

**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
Alpheus Communications, L.P.		01/31/2008	LIMITED PARTNERSHIP: DELAWARE

**RECEIVING PARTY DATA**

Name:	El Paso Telecom, L.L.C.
Street Address:	1001 Louisiana
Internal Address:	Suite 3048
City:	Houston
State/Country:	TEXAS
Postal Code:	77002
Entity Type:	LIMITED LIABILITY COMPANY: DELAWARE

**PROPERTY NUMBERS Total: 5**

Property Type	Number	Word Mark
Serial Number:	77124932	ALPHEUS
Serial Number:	77124936	ALPHEUS
Registration Number:	3017584	ALPHEUS
Registration Number:	3027694	ALPHEUS
Registration Number:	3160447	METROLOCITY

**CORRESPONDENCE DATA**

Fax Number: (713)223-3717  
*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*  
 Phone: 713-226-1252  
 Email: ppaquet@lockelord.com  
 Correspondent Name: Patricia Paquet  
 Address Line 1: 600 Travis Street  
 Address Line 2: 3400 JPMorgan Chase Tower  
 Address Line 4: Houston, TEXAS 77002-3095

CH \$140.00 77124932

ATTORNEY DOCKET NUMBER:	0000736-00804
NAME OF SUBMITTER:	Patricia Paquet
Signature:	/patricia paquet/
Date:	02/01/2008

**Total Attachments: 30**

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## SECURITY AGREEMENT (ALL ASSETS)

ALPHEUS COMMUNICATIONS, L.P., a Delaware limited partnership ("Debtor"), whose address is 1301 Fannin, 20th Floor, Houston, Texas 77002, and EL PASO TELECOM, L.L.C., a Delaware limited liability company ("Secured Party"), whose address is 1001 Louisiana, Suite 3048, Houston, Texas 77002, Attention: Craig Harris, agree effective as of January 31, 2008, as follows:

### ARTICLE 1

#### Creation of Security Interest

In order to secure the prompt and unconditional payment of the Debt (as defined in Section 2.2), Debtor, subject to the last paragraph in this Article 1, hereby grants to Secured Party a security interest in all of Debtor's remedies, powers, privileges, rights, titles and interests of every kind and character now owned or hereafter acquired, created or arising in and to all personal property of Debtor, including without limitation, all of Debtor's remedies, powers, privileges, rights, titles and interests (if any) of every kind and character now owned or hereafter acquired, created or arising in and to the following:

#### Accounts

- (i) all accounts, receivables and accounts receivable regardless of form (including all choses or things in action, trade names, trademarks, patents, patents pending, infringement claims, service marks, licenses, copyrights, blueprints, drawings, plans, diagrams, schematics, computer programs, computer tapes, computer discs, reports, catalogs, customer lists, purchase orders, goodwill, route lists, monies due or recoverable from pension funds, tax refunds and all rights to any of the foregoing), book debts, contract rights and rights to payment no matter how evidenced (including those accounts listed on the Schedule or Schedules which may from time to time be attached hereto);
- (ii) all chattel paper, notes, drafts, acceptances, payments under leases of equipment or sale of inventory, and other forms of obligations received by or belonging to Debtor for goods sold or leased and/or services rendered by Debtor;
- (iii) all purchase orders, instruments and other documents (including all documents of title) evidencing obligations to Debtor, including those for or representing obligations for goods sold or leased and/or services rendered by Debtor;
- (iv) all monies due or to become due to Debtor under all contracts, including those for the sale or lease of goods and/or performance of services by Debtor no matter how evidenced and whether or not earned by performance;
- (v) all accounts, receivables, accounts receivable, contract rights, and general intangibles arising as a result of Debtor's having paid accounts payable (or having had goods sold to or leased to Debtor or services performed for Debtor giving rise to accounts payable) which accounts payable were paid for or were incurred by Debtor on behalf of any third parties pursuant to an agreement or otherwise;
- (vi) all goods, the sale and delivery of which give rise to any of the foregoing, including any such goods which are returned to Debtor for credit;

### **Inventory**

all goods, merchandise, raw materials, work in process, finished goods, and other tangible personal property of whatever nature now owned by Debtor or hereafter from time to time existing or acquired, wherever located and held for sale or lease, including those held for display or demonstration or out on lease or consignment, or furnished or to be furnished under contracts of service or used or usable or consumed or consumable in Debtor's business or which are finished or unfinished goods and all accessions and appurtenances thereto, together with all warehouse receipts and other documents evidencing any of the same and all containers, packing, packaging, shipping and similar materials;

### **Equipment and General Intangibles**

all general intangibles now owned by Debtor or existing or hereafter acquired, created or arising (whether or not related to any of the other property described in this Article) and all goods, equipment, machinery, furnishings, fixtures, furniture, appliances, accessories, leasehold improvements, chattels and other articles of personal property of whatever nature (whether or not the same constitute fixtures) now owned by Debtor or hereafter acquired, and all component parts thereof and all appurtenances thereto;

### **Patents, Trademarks and Copyrights**

- (a) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, and other source or business identifiers (and all amendments, supplements, restatements and modification thereof or thereto from time to time), and all prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications, if any, in connection therewith including registrations, recordings and applications, if any, in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof, or any other country or any political subdivision thereof (each such office or agency being referred to herein as a "Trademark Office") and all reissues, continuations, continuations-in-part, extensions or renewals thereof (each of the foregoing items in this paragraph and listed on Exhibit A attached hereto being herein referred to as a "Trademark" and collectively called the "Trademarks") and all of the goodwill of the business connected with the use of, and symbolized by, each Trademark;
- (b) all letters patent of the United States or any other country, all registrations and recordings thereof, and all applications for such letters patent, including, without limitation, registrations, recordings and applications in a Trademark Office and all reissues, continuations, continuations-in-part, extensions or renewals thereof (each of the foregoing being herein called a "Patent"), and any license related thereto (each herein called a "Patent License"; listed on Exhibit A attached hereto are all Patents and Patent Licenses of Debtor);
- (c) copyrights and copyright registrations, including, without limitation, the copyright registrations and recordings thereof and all applications in connection therewith listed on Exhibit A attached hereto, and (i) all reissues, continuations, extensions or renewals thereof, (ii) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including, without limitation, payments under all

licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (iii) the right to sue for past, present and future infringements and dilutions thereof, (iv) the goodwill of Debtor's business symbolized by the foregoing and connected therewith and (v) all of Debtor's rights corresponding thereto throughout the world (all of the foregoing copyrights and copyright registrations, together with the items described in clauses (i)-(v) in this paragraph (c), are sometimes hereinafter individually and/or collectively referred to as the "Copyrights"); and (ii) all products and proceeds of any and all of the foregoing, including, with limitation, licensed royalties and proceeds of infringement suits;

- (d) any claim for past, present or future infringement or dilution of any Trademark, Patent, Patent License or Copyright (including licensed royalties), or for injury to the goodwill associated with any Trademark;

#### **Stock**

- (a) all of the investment securities listed on Exhibit B, hereto attached and hereby made a part hereof;
- (b) all dividends (cash or otherwise), rights to receive dividends, stock dividends, dividends paid in stock, distributions upon redemption or liquidation, distributions as a result of split-ups, recapitalizations or rearrangements, stock rights, rights to subscribe, voting rights, rights to receive securities, and all new securities and other investment property and other property which Debtor may hereafter become entitled to receive on account of the foregoing (Debtor hereby agreeing that in the event Debtor receives any such new securities, Debtor will immediately pledge the same to Secured Party subject to the terms and provisions of this Agreement);

#### **Partnership and Limited Liability Company Interests**

- (a) The partnerships and limited liability companies (the "Non-Corporate Entities") created under and by virtue of the organizational documents (collectively, the "Non-Corporate Entity Agreements") described on Exhibit B hereto;
- (b) all instruments, documents, chattel papers, accounts, general intangibles, profits, income, surplus, money, credits, claims, demands and other property (real or personal) and revenues of any kind or character now or hereafter relating to, accruing or arising under or in respect of the Non-Corporate Entity Agreements and all property, real or personal, now or hereafter owned by the Non-Corporate Entities (the "Property") or paid, payable or otherwise distributed or distributable or transferred or transferable to Debtor under, in connection with or otherwise in respect of the Property or the Non-Corporate Entity Agreements (whether by reason of Debtor's ownership interest, loans by Debtor or otherwise);

#### **Commercial Tort Claims, Deposit Accounts, Negotiable Collateral, Supporting Obligations and Money**

- (a) all "commercial tort claims" as that term is defined in the UCC (as hereafter defined) including, without limitation, the commercial tort claims listed on Exhibit C ("Commercial Tort Claims");

- (b) all "deposit accounts" as that term is defined in the UCC and the investments and earnings therein and documents evidencing the same, including, without limitation, any checking or other demand deposit account, time, savings, passbook or similar account maintained with a bank including, without limitation, the deposit accounts set forth on Exhibit C ("Deposit Accounts");
- (c) all letters of credit, letter-of-credit rights, instruments, promissory notes, drafts, and documents (including any bills of lading, dock warrants, dock receipts, warehouse receipts or orders for delivery of goods and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of such document and the goods it covers), as such terms may be defined in the UCC, and any and all supporting obligations in respect thereof ("Negotiable Collateral");
- (d) all "supporting obligations" as such term is defined in the UCC, including letters of credit and guaranties issued in support of accounts, chattel paper, documents, general intangibles, instruments, or investment property (the "Supporting Obligations");
- (e) All of Debtor's money, cash, cash equivalents or other assets of Debtor that now or hereafter come into the possession, custody, or control of Secured Party;

all accessions, appurtenances and additions to and substitutions for any of the foregoing and all products and proceeds of any of the foregoing, together with all renewals and replacements of any of the foregoing, all accounts, receivables, account receivables, instruments, notes, chattel paper, documents (including all documents of title), other Negotiable Collateral, Supporting Obligations, cash, books, records, contract rights and general intangibles arising in connection with any of the foregoing (including all insurance and claims for insurance affected or held for the benefit of Debtor or Secured Party in respect of the foregoing). All of the properties and interests described in this Article are herein collectively called the "Collateral." It is expressly contemplated that additional Collateral may from time to time be pledged to Secured Party as additional security for the Debt (hereinafter defined), and the term "Collateral" as used herein shall be deemed for all purposes hereof to include all such Collateral, together with all other property of the types described above related to the Collateral.

Notwithstanding anything to the contrary herein, the personal property of Debtor set forth on Exhibit D hereto shall not constitute Collateral for purposes of, and is hereby expressly excluded from, this Agreement.

## ARTICLE 2 Secured Indebtedness

2.1 This Agreement is made to secure all of the following present and future debt and obligations:

(a) All indebtedness now and hereafter evidenced and to be evidenced by (i) the promissory note dated concurrently herewith in the face amount of Thirty Million and No/100 Dollars (\$30,000,000.00), bearing interest at the rate or rates therein stated, principal and interest payable to the order of Secured Party on the dates therein stated, with final payment due on February 1, 2011, executed by Debtor, and (ii) any and all past, concurrent or future modifications, extensions, renewals, rearrangements, replacements and increases of such note (collectively, the "Note").

(b) All other obligations of Debtor, if any, set forth in this Agreement.

(c) Any and all sums and the interest which accrues on them as provided in this Agreement which Secured Party may advance or which Debtor may owe Secured Party pursuant to this Agreement on account of Debtor's failure to materially keep, observe or perform any of Debtor's covenants under this Agreement.

(d) All present and future debts and obligations under or pursuant to (1) the documents described on Exhibit A attached to that certain Notice of Entire Agreement dated concurrently herewith by and between Debtor and Secured Party (such documents, the "Credit Documents") now or in the future governing, evidencing, guaranteeing or securing or otherwise relating to payment of all or any part of the debt evidenced by the Note, or (2) all supplements, amendments, restatements, renewals, extensions, rearrangements, increases, expansions or replacements of them.

2.2 The term "Debt" means and includes the Note and all other debt and obligations described or referred to in Section 2.1. The Debt includes interest and other obligations accruing or arising after commencement of any case under any bankruptcy or similar laws by or against Debtor or any other person or entity now or hereafter primarily or secondarily obligated to pay all or any part of the Debt (Debtor and each such other person or entity being herein called an "Obligor"). The Debt also includes all reasonable attorneys' fees and any other reasonable expenses incurred by Secured Party in enforcing any of the Credit Documents.

### **ARTICLE 3 Representations and Warranties**

Debtor represents and warrants as of the date of this Agreement as follows:

(a) Except as set forth on Schedule 3(a), Debtor is the legal and equitable owner and holder of good and marketable title to the Collateral free of any adverse claim and free of any security interest or encumbrance except only for the security interest granted hereby in the Collateral and those other security interests (if any) expressly referred to or described in this Agreement. Debtor has not heretofore signed any financing statement directly or indirectly affecting the Collateral or any part of it which has not been completely terminated of record, and no such financing statement signed by Debtor is now on file in any public office except only those statements (if any) true and correct copies of which Debtor has actually delivered to Secured Party.

(b) Debtor is a limited partnership organized under the laws of Delaware and Debtor's Tax I.D. Number is 20-2258373 and Debtor's organizational identification number is 3322853. The address set forth at the beginning of this Agreement is (i) Debtor's place of business if Debtor has only one such place of business, or (ii) Debtor's chief executive office if Debtor has more than one place of business.

(c) All leased and owned locations (other than unmanned collocation or related sites) of Debtor are located at the addresses set forth on Exhibit E attached hereto; and in this regard, Debtor's location means all places of business of Debtor. All material books and records of Debtor with regard to the Collateral are maintained and kept at the chief executive office of Debtor set forth at the beginning of this Agreement.

(d) Except as set forth on Exhibit F hereto, no part of the Collateral is covered by a certificate of title or subject to any certificate of title law.

(e) No part of the Collateral consists or will consist of consumer goods, farm products, timber, minerals and the like (including oil and gas) or accounts resulting from the sale thereof.

(f) The Collateral described in Article 1 under the heading "Stock" (the "Stock Collateral") is genuine, free from any restriction relating to the granting of Liens, duly and validly authorized and issued, and fully paid, and is hereby duly and validly pledged and hypothecated to Secured Party in accordance with applicable law.

(g) Debtor is duly organized, validly existing and in good standing under the laws of the state of its organization and has full legal right, power and authority to carry on its business as presently conducted and to execute, deliver and perform its obligations under this Agreement and any other Credit Documents to which Debtor is a party. Debtor is duly qualified to do business and in good standing in each jurisdiction in which the nature of the business it conducts makes such qualification necessary or desirable. Debtor's execution, delivery and performance of this Agreement and any other Credit Documents to which Debtor is a party have been duly authorized by all necessary action under Debtor's organizational documents and otherwise.

(h) Debtor has duly and validly executed, issued and delivered this Agreement and any other Credit Documents to which Debtor is a party. This Agreement and each other Credit Document to which Debtor is a party is a valid and legally binding obligation of Debtor, enforceable in accordance with its respective terms. Debtor's obligations under this Agreement and any other Credit Documents to which Debtor is a party rank and will rank at least equal in priority of payment with all of Debtor's other debt (except only for debt preferred by operation of law or debt disclosed in writing to Secured Party to be senior before Debtor's execution and delivery of this Agreement or the other applicable Credit Document).

(i) To the best of Debtor's knowledge, all written statements supplied to Secured Party by an executive officer of Debtor relating to the Collateral concurrently with or after Debtor's execution of this Agreement are and will be true, correct, complete, valid and genuine in all material respects.

(j) To the best of Debtor's knowledge, Debtor has filed all tax returns required to be filed and paid all taxes shown thereon to be due, including interest and penalties, except for taxes being diligently contested in good faith and for payment of which adequate reserves have been set aside, and except as would not be reasonably likely to have a material adverse effect on Debtor's ability to perform its obligations under the Credit Documents.

(k) To the best of Debtor's knowledge, there is no action, suit or proceeding pending--or, to the best of Debtor's knowledge, threatened--against or affecting Debtor or the Collateral, at law or in equity, or before or by any governmental authority, which is likely to result in any material adverse change in Debtor's business or financial condition or in the Collateral or in Debtor's other property or Debtor's interest in it.

(l) Debtor is not in default with respect to any order, writ, injunction, decree or demand of any court or other governmental authority, in the payment of any material debt for borrowed money or under any agreement or other papers evidencing or securing any such debt.

(m) Debtor is not a party to any contract or agreement which materially and adversely affects its business, property, assets or financial condition.

(n) Debtor is now solvent, and no bankruptcy or insolvency proceedings are pending or contemplated by or--to Debtor's knowledge--against Debtor. Debtor's liabilities and obligations under



this Agreement and any other Credit Documents to which Debtor is a party do not and will not render Debtor insolvent, cause Debtor's liabilities to exceed Debtor's assets or leave Debtor with too little capital to properly conduct all of its business as now conducted or contemplated to be conducted.

(o) To the best of Debtor's knowledge, no representation or warranty contained in this Agreement or any other Credit Document to which Debtor is a party contains any untrue statement of material fact, or omits a material fact necessary to make the statements contained herein or therein not misleading.

(p) To the best of Debtor's knowledge, except as otherwise expressly permitted by this Agreement, the liens and security interests of this Agreement will constitute valid and perfected first and prior liens and security interests on the Collateral, subject to no other liens, security interests or charges whatsoever.

(q) Debtor possesses all permits, licenses, patents, trademarks, tradenames and copyrights required to conduct its business, except where the failure to so possess would not reasonably be expected to result in a material adverse effect on Debtor's ability to perform its obligations under the Credit Documents.

(r) Debtor is in compliance with all applicable legal requirements and Debtor manages and operates (and will continue to manage and operate) its businesses in accordance with good industry practices, except where the failure to comply or so manage or operate would not reasonably be expected to result in a material adverse effect on Debtor's ability to perform its obligations under the Credit Documents.

(s) No event has occurred which could result in Debtor's liability to the Pension Benefit Guaranty Corporation ("PBGC"). Debtor has met all requirements with respect to funding of each plan (a "Plan") maintained for any of Debtor's or the Note maker's employees subject to Title IV of the Employee Retirement Benefit Act of 1974, as amended, and related regulations ("ERISA"), if any exists. No event or condition has occurred that would permit any lien under ERISA to attach to any of the Collateral.

#### **ARTICLE 4** **Covenants**

4.1 Debtor covenants and agrees with Secured Party as follows:

(a) Debtor shall furnish to Secured Party such instruments as may be reasonably required by Secured Party to assure the transferability of the Collateral in accordance with the terms of this Agreement upon the reasonable request of Secured Party.

(b) Debtor will cause to be paid within ten (10) Business Days (as defined in the Note) of receipt of written notice of any delinquency, all taxes, charges, liens and assessments heretofore or hereafter levied or assessed against the Collateral, or any part thereof, except for taxes, charges, liens and assessments Debtor determines to contest in good faith and except to the extent that any nonpayment thereof would not be reasonably likely to have a material adverse effect on Debtor's ability to perform its obligations under the Credit Documents.

(c) If the validity or priority of this Agreement or of any rights, titles, security interests or other interests created or evidenced hereby shall be attacked, endangered or questioned or if any legal proceedings are instituted with respect thereto, and Debtor has knowledge of same, Debtor will give

prompt written notice thereof to Secured Party and at Debtor's own cost and expense will diligently endeavor to cure any defect that may be developed or claimed, and will take all necessary and proper steps for the defense of such legal proceedings; provided, however, if Debtor fails to diligently endeavor to cure any defect that may be developed or claimed, Secured Party (whether or not named as a party to legal proceedings with respect thereto) may take such additional steps as in its reasonable judgment may be necessary or proper for the defense of any such legal proceedings or the protection of the validity or priority of this Agreement and its rights, titles, security interests and other interests created or evidenced hereby, and all reasonable out-of-pocket expenses so incurred by Secured Party shall constitute sums advanced pursuant to Section 4.2 of this Agreement.

(d) Debtor will, upon the reasonable request of Secured Party, (i) promptly correct any defect, error or omission which may be discovered in the contents of this Agreement or in any other instrument executed in connection herewith; (ii) execute, acknowledge, deliver and record or file such further instruments (including further security agreements, financing statements and continuation statements) and do such further acts as may be necessary to carry out more effectively the purposes of this Agreement and to subject to the security interests hereof any property intended by the terms hereof to be covered hereby including specifically any renewals, additions, substitutions, replacements or appurtenances to the then Collateral; and (iii) execute any document or instrument (including specifically any financing statement) necessary to protect the security interest of Secured Party hereunder against the rights or interests of third persons. In addition, subject to Section 4.1(n), Debtor agrees to defend the Collateral and its proceeds against all claims and demands of any person at any time claiming the Collateral, its proceeds or any interest in either.

(e) Debtor agrees to indemnify, defend and hold Secured Party, its shareholders, directors, officers, agents, attorneys, advisors and employees (collectively "**Indemnified Parties**") harmless from and against any and all loss, liability, obligation, damage, penalty, judgment, claim, deficiency, expense, action, suit, cost and disbursement of any kind or nature whatsoever (including interest, penalties, attorneys' fees and amounts paid in settlement), **REGARDLESS OF WHETHER CAUSED IN PART BY THE NEGLIGENCE OF ANY OF THE INDEMNIFIED PARTIES**, imposed on, incurred by or asserted against the Indemnified Parties resulting from the breach by Debtor of any of its material representations, warranties or covenants contained in this Agreement or any other Credit Document (except that notwithstanding anything to the contrary contained herein such indemnity and defense shall not be paid to any Indemnified Party to the extent that such loss, etc. directly results from the gross negligence or willful misconduct of that Indemnified Party).

(f) Debtor will not change its address, location, name, identity or, if applicable, structure or the jurisdiction under whose laws Debtor is organized without notifying Secured Party of such change in writing at least five (5) days before the effective date of such change and unless Debtor shall have taken such action to have caused the security interest of Secured Party in the Collateral to be at all times fully perfected and in full force and effect.

(g) Debtor shall at all times keep materially accurate books and records reflecting all facts concerning the Collateral including those pertaining to Debtor's warranties, representations and agreements under this Agreement.

(h) Debtor agrees to provide, maintain and keep in force casualty, liability and other insurance for that portion of the Collateral which is tangible personal property as required by Secured Party in amounts that are customary for such personal property. Foreclosure of this Agreement shall automatically constitute foreclosure upon all policies of insurance insuring any part of or risk to the Collateral and all claims thereunder arising from post-foreclosure events. The successful bidder or bidders for the Collateral at foreclosure, as their respective interests may appear, shall automatically

accede to all of Debtor's rights in, under and to such policies and all post-foreclosure event claims, and such bidder(s) shall be named as insured(s) on request, whether or not the bill of sale to any such successful bidder mentions insurance. All proceeds of insurance which was paid for by Debtor or by anyone other than Secured Party or another holder of any of the Debt and which proceeds are actually received by Secured Party before foreclosure shall be applied in payment of the Debt or, at the option of Secured Party, shall be paid to Debtor or to such other person as is legally entitled to them. Unless Secured Party or Secured Party's representative reserves at the foreclosure sale the right to collect any uncollected insurance proceeds recoverable for events occurring before foreclosure (in which event the successful bidder at the sale, if not Secured Party, shall have no interest in such proceeds and Secured Party shall apply them, if and when collected, to the Debt in such order and manner as Secured Party shall then elect and remit any remaining balance to Debtor or to such other person or entity as is legally entitled to them), all proceeds of all such insurance which are not so reserved by Secured Party at the foreclosure sale and are not actually received by Secured Party until after foreclosure shall be the property of the successful bidder or bidders at foreclosure, as their interests may appear, and Debtor shall have no interest in them and shall receive no credit for them. Secured Party shall have no duty to Debtor or anyone else to either require or provide any insurance or to determine the adequacy or disclose any inadequacy of any insurance. If Secured Party elects at any time or for any reason to purchase insurance relating to the Collateral, it shall have no obligation to cause Debtor or anyone else to be named as an insured, to cause Debtor's or anyone else's interests to be insured or protected or to inform Debtor or anyone else that his or its interests are uninsured or underinsured.

(i) As soon as is practicable, but not later than five (5) Business Days, upon acquiring knowledge of any material adverse change in the assets, liabilities, financial condition, business, operations, affairs or circumstances of any Obligor, Debtor will notify Secured Party in writing thereof, setting forth the nature of such change in reasonable detail; provided that it is understood and agreed that Debtor's business and financial condition in 2008 is expected, in some ways, to be worse than 2007 and that such factors are assumed and not shall not be deemed to be a material adverse change.

(j) As soon as is practicable, but not later than five (5) Business Days, upon acquiring knowledge thereof, Debtor will notify Secured Party by telephone (and confirm such notice in writing within two (2) days) of the existence of any Event of Default, specifying the nature and duration thereof and what action Debtor has taken, is taking and proposes to take with respect thereto. In no event shall silence by Secured Party be deemed a waiver of a default or of an Event of Default; provided however, that Secured Party's right to any remedy in an Event of Default shall not vest until written notice of such Event of Default has been provided by Secured Party, as applicable, and any applicable cure period has expired. Debtor will take all such steps as are necessary or appropriate to remedy promptly any such default or Event of Default.

(k) As soon as is practicable, but not later than five (5) Business Days, upon obtaining knowledge of the institution of any proceedings arising out of material injury or damage to the Collateral, or any portion thereof, Debtor will notify Secured Party in writing of the pendency of such proceedings. Secured Party may participate in any such proceedings, and Debtor shall from time to time deliver to Secured Party all instruments reasonably requested by it to permit such participation.

(l) Debtor shall furnish to Secured Party from time to time such information relating to the Collateral or Debtor's financial condition and affairs as Secured Party may from time to time reasonably request or as may be required from time to time by any Credit Document.

(m) Debtor shall at all times maintain proper books of record and account in accordance with sound accounting practice and consistent with generally accepted accounting principles.

(n) Debtor will not sell, lease, exchange, lend, rent, assign, transfer or otherwise dispose of, or pledge, hypothecate or grant any security interest in, or permit to exist any lien, security interest, charge or encumbrance against, all or any part of the Collateral or any interest therein or permit any of the foregoing to occur or arise or permit title to the Collateral, or any interest therein, to be vested in any other party, in any manner whatsoever, by operation of law or otherwise, without the prior written consent of Secured Party. Notwithstanding the immediately preceding sentence, until the occurrence of an Event of Default (as hereinafter defined), Debtor may use the Collateral described in Article 1 in any lawful manner not inconsistent with this Agreement or with the terms or conditions of any policy of insurance thereon and may also sell, lease or otherwise dispose of such Collateral in the ordinary course of business (including one time type sales that are normal and customary for the business) or outside of the ordinary course of business if the aggregate fair market value of such Collateral sold, leased or otherwise disposed of in any fiscal quarter does not exceed \$250,000. A sale in the ordinary course of business does not include a transfer in partial or total satisfaction of a debt. In connection with any such sale, lease or disposal of Collateral (whether inventory or otherwise), the Secured Party agrees that the security interest granted hereby shall be released as to the Collateral sold in compliance with this Agreement, and upon request, the Secured Party shall, within five (5) Business Days, take such actions as are required to release such lien thereon (including, without limitation, preparing and filing notice thereof in accordance with the applicable provisions of the Uniform Commercial Code). Until the occurrence of an Event of Default, Debtor may also use and consume any raw materials or supplies, the use and consumption of which are necessary to carry on Debtor's business.

(o) As long as no default shall have occurred and be continuing, without the prior written consent of Secured Party, Debtor will not create, incur, suffer or permit to exist, or guarantee, directly or indirectly, or become or remain liable with respect to any indebtedness for borrowed money, other than: (i) the Debt; (ii) trade payables and other current liabilities incurred in the ordinary course of Debtor's business; (iii) operating and/or equipment leases; (iv) indebtedness that is secured by assets other than those subject to the Credit Documents; and (v) unsecured indebtedness for borrowed money in an aggregate amount not in excess of \$10,000,000.00.

4.2 If an Event of Default shall have occurred and be continuing under this Agreement, the Note or any other Credit Document, then Secured Party may perform the acts required to cure such Event of Default or cause them to be performed for Debtor's account and at Debtor's expense, but shall have no obligation to perform any of them or cause them to be performed. Any and all expenses thus incurred or paid by Secured Party shall be Debtor's obligations to Secured Party due and payable on demand, or if no demand is sooner made, then they shall be due on or before four (4) years after the respective dates on which they were incurred, and each shall bear interest from the date Secured Party pays it until the date Debtor repays it to Secured Party, at the Stated Rate (as defined in the Note). Such expenses or payments shall be prepayable at any time without penalty. Upon making any such payment or incurring any such expense, Secured Party shall be fully and automatically subrogated to all of the rights of the person, corporation or body politic receiving such payment. Any amounts owing by Debtor to Secured Party pursuant to this or any other provision of this Agreement shall automatically and without notice be and become a part of the Debt and shall be secured by this and all other instruments securing the Debt. The amount and nature of any such expense and the time when it was paid shall be evidenced by a receipt from such payee or an invoice marked "paid" from such payee. The exercise of the privileges granted to Secured Party in this Section shall in no event be considered or constitute a cure of the default or a waiver of Secured Party's right at any time after an Event of Default to declare the Debt to be at once due and payable, but is cumulative of such right and of all other rights given by this Agreement, the Note and the Credit Documents and of all rights given Secured Party by law.

4.3 Debtor, at its own expense, will perform all acts and execute all documents, including, without limitation, documents or instruments suitable for filing with any Trademark Office or the United

States Copyright Office (the “Copyright Office”), as applicable, at any time to evidence, perfect, maintain, record and enforce the Secured Party’s interest in the Collateral described in Article 1 under the heading “Patents; Trademarks and Copyrights” (collectively, the “Intellectual Property Collateral”), or to prosecute any Trademark application, or Copyright application, as applicable, or to preserve, extend, reissue, continue or renew any such Collateral (unless not doing so would be commercially reasonable and would not have a material adverse effect on Debtor or its ability to perform its obligations under the Credit Documents), or otherwise in furtherance of the provisions of this Agreement.

**ARTICLE 5**  
**Powers of Secured Party Following an Event of Default**

5.1 Following the occurrence and during the continuance of an Event of Default, Debtor hereby authorizes and directs each account debtor and each other person or entity obligated to make payment in respect of any of the Collateral (each a “Collateral Obligor”) to pay over to Secured Party, its officers, agents or assigns, upon demand by Secured Party, all or any part of the Collateral without making any inquiries as to the status or balance of the Debt and without any notice to or further consent of Debtor. Debtor hereby agrees to indemnify each Collateral Obligor and hold each Collateral Obligor harmless from all expenses and losses which it may incur or suffer as a result of any payment it makes to Secured Party pursuant to this paragraph. To facilitate the rights of Secured Party hereunder, Debtor hereby authorizes Secured Party, its officers, employees, agents or assigns at any time after the occurrence of and during the continuance of an Event of Default:

(a) to notify Collateral Obligors of Secured Party’s security interest in the Collateral and to collect all or any part of the Collateral without further notice to or further consent by Debtor, and Debtor hereby constitutes and appoints Secured Party the true and lawful attorney of Debtor (such agency being coupled with an interest), irrevocably, with power of substitution, in the name of Debtor or in its own name or otherwise, to take any of the actions described in the following clauses (b), (c), (d), (e), (f) and (g);

(b) to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all amounts which may be or become due or payable under the Collateral and to settle and/or adjust all disputes and/or claims directly with any Collateral Obligor and to compromise, extend the time for payment, arrange for payment in installments, otherwise modify the terms of, or release, any of the Collateral, on such terms and conditions as Secured Party may determine (without thereby incurring responsibility to or discharging or otherwise affecting the liability of Debtor to Secured Party under this Agreement or otherwise);

(c) to direct delivery of, receive, open and dispose of all mail addressed to Debtor and to execute, sign, endorse, transfer and deliver (in the name of Debtor or in its own name or otherwise) any and all receipts or other orders for the payment of money drawn on the Collateral and all notes, acceptances, commercial paper, drafts, checks, money orders and other instruments given in payment or in part payment thereof and all invoices, freight and express bills and bills of lading, storage receipts, warehouse receipts, other Negotiable Collateral and other instruments and documents in respect of any of the Collateral and any other documents necessary to evidence, perfect and realize upon the security interests and obligations of this Agreement;

(d) in its discretion to file any claim or take any other action or proceeding which Secured Party may deem necessary or appropriate to protect and preserve the rights, titles and interests of Secured Party hereunder;

(e) to station one or more representatives of Secured Party on Debtor's premises for the purpose of exercising any rights, benefits or privileges available to Secured Party hereunder or under any of the Credit Documents or at law or in equity, including receiving collections and taking possession of books and records relating to the Collateral; and

(f) to cause title to any or all of the Collateral to be transferred into the name of Secured Party or any nominee or nominees of Secured Party.

5.2 Unless and until an Event of Default, as hereinafter defined, shall have occurred and be continuing, (i) Debtor shall be entitled to exercise all voting and consensual powers and rights pertaining to the Stock Collateral or any part thereof for all purposes and (ii) except as herein provided, Debtor shall be entitled to receive and retain all dividends on the Stock Collateral or any part thereof. During the continuation of an Event of Default, Secured Party shall have the right to the extent permitted by applicable law (but shall not be obligated to exercise such right), and Debtor shall take all such action as may be reasonably necessary to give effect to such right, to vote and give consents, ratifications and waivers, and take any other action with respect to any or all of the Stock Collateral with the same force and effect as if Secured Party were the owner thereof. During the continuation of an Event of Default, all dividends in stock or property representing stock, and all subscription warrants or any other rights or options issued in connection with the Stock Collateral, and all liquidating dividends or distributions or return of capital upon or in respect of the Stock Collateral or any part thereof, or resulting from any split, revision or reclassification of the Stock Collateral or any part thereof or received in exchange for the Stock Collateral or any part thereof as a result of a merger, consolidation or otherwise, shall be paid or transferred directly to Secured Party, or if paid to or received by Debtor, shall, immediately upon receipt thereof, be paid over, transferred and delivered to Secured Party and shall be Stock Collateral pledged under and subject to the terms of this Agreement.

5.3 The powers conferred on Secured Party pursuant to this Article are conferred solely to protect Secured Party's interest in the Collateral and shall not impose any duty or obligation on Secured Party to perform any of the powers herein conferred. No exercise of any of the rights provided for in this Article shall constitute a retention of collateral in full or partial satisfaction of the indebtedness as provided for in the Uniform Commercial Code of Texas (the "UCC").

## **ARTICLE 6**

### **Events of Default**

Any breach of a representation, warranty or covenant hereunder (provided any allowance for any specified cure period has expired), or any Event of Default (as such term is defined in the Note) under the Note, shall constitute an "Event of Default" (herein so called) under this Agreement.

## **ARTICLE 7**

### **Remedies in Event of Default**

7.1 Upon the continuance of an Event of Default:

(a) Secured Party shall have the option of declaring all Debt to be immediately due and payable.

(b) Secured Party is authorized, in any legal manner and without breach of the peace, to take possession of the Collateral and of all books, records and accounts relating thereto and to exercise all rights and remedies of an assignee which may be available to Secured Party.

(c) Secured Party may, without notice except as hereinafter provided, sell the Collateral or any part thereof upon commercially reasonable terms at public or private sale or at any broker's board or on any securities exchange (with or without appraisal) for cash, upon credit, or for future delivery, and Secured Party may be the purchaser of any and all of the Collateral so sold and may apply upon the purchase price therefor any of the Debt and thereafter hold the same absolutely free from any right or claim of whatsoever kind. Upon any such sale Secured Party shall have the right to deliver, assign and transfer to the purchaser thereof the Collateral so sold. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right of whatsoever kind, including any equity or right of redemption, stay or appraisal which Debtor has or may have under any rule of law or statute now existing or hereafter adopted. Secured Party shall give Debtor written notice at the address set forth herein (which shall satisfy any requirement of notice or reasonable notice in any applicable statute) of Secured Party's intention to make any such public or private sale. Such notice shall be personally delivered or mailed, postage prepaid, at least ten (10) Business Days before the date fixed for a public sale, or at least ten (10) Business Days before the date after which the private sale or other disposition is to be made. Such notice, in case of public sale, shall state the time and place fixed for such sale or, in case of private sale or other disposition other than a public sale, the time after which the private sale or other such disposition is to be made. In case of sale at broker's board or on a securities exchange, such notice shall state the board or exchange at which such sale is to be made and the day on which the Collateral or that portion thereof so being sold will first be offered for sale at such board or exchange. Any public sale shall be held at such time or times, within the ordinary business hours and at such place or places, as Secured Party may fix in the notice of such sale. At any sale the Collateral may be sold in one lot as an entirety or in separate parcels as Secured Party may determine. Secured Party shall not be obligated to make any sale pursuant to any such notice. Secured Party may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at any time and place fixed for the sale, and such sale may be made at any time or place to which the same may be so adjourned. In case of any sale of all or any part of the Collateral on credit or for future delivery, the Collateral so sold may be retained by Secured Party until the selling price is paid by the purchaser thereof, but Secured Party shall incur no liability in case of the failure of such purchaser to take up and pay for the Collateral so sold, and in case of any such failure, such Collateral may again be sold upon like notice. The proceeds from any such sale shall be applied in accordance with Section 7.1(d)(i).

(d) Secured Party shall have all the rights of a secured party after default under the Uniform Commercial Code of Texas and in conjunction with, in addition to or in substitution for those rights and remedies:

- (i) before application of proceeds of disposition of the Collateral to the Debt, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing, licensing, sublicensing and the like and the reasonable attorneys' fees and legal expenses incurred by Secured Party, each Obligor, to the extent applicable, to remain liable for any deficiency; and
- (ii) the sale by Secured Party of less than the whole of the Collateral shall not exhaust the rights of Secured Party hereunder, and Secured Party is specifically empowered to make successive sale or sales hereunder until the whole of the Collateral shall be sold; and, if the proceeds of such sale of less than the whole of the Collateral shall be less than the aggregate of the Debt, this Agreement and the security interest created hereby shall remain in full force and effect as to the unsold portion of the Collateral just as though no sale had been made; and

- (iii) in the event any sale hereunder is not completed or is defective in the opinion of Secured Party, such sale shall not exhaust the rights of Secured Party hereunder and Secured Party shall have the right to cause a subsequent sale or sales to be made hereunder; and
- (iv) Secured Party may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Secured Party, including the sending of notices and the conduct of sale, but in the name and on behalf of Secured Party.
- (e) Secured Party may, at any time and from time to time, license or, to the extent permitted by an applicable license, sublicense, whether general, special or otherwise, and whether on an exclusive or non-exclusive basis, any of the Intellectual Property Collateral, throughout the world for such commercially reasonable term or terms, as Secured Party shall determine.
- (f) Secured Party may (without assuming any obligations or liability thereunder), enforce and shall have the exclusive right to enforce against any licensor, licensee or sublicensee all rights and remedies of Debtor in, to and under any one or more licenses or other agreements with respect to any Intellectual Property Collateral and take or refrain from taking any action under any thereof.
- (g) Without limiting any other provision of this Agreement, Debtor expressly agrees that Secured Party, without demand, presentment or protest to or upon Debtor or any other Person, may collect, receive, appropriate and realize upon any Intellectual Property Collateral or may at any time in a commercially reasonable manner, sell, lease, assign, license, sublicense, give an option or options to purchase or otherwise dispose of and deliver any Intellectual Property Collateral (or contract to do so) in one or more parcels, at one or more public or private sales or other dispositions, upon such commercially reasonable terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or other consideration or on credit (provided that such credit is secured by the property so disposed of), or for future delivery without assumption of any credit risk, with the right to Secured Party, to the extent permitted by applicable law, upon any such sale or sales, public or private, to purchase any or all Intellectual Property Collateral so sold or conveyed.
- (h) In order to implement the sale, lease, assignment, license, sublicense or other disposition of any of the Intellectual Property Collateral pursuant to this Article, Secured Party may execute and deliver on behalf of Debtor one or more instruments of assignment of any or all Intellectual Property Collateral, in form suitable for filing, recording or registration in any Trademark Office or the Copyright Office, as applicable.
- (i) In the event of any sale, lease, assignment, license, sublicense or other disposition of any of the Intellectual Property Collateral pursuant to this Article, Debtor shall supply to Secured Party or its designee its know-how and expertise relating to the manufacture and sale of the products relating to any Intellectual Property Collateral, as applicable, subject to such disposition, and its customer lists and other records relating to such Intellectual Property Collateral, as applicable, and to the distribution of said products.

7.2 All remedies herein expressly provided for are cumulative of any and all other remedies existing at law or in equity and are cumulative of any and all other remedies provided for in any other instrument securing the payment of the Debt, or any part thereof, or otherwise benefiting Secured Party, and the resort to any remedy provided for hereunder or under any such other instrument or provided for by law shall not prevent the concurrent or subsequent employment of any other appropriate remedy or remedies.



7.3 Secured Party may resort to any security given by this Agreement or to any other security now existing or hereafter given to secure the payment of the Debt, in whole or in part, and in such portions and in such order as may seem best to Secured Party in its sole and uncontrolled discretion, and any such action shall not in anywise be considered as a waiver of any of the rights, benefits or security interests evidenced by this Agreement.

## **ARTICLE 8 Additional Agreements**

8.1 Upon full payment of the Debt, all rights under this Agreement shall terminate and the Collateral shall become wholly clear of the security interest evidenced hereby, and Secured Party shall immediately release such security interest in due form and at Secured Party's cost, which in any event shall be no later than five (5) days after the payment of the Debt.

8.2 Secured Party may waive any default without waiving any other prior or subsequent default. Secured Party may remedy any default without waiving the default remedied. The failure by Secured Party to exercise any right, power or remedy upon any default shall not be construed as a waiver of such default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Secured Party of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Debtor therefrom shall in any event be effective unless the same shall be in writing and signed by Secured Party and then such waiver or consent shall be effective only in the specific instances, for the purpose for which given and to the extent therein specified. No notice to nor demand on Debtor in any case shall of itself entitle Debtor to any other or further notice or demand in similar or other circumstances. Acceptance by Secured Party of any payment in an amount less than the amount then due on the Debt shall be deemed an acceptance on account only and shall not in any way affect the existence of a default hereunder.

8.3 Secured Party may at any time and from time to time in writing (a) waive compliance by Debtor with any covenant herein made by Debtor to the extent and in the manner specified in such writing; (b) consent to Debtor's doing any act which hereunder Debtor is prohibited from doing, or consent to Debtor's failing to do any act which hereunder Debtor is required to do, to the extent and in the manner specified in such writing; (c) release any part of the Collateral, or any interest therein, from the security interest of this Agreement; or (d) release any party liable, either directly or indirectly, for the Debt or for any covenant herein or in any other instrument now or hereafter securing the payment of the Debt, without impairing or releasing the liability of any other party. No such act shall in any way impair the rights of Secured Party hereunder except to the extent specifically agreed to by Secured Party in such writing.

8.4 Secured Party shall not be required to take any steps necessary to preserve any rights against prior parties to any of the Collateral.

8.5 The security interest and other rights of Secured Party hereunder shall only be impaired to the extent of any indulgence, moratorium or release granted by Secured Party and shall not generally result in (a) any renewal, extension or modification which Secured Party may grant with respect to the Debt, (b) any surrender, compromise, release, renewal, extension, exchange or substitution which Secured Party may grant in respect of any item of the Collateral, or any part thereof or any interest therein, or (c) any release or indulgence granted to any endorser, guarantor or surety of the Debt.

8.6 Secured Party after reasonable prior notice may call at Debtor's place or places of business during normal business hours at intervals to be determined by Secured Party and, without hindrance or delay, inspect, audit, check and make extracts from and copies of the books, records, journals, orders, receipts, correspondence and other data relating to the Collateral or to any transaction between Debtor and Secured Party, and Debtor shall assist Secured Party in such actions, so long as such actions do not unduly disturb Debtor's workplace.

8.7 A photographic or other reproduction of this Agreement or of any financing statement relating to this Agreement shall be sufficient as a financing statement.

8.8 Debtor hereby authorizes Secured Party to file all financing statements and to take such other measures as Secured Party may deem necessary or appropriate to perfect any security interests created hereunder in and to the Collateral.

8.9 No forbearance on the part of Secured Party and no extension of the time for the payment of the Debt given by Secured Party shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of Debtor hereunder for the payment of the Debt or the liability of any other person hereunder for the payment of the Debt, except as agreed to in writing by Secured Party. Unless otherwise permitted by this Agreement, including pursuant to Section 4.1(n), in the event the ownership of the Collateral or any part thereof becomes vested in a person other than Debtor, Secured Party may, without notice to Debtor, deal with such successor or successors in interest with reference to this Agreement and to the Debt in the same manner as with Debtor, without in any way vitiating or discharging Debtor's liability hereunder or upon the Debt.

8.10 Any other or additional security taken for the payment of any of the Debt shall not in any manner affect the security given by this Agreement.

8.11 To the extent that proceeds of the Debt are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Collateral, such proceeds have been advanced by Secured Party at Debtor's request and Secured Party shall be subrogated to any and all rights, security interests and liens owned by any owner or holder of such outstanding liens, security interests, charges or encumbrances, irrespective of whether said liens, security interests, charges or encumbrances are released.

8.12 If any part of the Debt cannot be lawfully secured by this Agreement, or if the lien, assignments and security interests of this Agreement cannot be lawfully enforced to pay any part of the Debt, then and in either such event, at the option of Secured Party, all payments on the Debt shall be deemed to have been first applied against that part of the Debt.

8.13 Subject to Section 16 of the Note, after January 31, 2009, Secured Party may assign this Agreement so that the assignee shall be entitled to the rights and remedies of Secured Party hereunder and in the event of such assignment, Debtor will assert no claims or defenses it may have against the assignee except those granted in this Agreement.

8.14 This Agreement shall not be changed orally but shall be changed only by agreement in writing signed by Debtor and Secured Party. No course of dealing between the parties, no usage of trade and no parol or extrinsic evidence of any nature shall be used to supplement or modify any of the terms or provisions of this Agreement.

8.15 Any notice, request or other communication required or permitted to be given hereunder shall be given as provided in the Note.

8.16 This Agreement shall be binding upon Debtor, and the devisees, executors, administrators, trustees, beneficiaries, conservators, receivers, successors and assigns of Debtor, including all successors in interest of Debtor in and to all or any part of the Collateral, and shall benefit Secured Party and its successors and assigns.

8.17 If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby. Each waiver in this Agreement is subject to the overriding and controlling rule that it shall be effective only if and to the extent that (a) it is not prohibited by applicable law and (b) applicable law neither provides for nor allows any material sanctions to be imposed against Secured Party for having bargained for and obtained it.

8.18 Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of any of the Collateral in its possession if it takes such action for that purpose as Debtor requests in writing, but failure of Secured Party to comply with such request shall not of itself be deemed a failure to have exercised reasonable care. Secured Party shall not be responsible in any way for any depreciation in the value of the Collateral, nor shall any duty or responsibility whatsoever rest upon Secured Party to take any steps to preserve rights against prior parties or to enforce collection of the Collateral by legal proceedings or otherwise, the sole duty of Secured Party, its successors and assigns, being to receive collections, remittances and payments on such Collateral as and when made and received by Secured Party and to apply or hold the amount or amounts so received in accordance with the terms hereof and the other Credit Documents.

8.19 The pronouns used in this Agreement are in the masculine and neuter genders but shall be construed as feminine, masculine or neuter as occasion may require. "Secured Party", "Obligor" and "Debtor" as used in this Agreement include the heirs, devisees, executors, administrators, personal representatives, trustees, beneficiaries, conservators, receivers, successors and assigns of those parties.

8.20 The section headings appearing in this Agreement have been inserted for convenience only and shall be given no substantive meaning or significance whatever in construing the terms and provisions of this Agreement. Terms used in this Agreement which are defined in the Texas Uniform Commercial Code are used with the meanings as therein defined. Wherever the term "including" or a similar term is used in this Agreement, it shall be read as if it were written "including by way of example only and without in any way limiting the generality of the clause or concept referred to."

8.21 This Agreement is performable in Harris County, Texas, which shall be a proper place of venue for suit on or in respect of this Agreement. Debtor irrevocably agrees that any legal proceeding in respect of this Agreement shall be brought in the district courts of Harris County, Texas or the United States District Court for the Southern District of Texas, Houston Division (collectively, the "Specified Courts"). Debtor hereby irrevocably submits to the nonexclusive jurisdiction of the state and federal courts of the State of Texas. Debtor hereby irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to any Credit Document brought in any Specified Court, and hereby further irrevocably waives any claims that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Debtor further irrevocably consents to the service of process out of any of the Specified Courts in any such suit, action or proceeding by the mailing of copies thereof by certified mail, return receipt requested, postage prepaid, to Debtor at its address as provided in this Agreement or as otherwise provided by Texas law. Nothing herein shall affect the right of Secured Party to commence legal proceedings or otherwise proceed against Debtor in any jurisdiction or to serve process in any manner permitted by applicable law. Debtor agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the

judgment or in any other manner provided by law. **THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE APPLICABLE LAWS OF THE STATE OF TEXAS AND THE UNITED STATES OF AMERICA FROM TIME TO TIME IN EFFECT.**

8.22 Debtor agrees that, if at any time all or any part of any payment previously applied by Secured Party to the Debt is or must be returned by Secured Party--or recovered from Secured Party--for any reason (including the order of any bankruptcy court), this Agreement shall automatically be reinstated to the same effect, as if the prior application had not been made.

8.23 This Agreement and the other Credit Documents embody the entire agreement and understanding between Secured Party and Debtor with respect to their subject matter and supersede all prior conflicting or inconsistent agreements, consents and understandings relating to such subject matter. Debtor acknowledges and agrees there is no oral agreement between Debtor and Secured Party which has not been incorporated in this Agreement and the other Credit Documents.

8.24 Secured Party may from time to time and at any time, without any necessity for any notice to or consent by Debtor or any other person or entity, release all or any part of the Collateral from the security interests of this Agreement, with or without cause, including as a result of any determination by Secured Party that the Collateral or any portion thereof contains or has been contaminated by or releases or discharges any hazardous or toxic waste, material or substance.

8.25 This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such separate counterparts shall together constitute but one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by facsimile also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability and binding effect of this Agreement.


*[Signature Pages Follow]*

EXECUTED on January 31, 2008, to be effective as of the date set forth on the first page of this Agreement.

**DEBTOR:**

**ALPHEUS COMMUNICATIONS, L.P.,**  
a Delaware limited partnership

By: Zipline, L.L.C.,  
its general partner

By:   
Name: PAUL W. HOBBY  
Title: CEO

*[Signature Page to Security Agreement (All Assets)]*

**SECURED PARTY:**

**EL PASO TELECOM, L.L.C.,**  
a Delaware limited liability company

By: *Gene J. Waguespack* rw3  
Name: Gene J. Waguespack  
Title: Vice President

*[Signature Page to Security Agreement (All Assets)]*

**EXHIBITS**

**TO**

**SECURITY AGREEMENT (ALL ASSETS)**

**DATED JANUARY 31, 2008**

**BY AND BETWEEN ALPHEUS COMMUNICATIONS, L.P. AND EL PASO TELECOM, L.L.C.**

**EXHIBIT A**

**TABLE OF INTELLECTUAL PROPERTY**

<b>Name</b>	<b>Type</b>	<b>Jurisdiction</b>	<b>Date Filed</b>	<b>Class</b>	<b>Effective date/ Expiration</b>	<b>Number</b>
Alpheus (word mark)	T	US	7/2/04	38 Telecommunication services, namely broadband transmission of voice, video and/or data for wholesale and enterprise customers	11/22/2005 to 11/22/2015	3017584
Alpheus (word mark)	T	US	3/7/2007	38 Telecommunications (Expansion for IT Services, ISP and data center services)	Filed 3/7/2007	
Alpheus (word mark)	T	TX	9/27/2005	38 Telecommunications (Broadband Transmission)	9/27/2005 to 9/27/2015	800394850
Alpheus (graphic rainbow ring)	T	US	8/13/2004	38 Telecommunication services, namely broadband transmission of voice, video and/or data for wholesale and enterprise customers	12/13/2005 to 12/13/2015	3027694
Alpheus (graphic rainbow ring)	T	US	3/7/3007	38 Telecommunications (Expansion for IT Services, ISP and data center services)	Filed 3/7/2007	
Alpheus (graphic rainbow ring)	T	TX	9/27/2005	38 Telecommunications (Broadband Transmission)	9/27/2005 to 9/27/2015	800394842
METROLOCITY (word mark)	T	US	1/12/2005	38 Telecommunication services, namely broadband transmission of voice, video and/or data for wholesale and enterprise customers	10/17/2006	3160447
METROLOCITY (word mark)	T	TX	11/1/2005	38 Telecommunications (Broadband Transmission)	11/1/2005 to 11/1/2015	800561950

**TYPES**

TRADEMARK = T

PATENT = P

COPYRIGHT = C



## **EXHIBIT B**

### **INVESTMENT SECURITIES**

All interests in Alpheus Data Services, L.L.C., a single member LLC formed by Alpheus Communications, L.P.

The Certificate of Formation of Alpheus Data Services, L.L.C. was filed with the Secretary of State of the State of Delaware on December 21, 2006. The business and affairs of the limited liability company are managed and all its powers are exercised by the Member.

## EXHIBIT C

### COMMERCIAL CLAIMS

<b>Matter</b>	<b>Forum</b>	<b>Type</b>	<b>Status</b>
Gerald Ahmann vs. Alpheus Communications, L.P., Aspen Communications, LLC, and James T. Chiles	In the 44 <sup>th</sup> Judicial District Court of Dallas County, Texas	Claim of Tortious Interference with a contract.	Discovery has just begun.
Claim for Indemnity from McKnight Dallas Real Estate LP and McKnight Property Management LLC	N/A-no suit filed.	Claim for Defense and Indemnification	Believe claim was settled by McKnight for under \$15,000.

**EXHIBIT C  
CONTINUED**

**DEPOSIT ACCOUNTS**

ALPHEUS COMMUNICATIONS, L.P.

**Bank Accounts**

<u>Amegy Account #</u>	<u>Routing #</u>	<u>Account Name</u>	<u>Account Type</u>	<u>Status</u>
0093419002	113011258	Alpheus Communications LP- Euro Sweep (USD)	Euro sweep	active account
0003419002	113011258	Alpheus Communications LP	Operating	active account
0051300970	113011258	Alpheus Communications LP Payroll Acct (USD)	Payroll	active account
0051044419	113011258	Alpheus Communications LP Payables (USD)	Payable	active account
	113011258	Alpheus Communications Lock Box <u>Lock box address:</u> Dept 566 P.O. Box 4346 Houston, TX 77210-4346	Tied to operating account	active account
0003688224	113011258	Zipline LLC- Operating Acct (USD)	Operating	active account
0003688267	113011258	Zipline LLC- Payroll Acct (USD)	Payroll	active account active account--test check sent to Amegy 2/12/07
0003690911	113011258	Zipline LLC- Payables	Payable account	2/12/07
0003690962	113011258	Alpheus Data Services Operating account	ZBA Master-- Operating	active account
0003691047	113011258	Alpheus Data Services Payroll account	Payroll	active account
0003691004	113011258	Alpheus Data Services Payable account	Payable account	active account
	113011258	Alpheus Data Services Lock Box <u>Lock box address:</u> Dept 992 P.O. Box 4346 Houston, TX 77210-4346	Tied to operating account	active account

## EXHIBIT D

### EXCLUSIONS FROM COLLATERAL

1. The land, buildings, fixtures, equipment, cabling and any other owned, leased or licensed property at that certain location known as 1905 East 6<sup>th</sup> Street in Austin, Texas and all contracts and service agreements relating to services performed at or by such property.
2. Any and all Dark Fiber of Debtor. Dark Fiber shall be defined as any and all fiber optic strands, cables, jumpers and/or cross connects which are owned, leased, or licensed by Debtor or its subsidiaries which are not actively lit with optronics and carrying live traffic on the effective date of this Security Agreement (All Assets).
3. The following contracts of Debtor (for which the counter-party did not consent to the pledging of the contract):

Telecommunications Lease Agreement between EPEC REALTY, INC. and ALPHEUS COMMUNICATIONS, L.P. ("Alpheus") dated April 20, 2004
Assignment of License and Consent dated March 1, 2007, entered into by Aspen Communications, LLC, Alpheus Communications, L.P. ("Alpheus") and Dallas Main L.P.
Office Lease Agreement between Ft. Worth Plaza Limited Partnership and Alpheus Communications, L.P. successor-in-interest to Aspen Communications, LLC ("Alpheus") dated October 1, 2005

**EXHIBIT E**

**ALL LEASED AND OWNED LOCATIONS OTHER THAN UN-MANNED COLOCATION SITES**

Owned Property Shown for informational purposes only and not part of collateral			1905 East 6th Street	34,802 Square Feet		Austin, TX
Leased Property						
Alpheus as Lessee	Alpheus Entity	Monthly Rental	Address of Rental Property	Approximate Total Square Feet Rented	Landlord	Property City and State
Lessee	Alpheus Data Services	\$646.00	2323 Bryan, Suite 2440	6,463	Digital-Bryan Street Partnership, L.P.	Dallas, TX 75201
Lessee	Alpheus Data Services	\$25,673.16	2323 Bryan, Suite 2650	6,551	Digital-Bryan Street Partnership, L.P.	Dallas, TX 75201
Lessee	Alpheus Data Services	\$1,458.33	309 W. 7th Street, Suite 340	3,500	Fort Worth Plaza Limited Partnership c/o MTA Management Inc.	Fort Worth, TX 76102
Lessee	Alpheus Communications	\$23,746.69	2323 Bryan St., Suite 850	7,347	Digital-Bryan Street Partnership, LP	Dallas, TX 75201
Lessee	Alpheus Communications	\$14,279.00	800 Navarro, Suite 100	8,630	800 Navarro Partners, LLC	San Antonio , TX 78205
Lessee	Alpheus Communications	\$19,500.00	1301 Fannin, 20th Floor	19,495	UCM/GP-301 Fannin, L.P.	Houston, TX 77002
Lessee	Alpheus Communications	\$0.00	1010 Travis, Suite 100	10,304	EPEC Realty, Inc.	Houston, TX 77002

**EXHIBIT F****ITEMS OF COLLATERAL SUBJECT TO CERTIFICATES OF TITLE**

Year	Description	VIN	Class	License Plate #
2001	Chevy Astro Van	1GCDL19W71B139974	Van	5VB B05
2001	Chevy Astro Van	1GCDL19W41B150852	Van	6BX L62
2001	Chevy Astro Van	1GCDL19W41B150902	Van	5YW W08
2001	Ford F350	1FTSX31F81EC83597	Truck	5TS X89
2001	Splice Trailer	1F9AU18291A203181	Trailer	19W ZPZ
2001	Chevy Astro Van	1GCDL19W41B150981	Van	6BX X92
2002	Ford Explorer	1FMZU72E02ZA58178	Truck	5GF B67
2001	Chevy Astro Van	1GCDL19W21B149506	Van	4SX V74
2002	Ford Explorer	1FMZU72E22ZA42452	Truck	5GF B66
2001	Chevy Astro Van	1GCDL19WX1B149527	Van	4SY C27
2000	GMC Safari	1GTDL19W3YB524569	Van	5FV G43
2001	Chevy Astro Van	1GCDL19W61B151050	Van	N78 BJT
2001	Chevy Astro Van	1GCDL19W31B140166	Van	5RH B31
2002	Ford Explorer	1FMZU72E62ZA54037	Truck	5GF B65
2001	Chevy Astro Van	1GCDL19W01B149584	Van	4SY C32
2002	Ford Explorer	1FMZU72E52ZA54059	Truck	5GF B68
2001	Ford F350	1FTSX31F61EC83596	Truck	5YY B20
2001	Ford F350	1FTSX31FX1EC83598	Truck	4TB J28
2001	Ford F350	1FTSX31F61ED85352	Truck	5WD G17

2001	Splice Trailer	1F9AU18271A203180	Trailer	20W ZPZ
2001	Splice Trailer	1F9AU18281A203172	Trailer	22W ZPZ
2005	Fiber Reel Trailer	5E3SK16NX51000183	Trailer	91YSGJ
2001	Chevy Astro Van	1GDCL19W81B150644	Van	N09 BJT
2000	GMC Safari	1GTDL19W6YB524680	Van	5FV C22
	Trailer for 350kw generator	Under review		
	Trailer for 350kw generator	Under review		

**Schedule 3(a) Good Title**

None.