

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	SECURITY INTEREST		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Sapphire Wines, LLC		02/20/2009	LIMITED LIABILITY COMPANY: DELAWARE
RECEIVING PARTY DATA			
Name:	EPT DownREIT, Inc.		
Street Address:	30 West Pershing Road, Suite 201		
City:	Kansas City		
State/Country:	MISSOURI		
Postal Code:	64108		
Entity Type:	CORPORATION: MISSOURI		
PROPERTY NUMBERS Total: 3			
Property Type	Number	Word Mark	
Registration Number:	2200574	EOS	
Registration Number:	2725215	NOVELLA	
Registration Number:	2819488	CUPA GRANDIS	
CORRESPONDENCE DATA			
Fax Number:	(314)259-3983		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
Phone:	314-863-0800		
Email:	trademark.stl@stinson.com		
Correspondent Name:	Laila S. Wolfgram		
Address Line 1:	168 North Meramec Avenue, Suite 400		
Address Line 4:	St. Louis, MISSOURI 63105		
ATTORNEY DOCKET NUMBER:	503816-0255		
NAME OF SUBMITTER:	Laila S. Wolfgram		

CH \$90.00 2200574

Signature:	/Laila S. Wolfgram/
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Date:	03/16/2009
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Total Attachments: 13
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TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT (this "Agreement") is made as of February 20, 2009 by and among **SAPPHIRE WINES, LLC** and **SAPPHIRE ADVISORS, LLC**, both Delaware limited liability companies having an address of 381 Mallory Station Road, Suite 211, Franklin, Tennessee 37067, Attention: Jeffrey S. Hopmayer (collectively, "Grantor"), and **EPT DownREIT, Inc.**, a Missouri corporation ("Lender"), with an office located at 30 West Pershing Road, Suite 201, Kansas City, Missouri 64108.

W I T N E S S E T H

NOW THEREFORE, in consideration of the foregoing and other benefits accruing to Grantor, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby covenants and agrees with, and makes the following representations and warranties to the Lender as follows:

1. DEFINITIONS.

1.1 Credit Agreement. Any capitalized term used but not defined in this Agreement shall have the meaning ascribed thereto in that certain Credit Agreement between Sapphire Wines, LLC and Lender of even date herewith.

1.2 Other Definitional Provisions; Construction. Unless otherwise specified,

(i) References to the Uniform Commercial Code, or UCC, mean as enacted in the particular jurisdiction(s) encompassed by the reference.

(ii) The definition of any document or instrument includes all schedules, attachments and exhibits thereto and all renewals, extensions, supplements, restatements and amendments thereof. All Schedules and Exhibits attached to this Agreement are incorporated into, made and form an integral part of, this Agreement for all purposes.

(iii) "Hereunder," "herein," "hereto," "this Agreement" and words of similar import refer to this entire document.; "including" is used by way of illustration and not by way of limitation, unless the context clearly indicates the contrary; the singular includes the plural and conversely; and any action required to be taken by Grantor is to be taken promptly, unless the context clearly indicates the contrary.

(iv) All of the uncapitalized terms contained in this Agreement which are defined under the Code will, unless the context indicates otherwise, have the meanings provided for now or hereafter in the Code.

(v) "material item of the Trademark Collateral" means, collectively and individually, the marks "EOS", "Novella", "Cupa Grandis", and "Lost Angel" and other trademarks held by Grantor related to the production and distribution of wine (but not distilled spirits or other beverages) and each item of the Trademark Collateral unless, with respect to the applicable item of Trademark Collateral, the goodwill of the business connected with and

symbolized by such application, registration, trademark or service mark is not necessary in the conduct of Grantor's business.

2. GRANT OF SECURITY. As security for the full, prompt and complete performance of the Guaranteed Obligations, Grantor hereby pledges and grants to the Lender a continuing security interest in, and Lien on, all of Grantor's entire right, title and interest in and to the Trademark Collateral. As used in this Agreement, "Trademark Collateral" means, collectively: all of Grantor's right, title and interest in and to all of its now owned or existing and filed and hereafter acquired or arising and filed: trademarks, service marks, trademark or service mark registrations, trade names, and trademark or service mark applications related to the production and distribution of wine (but not distilled spirits or other beverages), including but not limited to those listed on Schedule 1 and (i) renewals thereof, (ii) all income, royalties, damages and payments now and in the future due or payable under or with respect thereto, including damages and payment for past or future infringements thereof, (iii) the right to sue for past, present and future infringements thereof, (iv) all rights corresponding thereto throughout the world, (v) the Trademark License Rights (as defined below) and (vi) together in each case with the goodwill of Grantor's business connected with the use of, and symbolized by, the Trademark Collateral. Without limiting any other rights or interests set forth or granted in any of the other Loan Documents, the Trademark Collateral excludes any U.S. intent to use trademark applications until evidence of use of the mark has been filed and accepted by the U.S. Patent and Trademark Office.

3. LICENSE; SECURITY INTEREST.

3.1 Grant of Licenses. Grantor hereby grants, assigns and conveys to the Lender Grantor's entire right, title and interest in, to and under all license agreements with any Person, whether Grantor is licensor or licensee under any such license agreement, including the licenses listed on Schedule 1, with respect to the Trademark Collateral and all rights thereto and thereunder (such rights as licensor or licensee sometimes referred to in this Agreement collectively as the "Trademark License Rights").

3.2 License by the Lender. In consideration of Grantor's agreement to perform, comply with, and observe each of the terms of this Agreement and to pay and discharge the Guaranteed Obligations, the Lender, grants to Grantor, without recourse, representation or warranty, a personal, non-transferrable exclusive license, to exercise the Trademark License Rights (such right and license referred to in this Agreement as the "License"). Upon the occurrence and during the continuation of an Event of Default and upon notice from the Lender to Grantor terminating the License: (i) the License will automatically and immediately terminate without any further notice or demand (which Grantor expressly waives), (ii) all rights and interests of Grantor in, to and under the License will revert to the Lender, and (iii) the Lender shall have all other rights and remedies provided in this Agreement and in the other Loan Documents. If the Event of Default is cured to the Lender's satisfaction or is waived in writing by the Lender, then, without any further action on the part of the Lender, the License will immediately revert with Grantor on the cessation of the Event of Default subject to the terms of this Agreement.

3.3 Security Interest in the License. As security for the full and prompt payment and performance of all of the Guaranteed Obligations, Grantor hereby assigns, pledges and grants to the Lender a continuing security interest in, and Lien on, all of the right, title and interest of Grantor in and to the License.

4. REPRESENTATIONS AND WARRANTIES. Grantor represents and warrants that:

(i) Grantor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademark Collateral and the License free and clear of any Liens, including any releases and covenants by Grantor not to sue any other Person in respect of the Trademark Collateral or the License, except as otherwise disclosed on Schedule 1 and except for U.S. intent to use trademark applications.

(ii) Set forth in Schedule 1 is a complete and accurate list of all the Trademark License Rights, trademarks, trade names, service marks, trademark and service mark registrations, U.S. intent to use trademark applications and applications for trademark or service mark registrations owned by Grantor.

(iii) Each trademark, service mark, trade name, trademark and service mark registration, and application for trademark or service mark registration identified in Schedule 1 is subsisting and has not been adjudged invalid, unregistrable or unenforceable, in whole or in part, except as otherwise disclosed in Schedule 1, and each registered trademark and service mark and each application for trademark and service mark registration is valid, registered or registrable and enforceable. Grantor has notified the Lender in writing of all prior uses of any material item of the Trademark Collateral of which Grantor is aware which could lead to such item becoming invalid or unenforceable, including prior unauthorized uses by third parties and uses which were not supported by the goodwill of the business connected with such item.

(iv) Grantor has not granted any license, release, covenant not to sue, or non-assertion assurance to any Person with respect to any part of the Trademark Collateral except as otherwise disclosed on Schedule 1.

(v) Grantor has used reasonable and proper statutory notice in connection with its use of each registered trademark and service mark.

(vi) The Trademark License Rights are in full force and effect, and Grantor is not in default under any of the Trademark License Rights and no event has occurred which with notice, the passage of time, the satisfaction of any condition, or all of them, might constitute a default by Grantor under the Trademark License Rights.

(vii) Except for the recording of this Agreement with the United States Patent and Trademark Office and the filing of applicable perfecting documents with the State of Delaware, no authorization, consent, approval or other action by, and no notice to or filing or recording with, any Governmental Authority is currently or is reasonably expected to be required either (a) for the grant by Grantor of the Lien granted hereby or for the execution, delivery or performance of this Agreement by Grantor, or (b) for the perfection of or the exercise by the Lender of its rights and remedies under this Agreement.

5. FURTHER ASSURANCES.

5.1 Required Grantor Actions. Grantor will from time to time, at its expense, promptly execute and deliver all further instruments, documents and agreements take all further action, that may be necessary or desirable, or that the Lender may reasonably request, in order to (i) continue, perfect and protect the security interests and Liens granted or purported to be granted by this Agreement or (ii) enable the Lender to exercise and enforce its rights and remedies under this Agreement with respect to any part of the Trademark Collateral and the License, or both.

5.2 Financing Statements. Without limiting the generality of Section 5.1, the Lender is authorized by Grantor (i) to file one or more financing statements disclosing Lender's security interest and Lien under this Agreement without Grantor's signature appearing thereon and to correct or complete, or to cause to be corrected or completed, any financing statements, continuation statements or other such documents as have been filed naming Grantor as debtor and Lender as secured party and (ii) to give notice to any creditor or landlord of Grantor or to any other Person to whom Lender may reasonably determine it is necessary or desirable under applicable law to give notice to perfect or preserve Lender's interests in the Trademark Collateral. A carbon, photographic or other reproduction of this Agreement or any financing statement covering the Trademark Collateral or any part thereof or the License will be sufficient as a financing statement.

5.3 Further Information. Grantor will furnish to the Lender from time to time statements and schedules further identifying and describing the Trademark Collateral and the License and all other reports in connection with the Trademark Collateral and the License as the Lender may reasonably request, all in reasonable detail.

5.4 Additional Ownership Interests. Grantor agrees that, should it obtain an ownership interest in any of the Trademark License Rights which is not now identified in Schedule 1, (i) Grantor will give prompt written notice thereof to the Lender, (ii) the provisions of Section 2 shall automatically apply to any such Trademark License Rights, and (iii) any such Trademark License Rights, together with the goodwill of the business connected with the use of the mark and symbolized by it, shall automatically become part of the Trademark Collateral. Grantor authorizes the Lender to modify this Agreement by amending Schedule 1 to include any of the Trademark License Rights which becomes part of the Trademark Collateral under this Section 5.4.

5.5 Maintenance of Rights. With respect to each material item of the Trademark Collateral, Grantor will take all necessary steps in any proceeding before the United States Patent and Trademark Office (or any similar office or agency in any other country or any political subdivision of that country) or in any court (i) to maintain and pursue any trademark application now or in the future included in the Trademark Collateral; (ii) to take all action necessary to preserve and protect any common law trademark rights in the Trademark Collateral; and (iii) to maintain each registered trademark, service mark, and trademark or service mark registration, and to pursue each application for trademark or service mark registration now or hereafter included in the Trademark Collateral, including the filing of applications for renewal, the payment of maintenance fees, and the participation in opposition, interference and infringement

proceedings. To the extent necessary to the conduct of its business, Grantor agrees to take corresponding steps with respect to each new or other registered trademark, service mark trademark or service mark registration, and application for trademark or service mark registration to which Grantor is now or later becomes entitled. Any expenses incurred in connection with such activities shall be borne by Grantor. Grantor shall not abandon any right to file an application for trademark or service mark registration, or abandon any pending application, registration, trademark or service mark, unless the goodwill of the business connected with and symbolized by such application, registration, trademark or service mark is not necessary in the conduct of Grantor's business.

5.6 Notification. Grantor will notify the Lender immediately and in writing if Grantor learns (i) that any of the Trademark Collateral may become abandoned or dedicated; (ii) of any adverse determination or any development (including the institution of any proceeding in the United States Patent and Trademark Office or any other U.S. or foreign court or tribunal of any kind) regarding any material item of the Trademark Collateral; or (iii) that Grantor is or potentially could be in default of any of the Trademark License Rights.

5.7 Infringement. If Grantor becomes aware that any item of the Trademark Collateral is infringed or misappropriated by any Person, Grantor will promptly notify the Lender and will, if necessary under the circumstances, promptly sue for infringement or misappropriation and for recovery of all damages caused by the infringement or misappropriation, and will take all such other actions as Grantor deems appropriate under the circumstances to protect the Trademark Collateral. Any expense incurred in connection with the foregoing activities shall be borne by Grantor.

5.8 Statutory Notice. Grantor will continue to use reasonable and proper statutory notice in connection with its use of each registered trademark or service mark.

6. TRANSFERS AND OTHER LIENS. Grantor shall not:

(i) sell, assign (by operation of law or otherwise) or otherwise dispose of any of the Trademark Collateral or the License, except that Grantor may license any Trademark Collateral in the ordinary course of Grantor's business, provided that such license is necessary or desirable in the conduct of Grantor's business;

(ii) create or suffer to exist any Liens upon or with respect to any of the Trademark Collateral or the License except to the extent, if any, as otherwise disclosed in Schedule 1; or

(iii) take any other action in connection with any of the Trademark Collateral or the License that could impair the value of the interests or rights of Grantor or the Lender in, to or under the Trademark Collateral or the License.

7. POWER OF ATTORNEY. Grantor hereby irrevocably appoints the Lender as Grantor's attorney-in-fact, with full authority in Grantor's place, stead and on behalf of Grantor and in Grantor's name or otherwise, from time to time in the Lender's sole and absolute discretion, to take any action and to execute any instrument that the Lender may deem necessary or advisable to accomplish the purposes of this Agreement, including:

(i) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in respect of any and all of the Trademark Collateral;

(ii) to receive, indorse, and collect any drafts or other instruments, documents and chattel paper, in connection with clause (i) above; and

(iii) to file any claims or take any action or institute any proceedings that the Lender may deem necessary or desirable for the collection of any of the Trademark Collateral or otherwise to enforce the rights of the Lender with respect to any of the Trademark Collateral or the License.

8. LENDER MAY PERFORM.

8.1 Performance by the Lender. If Grantor fails to perform any of its obligations contained in this Agreement, the Lender may itself perform, or cause the performance of, such obligations, and the expenses of the Lender incurred in connection therewith shall be payable by Grantor under Section 11.2 of this Agreement.

8.2 Inspections. The Lender, or its designated representatives, shall have the right, at all times to inspect Grantor's premises and to examine Grantor's books, records and operations relating to the Trademark Collateral.

8.3 Lender May Bring Suit. The Lender will have the right, but in no way will be obligated, to bring suit in its own name or in the name of Grantor to enforce any part of the Trademark Collateral or the Trademark License Rights. Grantor will at the reasonable request of the Lender do any and all lawful acts and sign any and all proper documents required by the Lender in aid of the Lender's enforcement actions. On the Lender's demand, Grantor will promptly reimburse and indemnify the Lender for all costs and expenses incurred by the Lender in the exercise of its rights under this Section 8.

9. LENDER'S DUTIES. The powers conferred on the Lender under this Agreement are solely to protect its interests in the Trademark Collateral and the License and shall not impose any duty upon the Lender to exercise any such powers. Except for the safe custody of any Trademark Collateral in its custody and possession and the accounting for moneys actually received by it hereunder, the Lender will have no duty as to any of the Trademark Collateral, the License or as to the taking of any necessary steps to preserve rights against other parties or any other rights pertaining to any Trademark Collateral. The Lender shall be deemed to have exercised reasonable care in the custody and preservation of the Trademark Collateral and the License in its possession if the Trademark Collateral and the License are accorded treatment substantially equal to that which the Lender accords its own property.

10. REMEDIES. If any Event of Default occurs and is continuing:

(i) The Lender may exercise in respect of the Trademark Collateral and the License, in addition to other rights and remedies provided for in this Agreement or otherwise available to the Lender, all the rights and remedies of a secured party on default under the UCC (whether or not the UCC applies to the affected Trademark Collateral) and also may (a) exercise

any and all rights and remedies of Grantor under or otherwise in respect of either the Trademark Collateral or the License, or both; (b) require Grantor to, and Grantor, at its expense, will immediately on the Lender's request, assemble all or any part of the documents embodying the Trademark Collateral as directed by the Lender and make the documents available to the Lender at a place to be designated by the Lender which is reasonably convenient to both the Lender and Grantor; (c) license the Trademark Collateral or any part thereof, or assign its rights to the Trademark License Rights to any Person, and (d) without notice, except as specified below, sell the Trademark Collateral or any part thereof at public or private sale, at any of the Lender's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as the Lender may deem commercially reasonable. In the event of any sale, assignment, or other disposition of any of the Trademark Collateral, the goodwill of the business connected with and symbolized by any Trademark Collateral subject to such disposition shall be included, and Grantor will supply to the Lender or its designee Grantor's know-how and expertise relating to the manufacture and sale of products or the provision of services relating to any Trademark Collateral subject to such disposition, and Grantor's customer lists and other records relating to such Trademark Collateral and to the distribution of such products and services. Grantor agrees that, to the extent notice of sale shall be required by law, at least 10 days' notice to Grantor of the time and place of any public sale or of the time after which any private sale is to be made shall constitute reasonable notification. The Lender shall not be obligated to make any sale of any Trademark Collateral regardless of notice of sale having been given. The Lender may adjourn any public or private sale from time to time by announcement at the time and place fixed for the sale, and any sale may, without further notice, be made at the time and place to which it was so adjourned.

(ii) All payments received by Grantor under or in connection with any of the Trademark Collateral or the License shall be received in trust for the benefit of the Lender, shall be segregated from other funds of Grantor and shall be immediately paid over to the Lender in the same form as so received (with any necessary indorsement) in accordance with the Credit Agreement.

(iii) All payments made under, in connection with or otherwise in respect of, the Trademark Collateral or the License and all cash proceeds received by the Lender in respect of any sale of, collection from, or other realization upon all or any part of the Trademark Collateral or the License may, in the discretion of the Lender, be held by the Lender as collateral for, and then or at any time thereafter applied (after payment of any amounts payable to the Lender pursuant to Section 11.2 of this Agreement) in whole or in part by the Lender against, all or any part of the Obligations in any order as the Lender may elect. Any surplus of any cash or cash proceeds held by the Lender and remaining after payment in full of all of the Guaranteed Obligations shall be paid over to Grantor or to whomsoever may be lawfully entitled to receive such surplus.

11. INDEMNIFICATION; EXPENSES.

11.1 Indemnification. In consideration of the execution and delivery of the Credit Agreement and the making of any Loan to Grantor, Grantor hereby indemnifies and holds the Lender and the Lender's officers, directors, Affiliates, and agents (for the purposes of this Section 11.1, each is an "Indemnified Party") harmless from and against any and all claims,

losses and liabilities arising out of or resulting from any or all of (i) this Agreement, (ii) the transactions contemplated hereby (including enforcement of this Agreement), and (iii) the Trademark Collateral and License except for claims, losses or liabilities resulting from an Indemnified Party's negligence or willful misconduct. The indemnification provided for in this Section 11.1 is in addition to, and not in limitation of, any other indemnification or insurance provided by Grantor to the Lender.

11.2 Expenses. Grantor will upon demand pay to the Lender the amount of any and all reasonable expenses, including reasonable attorneys' fees which the Lender may incur in connection with any and all of the following (i) the administration of this Agreement, (ii) the custody, preservation, use or operation of, or the sale of, collection from, or other realization upon, any of the Trademark Collateral and the License, (iii) the exercise or enforcement of any of the Lender's rights under this Agreement, or (iv) the failure by Grantor to perform or observe any of the provisions of this Agreement, all of which constitute part of the Obligations and are secured by the Trademark Collateral.

12. AMENDMENTS; WAIVERS; CONSENTS. No amendment or waiver of any provision of this Agreement nor consent to any departure by Grantor herefrom shall, in any event, be effective unless such amendment or waiver shall be in writing and signed by the Lender, and then such amendment or waiver shall be effective only in the specific instance and for the specific purpose for which it was given.

13. NOTICES. Any notice or notification required, permitted or contemplated under this Agreement shall be in writing, shall be addressed and given to the party to be notified at the address set forth in, and in the manner required by the Guaranty.

14. GENERAL.

14.1 Continuing Rights. This Agreement creates a continuing assignment to the Lender of the Trademark License Rights and a continuing Lien on the Trademark Collateral and the License and shall (i) remain in full force and effect until the full and final payment in full of the Obligations, (ii) be binding upon Grantor; its successors and assigns, and (iii) inure, together with the rights and remedies of the Lender under this Agreement, to the benefit of the Lender's successors, transferees and assigns.

14.2 Term; The Trademark Collateral and the License Revert. Subject to Section 14.10 below, this Agreement will terminate upon the full performance, payment and satisfaction of the Obligations, at which time the Lien granted by this Agreement shall terminate and all rights to the Trademark Collateral and the License shall revert to Grantor. Upon any such termination, the Lender will, at Grantor's expense, execute and deliver to Grantor such documents as Grantor reasonably requests to evidence such termination and to reassign the Trademark Collateral together with the goodwill of the business relating to the Trademark Collateral to Grantor.

14.3 Severability. If any term of this Agreement is found invalid under Missouri law or other laws of mandatory application by a court of competent jurisdiction, the invalid term will

be considered excluded from this Agreement and will not invalidate the remaining terms of this Agreement.

14.4 Governing Law. THIS AGREEMENT SHALL BE DEEMED TO HAVE BEEN MADE AT KANSAS CITY, MISSOURI. THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF MISSOURI (WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES); PROVIDED THAT LENDER SHALL RETAIN ALL RIGHTS ARISING UNDER FEDERAL LAW.

14.5 WAIVER OF JURISDICTION. AS A SPECIFICALLY BARGAINED INDUCEMENT FOR LENDER TO EXTEND CREDIT TO GRANTOR, GRANTOR AGREES THAT ANY ACTION, SUIT OR PROCEEDING IN RESPECT OF OR ARISING OUT OF THIS AGREEMENT, ITS VALIDITY OR PERFORMANCE, AT THE SOLE OPTION OF LENDER, ITS SUCCESSORS AND ASSIGNS, AND WITHOUT LIMITATION ON THE ABILITY OF LENDER, ITS SUCCESSORS AND ASSIGNS, TO EXERCISE ALL RIGHTS AS TO THE TRADEMARK COLLATERAL OR INITIATE AND PROSECUTE IN ANY APPLICABLE JURISDICTION ACTIONS RELATED TO REPAYMENT OF THE OBLIGATIONS, SHALL BE INITIATED AND PROSECUTED AS TO ALL PARTIES AND THEIR SUCCESSORS AND ASSIGNS AT KANSAS CITY, MISSOURI. LENDER AND GRANTOR EACH CONSENTS TO AND SUBMITS TO THE EXERCISE OF JURISDICTION OVER ITS PERSON BY ANY COURT SITUATED AT KANSAS CITY, MISSOURI HAVING JURISDICTION OVER THE SUBJECT MATTER, AND CONSENTS THAT ALL SERVICE OF PROCESS BE MADE BY CERTIFIED MAIL DIRECTED TO GRANTOR AND LENDER AT THEIR RESPECTIVE ADDRESSES SET FORTH IN THE CREDIT AGREEMENT OR AS OTHERWISE PROVIDED UNDER THE LAWS OF THE STATE OF MISSOURI. GRANTOR WAIVES ANY OBJECTION BASED ON FORUM NON CONVENIENS, AND ANY OBJECTION TO VENUE OF ANY ACTION INSTITUTED HEREUNDER, AND CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY THE COURT.

14.6 Headings. Section headings in this Agreement are included for convenience of reference only and shall not relate to the construction or interpretation of this Agreement.

14.7 Entire Agreement. This Agreement and the other Loan Documents set forth the entire agreement of the parties with respect to subject matter of this Agreement and supersedes all previous understandings, written or oral, in respect thereof.

14.8 Assignment. The Lender shall have the right to assign this Agreement and the other Loan Documents. Grantor may not assign, transfer or otherwise dispose of any of its rights or obligations hereunder, by operation of law or otherwise, and any such assignment, transfer or other disposition without the Lender's written consent shall be void. All of the rights, privileges, remedies and options given to the Lender under the Loan Documents shall inure to the benefit of the successors and assigns of the Lender, and all the terms, conditions, covenants, provisions and warranties in this Agreement shall inure to the benefit of and bind the permitted successors and assigns of Grantor and the Lender, respectively.

14.9 Application of Payments; Revival of the Guaranteed Obligations. The Lender shall have the continuing right to apply or reverse and reapply any payments to any portion of the Guaranteed Obligations. To the extent Grantor makes a payment or payments to the Lender or the Lender receives any payment or proceeds of the Trademark Collateral or any other security for Grantor's benefit, which payment(s) or proceeds or any part thereof are subsequently voided, invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy act, state or federal law, common law or equitable cause, then, to the extent of such payment(s) or proceeds received, the Guaranteed Obligations or part thereof intended to be satisfied shall be revived and shall continue in full force and effect, as if such payment(s) or proceeds had not been received by the Lender.

14.10 Survival and Continuation of Representations and Warranties. All of Grantor's representations and warranties contained in this Agreement shall (i) survive the execution, delivery and acceptance hereof by the parties hereto and the closing of the transactions described herein or related hereto, and (ii) remain true until the Guaranteed Obligations are fully performed, paid and satisfied, made by Grantor with the same effect as though the representations and warranties had been made again on, and as of, each day of the term of this Agreement, subject to such changes as may not be prohibited hereby, do not constitute Events of Default, and have been consented to by the Lender in writing.

14.11 Conflict. If there is any conflict, ambiguity, or inconsistency, in the Lender's Judgment, between the terms of this Agreement and any other Credit Documents, then the applicable terms and provisions, in the Lender's judgment, providing the Lender with greater rights, remedies, powers, privileges, or benefits will control. Without limiting the generality of the foregoing, the description of the Trademark Collateral in this Agreement does not in any way limit the description of, or the Lender's Lien on, any other collateral provided to Lender pursuant to the Credit Agreement or the Guaranties, or the Lender's remedies respecting such collateral.

14.12 WAIVER OF JURY TRIAL. AS A SPECIFICALLY BARGAINED INDUCEMENT FOR LENDER TO EXTEND CREDIT TO GRANTOR, GRANTOR AND LENDER EACH WAIVES TRIAL BY JURY WITH RESPECT TO ANY ACTION, CLAIM, SUIT OR PROCEEDING IN RESPECT OF OR ARISING OUT OF THIS AGREEMENT OR THE CONDUCT OF THE RELATIONSHIP BETWEEN LENDER AND GRANTOR.

STATE OF TENNESSEE)
) SS.
COUNTY OF WILLIAMSON

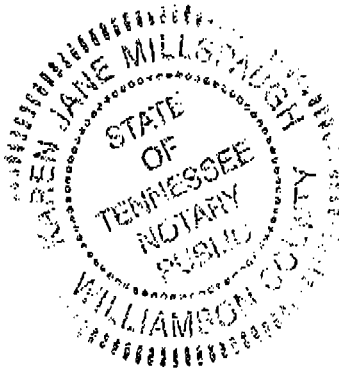
On this 20 day of February, 2009, before me, KAREN J. MILLSAUGH a Notary Public in and for said State, personally appeared JEFF S. HOPMAYER, to me personally known, who being by me duly sworn did say that he is the CEO of Sapphire Advisors, LLC, a Delaware limited liability company, and that said instrument was signed and sealed on behalf of said limited liability company by authority of its members, and said JEFF S. HOPMAYER acknowledged said instrument to be his/her free act and deed and the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in TENNESSEE the day and year last above written.

Karen J. Millsaugh
Printed Name: KAREN J. MILLSAUGH
Notary Public in and for said State
Commissioned in WILLIAMSON County

My commission expires:

FEB. 22, 2011



Schedule 1 to Trademark Security Agreement**TRADEMARKS**

<u>TM</u>	<u>App. Date</u>	<u>Ser. No.</u>	<u>Reg. No.</u>	<u>Date Reg.</u>
EOS	May 8, 1997	75/288,344	2,200,574	October 27, 1998
Novella	February 14, 2001	76/212,219	2,725,215	June 10, 2003
Cupa Grandis	May 19, 2003	76/515,430	2,819,488	March 2, 2004

Lost Angel – common law trademark. No formal state or federal registration has been initiated.
Dates of first use and first use in commerce by Grantor, if known: April ____, 2009.