

# Sample Form of Revised UCC Article 9 Security Agreement and Perfection Certificate

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A complete set of the course materials from which this outline was drawn may be purchased from ALI-ABA. Call 1-800-CLE-NEWS and ask for Customer Service. Have the order number of the course materials—SG023—handy.

On July 1, 2001, a revised version of Article 9 of the Uniform Commercial Code went into effect in about 47 states and the District of Columbia and is now in effect in the remaining states. Article 9 governs the creation, perfection, and priority of security interests in most types of personal property. As a result of the revisions, Article 9 now covers more types of property. For example, certain tort causes of action and bank accounts are now subject to security interests under Article 9. Article 9 also somewhat simplifies the procedures for perfecting security interests in most types of collateral. The following sample form security agreement and perfection certificate is intended to create a perfected loan security interest in the debtor's personalty and fixtures as covered by the revised Article 9. The forms are drafted in accordance with the provisions of revised Uniform Commercial Code Article 9.

## **Security Agreement**

SECURITY AGREEMENT, dated as of \_\_\_\_\_, between \_\_\_\_\_, a[an] \_\_\_\_\_ (the "Company"), and \_\_\_\_\_, a[an] \_\_\_\_\_ (referred to in this Agreement as the "Lender").

WHEREAS, the Company has entered into a \_\_\_\_\_ dated as of \_\_\_\_\_ (as amended and in effect from time to time, the "Credit Agreement"), with the Lender, under which the Lender, subject to the terms and conditions contained in this Agreement, is

to make loans [*or otherwise to extend credit*] to the Company; and

WHEREAS, it is a condition precedent to the Lender's making any loans [*or otherwise extending credit*] to the Company under the Credit Agreement that the Company execute and deliver to the Lender a security agreement in substantially the form of this Agreement; and

WHEREAS, the Company wishes to grant a security interest in favor of the Lender as in this Agreement provided;

NOW, THEREFORE, in consideration of the promises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement agree as follows:

**1. Definitions.** All capitalized terms used in this Agreement without definitions shall have the respective meanings provided therefor in the Credit Agreement. The term "State," as used in this Agreement, means the [State or Commonwealth] of [\_\_\_\_\_]. [*All terms defined in the Uniform Commercial Code of the State and used in this Agreement shall have the same definitions in this Agreement as specified in this Agreement. However, if a term is defined in Article 9 of the Uniform Commercial Code of the State differently than in another Article of the Uniform Commercial Code of the State, the term has the meaning specified in Article 9.*] [*The term "Obligations," as used in this Agreement, means all of the indebtedness, obligations and liabilities of the Company to the Lender, individually or collectively, whether direct or indirect, joint or several, absolute or contingent, due or to become due, now existing or hereafter arising under or in respect of the Credit Agreement[, any promissory notes or other instruments or agreements executed and delivered under this Agreement or in connection with this Agreement] or this Agreement, and the term "Event of Default", as used in this Agreement, means the failure of the Company to pay or perform any of the Obligations as and when due to be paid or performed under the terms of the Credit Agreement*] [*Also if not defined in the Credit Agreement or another document to which reference for defined terms is made, define "Default," "Event of Default," "Loan Documents," and "Security Documents" here*].

**2. Grant of Security Interest.** The Company hereby grants to the Lender, to secure the payment and performance in full of all of the Obligations, a security interest in and pledges and assigns to the Lender the following properties, assets, and rights of the Company, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof (all of the same being in this Agreement called the "Collateral"): all personal and fixture property of every kind and nature including without limitation all goods (including inventory, equipment and any accessions to this Agreement), instruments (including promissory notes), documents, accounts (including health-care-insurance receivables), chattel paper (whether tangible or electronic), deposit accounts, letter-of-credit

rights (whether or not the letter of credit is evidenced by a writing), commercial tort claims, securities and all other investment property, supporting obligations, any other contract rights or rights to the payment of money, insurance claims and proceeds, and all general intangibles (including all payment intangibles). The Lender acknowledges that the attachment of its security interest in any commercial tort claim as original collateral is subject to the Company's compliance with section 4.7.

**3. Authorization To File Financing Statements.** The Company hereby irrevocably authorizes the Lender at anytime and from time to time to file in any filing office in any Uniform Commercial Code jurisdiction any initial financing statements and amendments to this Agreement that: (a) indicate the Collateral (i) as all assets of the Company or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the State or such jurisdiction, or (ii) as being of an equal or lesser scope or with greater detail, and (b) provide any other information required by part 5 of Article 9 of the Uniform Commercial Code of the State or such other jurisdiction for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether the Company is an organization, the type of organization and any organizational identification number issued to the Company and, (ii) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. The Company agrees to furnish any such information to the Lender promptly upon the Lender's request. [*The Company also ratifies its authorization for the Lender to have filed in any Uniform Commercial Code jurisdiction any like initial financing statements or amendments to this Agreement if filed before the date of this Agreement.*]

**4. Other Actions.** Further to insure the attachment, perfection, and first priority of, and the ability of the Lender to enforce, the Lender's security interest in the Collateral, the Company agrees, in each case at the Company's expense, to take the following actions with respect to the following Collateral and without limitation on the Company's other obligations contained in this Agreement:

**4.1. Promissory Notes and Tangible Chattel Paper.** If the Company shall at any time hold or acquire any promissory notes or tangible chattel paper, the Company shall forthwith endorse, assign and deliver the same to the Lender, accompanied by such instruments of transfer or assignment duly executed in blank as the Lender may from time to time specify.

**4.2. Deposit Accounts.** For each deposit account that the Company at any time opens or maintains, the Company shall, at the Lender's request and option, under an agreement in form and substance satisfactory to

the Lender, either: (a) cause the depositary bank to agree to comply, without further consent of the Company, at any time with instructions from the Lender to such depositary bank directing the disposition of funds from time to time credited to such deposit account, or (b) arrange for the Lender to become the customer of the depositary bank with respect to the deposit account, with the Company being permitted, only with the consent of the Lender, to exercise rights to withdraw funds from such deposit account. [*The Lender agrees with the Company that the Lender shall not give any such instructions or withhold any withdrawal rights from the Company, unless an Event of Default has occurred and is continuing, or, if effect were given to any withdrawal not otherwise permitted by the Loan Documents, would occur.*] The provisions of this paragraph shall not apply to (i) any deposit account for which the Company, the depositary bank and the Lender have entered into a cash collateral agreement specially negotiated among the Company, the depositary bank and the Lender for the specific purpose set forth in this Agreement, (ii) a deposit account for which the Lender is the depositary bank and is in automatic control, and (iii) any deposit accounts specially and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of the Company's salaried employees [*Specify other fiduciary or escrow deposit accounts, if applicable.*]

**4.3. Investment Property.** If the Company shall at any time hold or acquire any certificated securities, the Company shall forthwith endorse, assign, and deliver the same to the Lender, accompanied by such instruments of transfer or assignment duly executed in blank as the Lender may from time to time specify. If any securities now or hereafter acquired by the Company are uncertificated and are issued to the Company or its nominee directly by the issuer thereof, the Company shall immediately notify the Lender thereof and, at the Lender's request and option, under an agreement in form and substance satisfactory to the Lender, either (a) cause the issuer to agree to comply, without further consent of the Company or such nominee, at any time with instructions from the Lender as to such securities, or (b) arrange for the Lender to become the registered owner of the securities. If any securities, whether certificated or uncertificated, or other investment property now or hereafter acquired by the Company are held by the Company or its nominee through a securities intermediary or commodity intermediary, the Company shall immediately notify the Lender thereof and, at the Lender's request and option, under an agreement in form and substance satisfactory to the Lender, either (i) cause such securities intermediary or (as the case may be) commodity intermediary to agree to comply, in each case without further consent of the Company or such nominee, at any time with entitlement orders or other instructions from the Lender to such securities intermediary as to such securities or other investment property, or (as the case may be) to apply any value distributed on account of any commodity contract as