

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	Second Lien Security Agreement		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Kuilima Resort Company		05/23/2008	PARTNERSHIP: HAWAII
TBR Property, LLC		05/23/2008	LIMITED LIABILITY COMPANY: DELAWARE
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Wells Fargo Bank, N.A.		
<b>Street Address:</b>	625 Marquette Avenue		
<b>City:</b>	Minneapolis		
<b>State/Country:</b>	MINNESOTA		
<b>Postal Code:</b>	55479		
<b>Entity Type:</b>	National Association: UNITED STATES		
<b>PROPERTY NUMBERS Total: 3</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
Registration Number:	2865448	TURTLE BAY RESORT	
Registration Number:	2943124	TURTLE BAY RESORT	
Registration Number:	2837438	TURTLE BAY RESORT	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	(213)629-5063		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
<b>Phone:</b>	213-892-4653		
<b>Email:</b>	bharris@milbank.com		
<b>Correspondent Name:</b>	Benjamin D. Harris		
<b>Address Line 1:</b>	601 S. Figueroa St.		
<b>Address Line 2:</b>	31st Floor		
<b>Address Line 4:</b>	Los Angeles, CALIFORNIA 90017		
<b>ATTORNEY DOCKET NUMBER:</b>	37386.01300		

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**SECURITY AGREEMENT  
(Borrower and Subsidiaries)  
(New Second Lien)**

This **SECURITY AGREEMENT** (this "**Agreement**") is dated as of May 23, 2008, and entered into by and among **KUILIMA RESORT COMPANY**, a Hawai'i general partnership, and **TBR PROPERTY, L.L.C.**, a Delaware limited liability company (together, jointly and severally, the "**Grantor**"), and **WELLS FARGO BANK, N.A.**, as collateral agent for the Beneficiaries (as hereinafter defined) (in such capacity herein called "**Secured Party**").

**PRELIMINARY STATEMENTS**

A. Pursuant to the New Second Lien Credit Agreement dated as of May 23, 2008 (as it may hereafter be amended, restated, supplemented or otherwise modified from time to time, being the "**Credit Agreement**"; the terms defined therein and not otherwise defined in Section 32 or elsewhere herein being used herein as therein defined), by and among Kuilima Resort Company ("**Borrower**"), the financial institutions listed therein as Lenders, and Wells Fargo Bank, N.A., as administrative agent (in such capacity, "**Administrative Agent**"), collateral agent and paying agent, Lenders have agreed to make, subject to the terms and conditions set forth in the Credit Agreement secured second lien multiple draw term loans (the "Loans" to Borrower in the aggregate principal amount of up to two million dollars (\$2,000,000).

B. It is a condition precedent to the obligation of Lenders to make the Loans to Borrower, pursuant to the Credit Agreement, that Grantor shall have executed and delivered this Agreement to Secured Party.

**NOW, THEREFORE**, in consideration of the agreements set forth herein and in the Credit Agreement and in order to induce Lenders to make Loans and other extensions of credit under the Credit Agreement, the Grantor hereby agrees with Secured Party as follows:

**SECTION 1. Grant of Security.**

The Grantor hereby assigns to Secured Party, and hereby grants to Secured Party a security interest in, all of Grantor's right, title and interest in and to all of the personal property of Grantor, in each case whether now or hereafter existing, whether tangible or intangible, whether now owned or hereafter acquired, wherever the same may be located and whether or not subject to the Uniform Commercial Code as it exists on the date of this Agreement, or as it may hereafter be amended in the State of New York (the "**UCC**"), including all Assigned Agreements and the following (the "**Collateral**"):

- (a) all Accounts;
- (b) all Chattel Paper;
- (c) all Money and all Deposit Accounts and Securities Accounts (including, without limitation, the Bank of New York Accounts (as listed on Schedule 6), the First Hawaiian

Bank Accounts (as listed on Schedule 6)), and the Bank of Hawaii Accounts (as listed on Schedule 6), together with all amounts on deposit from time to time in such Deposit Accounts and Securities Accounts;

- (d) all Documents;
- (e) all General Intangibles, including all Intellectual Property Collateral and Payment Intangibles;
- (f) all Goods, including, without limitation, Inventory, Equipment and Fixtures;
- (g) all Instruments;
- (h) all Investment Property;
- (i) all Letter-of-Credit Rights and other Supporting Obligations;
- (j) all Records;
- (k) all Commercial Tort Claims, including those set forth on Schedule 1 annexed hereto;
- (l) all Proceeds and Accessions with respect to any of the foregoing Collateral; and
- (m) all licenses, permits, and Entitlements (as defined in the Credit Agreement), including, without limitation, those set forth on Schedule 9.

Notwithstanding anything herein to the contrary, in no event shall the security interest granted under this Section 1 attach to (a) any lease, license, instrument, document, contract, Intellectual Property Collateral or agreement (including with respect to any Investment Property, Pledged Debt or Pledged Equity, any applicable shareholder or similar agreement) to which any Grantor is a party, 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 such Grantor therein or (ii) in a breach or termination pursuant to the terms of, or a default under, any such lease, license, instrument, document, 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 Uniform Commercial Code as in effect in any applicable jurisdiction (or any successor provision or provisions) or any other applicable law 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, Intellectual Property Collateral or agreement that does not result in any of the consequences specified in (i) or (ii) including, without limitation, any proceeds of such lease, license, contract, property rights or agreement; (b) any foreign Subsidiary voting stock of any "first-tier" foreign Subsidiary in excess of 65% of the voting power of all classes of capital stock of such foreign

Subsidiary entitled to vote; provided that immediately upon the amendment of the UCC to allow the pledge of a greater percentage of the voting power of foreign Subsidiary voting stock of any "first-tier" foreign Subsidiary without adverse tax consequences, the Collateral shall include, and the security interest granted by such Grantor shall attach to, such greater percentage of foreign Subsidiary voting stock of any "first-tier" foreign Subsidiary; or (c) any property or asset to the extent that such grant of a security interest is prohibited by any Applicable Laws or requires a consent not obtained of any Governmental Authority pursuant to such Applicable Laws (except to the extent such legal restriction would be ineffective under Sections 9-406 or 9-408 of the UCC as in effect in any applicable jurisdiction). Any capitalized terms in this Section 1 that are not otherwise defined herein or in the Credit Agreement are as defined in the UCC.

In the event that any asset of a Grantor is excluded from the Collateral by virtue of the foregoing paragraph and if reasonably requested by the Secured Party, the Grantor agrees to use all commercially reasonable efforts to obtain all requisite consents to enable the Grantor to provide a security interest in such asset pursuant hereto as promptly as practicable.

In addition, in no event shall the security interest granted under this Section 1 attach to any interest that Kuilima Resort Company may have in purchase and sale agreements and all other items covered by this Section 1 that are related exclusively to the Ocean Villas Units that are to be excluded from the Real Property Collateral; provided that, the items covered by this Section 1 that are related to Ocean Villas Unit No. 120 are to be included in the Collateral.

## **SECTION 2. Security for Obligations.**

This Agreement secures, and the Collateral is collateral security for, the prompt payment or performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, the Secured Obligations (as hereinafter defined). "**Secured Obligations**" means all obligations and other liabilities of every nature of the Grantor now or hereafter existing under or arising out of or in connection with the Credit Agreement, Hedge Agreements (if in favor of Collateral Agent, Administrative Agent or any Lender) and the other Loan Documents, in each case together with all extensions or renewals thereof, whether for principal, interest, fees, expenses, indemnities or otherwise, whether voluntary or involuntary, direct or indirect, absolute or contingent, liquidated or unliquidated, whether or not jointly owed with others, and whether or not from time to time decreased or extinguished and later increased, created or incurred, and all or any portion of such obligations or liabilities that are paid, to the extent all or any part of such payment is avoided or recovered directly or indirectly from Secured Party or any Lender, fraudulent transfer or otherwise, and all obligations of every nature of Grantor now or hereafter existing under this Agreement (including, without limitation, interest and other amounts that, but for the filing of a petition in bankruptcy with respect to the Grantor, would accrue on such obligations, whether or not a claim is allowed against the Grantor for such amounts in the related bankruptcy proceeding).

## **SECTION 3. Grantor Remains Liable.**

Anything contained herein to the contrary notwithstanding: (a) the Grantor shall remain liable under any contracts and agreements included in the Collateral, to the extent set

forth therein, to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed; (b) the exercise by Secured Party of any of its rights hereunder shall not release the Grantor from any of its duties or obligations under the contracts and agreements included in the Collateral; and (c) Secured Party shall not have any obligation or liability under any contracts, licenses, and agreements included in the Collateral by reason of this Agreement, nor shall Secured Party be obligated to perform any of the obligations or duties of the Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

#### **SECTION 4. Representations and Warranties.**

The Grantor represents and warrants as follows:

(a) **Ownership of Collateral.** Except as expressly permitted by the Credit Agreement, the Grantor owns its interests in the Collateral free and clear of any Lien and no effective financing statement or other instrument similar in effect covering all or any part of the Collateral is on file in any filing or recording office, in the United States Patent and Trademark Office (the "**PTO**") or in the Copyright Office, except for which proper terminations have been delivered to Secured Party for filing.

(b) **Perfection.** The security interests in the Collateral granted to Secured Party for the ratable benefit of Lenders constitute valid security interests in the Collateral, securing the payment of the Secured Obligations. Upon (i) the filing of UCC financing statements naming the Grantor as "debtor", naming Secured Party as "secured party" and describing the Collateral in the filing offices with respect to the Grantor set forth on Schedule 2 annexed hereto, (ii) in the case of any Securities Collateral consisting of certificated Securities or evidenced by Instruments, filing of such UCC financing statements or the delivery of the certificates representing such certificated Securities and delivery of such Instruments to Secured Party, (iii) in the case of any Intellectual Property Collateral, in addition to the filing of such UCC financing statements, recordation of appropriate evidence of the liens and security interest granted hereunder with the PTO or with the Copyright Office, as applicable, (iv) in the case of Equipment that is covered by a certificate of title, the filing with the registrar of motor vehicles or other appropriate authority in the applicable jurisdiction of an application requesting the notation of the security interest created hereunder on such certificate of title, and (v) in the case of any Deposit Account and any Investment Property constituting a Security Entitlement, Securities Account, Commodity Contract or Commodity Account, to the extent requested by Secured Party, the execution and delivery to Secured Party of an agreement providing for control by Secured Party thereof, the security interests in the Collateral granted to Secured Party for the ratable benefit of Lenders will constitute perfected security interests therein to the extent that security interests therein may be perfected by such filings prior to all other Liens (except for Permitted Encumbrances), and all filings and other actions necessary or desirable to perfect and protect such security interests have been, or promptly after the Closing Date will be, duly made or taken.

(c) **Office Locations; Type and Jurisdiction of Organization; Locations of Equipment and Inventory.** As of the Closing Date or, in the case of an Additional Grantor, the date of the applicable Counterpart, the chief place of business, the chief executive office and the

office where the Grantor keeps its Records regarding the Accounts and all Intellectual Property and all originals of all Chattel Paper that evidence Accounts are located at the locations set forth on Schedule 3 annexed hereto; the Grantor's name as it appears in official filings in the jurisdiction of its organization, type of organization (i.e. corporation, limited partnership, etc.), jurisdiction of organization and organization number provided by the applicable Government Authority of the jurisdiction of organization are set forth on Schedule 3 annexed hereto. All of the Equipment and Inventory is, as of the date hereof, or in the case of an Additional Grantor, the date of the applicable Counterpart, located at the places set forth on Schedule 4 annexed hereto, except for Inventory which, in the ordinary course of business, is in transit either (i) from a supplier to the Grantor, (ii) between the locations set forth on Schedule 4 annexed hereto or (iii) to customers of the Grantor.

(d) **Names.** The Grantor (or predecessor by merger or otherwise of the Grantor) shall not have, within the five year period preceding the Closing Date, or, in the case of an Additional Grantor, the date of the applicable Counterpart, had a different name from the name of the Grantor listed on the signature pages hereof, except the names set forth on Schedule 5 annexed hereto.

(e) **Delivery of Certain Collateral.** All certificates or Instruments (excluding checks) evidencing, comprising or representing the Collateral have been delivered to Secured Party duly endorsed or accompanied by duly executed instruments of transfer or assignment in blank.

(f) **Securities Collateral.** As of the date hereof, the Grantor has no interest in any Equity Interests, except for Kuilima Resort Company's 100% interest in TBR Property, LLC.

(g) **Intellectual Property Collateral.** Except as listed on Schedule 8, as of the date hereof, the Grantor does not own any of the following: (i) unregistered Trademarks or Trademark Registrations related to the Project; (ii) Patents; and (iii) Copyright Registrations; and the Grantor is not aware of any pending or threatened claim by any third party that any of the Intellectual Property Collateral owned by the Grantor is invalid or unenforceable that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(h) **Deposit Accounts, Security Accounts, Commodity Accounts.** Schedule 6 annexed hereto lists all Deposit Accounts, Security Accounts and Commodity Accounts owned by the Grantor as of the Closing Date and indicates the institution or intermediary at which the account is held and the account number.

(i) **Chattel Paper.** As of the date hereof, the Grantor has no interest in any Chattel Paper.

(j) **Letter-of-Credit Rights.** As of the date hereof, the Grantor has no interest in any Letter-of-Credit Rights.

(k) **Documents.** As of the date hereof, no negotiable Documents are outstanding with respect to any Inventory.



(l) **Assigned Agreements.** Schedule 7 annexed hereto contains a list of all agreements to which Grantor is a party and is considered a Material Contract according to Subsection 4.33 of the Credit Agreement. As of the date hereof, each Assigned Agreement is in full force and effect and is enforceable against the parties thereto in accordance with its terms.

(m) **Motor Vehicles.** As of the date hereof, the Grantor owns no motor vehicles.

(n) **Government Approvals.** No authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for either (i) the pledge or grant by the Grantor of the Liens purported to be created in favor of the Secured Party hereunder or (ii) the exercise by Secured Party of any rights or remedies in respect of any Collateral (whether specifically granted or created hereunder or created or provided for by applicable law), except (A) for the filings contemplated by clause (b) above and (B) as may be required in connection with the disposition of any Investment Property, by laws generally affecting the offering and sale of securities and as may be required under federal or other laws pertaining to Intellectual Property.

#### **SECTION 5. Delivery & Control Requirements; Further Assurances.**

(a) **Generally.** The Grantor agrees from time to time, at the expense of the Grantor, to promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that Secured Party may reasonably request, in order to perfect, protect and/or ensure the priority of any security interest granted or purported to be granted hereby or to enable Secured Party to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, the Grantor will: (i) notify Secured Party in writing of receipt by the Grantor of any interest in Chattel Paper and at the request of Secured Party, mark conspicuously each item of Chattel Paper, with a legend, in form and substance reasonably satisfactory to Secured Party, indicating that such Chattel Paper is subject to the security interest granted hereby, (ii) deliver to Secured Party all promissory notes and other Instruments and, at the request of Secured Party, all original counterparts of Chattel Paper, duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance reasonably satisfactory to Secured Party, (iii) (A) without need for the Secured Party to make any request, execute (if necessary) and file such financing or continuation statements, or amendments thereto, (B) without the need for the Secured Party to make any request, execute and deliver, and cause to be executed and delivered, agreements establishing that Secured Party has control of electronic Chattel Paper, Deposit Accounts, Investment Property and Letter-of-Credit Rights of the Grantor and (C) deliver such other instruments or notices, in each case, as may be necessary or desirable, or as Secured Party may reasonably request, in order to perfect and preserve the security interests granted or purported to be granted hereby, (iv) furnish to Secured Party from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as Secured Party may reasonably request, all in reasonable detail, (v) promptly after the acquisition by the Grantor of any item of Equipment with a value in excess of \$500,000 that 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, 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, (vi) within thirty (30) days after the end of each calendar quarter, deliver to Secured Party 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, (vii) at any reasonable time, upon request and reasonable prior notice by Secured Party, exhibit the Collateral to and allow inspection of the Collateral by Secured Party, or persons designated by Secured Party, (viii) at Secured Party's reasonable request, appear in and defend any action or proceeding that may affect the Grantor's title to or Secured Party's security interest in all or any material part of the Collateral, and (ix) use commercially reasonable efforts to obtain any necessary consents of third parties to the creation and perfection of a security interest in favor of Secured Party with respect to any Collateral. The Grantor hereby authorizes Secured Party to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral other than items which are specifically excluded from the Collateral under this Agreement or any other Loan Document (including any financing statement indicating that it covers "all assets" or "all personal property" of the Grantor) without the signature of the Grantor.

(b) **Securities Collateral.** Without limiting the generality of the foregoing Section 5(a), the Grantor agrees that (i) all certificates or Instruments representing or evidencing the Securities Collateral shall be delivered to and held by or on behalf of Secured Party pursuant hereto and shall be in suitable form for transfer by delivery or, as applicable, shall be accompanied by the Grantor's endorsement, where necessary, or duly executed instruments of transfer or assignment in blank, all in form and substance reasonably satisfactory to Secured Party and (ii) it will, upon obtaining any additional Securities Collateral, promptly (and in any event within ten (10) Business Days) deliver to Secured Party a Pledge Supplement, duly executed by the Grantor, in respect of such additional Securities Collateral; provided, that the failure of the Grantor to execute a Pledge Supplement with respect to any additional Securities Collateral shall not impair the security interest of Secured Party therein or otherwise adversely affect the rights and remedies of Secured Party hereunder with respect thereto.

(c) **Intellectual Property Collateral.** Without limiting the generality of the foregoing Section 5(a), if the Grantor shall hereafter obtain rights to any new Intellectual Property Collateral the provisions of this Agreement shall automatically apply thereto. At least quarterly, together with the Quarterly Financials as mandated by Subsection 5.3 of the Credit Agreement, the Grantor shall notify Secured Party in writing of any Trademark Registrations issued or application for a Trademark Registration made, any Patent issued or application for a Patent made, and any Copyright Registrations issued or application for Copyright Registration made, in any such case, during such calendar quarter. At least quarterly, (and together with the Quarterly Financials as mandated by Subsection 5.3 of the Credit Agreement if Grantor shall so choose) the Grantor shall execute and deliver to Secured Party a Pledge Supplement, and any other documents as the Secured Party may reasonably request, and have recorded all documents as the Secured Party may reasonably request to evidence the liens and security interest granted hereunder in the Intellectual Property Collateral with any intellectual property registry in which said Intellectual Property Collateral 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, any state agencies and the

foreign counterparts on any of the foregoing; provided, the failure of the Grantor to execute a Pledge Supplement or take the actions necessary for recording with respect to any additional Intellectual Property Collateral shall not impair the security interest of Secured Party therein or otherwise adversely affect the rights and remedies of Secured Party hereunder with respect thereto. Upon each such acquisition, and regardless of whether a Pledge Supplement is delivered to the Secured Party, the representations and warranties set forth in Section 4(g) hereof shall be deemed modified to include reference to any right, title or interest in any existing Intellectual Property Collateral or any Intellectual Property Collateral set forth on Schedule A to such Pledge Supplement.

(d) **Commercial Tort Claims.** The Grantor has no Commercial Tort Claims as of the date hereof, except as set forth on Schedule 1 annexed hereto. In the event that the Grantor shall at any time after the date hereof have any Commercial Tort Claim exceeding \$1,000,000 in any one instance, the Grantor shall promptly notify Secured Party thereof in writing, which notice shall (i) set forth in reasonable detail the basis for and nature of such Commercial Tort Claim and (ii) constitute an amendment to this Agreement by which such Commercial Tort Claim shall constitute part of the Collateral.

**SECTION 6. Certain Covenants of the Grantor.**

The Grantor shall:

(a) give Secured Party at least thirty (30) days prior written notice of (i) any change in the Grantor's name, identity or corporate structure and (ii) any reincorporation, reorganization or other action that results in a change of the jurisdiction of organization of the Grantor;

(b) if Secured Party gives value to enable the Grantor to acquire rights in or the use of any Collateral, use such value for such purposes;

(c) keep correct and accurate (in all material respects) Records of Collateral at the locations described in Schedule 3 annexed hereto; and

(d) permit representatives of Secured Party at any time upon reasonable prior notice during normal business hours to inspect and make abstracts from such Records, and the Grantor agrees to render to Secured Party, at the Grantor's cost and expense (provided that such cost and expense is reasonable), such clerical and other assistance as may be reasonably requested with regard thereto.

**SECTION 7. Special Covenants With Respect to Equipment and Inventory.**

The Grantor shall:

(a) if any Inventory is in possession or control of any of the Grantor's agents or processors and, in any event, upon the occurrence of and during the continuation of an Event of Default and at the written request of Secured Party, instruct such agent or processor to hold all such Inventory for the account of Secured Party and subject to the instructions of Secured Party;

(b) if any Inventory is located on premises leased by the Grantor, at the written request of Secured Party, use commercially reasonable efforts to deliver to Secured Party a fully executed access agreement (provided that this Section 7(b) shall not apply to the TBR Lease (as defined in the Credit Agreement)); and

(c) promptly upon the issuance and delivery to the Grantor of any negotiable Document, deliver such Document to Secured Party.

**SECTION 8. Special Covenants with respect to Accounts and Assigned Agreements.**

(a) The Grantor shall, for not less than three (3) years from the date on which each Account of the Grantor arose, maintain (i) complete Records of such Account, including records of all payments received, credits granted and merchandise returned, and (ii) all documentation relating thereto.

(b) Except as otherwise provided in this Subsection (b), the Grantor shall continue to collect, at its own expense, all amounts due or to become due to the Grantor under the Accounts. In connection with such collections, the Grantor may take such action as the Grantor may deem necessary or advisable to enforce collection of amounts due or to become due under the Accounts; provided, however, that Secured Party shall have the right at any time, upon the occurrence and during the continuation of an Event of Default and upon written notice to the Grantor of its intention to do so, to (i) notify the account debtors or obligors under any Accounts of the assignment of such Accounts to Secured Party and to direct such account debtors or obligors to make payment of all amounts due or to become due to the Grantor thereunder directly to Secured Party, (ii) notify each Person maintaining a lockbox or similar arrangement to which account debtors or obligors under any Accounts 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 Secured Party, (iii) enforce collection of any such Accounts at the expense of Grantor, and (iv) adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as the Grantor might have done. After receipt by the Grantor of the notice from Secured Party referred to in the proviso to the preceding sentence, (x) all amounts and proceeds (including checks and other Instruments) received by the Grantor in respect of the Accounts shall be received in trust for the benefit of Secured Party hereunder, shall be segregated from other funds of the Grantor and shall be forthwith paid over or delivered to Secured Party in the same form as so received (with any necessary endorsement) to be held as cash Collateral and applied as provided by Section 17 hereof, and (y) the Grantor shall not, without the written consent of Secured Party, adjust, settle or compromise the amount or payment of any Account, or release wholly or partly any account debtor or obligor thereof, or allow any credit or discount thereon except to the extent not prohibited by the terms of the Credit Agreement.

(c) The Grantor shall at its expense:

(i) if consistent with sound business practices, perform and observe all terms and provisions of the Assigned Agreements to be performed or observed by it and, subject to Subsection 4.33F of the Credit Agreement, maintain the Assigned Agreements in full force and effect, enforce the Assigned Agreements in accordance with their terms

and take all such action to such end as may be from time to time requested by Secured Party; and

(ii) after (A) any Material Contract is terminated or expires or is renewed or is, amended or otherwise Modified in any material respect (provided, however, that change orders relating to construction contracts are not included for purposes of this clause (A) unless the amount or value of such change order exceeds \$5,000,000), or (B) any notice or other communication is delivered by any party to any Material Contract pursuant thereto or in respect thereof relating to (x) any financial matter or other matter having adverse financial consequences (other than the express requirements of the relevant Material Contract) to the Borrower or its Subsidiaries in excess of \$5,000,000, or (y) any other non-financial matter which could reasonably be expected to have a Material Adverse Effect, promptly deliver to Secured Party notice and a copy thereof.

(d) Upon the occurrence and during the continuance of an Event of Default, no Grantor shall (i) cancel or terminate any of the Assigned Agreements or consent to or accept any cancellation or termination thereof that could reasonably be expected to materially impair the interest or rights of Secured Party; (ii) amend or otherwise modify the Assigned Agreements or give any consent, waiver or approval thereunder that could reasonably be expected to materially impair the interest or rights of Secured Party; (iii) waive any default under or breach of the Assigned Agreements that could reasonably be expected to materially impair the interest or rights of Secured Party; (iv) consent to or permit or accept any prepayment of amounts to become due under or in connection with the Assigned Agreements, except as expressly provided therein; or (v) take any other action in connection with the Assigned Agreements that could reasonably be expected to materially impair the value of the interest or rights of the Grantor thereunder or that could reasonably be expected to materially impair the interest or rights of Secured Party.

#### **SECTION 9. Special Covenants With Respect to the Securities Collateral.**

(a) **Form of Securities Collateral.** Secured Party shall have the right at any time to exchange certificates or instruments representing or evidencing Securities Collateral for certificates or instruments of smaller or larger denominations. If any Securities Collateral is not a security pursuant to Section 8-103 of the UCC on the date such Security Collateral becomes subject to this Agreement, no Grantor shall take or consent to the taking of any action that, under such Section, converts such Securities Collateral into a security without causing the issuer thereof to issue to it certificates or instruments evidencing such Securities Collateral, which it shall promptly deliver to Secured Party as provided in this Section 9(a).

(b) **Covenants.** The Grantor shall (i) not, except as expressly permitted by the Credit Agreement, permit any issuer of Pledged Subsidiary Equity to merge or consolidate unless all the outstanding Equity Interests of the surviving or resulting Person are, 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 corporation; provided that, if the surviving or resulting Person upon any such merger or consolidation is a controlled foreign corporation, then the Grantor shall only be required to pledge outstanding

Equity Interests of such surviving or resulting Person possessing up to but not exceeding 66% of the voting power of all classes of Equity Interests of such issuer entitled to vote; (ii) cause each issuer of Pledged Subsidiary Equity not to issue Equity Interests in addition to or in substitution for the Pledged Subsidiary Equity issued by such issuer, except to the Grantor or as contemplated under the Credit Agreement; (iii) immediately upon its acquisition (directly or indirectly) of any Equity Interests, including additional Equity Interests in each issuer of Pledged Equity, comply with Section 5(b); provided that, notwithstanding anything contained in this clause (iii) to the contrary, the Grantor shall only be required to pledge the outstanding Equity Interests of a controlled foreign corporation possessing up to but not exceeding 66% of the voting power of all classes of capital stock of such controlled foreign corporation entitled to vote; (iv) immediately upon issuance of any and all Instruments or other evidences of additional Indebtedness from time to time owed to the Grantor by any obligor on the Pledged Debt, comply with Sections 5(a) and (b); (v) promptly deliver to Secured Party all material written notices received by it with respect to the Securities Collateral; (vi) at its expense (A) perform and comply in all material respects with all terms and provisions of any agreement related to the Securities Collateral required to be performed or complied with by it, (B) maintain all such agreements in full force and effect and (C) enforce all such agreements in accordance with their terms; provided that, clause (iv) shall be complied with if failure to perform under clauses (A), (B) or (C) could reasonably be expected to result in a Material Adverse Effect; and (vii), at the request of Secured Party, promptly execute and deliver to Secured Party an agreement providing for control by Secured Party of all Securities Entitlements, Securities Accounts, Commodity Contracts and Commodity Accounts of the Grantor.

(c) **Voting and Distributions.** So long as no Event of Default shall have occurred and be continuing, (i) the Grantor shall be entitled to exercise any and all voting and other consensual rights pertaining to the Securities Collateral or any part thereof for any purpose not prohibited by the terms of this Agreement or the Credit Agreement; provided, no Grantor shall exercise or refrain from exercising any such right if Secured Party shall have notified the Grantor that, in Secured Party's reasonable judgment, such action would have a Material Adverse Effect on the value of the Securities Collateral or any part thereof; and (ii) the Grantor shall be entitled to receive and retain any and all dividends, other distributions and interest paid in respect of the Securities Collateral.

Upon the occurrence and during the continuation of an Event of Default, (x) upon written notice from Secured Party to the Grantor, all rights of the Grantor to exercise 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 Secured Party who shall thereupon have the sole right to exercise such voting and other consensual rights; (y) except as otherwise specified in the Credit Agreement, all rights of the Grantor to receive the dividends, other distributions, principal and interest payments which it would otherwise be authorized to receive and retain pursuant hereto shall cease, and all such rights shall thereupon become vested in Secured Party who shall thereupon have the sole right to receive and hold as Collateral such dividends, other distributions and interest payments; and (z) all dividends, principal, interest payments and other distributions which are received by the Grantor contrary to the provisions of clause (y) above shall be received in trust for the benefit of Secured Party, shall be segregated from other funds of the Grantor and shall forthwith be paid over to Secured Party as Collateral in the same form as so received (with any necessary endorsements).

In order to permit Secured Party 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, (I) the Grantor shall promptly execute and deliver (or cause to be executed and delivered) to Secured Party all such proxies, dividend payment orders and other instruments as Secured Party may from time to time reasonably request, and (II) without limiting the effect of clause (I) above, the Grantor hereby grants to Secured Party an irrevocable proxy to vote the Pledged Equity and to exercise all other rights, powers, privileges and remedies to which a holder of the Pledged Equity would be entitled (including giving or withholding written consents of holders of Equity Interests, calling special meetings of holders of Equity Interests and voting at such meetings), which proxy shall be effective, automatically and without the necessity of any action (including any transfer of any Pledged Equity on the record books of the issuer thereof) by any other Person (including the issuer of the Pledged Equity or any officer or agent thereof), upon the occurrence of an Event of Default and which proxy shall only terminate upon the payment and performance in full of the Secured Obligations, the cure of such Event of Default or waiver thereof as evidenced by a writing executed by Secured Party.

**SECTION 10. Special Covenants With Respect to the Intellectual Property Collateral.**

(a) The Grantor shall:

(i) except as permitted under Subsection 6.2B of the Credit Agreement, use commercially reasonable efforts so as not to permit the inclusion in any contract to which it hereafter becomes a party of any provision that could reasonably be expected to impair or prevent the creation of a security interest in, or the assignment of, the Grantor's rights and interests in any Intellectual Property Collateral acquired under such contracts;

(ii) use commercially reasonable efforts to protect the secrecy of all trade secrets that constitute Intellectual Property Collateral, including, without limitation, where appropriate, in Grantor's reasonable business judgment, entering into confidentiality agreements with employees and labeling and restricting access to secret information and documents;

(iii) use appropriate notice as may be required by Applicable Law in connection with its use of any of the Intellectual Property Collateral and products and services covered by the Intellectual Property Collateral; and

(iv) maintain the quality consistent with the Grantor's past practices in the manufacture, sale and delivery of products and services sold or delivered under or in connection with the Trademarks.

(b) Except as otherwise provided in this Section 10, the Grantor shall continue to collect, at its own expense, all amounts due or to become due to the Grantor in respect of the Intellectual Property Collateral or any portion thereof. In connection with such collections, the Grantor may take such action as the Grantor may reasonably deem necessary or advisable to enforce collection of such amounts; provided, Secured Party shall have the right at any time,

upon the occurrence and during the continuation of an Event of Default and upon written notice to the Grantor of its intention to do so, to notify the obligors with respect to any such amounts of the existence of the security interest created hereby and to direct such obligors to make payment of all such amounts directly to Secured Party, and, upon such notification and at the expense of the 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 the Grantor might have done. After receipt by the Grantor of the notice from Secured Party referred to in the proviso to the preceding sentence and upon the occurrence and during the continuance of any Event of Default, (i) all amounts and proceeds (including checks and Instruments) received by the Grantor in respect of amounts due to the Grantor in respect of the Intellectual Property Collateral or any portion thereof shall be received in trust for the benefit of Secured Party hereunder, shall be segregated from other funds of the Grantor and shall be forthwith paid over or delivered to Secured Party in the same form as so received (with any necessary endorsement) to be held as Cash Collateral and applied as provided by Section 17 hereof, and (ii) the 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, except with the written consent of the Secured Party.

(c) The Grantor shall diligently prosecute, file and/or make, unless and until the Grantor, in its reasonable business judgment, decides otherwise, (i) any application for registration relating to any of the Intellectual Property Collateral owned, held or used by the Grantor that is pending as of the date of this Agreement, (ii) any Copyright Registration on any existing or future unregistered copyrightable works (except for works of nominal commercial value or with respect to which the Grantor has determined in the exercise of its commercially reasonable judgment that it shall not seek registration), (iii) any application on any future patentable but unpatented innovation or invention comprising Intellectual Property Collateral, and (iv) any Trademark opposition and cancellation proceedings, as well as renew Trademark Registrations and Copyright Registrations and do any and all acts which are necessary or desirable to preserve and maintain its rights in all Intellectual Property Collateral. Any expenses incurred in connection therewith shall be borne solely by Grantor. Subject to the foregoing, the Grantor shall give Secured Party prior written notice of any abandonment by the Grantor of any material Intellectual Property Collateral.

(d) Except as provided herein, the Grantor shall have the right to commence and prosecute in its own name, as real party in interest, for its own benefit and at its own expense, such suits, proceedings or other actions for infringement, unfair competition, dilution, misappropriation or other damage, or reexamination or reissue proceedings as are necessary to protect the Intellectual Property Collateral. The Grantor shall promptly, following its becoming aware thereof, notify Secured Party of the institution of, or of any determination adverse to the Grantor in, any proceeding (whether in the PTO, the Copyright Office or any federal, state, local or foreign court) regarding the Grantor's ownership, right to use, or interest in any Intellectual Property Collateral. The Grantor shall provide to Secured Party any information with respect thereto reasonably requested by Secured Party and of which the Grantor has knowledge.

(e) In addition to, and not by way of limitation of, the granting of a security interest in the Collateral pursuant hereto, the Grantor, effective upon the occurrence and during the continuance of an Event of Default, hereby grants to Secured Party the nonexclusive right



and license to use all Trademarks, Copyrights, Patents or technical processes included within the Intellectual Property Collateral owned by the Grantor, together with any goodwill associated therewith, all to the extent necessary to enable Secured Party to exercise and enforce its rights and remedies hereunder with respect to any Collateral. This right shall inure to the benefit of all successors, assigns and transferees of Secured Party and its successors, assigns and transferees, whether by voluntary conveyance, operation of law, assignment, transfer, foreclosure, deed in lieu of foreclosure or otherwise. Such right and license shall be granted free of charge, without requirement that any monetary payment whatsoever be made to the Grantor. If and to the extent that the Grantor is permitted to license the Intellectual Property Collateral subject to the terms and provisions of this Agreement and of the Credit Agreement, Secured Party shall promptly enter into a non-disturbance agreement or other similar arrangement, at the Grantor's request and expense, with the Grantor and any licensee of any Intellectual Property Collateral permitted hereunder in form and substance reasonably satisfactory to such licensee, the Grantor and Secured Party pursuant to which (i) Secured Party shall agree not to disturb or interfere with such licensee's rights under its license agreement with the Grantor so long as such licensee is not in default thereunder, and (ii) such licensee shall acknowledge and agree that the Intellectual Property Collateral licensed to it is subject to the security interest created in favor of Secured Party and the other terms of this Agreement.

(f) The parties hereto acknowledge and agree that, subject to the other terms and provisions of this Agreement and of the Credit Agreement, including Secured Party's rights upon the occurrence and during the continuance of an Event of Default, the grant of a security interest in the Intellectual Property Collateral contained herein shall not diminish the Grantor's exclusive right and license to use or grant to other Persons licenses or sublicenses in such Intellectual Property Collateral.

**SECTION 11. Intentionally Deleted**

**SECTION 12. Secured Party Appointed Attorney-in-Fact.**

The Grantor hereby irrevocably appoints Secured Party as the Grantor's attorney-in-fact, with full authority in the place and stead of the Grantor and in the name of the Grantor, Secured Party or otherwise, from time to time in Secured Party's discretion to take any action and to execute any instrument that Secured Party may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation:

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

(b) upon the occurrence and during the continuance of an 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 an Event of Default, to receive, endorse and collect any drafts or other Instruments, Documents, Chattel Paper and other documents in connection with clauses (a) and (b) above;

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

(e) only if Grantor fails to pay or discharge the same within a reasonable time period after such taxes or liens become due or payable, to pay or discharge taxes or Liens (other than taxes not required to be discharged pursuant to the Credit Agreement and Liens permitted under this Agreement or the Credit Agreement) 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 Secured Party in its sole discretion, any such payments made by Secured Party to become obligations of the Grantor to Secured Party, due and payable immediately without demand;

(f) upon the occurrence and 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;

(g) upon the occurrence and during the continuance of an Event of Default, to sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications and notices in connection with Accounts and other documents relating to the Collateral; and

(g) upon the occurrence and during the continuance 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 Secured Party were the absolute owner thereof for all purposes, and to do, at Secured Party's option and Grantor's expense, at any time or from time to time, all acts and things that Secured Party deems necessary to protect, preserve or realize upon the Collateral and Secured Party's security interest therein in order to effect the intent of this Agreement, all as fully and effectively as the Grantor might do.

### **SECTION 13. Secured Party May Perform.**

If the Grantor fails to perform any agreement contained herein, after notice and the applicable cure period as set forth in Subsection 7.5 of the Credit Agreement, Secured Party may itself perform, or cause performance of, such agreement, and the expenses of Secured Party incurred in connection therewith shall be payable by Grantor under Section 18(b) hereof.

### **SECTION 14. Standard of Care.**

The powers conferred on Secured Party 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, Secured Party 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. Secured Party 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 Secured Party accords its own property.

**SECTION 15. Remedies.**

(a) **Generally.** If any Event of Default shall have occurred and be continuing, Secured Party may, subject to Section 20 hereof, 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 a secured party upon default under the UCC (whether or not the UCC applies to the affected Collateral), and also may (i) require the Grantor to, and the Grantor hereby agrees that it will at its expense and upon request of Secured Party forthwith, assemble all or part of the Collateral as directed by Secured Party and make it available to Secured Party at a place to be designated by Secured Party that is reasonably convenient to both parties, (ii) to the extent permitted by Applicable Law 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 Secured Party deems appropriate, (iv) to the extent permitted by Applicable Law take possession of the Grantor's premises or place custodians in exclusive control thereof, remain on such premises and use the same and any of the Grantor's equipment for the purpose of completing any work in process, taking any actions described in the preceding clause (iii) and collecting any Secured Obligation, (v) without notice except as specified below, sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of Secured Party'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 Secured Party may deem commercially reasonable, (vi) exercise dominion and control over and refuse to permit further withdrawals from any Deposit Account maintained with Secured Party or any Lender and provide instructions directing the disposition of funds in Deposit Accounts not maintained with Secured Party or any Lender and (vii) provide entitlement orders with respect to Security Entitlements and other Investment Property constituting a part of the Collateral and, without notice to the Grantor, transfer to or register in the name of Secured Party or any of its nominees any or all of the Securities Collateral. To the extent permitted by law, Secured Party or any Lender may be the purchaser of any or all of the Collateral at any such sale and Secured Party, as agent for and representative of Lenders 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 public sale, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any Collateral payable by Secured Party 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 the Grantor, and the 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. The Grantor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days' notice to the 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. Secured Party shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. Secured Party 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. The Grantor hereby waives any claims against Secured Party 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 Secured Party 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 Secured Party to collect such deficiency. The Grantor further agrees that a breach of any of the covenants contained in this Section 15 will cause irreparable injury to Secured Party, that Secured Party 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 the Grantor, and the 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 giving rise to the Secured Obligations becoming due and payable prior to their stated maturities.

(b) **Securities Collateral.** The Grantor recognizes that, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws, Secured Party may be compelled, with respect to any sale of all or any part of the Securities Collateral conducted without prior registration or qualification of such Securities Collateral under the Securities Act and/or such state securities laws, to limit purchasers to those who will agree, among other things, to acquire the Securities Collateral for their own account, for investment and not with a view to the distribution or resale thereof. The Grantor acknowledges that any such private placement may be at prices and on terms less favorable than those obtainable through a sale without such restrictions (including an offering made pursuant to a registration statement under the Securities Act) and, notwithstanding such circumstances, the Grantor agrees that any such private placement shall not be deemed, in and of itself, to be commercially unreasonable and that Secured Party shall have no obligation to delay the sale of any Securities Collateral for the period of time necessary to permit the issuer thereof to register it for a form of 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 Secured Party determines to exercise its right to sell any or all of the Securities Collateral, upon written request, the Grantor shall, and shall cause each issuer of any Securities Collateral to be sold hereunder from time to time to, furnish to Secured Party all such information as Secured Party may request in order to determine the amount of Securities Collateral which may be sold by Secured Party 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.

#### **SECTION 16. Additional Remedies for Intellectual Property Collateral.**

(a) Anything contained herein to the contrary notwithstanding, upon the occurrence and during the continuation of an Event of Default, (i) Secured Party shall have the right (but not the obligation) to bring suit, in the name of the Grantor, Secured Party or otherwise, to enforce any Intellectual Property Collateral, in which event the Grantor shall, at the commercially reasonable request of Secured Party, do any and all lawful acts and execute any and all documents reasonably required by Secured Party in aid of such enforcement, and the Grantor shall promptly, upon demand, reimburse and indemnify Secured Party as provided in Section 10.2 of the Credit Agreement and Section 18 hereof, as applicable, in connection with the exercise of its rights under this Section 16; and, to the extent that Secured Party shall elect not to bring suit to enforce any such Intellectual Property Collateral as provided in this Section, the Grantor agrees to take all commercially reasonable measures, whether by action, suit, proceeding or otherwise, which, in Grantor's reasonable judgment, is necessary to prevent the

infringement of any of the Intellectual Property Collateral by others and for that purpose agrees to use its commercially reasonable judgment in maintaining any action, suit or proceeding against any Person so infringing; (ii) upon written demand from Secured Party, the Grantor shall execute and deliver to Secured Party an assignment or assignments of the Intellectual Property Collateral and such other documents at the reasonable request of Secured Party and as are necessary or appropriate to carry out the intent and purposes of this Agreement; (iii) the Secured Party agrees that such an assignment shall be applied to reduce the Secured Obligations in accordance with the Credit Agreement.

(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 to Secured Party of any rights, title and interests in and to the Intellectual Property Collateral shall have been previously made, and (iv) the Secured Obligations shall not have become immediately due and payable, upon the written request of the Grantor, Secured Party shall promptly execute and deliver to the Grantor such assignments as may be necessary to reassign to the Grantor any such rights, title and interests as may have been assigned to Secured Party as aforesaid, subject to any disposition thereof that may have been made by Secured Party; provided, after giving effect to such reassignment, Secured Party's security interest granted pursuant hereto, as well as all other rights and remedies of Secured Party 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 all Liens other than Liens (if any) encumbering such rights, title and interest at the time of their assignment to Secured Party, Permitted Encumbrances, and any Liens related to any disposition of all or part of such rights, title and interests that may have been made by Secured Party.

**SECTION 17. Application of Proceeds.**

Except as expressly provided elsewhere in this Agreement, all proceeds received by Secured Party in respect of any sale of, collection from, or other realization upon all or any part of the Collateral shall be applied as provided in the Credit Agreement.

**SECTION 18. Indemnity and Expenses.**

(a) Each Grantor hereby agrees (i) to jointly and severally indemnify, protect, defend and save harmless the Secured Party and each Lender from and against any and all claims, actions, demands, losses and liabilities in any way relating to, growing out of or resulting from this Agreement and the transactions contemplated hereby (including, without limitation, enforcement of this Agreement), except to the extent such claims, actions, demands, losses or liabilities result solely from Secured Party's or such Lender's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction and (ii) to promptly pay to Secured Party upon demand the full amount of such indemnity. The Grantor shall directly and timely pay any and all costs of defense incurred by Secured Party or Lenders, including, without limitation, fees and expenses of Secured Party's or Lenders' counsel of choice.

(b) Grantor agrees to pay to Secured Party upon demand the amount of any and all costs and expenses in accordance with Subsection 10.2 of the Credit Agreement.

(c) The obligations of Grantor in this Section 18 shall survive the termination of this Agreement and the discharge of Grantor's other obligations under this Agreement, the Credit Agreement and the other Loan Documents.

**SECTION 19. Continuing Security Interest; Transfer of Loans; Termination and Release.**

(a) This Agreement shall create a continuing security interest in the Collateral and shall: (i) remain in full force and effect until the payment and performance in full of the Secured Obligations; (ii) be binding upon Grantor and its respective successors and assigns; and (iii) inure, together with the rights and remedies of Secured Party hereunder, to the benefit of Secured Party and its successors, transferees and assigns. Without limiting the generality of the foregoing clause (iii), but subject to the provisions of Subsection 10.1 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.

(b) Upon the payment and performance in full of all Secured Obligations (other than contingent obligations as to which no claim has been made), the security interest granted hereby shall terminate and all rights to the Collateral shall revert to the Grantor. Upon any such termination Secured Party will, at Grantor's expense, execute and deliver to Grantor such documents as Grantor shall reasonably request to evidence such termination. In addition, upon the proposed sale or other disposition of any Collateral by a Grantor in accordance with, or not prohibited by, the Credit Agreement for which the Grantor desires a security interest release from Secured Party, such a release may be obtained pursuant to the provisions of the Credit Agreement and the other Loan Documents. Notwithstanding anything in this Section 19, the disposition or sale of items within the Ordinary Course of Business (including, without limitation, the sale of obsolete equipment and replacement for ordinary wear and tear) shall be deemed released without the need for a release document.

**SECTION 20. Secured Party as Agent.**

(a) Secured Party has been appointed to act as Secured Party hereunder by Lenders. Secured Party 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 and the exercise of any remedies provided for in Section 15 hereof), notwithstanding anything herein to the contrary, solely in accordance with this Agreement and the Credit Agreement; provided however, the Secured Party shall only take or refrain from taking any action that is not expressly required or prohibited by this Agreement or the Credit Agreement (i) upon receipt of clear, definitive instruction from the Requisite Lenders to take or refrain from taking such action, and (ii) if the Secured Party does not believe that such action or inaction may adversely affect the rights and interests of itself or the Lenders. Nothing in this subsection (a) is intended, or shall be deemed, to confer any right, interest or benefit upon the Grantor.

(b) Secured Party shall at all times be the same Person that is Administrative Agent under the Credit Agreement. Written notice of resignation by Administrative Agent

pursuant to Subsection 8.6 of the Credit Agreement shall also constitute notice of resignation as Secured Party under this Agreement; and appointment of a successor Administrative Agent pursuant to Subsection 8.6 of the Credit Agreement shall also constitute appointment of a successor Secured Party under this Agreement. Upon the acceptance of any appointment as Administrative Agent under Subsection 8.6 of the Credit Agreement by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Secured Party under this Agreement, and the retiring Secured Party under this Agreement shall promptly (i) transfer to such successor Secured Party 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 Secured Party under this Agreement, and (ii) execute (if necessary) and deliver to such successor Secured Party such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Secured Party of the security interests created hereunder, whereupon such retiring Secured Party shall be discharged from its duties and obligations under this Agreement. After any retiring Administrative Agent's resignation hereunder as Secured Party, the provisions of this Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement while it was Secured Party hereunder.

**SECTION 21. Additional Grantor.**

From time to time subsequent to the date hereof, additional Subsidiaries of the Grantor may become Additional Grantor, by executing a Counterpart. Upon delivery of any such Counterpart to Secured Party, notice of which is hereby waived by Grantor, each such Additional Grantor shall be a Grantor and shall be as fully a party hereto as if such Additional Grantor were an original signatory hereto. The Grantor expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Grantor hereunder, nor by any election of Secured Party not to cause any Subsidiary of the Grantor to become an Additional Grantor hereunder. This Agreement shall be fully effective as to the Grantor that is or becomes a party hereto regardless of whether any other Person becomes or fails to become or ceases to be a Grantor hereunder.

**SECTION 22. Amendments; Etc.**

No amendment, modification, termination or waiver of any provision of this Agreement, and no consent to any departure by the Grantor therefrom, shall in any event be effective unless the same shall be in writing and signed by Secured Party and, in the case of any such amendment or modification, by Grantor; provided this Agreement may be modified by the execution of a Counterpart by an Additional Grantor in accordance with Section 21 hereof and Grantor hereby waives any requirement of notice of or consent to any such amendment. Any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

**SECTION 23. Notices.**

Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier. Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). For the purposes hereof, the address of each party hereto shall be as provided in Subsection 10.7 of the Credit Agreement or as set forth under such party's name on the signature pages hereof or such other address as shall be designated by such party in a written notice delivered to the other parties hereto.

**SECTION 24. Failure or Indulgence Not Waiver; Remedies Cumulative.**

No failure or delay on the part of Secured Party in the exercise of any power, right or privilege hereunder 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 any other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

**SECTION 25. Severability.**

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.

**SECTION 26. Headings.**

Section and Subsection 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.

**SECTION 27. Governing Law; Rules of Construction.**

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 NEW YORK (INCLUDING, WITHOUT LIMITATION, SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK), WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK, EXCEPT TO THE EXTENT THAT THE UCC PROVIDES THAT THE PERFECTION OF THE SECURITY INTEREST HEREUNDER, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR COLLATERAL ARE GOVERNED BY THE LAWS OF A JURISDICTION



OTHER THAN THE STATE OF NEW YORK, IN WHICH CASE THE LAWS OF SUCH JURISDICTION SHALL GOVERN WITH RESPECT TO THE PERFECTION OF THE SECURITY INTEREST IN, OR THE REMEDIES WITH RESPECT TO, SUCH PARTICULAR COLLATERAL. THE RULES OF CONSTRUCTION SET FORTH IN SUBSECTION 1.2 OF THE CREDIT AGREEMENT SHALL BE APPLICABLE TO THIS AGREEMENT *MUTATIS MUTANDIS*.

**SECTION 28. Consent to Jurisdiction and Service of Process.**

**A. SUBMISSION TO JURISDICTION WHILE ACTION IS PENDING. EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE HAWAII STATE COURT AND ANY APPELLATE COURT OF THE STATE OF HAWAII IN ANY DISPUTE OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER APPLICABLE LOAN DOCUMENTS OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT WHILE THE ACTION IS PENDING BEFORE THE HAWAII STATE COURT OR HAS NOT BEEN FINALLY DISPOSED OF BY THE COURTS OF THE STATE OF HAWAII. EACH OF THE PARTIES HERETO 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. NOTWITHSTANDING THE FOREGOING, IF THE HAWAII STATE COURT OR ANY APPELLATE COURT OF THE STATE OF HAWAII SHALL DECLINE JURISDICTION OVER ANY SUCH DISPUTE OR PROCEEDING ARISING FROM OR RELATING TO THIS AGREEMENT OR ANY OTHER APPLICABLE LOAN DOCUMENTS OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, THEN THE PROVISIONS OF SECTION 28.B. BELOW SHALL GOVERN.**

**B. SUBMISSION TO JURISDICTION UPON DISMISSAL WITH PREJUDICE OF THE ACTION, FINAL DISPOSITION, ETC. UPON DISMISSAL WITH PREJUDICE OF THE ACTION, FINAL DISPOSITION OF THE ACTION BY THE COURTS OF THE STATE OF HAWAII, OR UNDER THE CIRCUMSTANCES DESCRIBED IN THE FINAL SENTENCE OF SECTION 28.A. ABOVE, WHICHEVER FIRST OCCURS, EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK CITY AND OF THE UNITED STATES DISTRICT COURT SITTING IN NEW YORK CITY, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER APPLICABLE LOAN DOCUMENTS OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO 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. EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 28.A. ABOVE, NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, COLLATERAL AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER PARTIES OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.**

**C. WAIVER OF VENUE. EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN SECTION 28.A. OR SECTION 28.B., AS APPLICABLE. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.**

**D. Service of Process.** Each party hereto irrevocably consents to service of process in the manner provided for notices in Subsection 10.7 of the Credit Agreement. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable law.

**SECTION 29. Waiver of Jury Trial.**

GRANTOR AND SECURED PARTY HEREBY AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH GRANTOR AND SECURED PARTY ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT FOR GRANTOR AND SECURED PARTY TO ENTER INTO A BUSINESS RELATIONSHIP, THAT GRANTOR AND SECURED PARTY HAVE ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH GRANTOR AND SECURED PARTY FURTHER WARRANTS AND REPRESENTS THAT EACH HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO

THIS SECTION 29 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

**SECTION 30. Counterparts.**

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.

**SECTION 31. Intercreditor Agreement.**

Notwithstanding anything herein to the contrary, the lien and security interest granted to the Secured Party pursuant to this Agreement and the exercise of any right or remedy by the Secured Party hereunder are subject to the provisions of that certain Amended and Restated Intercreditor Agreement, dated as of even date herewith (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Intercreditor Agreement"), among Credit Suisse, as First Lien Administrative Agent, Wells Fargo Bank, N.A., as Second Lien Administrative Agent, and Wells Fargo Bank, N.A., as Third Lien Administrative Agent and such other persons party or that may become party thereto from time to time. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern and control; provided however, that, unless the Secured Party is expressly required or prohibited from taking or refraining from taking an action under the Intercreditor Agreement, the proviso in Section 20(a) of this Agreement shall apply. All capitalized terms in this Section 31 that are not defined herein are as defined in the Intercreditor Agreement.

**SECTION 32. Definitions.**

(a) Each capitalized term utilized in this Agreement that is not defined in this Agreement, including the categories of Collateral listed in Section 1 hereof, shall have the meaning set forth in Articles 1, 8 or 9 of the UCC or, if not defined therein, shall have the meaning set forth in the Credit Agreement.

(b) In addition, the following terms used in this Agreement shall have the following meanings:

**"Additional Grantor"** means a Subsidiary of the Grantor that becomes a party hereto after the date hereof as an additional Grantor by executing a Counterpart.

**"Assigned Agreements"** means, with respect to the Grantor, the agreements set forth on Schedule 7 annexed hereto, as each such agreement may be amended, restated, supplemented or otherwise modified from time to time, including, without limitation, (a) all rights of the Grantor to receive moneys due or to become due under or pursuant to the Assigned Agreements, (b) all

rights of the Grantor to receive proceeds of any Supporting Obligations with respect to the Assigned Agreements, (c) all claims of the Grantor for damages arising out of any breach of or default under the Assigned Agreements, and (d) all rights of the Grantor to terminate, amend, supplement, modify or exercise rights or options under the Assigned Agreements, to perform thereunder and to compel performance and otherwise exercise all remedies thereunder.

**“Beneficiary”** means Administrative Agent and each Lender.

**“Collateral”** has the meaning set forth in Section 1 hereof.

**“Copyright Office”** means the United States Copyright Office or any successor or substitute office in which it is necessary or, in the reasonable opinion of Secured Party, necessary to record a Security Interest in order to create or perfect Liens on Copyrights, Copyright Registrations and Copyright Rights.

**“Copyrights”** means all common law and other rights in and to the copyrights in the United States, any state thereof and foreign countries, that are owned or assigned to Grantor, including, without limitation, any copyrights owned or assigned to Grantor in any computer programs, computer data bases, other computer software layouts, trade dress, drawings, designs, writings, and formulas.

**“Copyright Registrations”** means all copyright registrations issued to the Grantor and applications for copyright registration that have been or may hereafter be issued or assigned to a Grantor or applied for by a Grantor thereon in the United States and any state thereof and in foreign countries.

**“Counterpart”** means a counterpart to this Agreement entered into by a Subsidiary of the Grantor pursuant to Section 21 hereof.

**“Credit Agreement”** has the meaning set forth in the Preliminary Statements of this Agreement.

**“Equity Interests”** means all shares of stock, partnership interests, interests in Joint Ventures, limited liability company interests and all other equity interests in a Person, whether such stock or interests are classified as Investment Property or General Intangibles under the UCC.

**“Intellectual Property Collateral”** means, with respect to the Grantor all right, title and interest (including rights acquired pursuant to a license or otherwise but only to the extent permitted by agreements governing such license or other use) of the Grantor in and to all:

- (a) Copyrights and Copyright Registrations;
- (b) Patents;
- (c) Trademarks, Trademark Registrations and goodwill of the Grantor’s business symbolized by the Trademarks and associated therewith; and

(d) all trade secrets, trade secret rights, know-how, customer lists, processes of production, ideas, confidential business information, techniques, processes, formulas, and all other proprietary information (collectively, with the Copyrights, Copyright Registrations, Patents, Trademarks and Trademark Registrations, the "**Intellectual Property**").

**"Patents"** means all patents and patent applications and rights and interests in patents and patent applications under any domestic or foreign law that are presently, or in the future may be, owned or assigned to Grantor in whole or in part, all re-issues, divisions, continuations, renewals, extensions and continuations-in-part thereof, and all rights corresponding thereto to sue for past, present and future infringements.

**"Pledged Debt"** means the Indebtedness from time to time owed to a Grantor, the Instruments and certificates evidencing such Indebtedness and all interest, cash or other property received, receivable or otherwise distributed in respect of or exchanged therefor.

**"Pledged Equity"** means all Equity Interests now or hereafter owned by a Grantor, including all securities convertible into, and rights, warrants, options and other rights to purchase or otherwise acquire, any of the foregoing, the certificates or other instruments representing any of the foregoing and any interest of the Grantor in the entries on the books of any securities intermediary pertaining thereto, and all distributions, dividends and other property received, receivable or otherwise distributed in respect of or exchanged therefor.

**"Pledged Subsidiary Debt"** means Pledged Debt owed to a Grantor by any obligor that is, or becomes, a direct or indirect Subsidiary of the Grantor, of which the Grantor is a direct or indirect Subsidiary or that controls, is controlled by or under common control with the Grantor.

**"Pledged Subsidiary Equity"** means Pledged Equity in a Person that is, or becomes a direct Subsidiary of a Grantor.

**"Pledge Supplement"** means a Pledge Supplement, in substantially the form of Exhibit I annexed hereto.

**"Secured Obligations"** has the meaning set forth in Section 2 hereof.

**"Securities Collateral"** means, with respect to the Grantor, the Pledged Equity, the Pledged Debt and any other Investment Property in which the Grantor has an interest.

**"Trademarks"** means all trademarks, service marks, designs, logos, indicia, tradenames, trade dress, corporate names, company names, business names, fictitious business names, trade styles and/or other source and/or business identifiers and applications pertaining thereto, owned by or assigned to the Grantor, or hereafter owned or assigned to Grantor, including all common law and other rights in and to the Trademarks in the United States and any state thereof and in foreign countries, but excluding in all cases all intent-to-use United States trademark applications for which an amendment to allege use or statement of use has not been filed under 15 U.S.C. § 1051(c) or 15 U.S.C. § 1051(d), respectively, or if filed, has not been deemed in conformance with 15 U.S.C. § 1051(a) or examined and accepted, respectively, by the United States Patent and Trademark Office provided that upon such filing and acceptance, such intent-to-use applications shall be included in the definition of Trademark.

**“Trademark Registrations”** means all Trademark registrations that have been or may hereafter be owned by or assigned to Grantor or applied for by Grantor thereon in the United States and any state thereof and in foreign countries.

**“UCC”** means the Uniform Commercial Code, as it exists on the date of this Agreement or as it may hereafter be amended, in the State of New York.

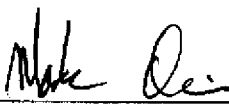
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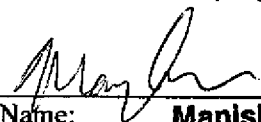
IN WITNESS WHEREOF, Grantor and Secured Party have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**GRANTOR:** **KUILIMA RESORT COMPANY,**  
a Hawai'i general partnership

By: **KUILIMA RESORT COMPANY HOLDING I, LLC,**  
a Delaware limited liability company,  
its managing general partner

By: **OAKTREE CAPITAL MANAGEMENT, L.P.,**  
a Delaware limited partnership,  
its manager

By:   
Name: **Mark Oei**  
Title: **Managing Director**

By:   
Name: **Manish Desai**  
Title: **Vice President**

Kuilima Resort Company  
c/o Oaktree Capital Management L.P.  
333 South Grand Avenue, 28th Floor  
Los Angeles, California 90071  
Attention: Cary A. Kleinman  
Facsimile: (213) 830-6392

with copies to:


Hennigan, Bennett & Dorman LLP  
865 S. Figueroa Street, Suite 2900  
Los Angeles, California 90017  
Attention: Bruce Bennett  
Facsimile: (213) 694-1234

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**GRANTOR:**

**TBR PROPERTY, L.L.C.,**  
a Delaware limited liability company

By: **OAKTREE CAPITAL MANAGEMENT, L.P.,**  
a Delaware limited partnership,  
its manager

By: 

Name:  
Title: **Mark Oei**  
**Managing Director**

By: 

Name:  
Title: **Manish Desai**  
**Vice President**

TBR Property, L.L.C.  
c/o Oaktree Capital Management L.P.  
333 South Grand Avenue, 28th Floor  
Los Angeles, California 90071  
Attention: Cary A. Kleinman  
Facsimile: (213) 830-6392

with copies to:

Hennigan, Bennett & Dorman LLP  
865 S. Figueroa Street, Suite 2900  
Los Angeles, California 90017  
Attention: Bruce Bennett  
Facsimile: (213) 694-1234

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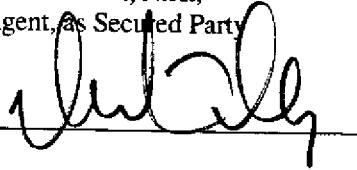
**SECURED PARTY:**

**WELLS FARGO BANK, N.A.,**  
as Collateral Agent, as Secured Party

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

Name:

Title:



NICHOLAS D. TALLY  
VICE PRESIDENT

Wells Fargo Bank, N.A.  
625 Marquette Avenue  
Minneapolis, MN 55479  
Attention: Jeffrey Rose  
Facsimile: (612) 667-9825

with copies to:

Milbank, Tweed, Hadley & McCloy LLP  
601 South Figueroa Street, 30<sup>th</sup> Floor  
Los Angeles, California 90017  
Attention: Robert J. Moore, Esq.  
Facsimile: (213) 892-4701

**SCHEDULE 1  
TO  
SECURITY AGREEMENT**

**Commercial Tort Claims**

None

**SCHEDULE 2  
TO  
SECURITY AGREEMENT**

**Filing Offices**

**Grantor**

Kuilima Resort Company  
TBR Property, L.L.C.

**Filing Offices**

The Bureau of Conveyances of the State of Hawaii  
Delaware Secretary of State, The Bureau of Conveyances  
of the State of Hawaii

**SCHEDULE 3  
TO  
SECURITY AGREEMENT**

**Office Locations, Type and Jurisdiction of Organization**

<b><u>Name of Grantor</u></b>	<b><u>Type of Organization</u></b>	<b><u>Office Locations</u></b>	<b><u>Jurisdiction of Organization</u></b>	<b><u>Organization Number</u></b>
Kuilima Resort Company	General Partnership	57-091 Kamehameha Highway Kahuku, Hawaii 96731  c/o Hawaii Registered Legal Agent, Inc. 500 Ala Moana Blvd., 4 <sup>th</sup> Floor Honolulu, Hawaii 96813  c/o Oaktree Capital Management L.P. 1301 Ave. of the Americas, 34 <sup>th</sup> Floor New York, NY 10019	Hawaii	15568 G5
TBR Property, L.L.C.	Limited Liability Company	2711 Centerville Road, Suite 400 Kahuku, Hawaii 96731  57-091 Kamehameha Highway Kahuku, Hawaii 96731  c/o Hawaii Registered Legal Agent, Inc. 500 Ala Moana Blvd., 4 <sup>th</sup> Floor Honolulu, Hawaii 96813	Delaware	3407080

**SCHEDULE 4  
TO  
SECURITY AGREEMENT**

**Locations of Equipment and Inventory**

**Name of Grantor**

Kuilima Resort Company, TBR  
Property, L.L.C.

**Locations of Equipment and Inventory**

All equipment and inventory located at the Project (as  
defined in the Credit Agreement)

**SCHEDULE 5  
TO  
SECURITY AGREEMENT**

**Other Names**

<b><u>Name of Grantor</u></b>	<b><u>Other Names</u></b>
Kuilima Resort Company, TBR Property, L.L.C.	Turtle Bay Resort Ocean Villas at Turtle Bay Resort Turtle Bay Resort True Hawaii

**SCHEDULE 6  
TO  
SECURITY AGREEMENT**

**Deposit Accounts, Security Accounts, Commodity Accounts**

<u>Type of Account</u>	<u>Depository Bank or Securities Intermediary</u>	<u>Address of Depository or Securities Intermediary</u>	<u>Bank</u>	<u>Account Number</u>
TBR Property Maxi-Collection	First Hawaiian Bank	Sarah Cadiz Branch Manager, Kahuku Branch First Hawaiian Bank 56-565 Kamehameha Highway Kahuku, Hawaii 96731 <a href="mailto:scadiz@fhb.com">scadiz@fhb.com</a>		38-903098
TBR Property Maxi-Credit Card	First Hawaiian Bank	Sarah Cadiz Branch Manager, Kahuku Branch First Hawaiian Bank 56-565 Kamehameha Highway Kahuku, Hawaii 96731 <a href="mailto:scadiz@fhb.com">scadiz@fhb.com</a>		38-903071
TBR Property LLC Credit Card Account	First Hawaiian Bank	Sarah Cadiz Branch Manager, Kahuku Branch First Hawaiian Bank 56-565 Kamehameha Highway Kahuku, Hawaii 96731 <a href="mailto:scadiz@fhb.com">scadiz@fhb.com</a>		38-027379
TBR Property LLC Credit Card Sweep Account	First Hawaiian Bank	Sarah Cadiz Branch Manager, Kahuku Branch First Hawaiian Bank 56-565 Kamehameha Highway Kahuku, Hawaii 96731 <a href="mailto:scadiz@fhb.com">scadiz@fhb.com</a>		88-028953
TBR Property LLC Collection Account	First Hawaiian Bank	Sarah Cadiz Branch Manager, Kahuku Branch First Hawaiian Bank 56-565 Kamehameha Highway Kahuku, Hawaii 96731 <a href="mailto:scadiz@fhb.com">scadiz@fhb.com</a>		38-027409
TBR Property LLC Collection Sweep Account	First Hawaiian Bank	Sarah Cadiz Branch Manager, Kahuku Branch First Hawaiian Bank 56-565 Kamehameha Highway Kahuku, Hawaii 96731 <a href="mailto:scadiz@fhb.com">scadiz@fhb.com</a>		88-028945
TBR Property LLC Kuilima Resort Company Managers Account	First Hawaiian Bank	Sarah Cadiz Branch Manager, Kahuku Branch First Hawaiian Bank 56-565 Kamehameha Highway Kahuku, Hawaii 96731 <a href="mailto:scadiz@fhb.com">scadiz@fhb.com</a>		38-027417
TBR Property Payroll Account	First Hawaiian Bank	Sarah Cadiz Branch Manager, Kahuku Branch First Hawaiian Bank 56-565 Kamehameha Highway Kahuku, Hawaii 96731		38-027360

Schedule 6

LAI 1145189v.7

Borrower and Subsidiaries Security Agreement  
(New Second Lien)

**TRADEMARK**

**REEL: 003787 FRAME: 0244**

TBR Property Operating Account	First Hawaiian Bank	<a href="mailto:scadiz@fhb.com">scadiz@fhb.com</a> Sarah Cadiz Branch Manager, Kahuku Branch First Hawaiian Bank 56-565 Kamehameha Highway Kahuku, Hawaii 96731	38-027387
TBR Property Managers Account	First Hawaiian Bank	<a href="mailto:scadiz@fhb.com">scadiz@fhb.com</a> Sarah Cadiz Branch Manager, Kahuku Branch First Hawaiian Bank 56-565 Kamehameha Highway Kahuku, Hawaii 96731	38-027395
TBR Property BMC (Benchmark) Account	First Hawaiian Bank	<a href="mailto:scadiz@fhb.com">scadiz@fhb.com</a> Sarah Cadiz Branch Manager, Kahuku Branch First Hawaiian Bank 56-565 Kamehameha Highway Kahuku, Hawaii 96731	38-027476
TBR Property, LLC Golf Course Collection Account	Bank of Hawaii	<a href="mailto:scadiz@fhb.com">scadiz@fhb.com</a> Susan Isidro Officer & Commercial Service Representative Commercial Banking Service & Support #108 Bank of Hawaii 130 Merchant Street, 20 <sup>th</sup> Floor Honolulu, Hawaii 96813	0001-521624
TBR Property, LLC Golf Course Operating Account	Bank of Hawaii	<a href="mailto:Susan.isidro@boh.com">Susan.isidro@boh.com</a> Susan Isidro Officer & Commercial Service Representative Commercial Banking Service & Support #108 Bank of Hawaii 130 Merchant Street, 20 <sup>th</sup> Floor Honolulu, Hawaii 96813	0001-521594
TBR Property Custody Account	Bank of New York	<a href="mailto:Susan.isidro@boh.com">Susan.isidro@boh.com</a> Barbara C. Mitchell BNY Mellon Asset Servicing Los Angeles Financial Institutions 700 S. Flower Street, Suite 200 Los Angeles, California 90017	354421
Kuilima Resort Company Custody Account	Bank of New York	<a href="mailto:Barbara.mitchell@bnymellon.com">Barbara.mitchell@bnymellon.com</a> Barbara C. Mitchell BNY Mellon Asset Servicing Los Angeles Financial Institutions 700 S. Flower Street, Suite 200 Los Angeles, California 90017	203674
Kuilima Resort Company Checking Account	Bank of New York	<a href="mailto:Barbara.mitchell@bnymellon.com">Barbara.mitchell@bnymellon.com</a> Barbara C. Mitchell BNY Mellon Asset Servicing Los Angeles Financial Institutions 700 S. Flower Street, Suite 200 Los Angeles, California 90017	8900373822



**SCHEDULE 7  
TO  
SECURITY AGREEMENT**

**Assigned Agreements**

Management Agreement dated September 1, 2001 by and between TBR Property, L.L.C. and  
BMC-The Benchmark Management Company

Site Sponsor Agreement dated October 2004 by and between 141 Worldwide and TBR Property,  
L.L.C.

**SCHEDULE 8  
TO  
SECURITY AGREEMENT**

**Patents, Copyright registrations, Trademarks and Trademark Registrations**

Trademarks and Service Marks

<u>Item No.</u>	<u>Trademark/ Service Mark</u>	<u>Description</u>	<u>Reg. Date</u>	<u>Reg. No.</u>
1.	Turtle Bay Resort	Words & Design  	July 20, 2004	2865448
2.	Turtle Bay Resort	Words Only	April 19, 2005	2943124
3.	Turtle bay Resort	Words Only	April 27, 2004	2837438
4.	Turtle Bay Resort True Hawaii	Words Only	April 3, 2007	4052414

Trade Names

1. "Lei Lei's Bar & Grill" to be used as a trade name throughout the State of Hawaii from September 17, 2003 through September 16, 2013, under Certificate of Registration No. 4003543.
2. "Ocean Villas at the Turtle Bay Resort" to be used as a trade name throughout the State of Hawaii from October 29, 2003 through October 28, 2008, under Certificate of Registration No. 4017067.
3. "Turtle Bay Resort" to be used as a trade name throughout the State of Hawaii from August 7, 2002 through August 6, 2012, under Certificate of Registration No. 252595.

Schedule 8

LAI 1145189v.7

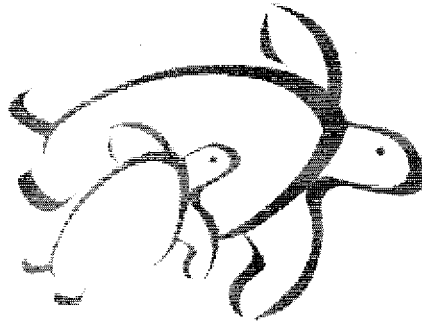
Borrower and Subsidiaries Security Agreement  
(New Second Lien)

**TRADEMARK**

**REEL: 003787 FRAME: 0247**

4. "The Spa at Turtle Bay Resort" to be used as a trade name throughout the State of Hawaii from October 25, 2003 through October 24, 2013, under Certificate of Registration No. 4004907.
5. "21 Degrees North "
6. "Spa Luana"
7. "Hang Ten Surf Bar" (Expired)
8. "The Bay Club" (Not registered)
9. "The Palm Terrace" (Expired)
10. "The Palm Terrace Cafe" (Expired)
11. "Turtle Bay Golf – Arnold Palmer Course" (Not registered)
12. "Turtle Bay Golf – George Fazio Course" (Not registered)
13. "Turtle Bay Championship" (Not registered)
14. "SBS Open – Turtle Bay" (Not registered)

Logos



**Turtle Bay Resort**  
true hawai'i

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**SBS OPEN**  
Turtle Bay Resort



Turtle Bay  
CHAMPIONSHIP

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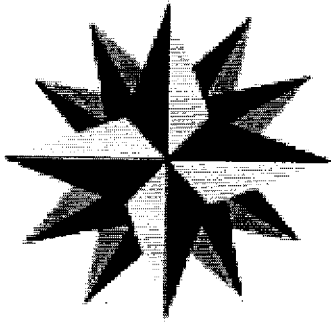
Turtle Bay  
CHAMPIONSHIP

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*Ocean Villas*

A T T U R T L E B A Y R E S O R T





*Twenty One*  
D E G R E E S N O R T H

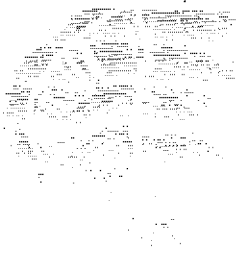
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**THE BAY CLUB**

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Lei Lei's

Bar & Grill at Turtle Bay Resort



Palm Terrace





**Turtle Bay Golf**  
true hawai'i



**Turtle Bay Golf**  
true hawai'i



*Spa Luana*

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AT TURTLE BAY RESORT

Websites

TurtleBayResort.com

TurtleBayChampionship.com (active redirects to separate area of TurtleBayResort.com)

TurtleBayHotel.com (active redirects to TurtleBayResort.com)

TurtleBayGolf.com (registered but not active)

TurtleBayCabanas.com(registered but not active)

TurtleBayTennis.com(registered but not active)

TurtleBayHomes.com(registered but not active)

TurtleBayVillas.com(registered but not active)

**SCHEDULE 9  
TO  
SECURITY AGREEMENT**

**Licenses, Permits and Entitlements**

	Type of Permit/Approval	Approving Agency	Date Approved
1	Approval of the Kuilima Resort Water Master Plan	Board of Water Supply	10/22/84
2	Ordinance 85-50 to Amend Portions of the Development Plan for Koolauloa	Honolulu City Council	02/27/85
3	Coastal Zone Management Consistency Determination	State Department Of Planning and Economic Development	10/22/85
4	Environmental Impact Statement	City Department of Land Utilization	10/30/85
5	Approval of the Kuilima Wastewater Master Plan	City Department of Public Works	12/16/85 (Rev. 11/7/90)
6	Findings of Fact, Conclusion of Law, and Decision and Order to Amend the State Land Use Boundary	State Land Use Commission	03/27/86
7	Unilateral Agreement and Declaration for Conditional Zoning	Honolulu City Council	09/23/86
8	Resolution 86-308 approving the Special Management Area Use Permit and Shoreline Setback Variance	Honolulu City Council	10/06/86
9	Ordinance No. 87-31 regarding Bill No. 189 - Bill for ordinance to amend portion of the Development Plan Public Facilities Map for Koolauloa	Honolulu City Council	11/19/86
10	Memorandum of Agreement	State Office of Hawaiian Affairs & U.S. Department of the Army	04/01/88
11	Designation of Easement AA	City Department of Land Utilization	06/01/88
12	Subdivision 1988(100)	City Department of Land Utilization	09/15/88
13	Unilateral Agreement and Declaration for Conditional Zoning, Amendment	Honolulu City Council	12/30/88
14	Perpetual, Non-Exclusive Waterline Easement at Waialea	State Department of Land and Natural Resources	01/19/89
15	Findings of Fact, Conclusion of Law, and Decision and Order to Amend the State Land Use Boundary Amendment	State Land Use Commission	03/16/89
16	Acceptance of the Urban Design Plan	City Department of Land Utilization	09/06/89
17	Blanket Disinterment Permit	State Department of Health	01/16/90
18	Subdivision 1989(203)	City Department of Land Utilization	02/22/90
19	Subdivision 1990(271)	City Department of Land Utilization	03/28/91

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**TRADEMARK**  
**REEL: 003787 FRAME: 0256**

	Type of Permit/Approval	Approving Agency	Date Approved
20	Modification to Special Management Area Use Permit	City Department of Land Utilization	11/04/91
21	Authorization of the Turtle Bay Wastewater Treatment Plant	State Department of Health	12/09/91
22	Ordinance 99-72 regarding Ko'olauloa Sustainable Communities Plan	Honolulu City Council	12/16/99
23	Resolution 03-116, CDI-SMA Use Permit and Shoreline Setback Variance for Renovations	Honolulu City Council	07/03/03
24	Conditional Use Permit (Minor) 2005/CUP-83 - (Supersedes CUPs (Minor) 92/CUP1-27 and 2004/CUP-48)	City Department of Planning & Permitting	10/10/05
25	Subdivision 2005(SUB 157)	City Department of Planning & Permitting	10/14/05
26	Zoning Adjustment 2005 (B-1 and P-2)	City Department of Planning & Permitting	11/14/05
27	Zoning Adjustment 2005 (P-2 and Resort)	City Department of Planning & Permitting	11/14/05
28	Zoning Adjustment 2005 (Resort and B-1)	City Department of Planning & Permitting	11/14/05
29	Acceptance of the Landscape Master Plan	City Department of Planning & Permitting	03/06/06
30	Concurrence with Park P-2 Concept Plan and Timing of Improvements	City Department of Parks and Recreation	03/10/06
31	Concurrence with the proposed plans for Kawela Bay Park, Park P-1, Kahuku Point Park and Park P-2	City Department of Parks and Recreation	03/10/06
32	Concurrence with the Site Development Plan	State Department of Health	04/25/06
33	Approval of Access to Park P-2 and Support of Subdivision (2005/SUB 310)	City Department of Parks and Recreation	08/28/06
34	Acceptance of the Turtle Bay Resort Improvements Implementation and Phasing Plan	City Department of Planning & Permitting	09/27/06
35	Acceptance of the Drainage Master Plan	City Department of Planning & Permitting	09/29/06
36	Subdivision 2005(SUB 310) - Tentative Approval	City Department of Planning & Permitting	09/29/06
37	Subdivision 2005(SUB 310) - Extension of Tentative Approval	City Department of Planning & Permitting	08/31/07
38	Nationwide Permit re: Punaho'olapa Marsh	U.S. Department of the Army	08/24/80
39	Punaho'olapa Marsh - Wetland Development Plan	U.S. Fish and Wildlife Service	09/22/86
40	Stream Channel Alteration Permit - (Expired as per terms of the permit 3 years from the date of approval)	State Department of Land and Natural Resources	07/07/87
41	401 Water Quality Certification	State Department of Health	02/04/88
42	Permit No. PODCO-0 1857-SD Department of the Army Permit to allow Kuilima Development Company to increase the size of the East and West drainage outlets - (Expired as per terms of the permit on December 31, 1991)	U.S. Department of the Army	07/20/88

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**TRADEMARK**

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	Type of Permit/Approval	Approving Agency	Date Approved
43	Approval of Shoreline Determination and Certification - (Valid for only 1 year as per HRS s. 205A-42(a))	State Department of Accounting and General Services	12/12/88
44	Pump Installation Permit for Opana Wells Nos. 1 and 2	State Department of Land and Natural Resources	06/28/89
45	Well Construction Permit for Opana Well No. 3	State Department of Land and Natural Resources	10/24/89
46	Stream Channel Alteration Permit Extension - (Expired as per terms of the permit 3 years from the date of approval)	State Department of Land and Natural Resources	05/16/90
47	Nationwide permit to allow the installation of eight marker buoys as required by Army Permit No. PODCO-O 1857-DS	U.S. Department of the Army	03/18/91
48	Conservation District Use Permit OA -2420 to allow the installation of eight marker buoys as required by Army Permit No. PODCO-O 1857-DS	State Department of Land and Natural Resources	04/22/91
49	Conditional Approval for Opana Well No. 3	State Department of Health	06/05/91
50	Permit No. PODCO-0 1857-SD Department of the Army Permit to allow Kuilima Development Company to increase the size of the East and West drainage outlets time extension - (Expired as per terms of the extension on December 31, 1994)	U.S. Department of the Army	12/11/91
51	Nationwide Permit (NW91-092) for Filling Wetlands	U.S. Department of the Army	01/10/92
52	Conservation District Use Permit for drain outlets	State Department of Land and Natural Resources	09/18/92
53	National Pollutant Discharge Elimination Systems Permit	State Department of Health	02/21/06

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**TRADEMARK**  
**REEL: 003787 FRAME: 0258**

**EXHIBIT I  
TO  
SECURITY AGREEMENT**

**Pledge Supplement**

PLEDGE SUPPLEMENT

This PLEDGE SUPPLEMENT, dated [mm/dd/yy], is delivered by [NAME OF GRANTOR OR GRANTORS] a [NAME OF STATE OF INCORPORATION] [Corporation] (the "Grantor") pursuant to the New Second Lien Security Agreement, dated as of May \_\_, 2008 (as it may be from time to time amended, restated, modified or supplemented, the "Security Agreement"), among [\_\_\_\_\_], the other grantors named therein, and WELLS FARGO BANK, N.A., as the Collateral Agent. Capitalized terms used herein not otherwise defined herein shall have the meanings ascribed thereto in the Security Agreement.

[The][Each] Grantor hereby confirms the grant to the Collateral Agent set forth in the Security Agreement of, and does hereby grant to the Collateral Agent, a security interest in all of such Grantor's right, title and interest in and to all [Investment Related Property][Letter of Credit Rights] [Intellectual Property][Commercial Tort Claims] including, without limitation, those specified on the Schedule attached hereto and agrees that such attached schedule shall supplement and become a part of Schedule [III][V][VI][VII] to the Security Agreement. Grantor represents and warrants that the attached Schedule is a true and correct list and that it has complied with all provisions of the Security Agreement relating thereto and that the Collateral Agent has a valid, perfected second priority security interest therein, subject to Permitted Encumbrances (as defined in the Credit Agreement) and to the extent a Security Interest therein may be perfected.

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

[NAME OF GRANTOR]

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

Name:

Title:

Exhibit I

LA1 1145189v.7

Borrower and Subsidiaries Security Agreement  
(New Second Lien)

**TRADEMARK**

**RECORDED: 06/02/2008**

**REEL: 003787 FRAME: 0259**