pertaining to such shares, and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such shares.

**"Pledged Trust Interests"** shall mean all interests in a Delaware business trust or other trust including, without limitation, all trust interests listed on Schedule 4.4(A) under the heading "Pledged Trust Interests" (as such schedule may be amended or supplemented from time to time) and the certificates, if any, representing such trust interests and any interest of Grantor on the books and records of such trust or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such trust interests.

**"Proceeds"** shall mean: (i) all "proceeds" as defined in Article 9 of the UCC, (ii) payments or distributions made with respect to any Investment Related Property and (iii) whatever is receivable or received when Collateral or proceeds are sold, exchanged, collected or otherwise disposed of, whether such disposition is voluntary or involuntary.

**"Receivables"** shall mean all rights to payment, whether or not earned by performance, for goods or other property sold, leased, licensed, assigned or otherwise disposed of, or services rendered or to be rendered, including, without limitation all such rights constituting or evidenced by any Account, Chattel Paper, Instrument, General Intangible or Investment Related Property, together with all of Grantor's rights, if any, in any goods or other property giving rise to such right to payment and all Collateral Support and Supporting Obligations related thereto and all Receivables Records.

**"Receivables Records"** shall mean (i) all original copies of all documents, instruments or other writings or electronic records or other Records evidencing the Receivables, (ii) all books, correspondence, credit or other files, Records, ledger sheets or cards, invoices, and other papers relating to Receivables, including, without limitation, all tapes, cards, computer tapes, computer discs, computer runs, record keeping systems and other papers and documents relating to the Receivables, whether in the possession or under the control of Grantor or any computer bureau or agent from time to time acting for Grantor or otherwise, (iii) all evidences of the filing of financing statements and the registration of other instruments in connection therewith, and amendments, supplements or other modifications thereto, notices to other creditors or secured parties, and certificates, acknowledgments, or other writings, including, without limitation, lien search reports, from filing or other registration officers, (iv) all credit information, reports and memoranda relating thereto and (v) all other written or nonwritten forms of information related in any way to the foregoing or any Receivable.

**"Record"** shall have the meaning specified in Article 9 of the UCC.

**"Secured Obligations"** shall have the meaning assigned in Section 3.1.

**"Secured Parties"** shall mean the Administration Agent, the Lenders and the Hedge Lenders and shall include, without limitation, all former Administration Agents, Lenders and Hedge Lenders to the extent that any Obligations owing to such Persons were incurred while such Persons were Administration Agent, Lenders or Hedge Lenders and such Obligations have not been paid or satisfied in full.

**"Securities"** shall mean any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

**"Securities Accounts"** shall mean all "securities accounts" as defined in Article 8 of the UCC.

**"Supporting Obligation"** shall mean all "supporting obligations" as defined in Article 9 of the UCC.

**"Tax Code"** shall mean the United States Internal Revenue Code of 1986, as amended from time to time.

**"Trademark Licenses"** shall mean any and all agreements providing for the granting of any right in or to Trademarks (whether Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.7(F) (as such schedule may be amended or supplemented from time to time).

**"Trademarks"** shall mean all United States, and foreign trademarks, trade names, corporate names, company names, business names, fictitious business names, Internet domain names, service marks, certification marks, collective marks, logos, other source or business identifiers, designs and general intangibles of a like nature, all registrations and applications for any of the foregoing including, but not limited to: (i) the registrations and

applications referred to in Schedule 4.7(E) (as such schedule may be amended or supplemented from time to time), (ii) all extensions or renewals of any of the foregoing, (iii) all of the goodwill of the business connected with the use of and symbolized by the foregoing, (iv) the right to sue for past, present and future infringement or dilution of any of the foregoing or for any injury to goodwill, and (v) all Proceeds of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages, and proceeds of suit.

**"Trade Secret Licenses"** shall mean any and all agreements providing for the granting of any right in or to Trade Secrets (whether Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.7(G) (as such schedule may be amended or supplemented from time to time).

**"Trade Secrets"** shall mean all trade secrets and all other confidential or proprietary information and know-how whether or not such Trade Secret has been reduced to a writing or other tangible form, including all documents and things embodying, incorporating, or referring in any way to such Trade Secret, including but not limited to: (i) the right to sue for past, present and future misappropriation or other violation of any Trade Secret, and (ii) all Proceeds of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages, and proceeds of suit.

**"UCC"** shall mean the Uniform Commercial Code as in effect from time to time in the State of New York or, when the context implies, the Uniform Commercial Code as in effect from time to time in any other applicable jurisdiction.

**"United States"** shall mean the United States of America.

**1.2 Definitions; Interpretation.** All capitalized terms used herein (including the preamble and recitals hereto) and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement or, if not defined therein, in the UCC. References to "Sections," "Exhibits" and "Schedules" shall be to Sections, Exhibits and Schedules, as the case may be, of this Agreement unless otherwise specifically provided. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word "include" or "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. If any conflict or inconsistency exists between this Agreement and the Credit Agreement, the Credit Agreement shall govern. All references herein to provisions of the UCC shall include all successor provisions under any subsequent version or amendment to any Article of the UCC.

## **SECTION 2. GRANT OF SECURITY.**

**2.1 Grant of Security.** Grantor hereby grants to the Administration Agent, for the benefit of the Secured Parties, a security interest in and continuing lien on all of Grantor's right, title and interest in, to and under all personal property of Grantor including, but not limited to the

following, in each case whether now owned or existing or hereafter acquired or arising and wherever located (all of which being hereinafter collectively referred to as the "Collateral"):

- (a) Accounts;
- (b) Chattel Paper;
- (c) Documents;
- (d) General Intangibles;
- (e) Goods;
- (f) Instruments;
- (g) Insurance;
- (h) Intellectual Property;
- (i) Investment Related Property;
- (j) Letter of Credit Rights;
- (k) Money;
- (l) Receivables and Receivable Records;
- (m) Commercial Tort Claims;
- (n) to the extent not otherwise included above, all Collateral Records, Collateral Support and Supporting Obligations relating to any of the foregoing; and
- (o) to the extent not otherwise included above, all Proceeds, products, accessions, rents and profits of or in respect of any of the foregoing.

**2.2 Certain Limited Exclusions.** Notwithstanding anything herein to the contrary, in no event shall the security interest granted under Section 2.1 hereof attach to (a) any lease, license, contract, property rights or agreement to which Grantor is a party, or any permit, consent, authorization or approval of which Grantor is the recipient or beneficiary, or any of its rights or interests thereunder if and for so long as the grant of such security interest shall constitute or result in (i) the abandonment, invalidation or unenforceability of any right, title or interest of Grantor therein or (ii) in a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract property rights or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law (including the Bankruptcy Code) or principles of equity), provided however that such security interest shall attach immediately at such time as the condition causing such abandonment, invalidation or unenforceability shall be remedied and to the extent severable, shall attach immediately to any portion of such lease, license, contract, property rights or agreement, or such permit, consent, authorization or approval, that does not result in any of the consequences specified in (i) or (ii) above; or (b) in any of the outstanding capital stock of a Controlled Foreign Corporation in excess of 65% of the voting power of all classes of capital stock of such

Controlled Foreign Corporation entitled to vote; provided that immediately upon the amendment of the Tax Code to allow the pledge of a greater percentage of the voting power of capital stock in a Controlled Foreign Corporation without adverse tax consequences, the Collateral shall include, and the security interest granted by Grantor shall attach to, such greater percentage of capital stock of each Controlled Foreign Corporation.

### SECTION 3. SECURITY FOR OBLIGATIONS; GRANTORS REMAIN LIABLE.

**3.1 Security for Obligations.** This Agreement secures, and the Collateral is collateral security for, the prompt and complete payment or performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including the payment of amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. §362(a) (and any successor provision thereof)), of all Obligations with respect to Grantor, the Company, each of the other US Borrowers and each Guarantor (the "**Secured Obligations**").

**3.2 Continuing Liability Under Collateral.** Notwithstanding anything herein to the contrary, (i) Grantor shall remain liable for all of its obligations under the Collateral and nothing contained herein is intended or shall be a delegation of duties to the Administration Agent or any Secured Party, (ii) Grantor shall remain liable under each of the agreements included in the Collateral, including, without limitation, any agreements relating to Pledged Partnership Interests or Pledged LLC Interests, to perform all of the obligations undertaken by it thereunder all in accordance with and pursuant to the terms and provisions thereof and neither the Administration Agent nor any Secured Party shall have any obligation or liability under any of such agreements by reason of or arising out of this Agreement or any other document related thereto nor shall the Administration Agent nor any Secured Party have any obligation to make any inquiry as to the nature or sufficiency of any payment received by it or have any obligation to take any action to collect or enforce any rights under any agreement included in the Collateral, including, without limitation, any agreements relating to Pledged Partnership Interests or Pledged LLC Interests, and (iii) the exercise by the Administration Agent of any of its rights hereunder shall not release Grantor from any of its duties or obligations under the contracts and agreements included in the Collateral.

### SECTION 4. REPRESENTATIONS AND WARRANTIES AND COVENANTS.

**4.1 Generally.**

(a) Representations and Warranties. Grantor hereby represents and warrants, on each date of Accommodation, that:

(i) it owns the Collateral purported to be owned by it or otherwise has the rights it purports to have in each item of Collateral and, as to all Collateral whether now existing or hereafter acquired, will continue to own or have such rights in each item of the Collateral, in each case free and clear of any and all Liens, rights or claims of all other Persons, including, without limitation, liens arising as a result of Grantor becoming bound (as a result of merger or otherwise) as debtor under a security agreement entered into by another Person other than Permitted Liens;

(ii) it has indicated on Schedule 4.1(A)(as such schedule may be amended or supplemented from time to time): (w) the type of organization of Grantor, (x) the jurisdiction of organization of Grantor, (y) its organizational identification number (if

any) and (z) the jurisdiction where the chief executive office or its sole place of business is (or the principal residence if Grantor is a natural person), and for the one-year period preceding the date hereof has been, located.

(iii) the full legal name of Grantor is as set forth on Schedule 4.1(A) and it has not done in the last five (5) years, and does not do, business under any other name (including any trade-name or fictitious business name) except for those names set forth on Schedule 4.1(B) (as such schedule may be amended or supplemented from time to time);

(iv) except as provided on Schedule 4.1(C), it has not changed its name, jurisdiction of organization, chief executive office or sole place of business (or principal residence if Grantor is a natural person) or its corporate structure in any way (e.g., by merger, consolidation, change in corporate form or otherwise) within the past five (5) years;

(v) it has not within the last five (5) years become bound (whether as a result of merger or otherwise) as debtor under a security agreement entered into by another Person, which has not heretofore been terminated;

(vi) [reserved]

(vii) (u) upon the filing of all UCC financing statements naming Grantor as "debtor" and the Administration Agent as "secured party" and describing the Collateral in the filing offices set forth on Schedule 4.1(E) hereof (as such schedule may be amended or supplemented from time to time) and other filings delivered by Grantor, (v) upon delivery of all Instruments, Chattel Paper and certificated Pledged Equity Interests, (w) upon sufficient identification of Commercial Tort Claims, (x) upon execution of a control agreement establishing the Administration Agent's "control" (within the meaning of Section 9-806, 9-106 or 9-104 of the UCC, as applicable) with respect to any Investment Account in accordance with Section 4.4.4 hereof, (y) upon consent of the issuer with respect to Letter of Credit Rights, and (z) to the extent not subject to Article 9 of the UCC, upon recordation of the security interests granted hereunder in Patents, Trademarks and Copyrights in the applicable intellectual property registries, including but not limited to the United States Patent and Trademark Office and the United States Copyright Office], the security interests granted to the Administration Agent hereunder constitute valid and perfected first priority Liens (subject in the case of priority only to Permitted Liens and to the rights of the United States government (including any agency or department thereof) with respect to United States government Receivables) on all of the Collateral;

(viii) all actions and consents, including all filings, notices, registrations and recordings necessary for the exercise by the Administration Agent of the voting or other rights provided for in this Agreement or the exercise of remedies in respect of the Collateral as of the date hereof have been made or obtained;

(ix) other than the financing statements filed in favor of the Administration Agent and except as described on Schedule 4.1(E), no effective UCC financing statement, fixture filing or other instrument similar in effect under any applicable law covering all or any part of the Collateral is on file in any filing or recording office except for (x) financing statements for which proper termination



statements have been delivered to the Administration Agent for filing and (y) financing statements filed in connection with Permitted Liens;

(x) no authorization, approval or other action by, and no notice to or filing with, any Governmental Entity or regulatory body is required for either (i) the pledge or grant by Grantor of the Liens purported to be created in favor of the Administration Agent hereunder or (ii) the exercise by Administration Agent of any rights or remedies in respect of any Collateral (whether specifically granted or created hereunder or created or provided for by applicable law) as of the date hereof, except (A) for the filings contemplated by clause (vii) above and (B) as may be required, in connection with the disposition of any Investment Related Property, by laws generally affecting the offering and sale of Securities;

(xi) all information supplied in writing by Grantor with respect to any of the Collateral (in each case taken as a whole with respect to any particular Collateral) is accurate and complete in all material respects;

(xii) none of the Collateral constitutes, or is the Proceeds of, "farm products" (as defined in the UCC);

(xiii) it does not own any "as extracted collateral" (as defined in the UCC) or any timber to be cut;

(xiv) except as described on Schedule 4.1(D), Grantor has not become bound as a debtor, either by contract or by operation of law, by a security agreement previously entered into by another Person; and

(xv) such Grantor has been duly organized as an entity of the type as set forth opposite Grantor's name on Schedule 4.1(A) solely under the laws of the jurisdiction as set forth opposite Grantor's name on Schedule 4.1(A) and remains duly existing as such. Such Grantor has not filed any certificates of domestication, transfer or continuance in any other jurisdiction.

(b) Covenants and Agreements. Grantor hereby covenants and agrees that:

(i) except for the security interest created by this Agreement and for Permitted Liens, it shall not create or suffer to exist any Lien upon or with respect to any of the Collateral, and Grantor shall defend the Collateral against all Persons at any time claiming any interest therein, except Permitted Liens;

(ii) it shall not produce, use or permit any Collateral to be used unlawfully or in violation of any provision of this Agreement or any applicable statute, regulation or ordinance or any policy of insurance covering the Collateral;

(iii) it shall not change Grantor's name, identity, corporate structure (e.g., by merger, consolidation, change in corporate form or otherwise) sole place of business (or principal residence if Grantor is a natural person), chief executive office, type of organization or jurisdiction of organization or establish any trade names unless it shall have (a) notified the Administration Agent in writing, by executing and delivering to the Administration Agent a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto, at least

thirty (30) days prior to any such change or establishment, identifying such new proposed name, identity, corporate structure, sole place of business (or principal residence if Grantor is a natural person), chief executive office, jurisdiction of organization or trade name and providing such other information in connection therewith as the Administration Agent may reasonably request and (b) taken all actions necessary to maintain the continuous validity, perfection and the same or better priority of the Administration Agent's security interest in the Collateral intended to be granted and agreed to hereby;

(iv) it shall pay promptly when due all property and other taxes, assessments and governmental charges or levies imposed upon, and all claims (including claims for labor, materials and supplies) against, the Collateral, except to the extent the validity thereof is being contested in good faith; provided, Grantor shall in any event pay such taxes, assessments, charges, levies or claims not later than five (5) days prior to the date of any proposed sale under any judgment, writ or warrant of attachment entered or filed against Grantor or any of the Collateral as a result of the failure to make such payment;

(v) upon Grantor or any senior officer of Grantor obtaining knowledge thereof, it shall promptly notify the Administration Agent in writing of any event that could reasonably be expected to have a Material Adverse Change on the value of the Collateral or any material portion thereof, the ability of Grantor or the Administration Agent to dispose of the Collateral or any material portion thereof, or the rights and remedies of the Administration Agent in relation thereto, including, without limitation, the levy of any legal process against the Collateral or any material portion thereof;

(vi) it shall not take or permit any action which could reasonably be expected to materially impair the Administration Agent's rights in the Collateral; and

(vii) it shall not sell, transfer or assign (by operation of law or otherwise) any Collateral except as otherwise in accordance with the Credit Agreement.

#### **4.2 Equipment and Inventory.**

(a) Representations and Warranties. Grantor represents and warrants, on each date of Accommodation, that:

(i) all of the Equipment and Inventory included in the Collateral is kept for the past five (5) years only at the locations specified in Schedule 4.2 (as such schedule may be amended or supplemented from time to time);

(ii) any Goods now or hereafter produced by Grantor included in the Collateral have been and will be produced in compliance with the requirements of the Fair Labor Standards Act, as amended; and

(iii) none of the Inventory or Equipment is in the possession of an issuer of a negotiable document (as defined in Section 7-104 of the UCC) therefor or otherwise in the possession of a bailee or a warehouseman.

(b) Covenants and Agreements. Grantor covenants and agrees that:

(i) it shall keep the Equipment, Inventory and any Documents evidencing any Equipment and Inventory in the locations specified on Schedule 4.2 (as such schedule may be amended or supplemented from time to time) unless it shall have (a) notified the Administration Agent in writing, by executing and delivering to the Administration Agent a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto, no later than thirty (30) days after any change in locations, identifying such new locations and providing such other information in connection therewith as the Administration Agent may reasonably request and (b) taken all actions necessary to maintain the continuous validity, perfection and the same or better priority of the Administration Agent's security interest in such Equipment and Inventory intended to be granted and agreed to hereby, or to enable the Administration Agent to exercise and enforce its rights and remedies hereunder, with respect to such Equipment and Inventory;

(ii) it shall keep correct and accurate records of the Inventory, as is customarily maintained under similar circumstances by Persons of established reputation engaged in similar business, and in any event in conformity with GAAP;

(iii) it shall not deliver any Document evidencing any Equipment and Inventory to any Person other than the issuer of such Document to claim the Goods evidenced therefor or the Administration Agent;

(iv) if any Equipment or Inventory is in possession or control of any third party, Grantor shall join with the Administration Agent in notifying the third party of the Administration Agent's security interest and obtaining an acknowledgment from the third party that it is holding the Equipment and Inventory as Collateral hereunder for the benefit of the Administration Agent; and

(v) with respect to any item of Equipment which is covered by a certificate of title under a statute of any jurisdiction under the law of which indication of a security interest on such certificate is required as a condition of perfection thereof, upon the reasonable request of the Administration Agent, (A) provide information with respect to any such Equipment, (B) execute and file with the registrar of motor vehicles or other appropriate authority in such jurisdiction an application or other document requesting the notation or other indication of the security interest created hereunder on such certificate of title, and (C) deliver to the Administration Agent copies of all such applications or other documents filed during such calendar quarter and copies of all such certificates of title issued during such calendar quarter indicating the security interest created hereunder in the items of Equipment covered thereby.

#### **4.3 Receivables.**

(a) Representations and Warranties. Grantor represents and warrants, on each date of Accommodation, that:

(i) each Receivable (a) is and will be the legal, valid and binding obligation of the Account Debtor in respect thereof, representing an unsatisfied obligation of such Account Debtor, (b) is and will be enforceable in accordance with its terms, (c) is not and will not be subject to any setoffs, defenses, taxes, counterclaims (except with respect to refunds, returns and allowances in the ordinary course of business with respect

to damaged merchandise) and (d) is and will be in compliance with all applicable laws, whether federal, state, local or foreign;

(ii) none of the Account Debtors in respect of any Receivable is the government of the United States, any agency or instrumentality thereof, any state or municipality or any foreign sovereign. No Receivable requires the consent of the Account Debtor in respect thereof in connection with the pledge hereunder, except any consent which has been obtained; and

(iii) no Receivable is evidenced by, or constitutes, an Instrument or Chattel Paper which has not been delivered to, or otherwise subjected to the control of, the Administration Agent to the extent required by, and in accordance with Section 4.3(c).

(b) Covenants and Agreements: Grantor hereby covenants and agrees that:

(i) it shall keep and maintain at its own cost and expense satisfactory and complete records of the Receivables, including, but not limited to, the originals of all documentation with respect to all Receivables and records of all payments received and all credits granted on the Receivables, all merchandise returned and all other dealings therewith;

(ii) it shall mark conspicuously, in form and manner reasonably satisfactory to the Administration Agent, all Chattel Paper, Instruments and other evidence of Receivables (other than any delivered to the Administration Agent as provided herein), as well as the Receivables Records with an appropriate reference to the fact that the Administration Agent has a security interest therein;

(iii) it shall perform in all material respects all of its obligations with respect to the Receivables;

(iv) it shall not amend, modify, terminate or waive any provision of any Receivable in any manner which could reasonably be expected to have a Material Adverse Change on the value of such Receivable as Collateral. Other than in the ordinary course of business as generally conducted by it on and prior to the date hereof, and except as otherwise provided in subsection (v) below, following the occurrence and during the continuation of an Event of Default, Grantor shall not, without the Administration Agent's consent, (w) grant any extension or renewal of the time of payment of any Receivable, (x) compromise or settle any dispute, claim or legal proceeding with respect to any Receivable for less than the total unpaid balance thereof, (y) release, wholly or partially, any Person liable for the payment thereof, or (z) allow any credit or discount thereon;

(v) except as otherwise provided in this subsection, Grantor shall continue to collect all amounts due or to become due to Grantor under the Receivables and any Supporting Obligation and diligently exercise each material right it may have under any Receivable any Supporting Obligation or Collateral Support, in each case, at its own expense, and in connection with such collections and exercise, Grantor shall take such action as Grantor may deem necessary or advisable or the Administration Agent shall reasonably request. Notwithstanding the foregoing, the Administration Agent shall have the right at any time following the occurrence and during the continuation of an

Event of Default to notify, or require Grantor to notify, any Account Debtor of the Administration Agent's security interest in the Receivables and any Supporting Obligation and, in addition, at any time following the occurrence and during the continuation of an Event of Default, the Administration Agent may: (1) direct the Account Debtors under any Receivables to make payment of all amounts due or to become due to Grantor thereunder directly to the Administration Agent; (2) notify, or require Grantor to notify, each Person maintaining a lockbox or similar arrangement to which Account Debtors under any Receivables have been directed to make payment to remit all amounts representing collections on checks and other payment items from time to time sent to or deposited in such lockbox or other arrangement directly to the Administration Agent; and (3) enforce, at the expense of Grantor, collection of any such Receivables and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as Grantor might have done. If the Administration Agent so notifies Grantor that it has elected to collect the Receivables in accordance with the preceding sentence, any payments of Receivables received by Grantor shall be forthwith (and in any event within two (2) Business Days) deposited by Grantor in the exact form received, duly indorsed by Grantor to the Administration Agent if required, in the Collateral Account maintained under the sole dominion and control of the Administration Agent, and until so turned over, all amounts and proceeds (including checks and other instruments) received by Grantor in respect of the Receivables, any Supporting Obligation or Collateral Support shall be received in trust for the benefit of the Administration Agent hereunder and shall be segregated from other funds of Grantor and Grantor shall not adjust, settle or compromise the amount or payment of any Receivable, or release wholly or partly any Account Debtor or obligor thereof, or allow any credit or discount thereon; and

(vi) it shall use its best efforts to keep in full force and effect any Supporting Obligation or Collateral Support relating to any Receivable.

(c) Delivery and Control of Receivables. With respect to any Receivables that is evidenced by, or constitutes, Chattel Paper or Instruments, Grantor shall cause each originally executed copy thereof to be delivered to the Administration Agent (or its agent or designee) appropriately indorsed to the Administration Agent or indorsed in blank: (i) with respect to any such Receivables in existence on the date hereof, on or prior to the date hereof and (ii) with respect to any such Receivables hereafter arising, within ten (10) days of Grantor acquiring rights therein. With respect to any Receivables which would constitute "electronic chattel paper" under Article 9 of the UCC, Grantor shall take all steps necessary to give the Administration Agent control over such Receivables (within the meaning of Section 9-105 of the UCC): (i) with respect to any such Receivables in existence on the date hereof, on or prior to the date hereof and (ii) with respect to any such Receivables hereafter arising, within ten (10) days of Grantor acquiring rights therein. Any Receivable not otherwise required to be delivered or subjected to the control of the Administration Agent in accordance with this subsection (c) shall be delivered or subjected to such control upon request of the Administration Agent following the occurrence and during the continuation of an Event of Default.

#### **4.4 Investment Related Property. Investment Related Property Generally**

(a) Covenants and Agreements. Grantor hereby covenants and agrees that:

(i) in the event it acquires rights in any Investment Related Property after the date hereof, it shall deliver to the Administration Agent a completed Pledge

Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto, reflecting such new Investment Related Property and all other Investment Related Property. Notwithstanding the foregoing, it is understood and agreed that the security interest of the Administration Agent shall attach to all Investment Related Property immediately upon Grantor's acquisition of rights therein and shall not be affected by the failure of Grantor to deliver a supplement to Schedule 4.4 as required hereby;

(ii) except as provided in the next sentence, in the event Grantor receives any dividends, interest or distributions on any Investment Related Property, or any securities or other property upon the merger, consolidation, liquidation or dissolution of any issuer of any Investment Related Property, then (a) such dividends, interest or distributions and securities or other property shall be included in the definition of Collateral without further action and (b) Grantor shall immediately take all steps, if any, necessary to ensure the validity, perfection, priority and, if applicable, control of the Administration Agent over such Investment Related Property (including, without limitation, delivery thereof to the Administration Agent) and pending any such action Grantor shall be deemed to hold such dividends, interest, distributions, securities or other property in trust for the benefit of the Administration Agent and shall segregate such dividends, distributions, Securities or other property from all other property of Grantor. Notwithstanding the foregoing, so long as no Event of Default shall have occurred and be continuing, the Administration Agent authorizes Grantor to retain all ordinary cash dividends and distributions paid in the normal course of the business of the issuer and consistent with the past practice of the issuer and all scheduled payments of interest.

(b) Delivery and Control.

(i) Grantor agrees that with respect to any Investment Related Property in which it currently has rights it shall comply with the provisions of this Section 4.4.1(b) on or prior to the initial Accommodation under the Credit Facilities and with respect to any Investment Related Property hereafter acquired by Grantor it shall comply with the provisions of this Section 4.4.1(b) immediately upon acquiring rights therein, in each case in form and substance reasonably satisfactory to the Administration Agent. With respect to any Investment Related Property that is represented by a certificate or that is an "instrument" (other than any Investment Related Property credited to a Securities Account) it shall cause such certificate or instrument to be delivered to the Administration Agent, indorsed in blank by an "effective indorsement" (as defined in Section 8-107 of the UCC), regardless of whether such certificate constitutes a "certificated security" for purposes of the UCC. With respect to any Investment Related Property that is an "uncertificated security" for purposes of the UCC (other than any "uncertificated securities" credited to a Securities Account), it shall cause the issuer of such uncertificated security promptly after the earlier of the Administration Agent's reasonable request or the occurrence and continuation of an Event of Default to either (i) register the Administration Agent as the registered owner thereof on the books and records of the issuer or (ii) execute an agreement substantially in the form of Exhibit B hereto or a form reasonably acceptable to the Administration Agent, pursuant to which such issuer agrees to comply with the Administration Agent's instructions with respect to such uncertificated security without further consent by Grantor.

(c) Voting and Distributions.

(i) So long as no Event of Default shall have occurred and be continuing:

- (1) except as otherwise provided under the covenants and agreements relating to investment related property in this Agreement or elsewhere herein or in the Credit Agreement, Grantor shall be entitled to exercise or refrain from exercising any and all voting and other consensual rights pertaining to the Investment Related Property or any part thereof for any purpose not inconsistent with the terms of this Agreement or the Credit Agreement; provided, Grantor shall not exercise or refrain from exercising any such right if the Administration Agent shall have notified Grantor that, in the Administration Agent's reasonable judgment, such action would have a Material Adverse Change on the value of the Investment Related Property or any material part thereof; and provided further, Grantor shall give the Administration Agent at least five (5) Business Days prior written notice of the manner in which it intends to exercise, or the reasons for refraining from exercising, any such right; it being understood, however, that neither the voting by Grantor of any Pledged Stock for, or Grantor's consent to, the election of directors (or similar governing body) at a regularly scheduled annual or other meeting of stockholders or with respect to incidental matters at any such meeting, nor Grantor's consent to or approval of any action not prohibited under this Agreement and the Credit Agreement, shall be deemed inconsistent with the terms of this Agreement or the Credit Agreement within the meaning of this Section 4.4(c)(i)(1), and no notice of any such voting or consent need be given to the Administration Agent; and
- (2) the Administration Agent shall promptly execute and deliver (or cause to be executed and delivered) to Grantor all proxies, and other instruments as Grantor may from time to time reasonably request for the purpose of enabling Grantor to exercise the voting and other consensual rights when and to the extent which it is entitled to exercise pursuant to clause (1) above;
- (3) Upon the occurrence and during the continuation of an Event of Default:
  - (A) all rights of Grantor to exercise or refrain from exercising the voting and other consensual rights which it would otherwise be entitled to exercise pursuant hereto shall cease and all such rights shall thereupon become vested in the Administration Agent who shall thereupon have the sole right to exercise such voting and other consensual rights; and
  - (B) in order to permit the Administration Agent to exercise the voting and other consensual rights which it may be entitled to exercise pursuant hereto and to receive all dividends and other distributions which it may be entitled to receive hereunder: (1) Grantor shall promptly execute and deliver (or cause to be executed and delivered) to the Administration Agent all proxies, dividend payment orders and other instruments as the Administration Agent may from time to time reasonably request and (2) Grantor acknowledges that the Administration Agent may utilize the power of attorney set forth in Section 6.1.

#### 4.4.2 Pledged Equity Interests

(a) Representations and Warranties. Grantor hereby represents and warrants, on the date of each Accommodation, that:

(i) Schedule 4.4(A) (as such schedule may be amended or supplemented from time to time) sets forth under the headings "Pledged Stock, "Pledged LLC Interests," "Pledged Partnership Interests" and "Pledged Trust Interests," respectively, all of the Pledged Stock, Pledged LLC Interests, Pledged Partnership Interests and Pledged Trust Interests owned by Grantor and such Pledged Equity Interests constitute the percentage of issued and outstanding shares of stock, percentage of membership interests, percentage of partnership interests or percentage of beneficial interest of the respective issuers thereof indicated on such Schedule;

(ii) except as set forth on Schedule 4.4(B), it has not acquired any equity interests of another entity or substantially all the assets of another entity within the past five (5) years;

(iii) it is the record and beneficial owner of the Pledged Equity Interests free of all Liens, rights or claims of other Persons other than Permitted Liens and there are no outstanding warrants, options or other rights to purchase, or shareholder, voting trust or similar agreements outstanding with respect to, or property that is convertible into, or that requires the issuance or sale of, any Pledged Equity Interests;

(iv) without limiting the generality of Section 4.1(a)(v), no consent of any Person including any other general or limited partner, any other member of a limited liability company, any other shareholder or any other trust beneficiary is necessary in connection with the creation, perfection or first priority status (subject only to Permitted Liens) of the security interest of the Administration Agent in any Pledged Equity Interests or the exercise by the Administration Agent of the voting or other rights provided for in this Agreement or the exercise of remedies in respect thereof as of the date hereof;

(v) none of the Pledged LLC Interests nor Pledged Partnership Interests are or represent interests in issuers that: (a) are registered as investment companies or (b) are dealt in or traded on securities exchanges or markets; and

(vi) unless otherwise set forth in Schedule 4.4 hereto, all of the Pledged LLC Interests and Pledged Partnership Interests are or represent interests in issuers that have opted to be treated as securities under the uniform commercial code of any jurisdiction.

(b) Covenants and Agreements. Grantor hereby covenants and agrees that:

(i) without the prior written consent of the Administration Agent, it shall not vote to enable or take any other action to: (a) amend or terminate any partnership agreement, limited liability company agreement, certificate of incorporation, by-laws or other organizational documents in any way that materially and adversely changes the rights of Grantor with respect to any Investment Related Property or materially and adversely affects the validity, perfection or priority of the Administration Agent's security interest, (b) permit any issuer of any Pledged Equity Interest to issue any additional stock, partnership interests, limited liability company interests or other equity interests of any nature or to issue securities convertible into or granting the right of



purchase or exchange for any stock or other equity interest of any nature of such issuer to any person or entity other than Grantor, (c) other than as permitted under the Credit Agreement, permit any issuer of any Pledged Equity Interest to dispose of all or a material portion of its assets, (d) waive any default under or breach of any terms of organizational document relating to the issuer of any Pledged Equity Interest or the terms of any Pledged Debt, or (e) cause any issuer of any Pledged Partnership Interests or Pledged LLC Interests which are not securities (for purposes of the UCC) on the date hereof to elect or otherwise take any action to cause such Pledged Partnership Interests or Pledged LLC Interests to be treated as securities for purposes of the UCC; provided, however, notwithstanding the foregoing, if any issuer of any Pledged Partnership Interests or Pledged LLC Interests takes any such action in violation of the foregoing in this clause (e), Grantor shall promptly notify the Administration Agent in writing of any such election or action and, in such event, shall take all steps necessary to establish the Administration Agent's "control" thereof;

(ii) it shall comply with all of its obligations under any partnership agreement or limited liability company agreement relating to Pledged Partnership Interests or Pledged LLC Interests and shall enforce all of its rights with respect to any Investment Related Property;

(iii) without the prior written consent of the Administration Agent, it shall not permit any issuer of any Pledged Equity Interest to merge or consolidate unless (i) such issuer creates a security interest that is perfected by a filed financing statement (that is not effective solely under section 9-508 of the UCC) in collateral in which such new debtor has or acquires rights, and (ii) all the outstanding capital stock or other equity interests of the surviving or resulting corporation, limited liability company, partnership or other entity is, upon such merger or consolidation, pledged hereunder and no cash, securities or other property is distributed in respect of the outstanding equity interests of any other constituent Grantor; provided that if the surviving or resulting Grantor upon any such merger or consolidation involving an issuer which is a Controlled Foreign Corporation, then Grantor shall only be required to pledge equity interests in accordance with Section 2.2; and

(iv) Grantor consents to the grant by each other Loan Party of a security interest in all Investment Related Property to the Administration Agent and, without limiting the foregoing, consents to the transfer of any Pledged Partnership Interest and any Pledged LLC Interest to the Administration Agent or its nominee following the occurrence and during the continuation of an Event of Default and to the substitution of the Administration Agent or its nominee as a partner in any partnership or as a member in any limited liability company with all the rights and powers related thereto.

#### **4.4.3 Pledged Debt**

(a) Representations and Warranties. Grantor hereby represents and warrants, on each date of Accommodation, that:

(i) All Pledged Debt has been duly authorized, authenticated or issued, and delivered and is the legal, valid and binding obligation of the issuers thereof and is not in default and constitutes all of the issued and outstanding inter-company Debt;

(b) Covenants and Agreements. Grantor hereby covenants and agrees that:

(i) it shall notify the Administration Agent of any default under any Pledged Debt that has caused, either in any individual case or in the aggregate, a Material Adverse Change.

#### 4.4.4 Investment Accounts

(a) Representations and Warranties. Grantor hereby represents and warrants, on each date of Accommodation, that:

(i) Grantor is the sole entitlement holder of each Securities Account and Commodity Account, and Grantor has not consented to, and is not otherwise aware of, any Person (other than the Administration Agent pursuant hereto) having "control" (within the meanings of Sections 8-106 and 9-106 of the UCC) over, or any other interest in, any such Securities Account or Commodity Account or securities or other property credited thereto;

(ii) Grantor is the sole account holder of each Deposit Account and Grantor has not consented to, and is not otherwise aware of, any Person (other than the Administration Agent pursuant hereto) having either sole dominion and control (within the meaning of common law) or "control" (within the meanings of Section 9-104 of the UCC) over, or any other interest in, any such Deposit Account or any money or other property deposited therein; and

(iii) Grantor has taken all actions necessary, including those specified in Section 4.4.4(c), to: (a) establish Administration Agent's "control" (within the meanings of Sections 8-106 and 9-106 of the UCC) over any portion of the Investment Related Property constituting Certificated Securities, Uncertificated Securities, Securities Accounts, Securities Entitlements or Commodities Accounts (each as defined in the UCC); (b) establish the Administration Agent's "control" (within the meaning of Section 9-104 of the UCC) over all Deposit Accounts; and (c) deliver all Instruments to the Administration Agent; provided, it being understood that Grantor is only required to establish Administration Agent's "control" over any Securities Accounts, Securities Entitlements, Commodities Accounts or Deposit Accounts promptly after the earlier of the Administration Agent's reasonable request or the occurrence and continuation of an Event of Default.

(b) Covenant and Agreement. Grantor hereby covenants and agrees with the Administration Agent and each other Secured Party that it shall not close or terminate any Investment Account without the prior consent of the Administration Agent and unless a successor or replacement account has been established with the consent of the Administration Agent with respect to which successor or replacement account a control agreement has been entered into by the appropriate Grantor, Administration Agent and securities intermediary or depository institution at which such successor or replacement account is to be maintained in accordance with the provisions of Section 4.4.4(c).

(c) Delivery and Control

(i) With respect to any Investment Related Property consisting of Securities Accounts or Securities Entitlements, promptly after the earlier of the

Administration Agent's reasonable request or the occurrence and continuation of an Event of Default, it shall cause the securities intermediary maintaining such Securities Account or Securities Entitlement to enter into an agreement substantially in the form of Exhibit C hereto or an agreement reasonably acceptable to the Administration Agent pursuant to which it shall agree to comply with the Administration Agent's "entitlement orders" without further consent by Grantor. With respect to any Investment Related Property that is a "Deposit Account," promptly after the earlier of the Administration Agent's reasonable request or the occurrence and continuation of an Event of Default, it shall cause the depository institution maintaining such account to enter into an agreement substantially in the form of Exhibit D hereto or an agreement reasonably acceptable to the Administration Agent, pursuant to which the Administration Agent shall have both sole dominion and control over such Deposit Account (within the meaning of the common law) and "control" (within the meaning of Section 9-104 of the UCC) over such Deposit Account.

In addition to the foregoing, if any issuer of any Investment Related Property is located in a jurisdiction outside of the United States, Grantor shall take such additional actions, including, without limitation, causing the issuer to register the pledge on its books and records or making such filings or recordings, in each case as may be necessary, under the laws of such issuer's jurisdiction to insure the validity, perfection and priority of the security interest of the Administration Agent. Upon the occurrence and during the continuation of an Event of Default, the Administration Agent shall have the right, without notice to Grantor, to transfer in accordance with applicable law all or any portion of the Investment Related Property to its name or the name of its nominee or agent. In addition, the Administration Agent shall have the right at any time, without notice to Grantor, to exchange in accordance with applicable law any certificates or instruments representing any Investment Related Property for certificates or instruments of smaller or larger denominations.

**4.5 [Reserved].**

**4.6 Letter of Credit Rights.**

(a) Representations and Warranties. Grantor hereby represents and warrants, on each date of Accommodation, that:

(i) all material letters of credit to which Grantor has rights is listed on Schedule 4.6 (as such schedule may be amended or supplemented from time to time) hereto; and

(ii) it has obtained the consent of each issuer of any material letter of credit to the collateral assignment of the proceeds of the letter of credit to the Administration Agent.

(b) Covenants and Agreements. Grantor hereby covenants and agrees that with respect to any material letter of credit hereafter arising it shall obtain the consent of the issuer thereof to the collateral assignment of the proceeds of the letter of credit to the Administration Agent and shall deliver to the Administration Agent a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto.

#### 4.7 Intellectual Property.

(a) Representations and Warranties. Except as disclosed in Schedule 4.7(H) (as such schedule may be amended or supplemented from time to time), Grantor hereby represents and warrants, on each date of Accommodation, that:

(i) Schedule 4.7 (as such schedule may be amended or supplemented from time to time) sets forth a true and complete list of (i) all United States, state and foreign registrations of and applications for Patents, Trademarks, and Copyrights owned by Grantor and (ii) all Patent Licenses, Trademark Licenses, Trade Secret Licenses and Copyright Licenses material to the business of Grantor;

(ii) it is the sole and exclusive owner of the entire right, title, and interest in and to all Intellectual Property listed on Schedule 4.7 (as such schedule may be amended or supplemented from time to time), and owns or has the valid right to use all other Intellectual Property used in or necessary to conduct its business, free and clear of all Liens, claims, encumbrances and licenses, except for Permitted Liens, or as described on Schedule 4.1(E) and the licenses set forth on Schedule 4.7(B), (D), (E) and (G) (as each may be amended or supplemented from time to time);

(iii) all Intellectual Property is subsisting and has not been adjudged invalid or unenforceable, in whole or in part, and Grantor has performed all acts and has paid all renewal, maintenance, and other fees and taxes required to maintain each and every registration and application of Copyrights, Patents and Trademarks in full force and effect;

(iv) all Intellectual Property is valid and enforceable; no holding, decision, or judgment has been rendered in any action or proceeding before any court or Administration authority challenging the validity of, Grantor's right to register, or Grantor's rights to own or use, any Intellectual Property and no such action or proceeding is pending or, to the best of Grantor's knowledge, threatened;

(v) all registrations and applications for Copyrights, Patents and Trademarks are standing in the name of Grantor, and none of the Trademarks, Patents, Copyrights or Trade Secrets has been licensed by Grantor to any Affiliate or third party, except as disclosed in Schedule 4.7(B), (D), (E), or (G) (as each may be amended or supplemented from time to time);

(vi) Grantor has been using appropriate statutory notice of registration in connection with its use of registered Trademarks, proper marking practices in connection with the use of Patents, and appropriate notice of copyright in connection with the publication of Copyrights material to the business of Grantor;

(vii) Grantor uses adequate standards of quality in the manufacture, distribution, and sale of all products sold and in the provision of all services rendered under or in connection with all Trademark Collateral and has taken all action necessary to insure that all licensees of the Trademark Collateral owned by Grantor use such adequate standards of quality;

(viii) to Grantor's knowledge, the conduct of Grantor's business does not infringe upon or otherwise violate any trademark, patent, copyright, trade secret or

other intellectual property right owned or controlled by a third party; no claim has been received by Grantor that the use of any Intellectual Property owned or used by Grantor (or any of its respective licensees) violates the asserted rights of any third party;

(ix) to Grantor's knowledge, no third party is infringing upon or otherwise violating any rights in any Intellectual Property owned or used by Grantor, or any of its respective licensees;

(x) no settlement or consents, covenants not to sue, nonassertion assurances, or releases have been entered into by Grantor or to which Grantor is bound that materially and adversely affect Grantor's rights to own or use any Intellectual Property; and

(xi) Grantor has not made a previous assignment, sale, transfer or agreement constituting a present or future assignment, sale, transfer or agreement of any Intellectual Property that has not been terminated or released. There is no effective financing statement or other document or instrument now executed, or on file or recorded in any public office, granting a security interest in or otherwise encumbering any part of the Intellectual Property, other than in favor of the Administration Agent or as described on Schedule 4.1(E).

(b) Covenants and Agreements. Grantor hereby covenants and agrees as follows:

(i) [reserved];

(ii) it shall not, with respect to any Trademarks which are material to the business of Grantor, cease the use of any of such Trademarks or fail to maintain the level of the quality of products sold and services rendered under any of such Trademark at a level at least substantially consistent with the quality of such products and services as of the date hereof, and Grantor shall take all commercially reasonable steps necessary to insure that licensees of such Trademarks use such consistent standards of quality;

(iii) [reserved];

(iv) it shall promptly notify the Administration Agent if it knows or has reason to know that any item of the Intellectual Property that is material to the business of Grantor may become (a) abandoned or dedicated to the public or placed in the public domain, (b) invalid or unenforceable, or (c) subject to any adverse determination or development (including the institution of proceedings) in any action or proceeding in the United States Patent and Trademark Office, the United States Copyright Office, any state registry, any foreign counterpart of the foregoing, or any court;

(v) [reserved];

(vi) in the event that any Intellectual Property owned by or exclusively licensed to Grantor is infringed, misappropriated, or diluted by a third party, Grantor shall promptly take all commercially reasonable actions to stop such infringement, misappropriation, or dilution and protect its rights in such Intellectual Property including, but not limited to, the initiation of a suit for injunctive relief and to recover damages;

(vii) it shall promptly (but in no event more than thirty (30) days after Grantor obtains knowledge thereof) report to the Administration Agent (i) the filing of any application to register any Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office, or any state registry or foreign counterpart of the foregoing (whether such application is filed by Grantor or through any agent, employee, licensee, or designee thereof) and (ii) the registration of any Intellectual Property by any such office, in each case by executing and delivering to the Administration Agent a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto;

(viii) it shall, promptly upon the reasonable request of the Administration Agent, execute and deliver to the Administration Agent any document required to acknowledge, confirm, register, record, or perfect the Administration Agent's interest in any part of the Intellectual Property, whether now owned or hereafter acquired;

(ix) except with the prior consent of the Administration Agent or as permitted under the Credit Agreement, Grantor shall not execute, and there will not be on file in any public office, any financing statement or other document or instruments, except financing statements or other documents or instruments filed or to be filed in favor of the Administration Agent or as described on Schedule 4.1(E) and Grantor shall not sell, assign, transfer, license, grant any option, or create or suffer to exist any Lien upon or with respect to the Intellectual Property, except for the Lien created by and under this Agreement and the other Loan Documents or as described on Schedule 4.1(E);

(x) [reserved];

(xi) it shall take all steps commercially reasonably necessary to protect the secrecy of all Trade Secrets, including, without limitation, entering into confidentiality agreements with employees and labeling and restricting access to secret information and documents;

(xii) it shall use proper statutory notice in connection with its use of any of the Intellectual Property; and

(xiii) it shall continue to collect, at its own expense, all amounts due or to become due to Grantor in respect of the Intellectual Property or any portion thereof. In connection with such collections, Grantor may take (and, at the Administration Agent's reasonable direction, shall take) such action as Grantor or the Administration Agent may deem reasonably necessary to enforce collection of such amounts. Notwithstanding the foregoing, the Administration Agent shall have the right at any time following the occurrence and during the continuation of an Event of Default, to notify, or require Grantor to notify, any obligors with respect to any such amounts of the existence of the security interest created hereby.

#### **4.8 Commercial Tort Claims**

(a) Representations and Warranties. Grantor hereby represents and warrants, on each date of Accommodation, that Schedule 4.8 (as such schedule may be amended or supplemented from time to time) sets forth all Commercial Tort Claims of Grantor; and

(b) Covenants and Agreements. Grantor hereby covenants and agrees that with respect to any Commercial Tort Claim hereafter arising it shall deliver to the Administration Agent a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto, identifying such new Commercial Tort Claims.

## **SECTION 5. ACCESS; RIGHT OF INSPECTION AND FURTHER ASSURANCES.**

**5.1 Access; Right of Inspection.** The Administration Agent shall at all times have full and free access during normal business hours upon reasonable prior notice to all the books, correspondence and records of Grantor, and the Administration Agent and its representatives may examine the same, take extracts therefrom and make photocopies thereof, and Grantor agrees to render to the Administration Agent, at Grantor's cost and expense, such clerical and other assistance as may be reasonably requested with regard thereto. The Administration Agent and its representatives shall at all times upon reasonable prior notice also have the right to enter any premises of Grantor and inspect any property of Grantor where any of the Collateral of Grantor granted pursuant to this Agreement is located for the purpose of inspecting the same, observing its use or otherwise protecting its interests therein.

### **5.2 Further Assurances.**

(a) Grantor agrees that from time to time, at the expense of Grantor, that it shall promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary, or that the Administration Agent may reasonably request, in order to create and/or maintain the validity, perfection or priority of and protect any security interest granted hereby or to enable the Administration Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, Grantor shall:

(i) file such financing or continuation statements, or amendments thereto, and execute and deliver such other agreements, instruments, endorsements, powers of attorney or notices, as may be necessary, or as the Administration Agent may reasonably request, in order to perfect and preserve the security interests granted or purported to be granted hereby;

(ii) take all actions necessary to ensure the recordation of appropriate evidence of the liens and security interest granted hereunder in the Intellectual Property with any intellectual property registry in which said Intellectual Property is registered or in which an application for registration is pending including, without limitation, the United States Patent and Trademark Office, the United States Copyright Office, the various Secretaries of State, and the foreign counterparts on any of the foregoing;

(iii) at any reasonable time during Grantor's regular business hours and upon reasonable prior notice, upon request by the Administration Agent, assemble the Collateral and allow inspection of the Collateral by the Administration Agent, or persons designated by the Administration Agent; and

(iv) at the Administration Agent's request, appear in and defend any action or proceeding that may affect Grantor's title to or the Administration Agent's security interest in all or any part of the Collateral.

(b) Grantor hereby authorizes the Administration Agent to file a Record or Records, including, without limitation, financing or continuation statements, and amendments thereto, in any jurisdictions and with any filing offices as the Administration Agent may determine, in its sole discretion, are necessary to perfect the security interest granted to the Administration Agent herein. Such financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as the Administration Agent may reasonably determine is necessary, advisable or prudent to ensure the perfection of the security interest in the Collateral granted to the Administration Agent herein, including, without limitation, describing such property as "all assets" or "all personal property, whether now owned or hereafter acquired." Grantor shall furnish to the Administration Agent from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Administration Agent may reasonably request, all in reasonable detail.

(c) Grantor hereby authorizes the Administration Agent to modify this Agreement after obtaining Grantor's approval of or signature to such modification by amending Schedule 4.7 (as such schedule may be amended or supplemented from time to time) to include reference to any right, title or interest in any existing Intellectual Property or any Intellectual Property acquired or developed by Grantor after the execution hereof or to delete any reference to any right, title or interest in any Intellectual Property in which Grantor no longer has or claims any right, title or interest.

#### **SECTION 6. ADMINISTRATION AGENT APPOINTED ATTORNEY-IN-FACT.**

**6.1 Power of Attorney.** Grantor hereby irrevocably appoints the Administration Agent (such appointment being coupled with an interest) as Grantor's attorney-in-fact, with full authority in the place and stead of Grantor and in the name of Grantor, the Administration Agent or otherwise, from time to time in the Administration Agent's discretion to take any action and to execute any instrument that the Administration Agent may deem reasonably necessary to accomplish the purposes of this Agreement, including, without limitation, the following:

(a) upon the occurrence and during the continuance of any Event of Default, to obtain and adjust insurance required to be maintained by Grantor or paid to the Administration Agent pursuant to the Credit Agreement;

(b) upon the occurrence and during the continuance of any Event of Default, to ask for, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral;

(c) upon the occurrence and during the continuance of any Event of Default, to receive, endorse and collect any drafts or other instruments, documents and chattel paper in connection with clause (b) above;

(d) upon the occurrence and during the continuance of any Event of Default, to file any claims or take any action or institute any proceedings that the Administration Agent may deem necessary for the collection of any of the Collateral or otherwise to enforce the rights of the Administration Agent with respect to any of the Collateral;

(e) to prepare and file any UCC financing statements against Grantor as debtor;



(f) to prepare, sign, and file for recordation in any intellectual property registry, appropriate evidence of the lien and security interest granted herein in the Intellectual Property in the name of Grantor as debtor;

(g) upon the occurrence and during the continuation of an Event of Default, to take or cause to be taken all actions necessary to perform or comply or cause performance or compliance with the terms of this Agreement, including, without limitation, access to pay or discharge taxes or Liens (other than Permitted Liens) levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by the Administration Agent in its sole discretion, any such payments made by the Administration Agent to become obligations of Grantor to the Administration Agent, due and payable immediately without demand; and

(h) upon the occurrence and during the continuation of an Event of Default, generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Administration Agent were the absolute owner thereof for all purposes, and to do, at the Administration Agent's option and Grantor's expense, at any time or from time to time, all acts and things that the Administration Agent deems reasonably necessary to protect, preserve or realize upon the Collateral and the Administration Agent's security interest therein in order to effect the intent of this Agreement, all as fully and effectively as Grantor might do.

**6.2 No Duty on the Part of Administration Agent or Secured Parties.** The powers conferred on the Administration Agent hereunder are solely to protect the interests of the Secured Parties in the Collateral and shall not impose any duty upon the Administration Agent or any Secured Party to exercise any such powers. The Administration Agent and the Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

## **SECTION 7. REMEDIES.**

### **7.1 Generally.**

(a) If any Event of Default shall have occurred and be continuing, the Administration Agent may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it at law or in equity, all the rights and remedies of the Administration Agent on default under the UCC (whether or not the UCC applies to the affected Collateral) to collect, enforce or satisfy any Secured Obligations then owing, whether by acceleration or otherwise, and also may pursue any of the following separately, successively or simultaneously, in accordance with applicable law:

(i) require Grantor to, and Grantor hereby agrees that it shall at its expense and promptly upon request of the Administration Agent forthwith, assemble all or part of the Collateral as directed by the Administration Agent and make it available to the Administration Agent at a place to be designated by the Administration Agent that is reasonably convenient to both parties;

(ii) subject to the rights of third parties (including landlords, lessors and mortgages), enter onto the property where any Collateral is located and take possession thereof with or without judicial process;

(iii) prior to the disposition of the Collateral, store, process, repair or recondition the Collateral or otherwise prepare the Collateral for disposition in any manner to the extent the Administration Agent deems appropriate; and

(iv) without notice except as specified below or under the UCC, sell, assign, lease, license (on an exclusive or nonexclusive basis) or otherwise dispose of the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Administration Agent's offices or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as are commercially reasonable.

(b) The Administration Agent or any Secured Party may be the purchaser of any or all of the Collateral at any public or private (to the extent to the portion of the Collateral being privately sold is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations) sale in accordance with the UCC and the Administration Agent, as Administration agent for and representative of the Secured Parties, shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale made in accordance with the UCC, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any Collateral payable by the Administration Agent at such sale. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of Grantor, and Grantor hereby waives (to the extent permitted by applicable law) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Grantor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days notice to Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Administration Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Administration Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Grantor agrees that it would not be commercially unreasonable for the Administration Agent to dispose of the Collateral or any portion thereof by using Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets. Grantor hereby waives any claims against the Administration Agent arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if the Administration Agent accepts the first offer received and does not offer such Collateral to more than one offeree. If the proceeds of any sale or other disposition of the Collateral are insufficient to pay all the Secured Obligations, Grantor shall be liable for the deficiency and the fees of any attorneys employed by the Administration Agent to collect such deficiency. Grantor further agrees that a breach of any of the covenants contained in this Section will cause irreparable injury to the Administration Agent, that the Administration Agent has no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section shall be specifically enforceable against Grantor, and Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no default has occurred and is continuing giving rise to the

Secured Obligations becoming due and payable prior to their stated maturities. Nothing in this Section shall in any way alter the rights of the Administration Agent hereunder.

(c) The Administration Agent may sell the Collateral without giving any warranties as to the Collateral. The Administration Agent may specifically disclaim or modify any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(d) The Administration Agent shall have no obligation to marshal any of the Collateral.

**7.2 Application of Proceeds.** Except as expressly provided elsewhere in this Agreement or by applicable law, all proceeds received by the Administration Agent in respect of any sale, any collection from, or other realization upon all or any part of the Collateral after the occurrence and during the continuation of an Event of Default shall be applied in full or in part by the Administration Agent against, the Secured Obligations in the following order of priority: first, to the payment of all costs and expenses of such sale, collection or other realization, including reasonable compensation to the Administration Agent and its agents and counsel, and all other expenses, liabilities and advances made or incurred by the Administration Agent in connection therewith, and all amounts for which the Administration Agent is entitled to indemnification hereunder (in its capacity as the Administration Agent and not as a Lender) and all advances made by the Administration Agent hereunder for the account of the applicable Grantor, and to the payment of all costs and expenses paid or incurred by the Administration Agent in connection with the exercise of any right or remedy hereunder or under the Credit Agreement, all in accordance with the terms hereof or thereof; second, to the extent of any excess of such proceeds, to the payment of all other Secured Obligations for the ratable benefit of the Lenders and the Lender Counterparties; and third, to the extent of any excess of such proceeds, to the payment to or upon the order of Grantor or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

**7.3 Sales on Credit.** If after the occurrence and during the continuation of an Event of Default the Administration Agent sells any of the Collateral upon credit, Grantor will be credited only with payments actually made by purchaser and received by Administration Agent and applied to indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Administration Agent may resell the Collateral and Grantor shall be credited with proceeds of the sale.

**7.4 Deposit Accounts.**

If any Event of Default shall have occurred and be continuing, the Administration Agent may apply the balance from any Deposit Account or instruct the bank at which any Deposit Account is maintained to pay the balance of any Deposit Account to or for the benefit of the Administration Agent.

**7.5 Investment Related Property.**

Grantor recognizes that, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws, the Administration Agent may be compelled, with respect to any sale of all or any part of the Investment Related Property conducted without prior registration or qualification of such Investment Related Property under the Securities Act and/or such state securities laws, to limit purchasers to those who will agree, among other things, to acquire the

Investment Related Property for their own account, for investment and not with a view to the distribution or resale thereof. Grantor acknowledges that any such private sale may be at prices and on terms less favorable than those obtainable through a public sale without such restrictions (including a public offering made pursuant to a registration statement under the Securities Act) and, notwithstanding such circumstances, Grantor agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner and that the Administration Agent shall have no obligation to engage in public sales and no obligation to delay the sale of any Investment Related Property for the period of time necessary to permit the issuer thereof to register it for a form of public sale requiring registration under the Securities Act or under applicable state securities laws, even if such issuer would, or should, agree to so register it. If the Administration Agent determines to exercise its right to sell any or all of the Investment Related Property, upon written request, Grantor shall and shall cause each issuer of any Pledged Stock to be sold hereunder, each partnership and each limited liability company from time to time to furnish to the Administration Agent all such information as the Administration Agent may request in order to determine the number and nature of interest, shares or other instruments included in the Investment Related Property which may be sold by the Administration Agent in exempt transactions under the Securities Act and the rules and regulations of the Securities and Exchange Commission thereunder, as the same are from time to time in effect.

#### **7.6 Intellectual Property.**

(a) Anything contained herein to the contrary notwithstanding, upon the occurrence and during the continuation of an Event of Default:

(i) the Administration Agent shall have the right (but not the obligation) to bring suit or otherwise commence any action or proceeding in the name of Grantor, the Administration Agent or otherwise, in the Administration Agent's sole discretion, to enforce any Intellectual Property, in which event Grantor shall, at the request of the Administration Agent, do any and all lawful acts and execute any and all documents required by the Administration Agent in aid of such enforcement and Grantor shall promptly, upon demand, reimburse and indemnify the Administration Agent as provided in Section 10 hereof in connection with the exercise of its rights under this Section, and, to the extent that the Administration Agent shall elect not to bring suit to enforce any Intellectual Property as provided in this Section, Grantor agrees to use all reasonable measures, whether by action, suit, proceeding or otherwise, to prevent the infringement or other violation of any of Grantor's rights in the Intellectual Property by others and for that purpose agrees to diligently maintain any action, suit or proceeding against any Person so infringing as shall be necessary to prevent such infringement or violation;

(ii) upon written demand from the Administration Agent, Grantor shall grant, assign, convey or otherwise transfer to the Administration Agent an absolute assignment of all of Grantor's right, title and interest in and to the Intellectual Property and shall execute and deliver to the Administration Agent such documents as are necessary or appropriate to carry out the intent and purposes of this Agreement;

(iii) Grantor agrees that such an assignment and/or recording shall be applied to reduce the Secured Obligations outstanding only to the extent that the Administration Agent (or any Secured Party) receives cash proceeds in respect of the sale or license of, or other realization upon, the Intellectual Property;

(iv) within five (5) Business Days after written notice from the Administration Agent, Grantor shall make available to the Administration Agent, to the extent commercially reasonable and within Grantor's power and authority, such personnel in Grantor's employ on the date of such Event of Default as the Administration Agent may reasonably designate, by name, title or job responsibility, to permit Grantor to continue, directly or indirectly, to produce, advertise and sell the products and services sold or delivered by Grantor under or in connection with the Trademarks, Trademark Licenses, such persons to be available to perform their prior functions on the Administration Agent's behalf and to be compensated by the Administration Agent at Grantor's expense on a per diem, pro-rata basis consistent with the salary and benefit structure applicable to each as of the date of such Event of Default; and

(v) the Administration Agent shall have the right to notify, or require Grantor to notify, any obligors with respect to amounts due or to become due to Grantor in respect of the Intellectual Property, of the existence of the security interest created herein, to direct such obligors to make payment of all such amounts directly to the Administration Agent, and, upon such notification and at the expense of Grantor, to enforce collection of any such amounts and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as Grantor might have done;

- (1) all amounts and proceeds (including checks and other instruments) received by Grantor in respect of amounts due to Grantor in respect of the Collateral or any portion thereof shall be received in trust for the benefit of the Administration Agent hereunder, shall be segregated from other funds of Grantor and shall be forthwith paid over or delivered to the Administration Agent in the same form as so received (with any necessary endorsement) to be held as cash Collateral and applied as provided by Section 7.7 hereof; and
- (2) Grantor shall not adjust, settle or compromise the amount or payment of any such amount or release wholly or partly any obligor with respect thereto or allow any credit or discount thereon.

(b) If (i) an Event of Default shall have occurred and, by reason of cure, waiver, modification, amendment or otherwise, no longer be continuing, (ii) no other Event of Default shall have occurred and be continuing, (iii) an assignment or other transfer to the Administration Agent of any rights, title and interests in and to the Intellectual Property shall have been previously made and shall have become absolute and effective, and (iv) the Secured Obligations shall not have become immediately due and payable, upon the written request of Grantor, the Administration Agent shall promptly execute and deliver to Grantor, at Grantor's sole cost and expense, such assignments or other transfer as may be necessary to reassign to Grantor any such rights, title and interests as may have been assigned to the Administration Agent as aforesaid, subject to any disposition thereof that may have been made by the Administration Agent; provided, after giving effect to such reassignment, the Administration Agent's security interest granted pursuant hereto, as well as all other rights and remedies of the Administration Agent granted hereunder, shall continue to be in full force and effect; and provided further, the rights, title and interests so reassigned shall be free and clear of any other Liens granted by or on behalf of the Administration Agent and the Secured Parties.

(c) Solely for the purpose of enabling the Administration Agent to exercise rights and remedies under this Section 7 and at such time as the Administration Agent shall be lawfully entitled to exercise such rights and remedies, Grantor hereby grants to the

Administration Agent, to the extent it has the right to do so, an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to Grantor), subject, in the case of Trademarks, to sufficient rights to quality control and inspection in favor of Grantor to avoid the risk of invalidation of said Trademarks, to use, operate under, license, or sublicense any Intellectual Property now owned or hereafter acquired by Grantor, and wherever the same may be located.

**7.7 Cash Proceeds.** In addition to the rights of the Administration Agent specified in Section 4.3 with respect to payments of Receivables after the occurrence and during the continuation of an Event of Default, all proceeds of any Collateral received by Grantor after the occurrence and during the continuation of an Event of Default consisting of cash, checks and other non-cash items (collectively, "**Cash Proceeds**") shall be held by Grantor in trust for the Administration Agent, segregated from other funds of Grantor, and shall, forthwith upon receipt by Grantor, unless otherwise provided pursuant to Section 4.4(a)(ii), be turned over to the Administration Agent in the exact form received by Grantor (duly indorsed by Grantor to the Administration Agent, if required) and held by the Administration Agent in the Collateral Account. Any Cash Proceeds so received by the Administration Agent (whether from a Grantor or otherwise) after an Event of Default shall have occurred and be continuing, may, in the sole discretion of the Administration Agent, (A) be held by the Administration Agent for the ratable benefit of the Secured Parties, as collateral security for the Secured Obligations (whether matured or unmatured) and/or (B) then or at any time thereafter may be applied by the Administration Agent against the Secured Obligations then due and owing.

## **SECTION 8. ADMINISTRATION AGENT.**

The Administration Agent has been appointed to act as Administration Agent hereunder by Lenders and, by their acceptance of the benefits hereof, the other Secured Parties. The Administration Agent shall be obligated, and shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action (including, without limitation, the release or substitution of Collateral), solely in accordance with this Agreement and the Credit Agreement; provided, the Administration Agent shall, after payment in full of all Obligations under the Credit Agreement and the other Loan Documents, exercise, or refrain from exercising, any remedies provided for herein in accordance with the instructions of the holders of a majority of the aggregate notional amount (or, with respect to any Hedge Agreement that has been terminated in accordance with its terms, the amount then due and payable (exclusive of expenses and similar payments but including any early termination payments then due) under such Hedge Agreement) under all Hedge Agreements. In furtherance of the foregoing provisions of this Section, each Secured Party, by its acceptance of the benefits hereof, agrees that it shall have no right individually to realize upon any of the Collateral hereunder, it being understood and agreed by such Secured Party that all rights and remedies hereunder may be exercised solely by the Administration Agent for the benefit of Secured Parties in accordance with the terms of this Section. Administration Agent may resign, be removed and/or replaced in accordance with Section 11.08 of the Credit Agreement. Upon the acceptance of any appointment as Administration Agent under the Credit Agreement by a successor Administration Agent, in addition to the rights, powers, privileges and duties set forth in Section 11.08 of the Credit Agreement, the retiring or removed Administration Agent under this Agreement shall promptly (i) transfer to such successor Administration Agent all sums, Securities and other items of Collateral held hereunder, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administration Agent under this Agreement, and (ii) execute and deliver to such successor Administration Agent or otherwise authorize the filing of such amendments to

financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Administration Agent of the security interests created hereunder.

#### **SECTION 9. CONTINUING SECURITY INTEREST; TRANSFER OF LOANS.**

This Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect until the payment in full of all Secured Obligations, the cancellation or termination of the Commitments and the cancellation or expiration of all outstanding Banker's Acceptances and Documentary Credits, be binding upon Grantor, its successors and assigns, and inure, together with the rights and remedies of the Administration Agent hereunder, to the benefit of the Administration Agent and its successors, transferees and assigns. Without limiting the generality of the foregoing, but subject to the terms of the Credit Agreement, any Lender may assign or otherwise transfer any Loans held by it to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to Lenders herein or otherwise. Upon the payment in full of all Secured Obligations, the cancellation or termination of the Commitments and the cancellation or expiration of all outstanding Banker's Acceptances and Documentary Credits, the security interest granted hereby shall terminate hereunder and of record and all rights to the Collateral shall revert to Grantor. Upon any such termination the Administration Agent shall, at Grantor's expense, execute and deliver to Grantor such documents as Grantor shall reasonably request to evidence such termination.

#### **SECTION 10. STANDARD OF CARE; ADMINISTRATION AGENT MAY PERFORM.**

The powers conferred on the Administration Agent hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the exercise of reasonable care in the custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder and compliance with applicable law, the Administration Agent shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral. The Administration Agent shall be deemed to have exercised reasonable care in the custody and preservation of Collateral in its possession if such Collateral is accorded treatment substantially equal to that which the Administration Agent accords its own property of similar kind. Neither the Administration Agent nor any of its directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon all or any part of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of Grantor or otherwise. If Grantor fails to perform any agreement contained herein, the Administration Agent may itself perform, or cause performance of, such agreement, and the expenses of the Administration Agent incurred in connection therewith shall be payable by Grantor under Section 12.06 of the Credit Agreement.

#### **SECTION 11. MISCELLANEOUS.**

Any notice required or permitted to be given under this Agreement shall be given in accordance with Section 12.04 of the Credit Agreement. No failure or delay on the part of the Administration Agent in the exercise of any power, right or privilege hereunder or under any other Loan Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement and the other Loan Documents

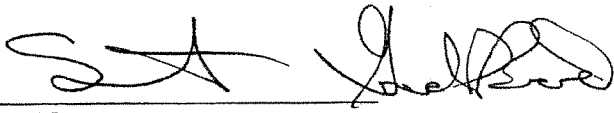
are cumulative to, and not exclusive of, any rights or remedies otherwise available. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists. This Agreement shall be binding upon and inure to the benefit of the Administration Agent and Grantor and their respective successors and assigns. Grantor shall not, without the prior written consent of the Administration Agent given in accordance with the Credit Agreement, assign any right, duty or obligation hereunder. This Agreement and the other Loan Documents embody the entire agreement and understanding between Grantor and the Administration Agent and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties. This Agreement may be executed in one or more counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

**THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF INDIANA.**



IN WITNESS WHEREOF, Grantor and the Administration Agent have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**THE TRADER ENTERPRISES, INC.**

By:   
Name:  
Title:

**THE TORONTO-DOMINION BANK,**  
as the Administration Agent

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, Grantor and the Administration Agent have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**THE TRADER ENTERPRISES, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**THE TORONTO-DOMINION BANK,  
as the Administration Agent**

By: \_\_\_\_\_  
Name: *Joseph Carbonneau*  
Title: *VICE PRESIDENT*

SCHEDULE 4.1  
TO PLEDGE AND SECURITY AGREEMENT

**GENERAL INFORMATION**

(A) Full Legal Name, Type of Organization, Jurisdiction of Organization, Chief Executive Office/Sole Place of Business (or Residence if Grantor is a Natural Person) and Organizational Identification Number of Grantor:

<u>Full Legal Name</u>	<u>Type of Organization</u>	<u>Jurisdiction of Organization</u>	<u>Chief Executive Office/Sole Place of Business (or Residence if Grantor is a Natural Person)</u>	<u>Organization I.D.#</u>
The Trader Enterprises, Inc.	Corporation	Indiana	11907 Exit 5 Parkway Fishers, IN 46038	198205-538

(B) Other Names (including any Trade-Name or Fictitious Business Name) under which Grantor has conducted business for the past five (5) years:

<u>Full Legal Name</u>	<u>Trade Name or Fictitious Business Name</u>
------------------------	---

Not applicable.

(C) Changes in Name, Jurisdiction of Organization, Chief Executive Office or Sole Place of Business (or Principal Residence if Grantor is a Natural Person) and Corporate Structure within past five (5) years:

<u>Name of Grantor</u>	<u>Date of Change</u>	<u>Description of Change</u>
The Trader Enterprises, Inc.	May, 2000	Change of Chief Executive Office from  5610 E Washington St. Indianapolis, IN 46219  To:  11907 Exit 5 Parkway Fishers, IN 46038

(D) Financing Statements:

<u>Name of Grantor</u>	<u>Filing Jurisdiction(s)</u>
The Trader Enterprises, Inc.	Indiana

(E) Existing Financing Statements:

<u>Name of Grantor</u>	<u>Filing Jurisdiction(s)</u>
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UCC Filings

<u>Name of Grantor</u>	<u>Secured Party</u>	<u>Filing Number</u>	<u>File Date</u>	<u>Jurisdiction of Filing</u>	<u>Description of Collateral</u>
Trader Enterprises, Inc.	Fuji Photo Film U.S.A., Inc.	200100002690414	5/24/01	Indiana	Fuji Film Graphic Equipment

IP Filings

<u>Name of Grantor</u>	<u>Secured Party</u>	<u>App. No. / Reg. No.</u>	<u>Recorded</u>	<u>Description of IP</u>
The Trader Enterprises, Inc.	Montreal Trust Company of Canada	2,099,725	5/13/97	PEDDLER'S POST
The Trader Enterprises, Inc.	Montreal Trust Company of Canada	2,186,120	5/13/97	THE TRADER PAPER & Design
The Trader Enterprises, Inc.	Montreal Trust Company of Canada	2,084,520	5/13/97	ADWATCH
The Trader Enterprises, Inc.	Montreal Trust Company of Canada	74/437,425	5/13/97	TRADERS' CONNECTION
The Trader Enterprises, Inc.	Montreal Trust Company of Canada	74/444,040	5/13/97	TRADERS' CONNECTION & Design
The Trader Enterprises, Inc.	The Bank of Nova Scotia	2,186,120	4/6/95	THE TRADER PAPER & Design

SCHEDULE 4.2  
TO PLEDGE AND SECURITY AGREEMENT

Name of Grantor

The Trader Enterprises, Inc.

Location of Equipment and Inventory

North Carolina

SCHEDULE 4.2-1

**TRADEMARK**  
**REEL: 002837 FRAME: 0921**

SCHEDULE 4.4  
TO PLEDGE AND SECURITY AGREEMENT

**INVESTMENT RELATED PROPERTY**

(A) Pledged Stock: Not applicable.

Grantor	Stock Issuer	Class of Stock	Certificated (Y/N)	Stock Certificate No.	Par Value	No. of Pledged Stock	% of Outstanding Stock of the Stock Issuer

Pledged LLC Interests: Not applicable.

Grantor	Limited Liability Company	Certificated (Y/N)	Certificate No. (if any)	No. of Pledged Units	% of Outstanding LLC Interests of the Limited Liability Company

Pledged Partnership Interests: Not applicable.

Grantor	Partnership	Type of Partnership Interests (e.g., general or limited)	Certificated (Y/N)	Certificate No. (if any)	% of Outstanding Partnership Interests of the Partnership

Pledged Trust Interests: Not applicable.

Grantor	Trust	Class of Trust Interests	Certificated (Y/N)	Certificate No. (if any)	% of Outstanding Trust Interests of the Trust

(B) Not applicable.

Name of Grantor	Date of Acquisition	Description of Acquisition
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SCHEDULE 4.4-2

**TRADEMARK**  
**REEL: 002837 FRAME: 0923**

SCHEDULE 4.6  
TO PLEDGE AND SECURITY AGREEMENT

Name of Grantor

Description of Letters of Credit

Not applicable.

SCHEDULE 4.6-1

**TRADEMARK**  
**REEL: 002837 FRAME: 0924**



SCHEDULE 4.7  
TO PLEDGE AND SECURITY AGREEMENT

**INTELLECTUAL PROPERTY**

- (A) Copyrights
- (B) Copyright Licenses
- (C) Patents
- (D) Patent Licenses
- (E) Trademarks

THT Docket	Jdx	Trademark Name:	Owner	App. No.	Filing Date	Reg. No.	Reg. Date	Status	Class
HEB-626	US	PEDDLERS' POST	The Trader Enterprises, Inc.	75/204,725	26-Nov-1996	2,099,578	23-Sep-1997	Registered	16
HEB-639	US	DEALER DIRECTORY	The Trader Enterprises, Inc.	75/287,549	06-May-1997	2,146,887	24-Mar-1998	Registered	16, 35
HEB-635	US	ADWATCH	The Trader Enterprises, Inc.	74/679,831	25-May-1995	2,084,520	29-Jul-1997	Registered	35
HEB-622A	USIN	WHEELS & DEALS & Design	The Trader Enterprises, Inc.	1997-0082	10-Feb-1997	1997-0082	25-Feb-1997	Registered	38
HEB-625	USIN	THE TRADER PAPER & Design	The Trader Enterprises, Inc.	1997-0064	10-Feb-1997	1997-0064	13-Feb-1997	Registered	38
HEB-644	US	THE TRADER PAPER & Design	The Trader Enterprises, Inc.	75/344,845	21-Aug-1997	2,171,443	07-Jul-1998	Registered	16
HEB-645	US	THE TRADER PAPER	The Trader Enterprises, Inc.	75/357,461	15-Sep-1997	2,171,470	07-Jul-1998	Registered	16
	US	TRADERS' CONNECTION	The Trader Enterprises, Inc.	74/437,425	09-Sep-1993	N/a	N/a	Published (Opp. Pending)	42
	US	THE TRADER PAPER & Design	The Trader Enterprises, Inc.	75/103,303	13-May-1996	2,143,955	17-Mar-1998	Registered	16
	US	THE TRADER PAPER & Design	The Trader Enterprises, Inc.	74/567,822	30-Aug-1994	2,186,120	01-Sep-1998	Registered	16
	US	TRADERS' CONNECTION & Design	The Trader Enterprises, Inc.	74/444,040	01-Oct-1993	N/a	N/a	Published (Opp. Pending)	42

- (F) Trademark Licenses
- (G) Trade Secret Licenses
- (H) Intellectual Property Exceptions

SCHEDULE 4.8  
TO PLEDGE AND SECURITY AGREEMENT

Name of Grantor

Commercial Tort Claims

Not applicable.

3055086\_1

SCHEDULE 4.8-1

**TRADEMARK**  
**REEL: 002837 FRAME: 0926**

EXHIBIT A  
TO PLEDGE AND SECURITY AGREEMENT

**PLEDGE SUPPLEMENT**

This **PLEDGE SUPPLEMENT**, dated [mm/dd/yy], is delivered by **THE TRADER ENTERPRISES, INC.**, a Delaware corporation (the "**Grantor**") pursuant to the Pledge and Security Agreement, dated as of [mm/dd/yy] (as it may be from time to time amended, restated, modified or supplemented, the "Security Agreement"), between the Grantor and The Toronto-Dominion Bank, as the Administration Agent. Capitalized terms used herein not otherwise defined herein shall have the meanings ascribed thereto in the Security Agreement.

Grantor hereby confirms the grant to the Administration Agent set forth in the Security Agreement of, and does hereby grant to the Administration Agent, a security interest in all of Grantor's right, title and interest in and to all Collateral to secure the Secured Obligations, in each case whether now or hereafter existing or in which Grantor now has or hereafter acquires an interest and wherever the same may be located. Grantor represents and warrants that the attached Supplements to Schedules accurately and completely set forth all additional information required pursuant to the Security Agreement and hereby agrees that such Supplements to Schedules shall constitute part of the Schedules to the Security Agreement.

**IN WITNESS WHEREOF**, Grantor has caused this Pledge Supplement to be duly executed and delivered by its duly authorized officer as of [mm/dd/yy].

**THE TRADER ENTERPRISES, INC.**

By: \_\_\_\_\_  
Name:  
Title:

SUPPLEMENT TO SCHEDULE 4.1  
TO PLEDGE AND SECURITY AGREEMENT

Additional Information:

- (A) Full Legal Name, Type of Organization, Jurisdiction of Organization, Chief Executive Office/Sole Place of Business (or Residence if Grantor is a Natural Person) and Organizational Identification Number of Grantor:

<u>Full Legal Name</u>	<u>Type of Organization</u>	<u>Jurisdiction of Organization</u>	<u>Chief Executive Office/Sole Place of Business (or Residence if Grantor is a Natural Person)</u>	<u>Organization I.D.#</u>
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- (B) Other Names (including any Trade-Name or Fictitious Business Name) under which Grantor has conducted business for the past five (5) years:

<u>Full Legal Name</u>	<u>Trade Name or Fictitious Business Name</u>
------------------------	---

- (C) Changes in Name, Jurisdiction of Organization, Chief Executive Office or Sole Place of Business (or Principal Residence if Grantor is a Natural Person) and Corporate Structure within past five (5) years:

<u>Name of Grantor</u>	<u>Date of Change</u>	<u>Description of Change</u>
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- (D) Financing Statements:

<u>Name of Grantor</u>	<u>Filing Jurisdiction(s)</u>
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- (E) Existing Financing Statements:

<u>Name of Grantor</u>	<u>Filing Jurisdiction(s)</u>
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SUPPLEMENT TO SCHEDULE 4.2  
TO PLEDGE AND SECURITY AGREEMENT

Additional Information:

Name of Grantor

Location of Equipment and Inventory

EXHIBIT A-3

NY886370.2

**TRADEMARK**  
**REEL: 002837 FRAME: 0929**

SUPPLEMENT TO SCHEDULE 4.4  
TO PLEDGE AND SECURITY AGREEMENT

Additional Information:

(A)

Pledged Stock:

Pledged Partnership Interests:

Pledged LLC Interests:

Pledged Trust Interests:

Pledged Debt:

Securities Account:

Commodities Accounts:

Deposit Accounts:

(B)

Name of Grantor

Date of Acquisition

Description of Acquisition

SUPPLEMENT TO SCHEDULE 4.6  
TO PLEDGE AND SECURITY AGREEMENT

Additional Information:

Name of Grantor

Description of Letters of Credit

EXHIBIT A-5

NY\886370.2

**TRADEMARK**  
**REEL: 002837 FRAME: 0931**

SUPPLEMENT TO SCHEDULE 4.7  
TO PLEDGE AND SECURITY AGREEMENT

Additional Information:

- (A) Copyrights
- (B) Copyright Licenses
- (C) Patents
- (D) Patent Licenses
- (E) Trademarks
- (F) Trademark Licenses
- (G) Trade Secret Licenses
- (H) Intellectual Property Exceptions

EXHIBIT A-6

NY886370.2

**TRADEMARK**  
**REEL: 002837 FRAME: 0932**



SUPPLEMENT TO SCHEDULE 4.8  
TO PLEDGE AND SECURITY AGREEMENT

Additional Information:

Name of Grantor

Commercial Tort Claims

EXHIBIT A-7

NY886370.2

**TRADEMARK**  
**REEL: 002837 FRAME: 0933**

EXHIBIT B  
TO PLEDGE AND SECURITY AGREEMENT

**UNCERTIFICATED SECURITIES CONTROL AGREEMENT**

This Uncertificated Securities Control Agreement dated as of \_\_\_\_\_, 200\_\_ among \_\_\_\_\_ (the "**Pledgor**"), \_\_\_\_\_, as administration agent for the Secured Parties, (the "**Administration Agent**") and \_\_\_\_\_, a \_\_\_\_\_ corporation (the "**Issuer**"). Capitalized terms used but not defined herein shall have the meaning assigned in the Pledge and Security Agreement dated [as of the date hereof], between the Pledgor and the Administration Agent (the "**Security Agreement**"). All references herein to the "**UCC**" shall mean the Uniform Commercial Code as in effect in the State of New York.

**Section 1. Registered Ownership of Shares.** The Issuer hereby confirms and agrees that as of the date hereof the Pledgor is the registered owner of \_\_\_\_\_ shares of the Issuer's [common] stock (the "**Pledged Shares**") and the Issuer shall not change the registered owner of the Pledged Shares without the prior written consent of the Administration Agent.

**Section 2. Instructions.** If at any time the Issuer shall receive instructions originated by the Administration Agent relating to the Pledged Shares, the Issuer shall comply with such instructions without further consent by the Pledgor or any other person.

**Section 3. Additional Representations and Warranties of the Issuer.** The Issuer hereby represents and warrants to the Administration Agent:

(a) It has not entered into, and until the termination of this agreement will not enter into, any agreement with any other person relating the Pledged Shares pursuant to which it has agreed to comply with instructions issued by such other person; and

(b) It has not entered into, and until the termination of this agreement will not enter into, any agreement with the Pledgor or the Administration Agent purporting to limit or condition the obligation of the Issuer to comply with Instructions as set forth in Section 2 hereof.

(c) Except for the claims and interest of the Administration Agent and of the Pledgor in the Pledged Shares, the Issuer does not know of any claim to, or interest in, the Pledged Shares. If any person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Pledged Shares, the Issuer will promptly notify the Administration Agent and the Pledgor thereof.

(d) This Uncertificated Securities Control Agreement is the valid and legally binding obligation of the Issuer.

**Section 4. Choice of Law.** This Agreement shall be governed by the laws of the State of [New York].

**Section 5. Conflict with Other Agreements.** In the event of any conflict between this Agreement (or any portion thereof) and any other agreement now existing or hereafter entered into, the terms of this Agreement shall prevail. No amendment or modification of this Agreement

or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all of the parties hereto.

**Section 6. Voting Rights.** Until such time as the Administration Agent shall otherwise instruct the Issuer in writing, the Pledgor shall have the right to vote the Pledged Shares.

**Section 7. Successors; Assignment.** The terms of this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective corporate successors or heirs and personal representatives who obtain such rights solely by operation of law. The Administration Agent may assign its rights hereunder only with the express written consent of the Issuer and by sending written notice of such assignment to the Pledgor.

**Section 8. Indemnification of Issuer.** The Pledgor and the Administration Agent hereby agree that (a) the Issuer is released from any and all liabilities to the Pledgor and the Administration Agent arising from the terms of this Agreement and the compliance of the Issuer with the terms hereof, except to the extent that such liabilities arise from the Issuer's negligence and (b) the Pledgor, its successors and assigns shall at all times indemnify and save harmless the Issuer from and against any and all claims, actions and suits of others arising out of the terms of this Agreement or the compliance of the Issuer with the terms hereof, except to the extent that such arises from the Issuer's negligence, and from and against any and all liabilities, losses, damages, costs, charges, counsel fees and other expenses of every nature and character arising by reason of the same, until the termination of this Agreement.

**Section 9. Notices.** Any notice, request or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been properly given when delivered in person, or when sent by telecopy or other electronic means and electronic confirmation of error free receipt is received or two (2) days after being sent by certified or registered United States mail, return receipt requested, postage prepaid, addressed to the party at the address set forth below.

Pledgor: [INSERT ADDRESS]

Attention:  
Telecopier:

Administration Agent: [INSERT ADDRESS]

Attention:  
Telecopier:

Issuer: [INSERT ADDRESS]

Attention:  
Telecopier:

Any party may change its address for notices in the manner set forth above.

**Section 10. Termination.** The obligations of the Issuer to the Administration Agent pursuant to this Control Agreement shall continue in effect until the security interests of the Administration Agent in the Pledged Shares have been terminated pursuant to the terms of the Security Agreement and the Administration Agent has notified the Issuer of such termination in writing. The Administration Agent agrees to provide Notice of Termination in substantially the form of Exhibit A hereto to the Issuer upon the request of the Pledgor on or after the termination of the Administration Agent's security interest in the Pledged Shares pursuant to the terms of the

Security Agreement. The termination of this Control Agreement shall not terminate the Pledged Shares or alter the obligations of the Issuer to the Pledgor pursuant to any other agreement with respect to the Pledged Shares.

**Section 11. Counterparts.** This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing and delivering one or more counterparts.

[NAME OF PLEDGOR]

By: \_\_\_\_\_  
Name:  
Title:

[NAME OF ADMINISTRATION AGENT],  
as Administration Agent

By: \_\_\_\_\_  
Name:  
Title:

[NAME OF ISSUER]

By: \_\_\_\_\_  
Name:  
Title:

[Letterhead of Administration Agent]

[Date]

[Name and Address of Issuer]

Attention: \_\_\_\_\_

Re: Termination of Control Agreement

You are hereby notified that the Uncertificated Securities Control Agreement between you, [the Pledgor] and the undersigned (a copy of which is attached) is terminated and you have no further obligations to the undersigned pursuant to such Agreement. Notwithstanding any previous instructions to you, you are hereby instructed to accept all future directions with respect to Pledged Shares (as defined in the Uncertificated Control Agreement) from [the Pledgor]. This notice terminates any obligations you may have to the undersigned with respect to the Pledged Shares, however nothing contained in this notice shall alter any obligations which you may otherwise owe to [the Pledgor] pursuant to any other agreement.

You are instructed to deliver a copy of this notice by facsimile transmission to [insert name of Pledgor].

Very truly yours,

[NAME OF ADMINISTRATION AGENT],  
as Administration Agent

By: \_\_\_\_\_  
Name:  
Title:

Exhibit B-A-1

EXHIBIT C  
TO PLEDGE AND SECURITY AGREEMENT

**SECURITIES ACCOUNT CONTROL AGREEMENT**

This Securities Account Control Agreement dated as of \_\_\_\_\_, 200\_\_ (this "Agreement") among \_\_\_\_\_ (the "Debtor"), \_\_\_\_\_, as administration agent for the Secured Parties (the "Administration Agent") and \_\_\_\_\_, in its capacity as a "securities intermediary" as defined in Section 8-102 of the UCC (in such capacity, the "Securities Intermediary"). Capitalized terms used but not defined herein shall have the meaning assigned thereto in the Pledge and Security Agreement, dated [as of the date hereof], among the Debtor, the other Grantor party thereto and the Administration Agent (as amended, restated, supplemented or otherwise modified from time to time, the "Security Agreement"). All references herein to the "UCC" shall mean the Uniform Commercial Code as in effect in the State of New York.

**Section 1. Establishment of Securities Account.** The Securities Intermediary hereby confirms and agrees that:

(a) The Securities Intermediary has established account number [IDENTIFY ACCOUNT NUMBER] in the name "[IDENTIFY EXACT TITLE OF ACCOUNT]" (such account and any successor account, the "Securities Account") and the Securities Intermediary shall not change the name or account number of the Securities Account without the prior written consent of the Administration Agent;

(b) All securities or other property underlying any financial assets credited to the Securities Account shall be registered in the name of the Securities Intermediary, indorsed to the Securities Intermediary or in blank or credited to another securities account maintained in the name of the Securities Intermediary and in no case will any financial asset credited to the Securities Account be registered in the name of the Debtor, payable to the order of the Debtor or specially indorsed to the Debtor except to the extent the foregoing have been specially indorsed to the Securities Intermediary or in blank;

(c) All property delivered to the Securities Intermediary pursuant to the Security Agreement will be promptly credited to the Securities Account; and

(d) The Securities Account is a "securities account" within the meaning of Section 8-501 of the UCC.

**Section 2. "Financial Assets" Election.** The Securities Intermediary hereby agrees that each item of property (including, without limitation, any investment property, financial asset, security, instrument, general intangible or cash) credited to the Securities Account shall be treated as a "financial asset" within the meaning of Section 8-102(a)(9) of the UCC.

**Section 3. Control of the Securities Account.** If at any time the Securities Intermediary shall receive any order from the Administration Agent directing transfer or

Exhibit C-1

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**TRADEMARK**  
**REEL: 002837 FRAME: 0938**

redemption of any financial asset relating to the Securities Account, the Securities Intermediary shall comply with such entitlement order without further consent by the Debtor or any other person. If the Debtor is otherwise entitled to issue entitlement orders and such orders conflict with any entitlement order issued by the Administration Agent, the Securities Intermediary shall follow the orders issued by the Administration Agent.

**Section 4. Subordination of Lien; Waiver of Set-Off.** In the event that the Securities Intermediary has or subsequently obtains by agreement, by operation of law or otherwise a security interest in the Securities Account or any security entitlement credited thereto, the Securities Intermediary hereby agrees that such security interest shall be subordinate to the security interest of the Administration Agent. The financial assets and other items deposited to the Securities Account will not be subject to deduction, set-off, banker's lien, or any other right in favor of any person other than the Administration Agent (except that the Securities Intermediary may set off (i) all amounts due to the Securities Intermediary in respect of customary fees and expenses for the routine maintenance and operation of the Securities Account and (ii) the face amount of any checks which have been credited to such Securities Account but are subsequently returned unpaid because of uncollected or insufficient funds).

**Section 5. Choice of Law.** This Agreement and the Securities Account shall each be governed by the laws of the State of [New York]. Regardless of any provision in any other agreement, for purposes of the UCC, [New York] shall be deemed to be the Securities Intermediary's jurisdiction (within the meaning of Section 8-110 of the UCC) and the Securities Account (as well as the securities entitlements related thereto) shall be governed by the laws of the State of [New York].

**Section 6. Conflict with Other Agreements.**

(a) In the event of any conflict between this Agreement (or any portion thereof) and any other agreement now existing or hereafter entered into, the terms of this Agreement shall prevail;

(b) No amendment or modification of this Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all of the parties hereto;

(c) The Securities Intermediary hereby confirms and agrees that:

(i) There are no other control agreements entered into between the Securities Intermediary and the Debtor with respect to the Securities Account;

(ii) It has not entered into, and until the termination of this Agreement, will not enter into, any agreement with any other person relating to the Securities Account and/or any financial assets credited thereto pursuant to which it has agreed to comply with entitlement orders (as defined in Section 8-102(a)(8) of the UCC) of such other person; and

(iii) It has not entered into, and until the termination of this Agreement, will not enter into, any agreement with the Debtor or the Administration Agent purporting to limit or condition the obligation of the Securities Intermediary to comply with entitlement orders as set forth in Section 3 hereof.

**Section 7. Adverse Claims.** Except for the claims and interest of the Administration Agent and of the Debtor in the Securities Account, the Securities Intermediary does not know of any claim to, or interest in, the Securities Account or in any "financial asset" (as defined in Section 8-102(a) of the UCC) credited thereto. If any person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Securities Account or in any financial asset carried therein, the Securities Intermediary will promptly notify the Administration Agent and the Debtor thereof.

**Section 8. Maintenance of Securities Account.** In addition to, and not in lieu of, the obligation of the Securities Intermediary to honor entitlement orders as agreed in Section 3 hereof, the Securities Intermediary agrees to maintain the Securities Account as follows:

(a) Notice of Sole Control. If at any time the Administration Agent delivers to the Securities Intermediary a Notice of Sole Control in substantially the form set forth in Exhibit A hereto, the Securities Intermediary agrees that after receipt of such notice, it will take all instruction with respect to the Securities Account solely from the Administration Agent.

(b) Voting Rights. Until such time as the Securities Intermediary receives a Notice of Sole Control pursuant to subsection (a) of this Section 8, the Debtor shall direct the Securities Intermediary with respect to the voting of any financial assets credited to the Securities Account.

(c) Permitted Investments. Until such time as the Securities Intermediary receives a Notice of Sole Control signed by the Administration Agent, the Debtor shall direct the Securities Intermediary with respect to the selection of investments to be made for the Securities Account; provided, however, that the Securities Intermediary shall not honor any instruction to purchase any investments other than investments of a type described on Exhibit B hereto.

(d) Statements and Confirmations. The Securities Intermediary will promptly send copies of all statements, confirmations and other correspondence concerning the Securities Account and/or any financial assets credited thereto simultaneously to each of the Debtor and the Administration Agent at the address for each set forth in Section 12 of this Agreement.

(e) Tax Reporting. All items of income, gain, expense and loss recognized in the Securities Account shall be reported to the Internal Revenue Service and all state and local taxing authorities under the name and taxpayer identification number of the Debtor.

**Section 9. Representations, Warranties and Covenants of the Securities Intermediary.** The Securities Intermediary hereby makes the following representations, warranties and covenants:

(a) The Securities Account has been established as set forth in Section 1 above and such Securities Account will be maintained in the manner set forth herein until termination of this Agreement; and

(b) This Agreement is the valid and legally binding obligation of the Securities Intermediary.

**Section 10 Indemnification of Securities Intermediary.** The Debtor and the Administration Agent hereby agree that (a) the Securities Intermediary is released from any and all liabilities to the Debtor and the Administration Agent arising from the terms of this Agreement and the compliance of the Securities Intermediary with the terms hereof, except to the extent that



such liabilities arise from the Securities Intermediary's negligence and (b) the Debtor, its successors and assigns shall at all times indemnify and save harmless the Securities Intermediary from and against any and all claims, actions and suits of others arising out of the terms of this Agreement or the compliance of the Securities Intermediary with the terms hereof, except to the extent that such arises from the Securities Intermediary's negligence, and from and against any and all liabilities, losses, damages, costs, charges, counsel fees and other expenses of every nature and character arising by reason of the same, until the termination of this Agreement.

**Section 11. Successors; Assignment.** The terms of this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective corporate successors or heirs and personal representatives who obtain such rights solely by operation of law. The Administration Agent may assign its rights hereunder only with the express written consent of the Securities Intermediary and by sending written notice of such assignment to the Debtor.

**Section 12. Notices.** Any notice, request or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been properly given when delivered in person, or when sent by telecopy or other electronic means and electronic confirmation of error free receipt is received or two (2) days after being sent by certified or registered United States mail, return receipt requested, postage prepaid, addressed to the party at the address set forth below.

Debtor: [INSERT ADDRESS]  
Attention:  
Telecopier:

Administration Agent: [INSERT ADDRESS]  
Attention:  
Telecopier:

Securities Intermediary: [INSERT ADDRESS]  
Attention:  
Telecopier:

Any party may change its address for notices in the manner set forth above.

**Section 13. Termination.** The obligations of the Securities Intermediary to the Administration Agent pursuant to this Agreement shall continue in effect until the security interest of the Administration Agent in the Securities Account has been terminated pursuant to the terms of the Security Agreement and the Administration Agent has notified the Securities Intermediary of such termination in writing. The Administration Agent agrees to provide Notice of Termination in substantially the form of Exhibit C hereto to the Securities Intermediary upon the request of the Debtor on or after the termination of the Administration Agent's security interest in the Securities Account pursuant to the terms of the Security Agreement. The termination of this Agreement shall not terminate the Securities Account or alter the obligations of the Securities Intermediary to the Debtor pursuant to any other agreement with respect to the Securities Account.

**Section 14. Counterparts.** This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing and delivering one or more counterparts.

Exhibit C-4

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**TRADEMARK**  
**REEL: 002837 FRAME: 0941**

IN WITNESS WHEREOF, the parties hereto have caused this Securities Account Control Agreement to be executed as of the date first above written by their respective officers thereunto duly authorized.

**[DEBTOR]**

By: \_\_\_\_\_  
Name:  
Title:

**[NAME OF ADMINISTRATION AGENT],**  
as Administration Agent

By: \_\_\_\_\_  
Name:  
Title:

**[NAME OF SECURITIES  
INTERMEDIARY],**  
as Securities Intermediary

By: \_\_\_\_\_  
Name:  
Title:

Exhibit C-5

NY886370.2

**TRADEMARK**  
**REEL: 002837 FRAME: 0942**

EXHIBIT A  
TO SECURITIES ACCOUNT CONTROL AGREEMENT

[Letterhead of Administration Agent]

[Date]

[Name and Address of Securities Intermediary]

Attention:

Re: Notice of Sole Control

Ladies and Gentlemen:

As referenced in the Securities Account Control Agreement dated as of \_\_\_\_\_, 200\_\_ among **[NAME OF THE DEBTOR]**, you and the undersigned (a copy of which is attached), we hereby give you notice of our sole control over securities account number \_\_\_\_\_ (the "**Securities Account**") and all financial assets credited thereto. You are hereby instructed not to accept any direction, instructions or entitlement orders with respect to the Securities Account or the financial assets credited thereto from any person other than the undersigned, unless otherwise ordered by a court of competent jurisdiction.

You are instructed to deliver a copy of this notice by facsimile transmission to **[NAME OF THE DEBTOR]**.

Very truly yours,

**[NAME OF ADMINISTRATION AGENT]**,  
as Administration Agent

By: \_\_\_\_\_

Name:

Title:

cc: **[NAME OF THE DEBTOR]**

Exhibit C-A-1

NY886370.2

**TRADEMARK**  
**REEL: 002837 FRAME: 0943**

EXHIBIT B  
TO SECURITIES ACCOUNT CONTROL AGREEMENT

Permitted Investments

[TO COME]

Exhibit C-B-1

NY886370.2

**TRADEMARK**  
**REEL: 002837 FRAME: 0944**

EXHIBIT C  
TO SECURITIES ACCOUNT CONTROL AGREEMENT

[Letterhead of the Administration Agent]

[Date]

[Name and Address of Securities Intermediary]

Attention:

Re: Termination of Securities Account Control Agreement

You are hereby notified that the Securities Account Control Agreement dated as of \_\_\_\_\_, 200\_\_ among you, **[NAME OF THE DEBTOR]** and the undersigned (a copy of which is attached) is terminated and you have no further obligations to the undersigned pursuant to such Agreement. Notwithstanding any previous instructions to you, you are hereby instructed to accept all future directions with respect to account number(s) \_\_\_\_\_ from **[NAME OF THE DEBTOR]**. This notice terminates any obligations you may have to the undersigned with respect to such account, however nothing contained in this notice shall alter any obligations which you may otherwise owe to **[NAME OF THE DEBTOR]** pursuant to any other agreement.

You are instructed to deliver a copy of this notice by facsimile transmission to **[NAME OF THE DEBTOR]**.

Very truly yours,

**[NAME OF COLLATERAL  
AGENT]**,  
as Administration Agent

By: \_\_\_\_\_

Name:

Title:

Exhibit C-C-1

NY886370.2

**TRADEMARK**  
**REEL: 002837 FRAME: 0945**

**DEPOSIT ACCOUNT CONTROL AGREEMENT**

This Deposit Account Control Agreement dated as of \_\_\_\_\_, 2001 (this "Agreement") among \_\_\_\_\_ (the "Debtor"), \_\_\_\_\_, as administration agent for the Secured Parties (the "Administration Agent") and \_\_\_\_\_, in its capacity as a "bank" as defined in Section 9-102 of the UCC (in such capacity, the "Financial Institution"). Capitalized terms used but not defined herein shall have the meaning assigned thereto in the Pledge and Security Agreement, dated [as of the date hereof], between the Debtor, the other Grantor party thereto and the Administration Agent (as amended, restated, supplemented or otherwise modified from time to time, the "Security Agreement"). All references herein to the "UCC" shall mean the Uniform Commercial Code as in effect in the State of [New York].

**Section 1. Establishment of Deposit Account.** The Financial Institution hereby confirms and agrees that:

(a) The Financial Institution has established account number [IDENTIFY ACCOUNT NUMBER] in the name "[IDENTIFY EXACT TITLE OF ACCOUNT]" (such account and any successor account, the "Deposit Account") and the Financial Institution shall not change the name or account number of the Deposit Account without the prior written consent of the Administration Agent and, prior to delivery of a Notice of Sole Control in substantially the form set forth in Exhibit A hereto, the Debtor; and

(b) The Deposit Account is a "deposit account" within the meaning of Section 9-102(a)(29) of the UCC.

**Section 2. Control of the Deposit Account.** If at any time the Financial Institution shall receive any instructions originated by the Administration Agent directing the disposition of funds in the Deposit Account, the Financial Institution shall comply with such instructions without further consent by the Debtor or any other person. The Financial Institution hereby acknowledges that it has received notice of the security interest of the Administration Agent in the Deposit Account and hereby acknowledges and consents to such lien.

**Section 3. Subordination of Lien; Waiver of Set-Off.** In the event that the Financial Institution has or subsequently obtains by agreement, by operation of law or otherwise a security interest in the Deposit Account or any funds credited thereto, the Financial Institution hereby agrees that such security interest shall be subordinate to the security interest of the Administration Agent. Money and other items credited to the Deposit Account will not be subject to deduction, set-off, banker's lien, or any other right in favor of any person other than the Administration Agent (except that the Financial Institution may set off (i) all amounts due to the Financial Institution in respect of customary fees and expenses for the routine maintenance and operation of the Deposit Account and (ii) the face amount of any checks which have been credited to such Deposit Account but are subsequently returned unpaid because of uncollected or insufficient funds).

**Section 4. Choice of Law.** This Agreement and the Deposit Account shall each be governed by the laws of the State of [New York]. Regardless of any provision in any other agreement, for purposes of the UCC, [New York] shall be deemed to be the Financial Institution's jurisdiction (within the meaning of Section 9-304 of the UCC) and the Deposit Account shall be governed by the laws of the State of [New York].

**Section 5. Conflict with Other Agreements.**

(a) In the event of any conflict between this Agreement (or any portion thereof) and any other agreement now existing or hereafter entered into, the terms of this Agreement shall prevail;

(b) No amendment or modification of this Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all of the parties hereto; and

(c) The Financial Institution hereby confirms and agrees that:

(i) There are no other agreements entered into between the Financial Institution and the Debtor with respect to the Deposit Account; and

(ii) It has not entered into, and until the termination of this Agreement, will not enter into, any agreement with any other person relating to the Deposit Account and/or any funds credited thereto pursuant to which it has agreed to comply with instructions originated by such persons as contemplated by Section 9-104 of the UCC.

**Section 6. Adverse Claims.** The Financial Institution does not know of any liens, claims or encumbrances relating to the Deposit Account. If any person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Deposit Account, the Financial Institution will promptly notify the Administration Agent and the Debtor thereof.

**Section 7. Maintenance of Deposit Account.** In addition to, and not in lieu of, the obligation of the Financial Institution to honor instructions as set forth in Section 2 hereof, the Financial Institution agrees to maintain the Deposit Account as follows:

(a) Statements and Confirmations. The Financial Institution will promptly send copies of all statements, confirmations and other correspondence concerning the Deposit Account simultaneously to each of the Debtor and the Administration Agent at the address for each set forth in Section 11 of this Agreement; and

(b) Tax Reporting. All interest, if any, relating to the Deposit Account, shall be reported to the Internal Revenue Service and all state and local taxing authorities under the name and taxpayer identification number of the Debtor.

**Section 8. Representations, Warranties and Covenants of the Financial Institution.** The Financial Institution hereby makes the following representations, warranties and covenants:

(a) The Deposit Account has been established as set forth in Section 1 and such Deposit Account will be maintained in the manner set forth herein until termination of this Agreement; and

(b) This Agreement is the valid and legally binding obligation of the Financial Institution.

**Section 9. Indemnification of Financial Institution.** The Debtor and the Administration Agent hereby agree that (a) the Financial Institution is released from any and all liabilities to the Debtor and the Administration Agent arising from the terms of this Agreement and the compliance of the Financial Institution with the terms hereof, except to the extent that such liabilities arise from the Financial Institution's negligence and (b) the Debtor, its successors and assigns shall at all times indemnify and save harmless the Financial Institution from and against any and all claims, actions and suits of others arising out of the terms of this Agreement or the compliance of the Financial Institution with the terms hereof, except to the extent that such arises from the Financial Institution's negligence, and from and against any and all liabilities, losses, damages, costs, charges, counsel fees and other expenses of every nature and character arising by reason of the same, until the termination of this Agreement.

**Section 10. Successors; Assignment.** The terms of this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective corporate successors or heirs and personal representatives who obtain such rights solely by operation of law. The Administration Agent may assign its rights hereunder only with the express written consent of the Financial Institution and by sending written notice of such assignment to the Debtor.

**Section 11 Notices.** Any notice, request or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been properly given when delivered in person, or when sent by telecopy or other electronic means and electronic confirmation of error free receipt is received or two (2) days after being sent by certified or registered United States mail, return receipt requested, postage prepaid, addressed to the party at the address set forth below.

Debtor:                   **[INSERT ADDRESS]**  
                                  Attention:  
                                  Telecopier:

Administration Agent: **[INSERT ADDRESS]**  
                                  Attention:  
                                  Telecopier:

Financial Institution: **[INSERT ADDRESS]**  
                                  Attention:  
                                  Telecopier:

Any party may change its address for notices in the manner set forth above.

**Section 12. Termination.** The obligations of the Financial Institution to the Administration Agent pursuant to this Agreement shall continue in effect until the security interest of the Administration Agent in the Deposit Account has been terminated pursuant to the terms of the Security Agreement and the Administration Agent has notified the Financial Institution of such termination in writing. The Administration Agent agrees to provide Notice of Termination in substantially the form of Exhibit A hereto to the Financial Institution upon the request of the Debtor on or after the termination of the Administration Agent's security interest in the Deposit Account pursuant to the terms of the Security Agreement. The termination of this



Agreement shall not terminate the Deposit Account or alter the obligations of the Financial Institution to the Debtor pursuant to any other agreement with respect to the Deposit Account.

**Section 13. Counterparts.** This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing and delivering one or more counterparts.

IN WITNESS WHEREOF, the parties hereto have caused this Deposit Account Control Agreement to be executed as of the date first above written by their respective officers thereunto duly authorized.

**[DEBTOR]**

By: \_\_\_\_\_  
Name:  
Title:

**[NAME OF ADMINISTRATION AGENT],**  
as Administration Agent

By: \_\_\_\_\_  
Name:  
Title:

**[NAME OF FINANCIAL INSTITUTION],**  
as Financial Institution

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT A  
TO DEPOSIT ACCOUNT CONTROL AGREEMENT

[Letterhead of the Administration Agent]

[Date]

[Name and Address of Financial Institution]

Attention:

Re: Termination of Deposit Account Control Agreement

You are hereby notified that the Deposit Account Control Agreement dated as of \_\_\_\_\_, 200[\_] among [NAME OF THE DEBTOR], you and the undersigned (a copy of which is attached) is terminated and you have no further obligations to the undersigned pursuant to such Agreement. Notwithstanding any previous instructions to you, you are hereby instructed to accept all future directions with respect to account number(s) \_\_\_\_\_ from [NAME OF THE DEBTOR]. This notice terminates any obligations you may have to the undersigned with respect to such account, however nothing contained in this notice shall alter any obligations which you may otherwise owe to [NAME OF THE DEBTOR] pursuant to any other agreement.

You are instructed to deliver a copy of this notice by facsimile transmission to [NAME OF THE DEBTOR].

Very truly yours,

[NAME OF ADMINISTRATION AGENT],  
as Administration Agent

By: \_\_\_\_\_  
Name:  
Title:

Exhibit D-A-1

NY886370.2