

JUDGE HERB ROSS (Recalled)

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF ALASKA
605 West 4th Avenue, Room 138, Anchorage, AK 99501-2253 — (Website: www.akb.uscourts.gov)
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Case No. A15-00076-HAR
In re OMNI ENTERPRISES, INC.,
Debtor
NACOLE M. JIPPING,
Plaintiff
v.
FIRST NATIONAL BANK ALASKA,
Defendant

In Chapter 7

Adv Proc No A15-90018-HAR

MEMORANDUM DECISION REGARDING
CROSS-MOTIONS FOR SUMMARY
JUDGMENT

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1 **1. SUMMARY OF DECISION-** In 2009 Omni borrowed \$1.3 million from FNBA. Part of
2 the collateral under the 2009 Security Agreement was “Deposit Accounts.”¹ The 2009 Security
3 Agreement also contained future advances and cross-collateralization clauses. Omni paid off the
4 2009 loan in 2011.

5 In 2013, Omni borrowed \$2.6 million for equipment for a new grocery store in Bethel,
6 Alaska. The collateral did not explicitly include “Deposit Accounts.” The 2013 Security
7 Agreement contained an integration clause saying the 2013 loan documents were the “entire
8 agreement” between FNBA and Omni, and did not explicitly mention the 2009 Security
9 Agreement.

10 When Omni got into financial trouble in 2015, FNBA swept Omni’s FNBA checking
11 account, seizing \$1.3 million. FNBA claims it had lien rights in the checking account stemming
12 from its lien rights on “Deposit Accounts” in the 2009 Security Agreement.

13 Omni filed a chapter 7 bankruptcy. The trustee filed this adversary proceeding. Cross-
14 motions for summary judgment were filed. The trustee argues that the integration clause in the
15 **2013 Security Agreement** trumps FNBA’s future advances claim of lien arising from the **2009**
16 **Security Agreement**. The trustee’s second point is that the 2009 Security Agreement, by virtue of
17 a Survival clause, terminated when was paid off in 2011. FNBA disputes these conclusions.

18 I hold for FNBA that while the 2013 Security Agreement integration clause provides that it
19 was the “entire agreement” involving the 2013 loan, the definitions of “Related Documents” and
20 “Indebtedness,” though somewhat circular, are sufficiently clear for the court to find the 2009
21 Security Agreement is implicitly part of the “entire agreement.”

22 Additionally, the Survival clause in the 2009 Security Agreement does not direct that the
23 security interest in Deposit Accounts expired when the 2009 loan was paid because the 2009

24
25 ¹AS 45.29.102(a)(36) states in Article 9 of the Alaska Uniform Commercial Code that “ ‘deposit account’
26 means a demand, time, savings, passbook, or similar account maintained with a bank except that the term does
not include investment property or accounts evidenced by an instrument” . . .

1 Security Agreement has a future advances clause that is inconsistent with termination even
2 though the 2009 Security Agreement secured no existing debt from time to time.

3 Since the FNBA sweep was supported by its deposit account lien rights, the trustee cannot
4 avoid it under 11 USC §547(b).

5 **2. FACTUAL BACKGROUND-**

6 **2.1. The Essential Facts-** The facts are uncontested. A fuller discussion of them is set out
7 in the parties' summary judgment briefs. These briefs include a number of exhibits (including
8 commercial security agreements, financing statements, extension agreements, etc.) and give more
9 context to the story.²

10 To focus on the essential facts and exhibits used in deciding this dispute, however, the
11 court will concentrate on the two commercial security agreements between Omni and FNBA, one
12 in 2009 and the other in 2013. These will be the two exhibits attached to the memorandum
13 decision. These exhibits, with the highlighting, are copied from the trustee's opening summary
14 judgment brief at ECF No. 12. Exhibit A is a copy of the 2009 Security Agreement. Exhibit F is a
15 copy of the 2013 Security Agreement.

16 Both documents have been described to me as being a product of the Laser Pro document
17 system. These forms, or at least some of the key terms, were also used in some of the cases cited
18 by the parties.³ The parties did not describe the construct of the forms in detail - for example,
19 what is fixed "boilerplate" and what is customizable to suit the situation.

22 ²*Trustee's Motion for Summary Judgment*. ECF No. 12, pages 5-8, including fourteen exhibits; *FNBA's*
23 *Brief in Opposition to Trustee's Motion for Summary Judgment and FNBA's Motion for Summary Judgment and*
24 *Brief in Support*. ECF 13, pages 2-5.

25 ³See the trustee's opening brief, ECF No. 12, page 12 and the trustee's reply, ECF 14, page 11, fn9.

1 Some of the facts discussed by the trustee⁴ relate to the setoff recovery argument the
2 trustee makes. That is, if FNBA did not have a lien in Deposit Accounts then its setoff rights are
3 restricted by 11 USC § 553(b) and it must return \$1,256,504.49 to the trustee. The parties agree
4 that if FNBA had a lien on Deposit Accounts for the 2013 loan by virtue of the future advances
5 clause for the 2009 loan FNBA wins and keeps the money it swept from Omni's bank account. If
6 it does not have such a lien, the trustee prevails under §§ 547(b) and 553(b). So, I will not review
7 the setoff argument in detail.

8 **2.2. A Little More Historical Context**- Omni maintained a bank account at FNBA from at
9 least 2005 to the petition date in 2015. This dispute involves two commercial loans FNBA made
10 to Omni, one in 2009 and the second in 2013.

11 These loans involved commercial security agreements, financing statements, promissory
12 notes, modification of the 2013 loan payment terms, etc. None of these effect the outcome except
13 the two security agreements.

14 In 2015, when only the 2013 loan was outstanding, FNBA learned Omni might be going
15 out of business. So, it swept the balances from Omni's checking account between March 11, 2015
16 and March 17, 2015 to the tune of \$1,329,096.51. While both parties acknowledge that FNBA has
17 setoff rights under the terms of the 2013 Security Agreement, FNBA also claims it has lien rights
18 pursuant to the future advances clause of the 2009 Security Agreement, notwithstanding the fact
19 that the 2009 loan had been paid off. These liens rights, if they exist, would protect FNBA from a
20 preference avoidance under 11 USC §547(b).

21 The trustee counters that the integration clause in the 2013 Security Agreement does not
22 mention Deposit Accounts or the 2009 Security Agreement as being part of the collateral and
23

24 ⁴The trustee's opening summary judgment brief. ECF No. 12, pages 22-24 and related exhibits.
25
26
27

1 2013 loan agreement, and to the contrary it says that the 2013 loan is only based on the
2 documents specifically identified in the 2013 Security Agreement. At oral argument FNBA
3 conceded that there is no specific mention of the 2009 Security Agreement in the papers involved
4 in the 2013 loan. But it argues that the policy of the Uniform Commercial Code is to favor future
5 advance clauses, as recognized in several Alaska bankruptcy court decisions, which establish that
6 this court should treat Deposit Accounts as collateral for the 2013 loan.

7 As previously indicated, both parties acknowledge the setoff rights of FNBA, but do not
8 contest that if FNBA does not have lien rights, the trustee is entitled to recover \$1,256,504.49
9 pursuant to 11 USC §553(b). If it does have lien rights, however, the foreclosure or sweep of the
10 deposit account in 2015 was not a preference under 11 USC §547(b).

11 **2.3. The 2009 Loan**- The 2009 loan was for \$1,277,883.21 on about September 2, 2009.
12 Part of the collateral was "Deposit Accounts." This loan was paid off in full in 2011.

13 The 2009 Security Agreement contained a "Future Advances" clause as well as a "Survival"
14 or termination clause and other terms reproduced verbatim in Section 2.5.1 of this memorandum.

15 **2.4. The 2013 Loan**- Omni decided to open a grocery and retail store in Bethel, Alaska.⁵
16 To finance an extensive list of equipment, furnishing and fixtures, it borrowed \$2,575,520 on
17 about August 13, 2013. These items and others were listed as the collateral, but Deposit Accounts
18 were not specifically mentioned.

19 The 2013 Security Agreement has an integration clause, called the Amendment clause,
20 identifying all the papers and agreements that were the basis of the 2013 loan, with no explicit
21

22 ⁵"Bethel (Mamterilleq in Central Alaskan Yup'ik) is a city located near the west coast of the U.S. state
23 of Alaska, approximately 400 miles (640 km) west of Anchorage. Accessible only by air and river, Bethel is the
24 main port on the Kuskokwim River and is an administrative and transportation hub for the 56 villages in the
25 Yukon-Kuskokwim Delta." Wikipedia for "Bethel, Alaska" as it appeared on 05/22/16 at
https://en.wikipedia.org/wiki/Bethel,_Alaska.

1 mention of the 2009 Security Agreement and its future advances clause or Deposit Accounts
2 collateral.

3 The pertinent contract provisions are reproduced verbatim in Section 2.5.2 of this
4 memorandum.

5 **2.5. The Important Contractual Clauses**- The parties have identified the 2009 and 2013
6 Security Agreements as the keystones in determining whether the trustee or FNBA prevails.
7 The trustee has selected the key contract terms to focus upon: “Agreement”; “Future Advances”;
8 “Cross-collateralization”; “Survival of Representations and Warranties; Perfection of Security
9 Interests”; “Amendments” (the integration clause); “Related Documents”; “Right of Setoff; and,
10 Indebtedness.”⁶ Though the wording of these terms is identical in both agreements I will repeat
11 them for each agreement for ease of use and clarity.

12 **2.5.1. Terms from the 2009 Security Agreement**- FNBA principally relies on the **Future**
13 **Advances** and **Cross-collateralization** clauses in the 2009 Security Agreement to establish that
14 Deposit Accounts are collateral for the 2013 loan. Again, if FNBA has a “lien” on the accounts it
15 swept then the trustee cannot avoid the \$1.3 million it foreclosed on when it swept funds from
16 Omni’s deposit account. The 2009 Future Advances clause⁷ and the Cross-Collateralization clause⁸
17 provide:

18 **FUTURE ADVANCES.** In addition to the Note, this Agreement secures all future
19 advances made by lender to Grantor regardless of whether the advances are made a)
20 pursuant to a commitment or b) for the same purposes.

21 **CROSS-COLLATERALIZATION.** In addition to the Note, this Agreement secures
22 all obligations, debts and liabilities, plus interest thereon, of Grantor to Lender, or

22 ⁶Trustee’s motion for summary judgment. ECF No. 12, pages 9-16.

23 ⁷Exhibit A, page 1.

24 ⁸Exhibit A, page 1.

any one or more of them, as well as all claims by Lender against Grantor or anyone or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

The trustee counters that the 2009 Security Agreement was terminated when the 2009 loan was paid off in 2011 by virtue of the Survival of Representations and Warranties clause⁹ :

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Agreement shall survive the execution and delivery of this Agreement, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's Indebtedness shall be paid in full.

FNBA argues to the contrary that the 2009 Security Agreement with Deposit Accounts as collateral was not terminated by the Survival clause because the "Indebtedness"¹⁰ includes future advances (such as the 2013 loan):

Indebtedness. The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Grantor is responsible under this Agreement or under any of the Related Documents. Specifically, without limitation, Indebtedness includes the future advances set forth in the Future Advances provision, together with all interest thereon and all amounts that may be indirectly secured by the Cross-Collateralization provision of this Agreement.

In addition, FNBA says the "Perfection of Security Interest"¹¹ clause belies the argument that the 2009 agreement was terminated by the 2011 payoff of the 2009 loan. This clause says

⁹Exhibit A, page 4.

¹⁰Exhibit A, page 4.

¹¹Exhibit A, page 1.

despite any prior payoff (e.g., of the 2009 loan), the duty to assist where necessary in perfection of subsequent loans (e.g., the 2013 loan) continues for the Grantor (Omni):

GRANTOR'S REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE COLLATERAL With respect to the Collateral, Grantor represents and promises the Lender that:

Perfection of Security Interest. Grantor agrees to take whatever actions are requested by Lender to perfect and continue Lender's security interest in the Collateral. Upon request of Lender, Grantor will deliver to Lender any and all of the documents evidencing or constituting the Collateral, and Grantor will note Lender's interest upon any and all chattel paper and instruments if not delivered to Lender for possession by Lender. **This is a continuing Security Agreement and will continue in effect even though all or any part of the Indebtedness is paid in full and even though for a period of time Grantor may not be indebted to Lender.**

The trustee argues that survival and perfection clauses, though seemingly inconsistent can be harmonized.¹² And, if the court finds them inconsistent, it should tag FNBA as drafter with the fault and adopt the trustee's position that the survival clause controls.

2.5.2. Terms from the 2013 Security Agreement- The trustee focuses on various terms of the 2013 Security Agreement to support her argument that the Amendments clause (that is, the integration clause) excludes inclusion of the 2009 Future Advances clause (which includes Deposit Accounts as collateral).

The Amendments clause¹³ reads:

Amendments. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

¹²Trustee's reply brief. ECF No. 14, pages 9-14.

¹³Exhibit F, page 3 at the bottom under Miscellaneous Provisions.

Fleshing out the other important terms to understanding the trustee's integrated contract argument are:

Agreement.¹⁴ The word "Agreement" means this Commercial Security Agreement as this Commercial Security Agreement may be amended from time to time, together with all exhibits and schedules attached to this Commercial Security Agreement from time to time.

Related Documents.¹⁵ The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Indebtedness.¹⁶ The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Grantor is responsible under this Agreement or under any of the Related Documents. Specifically, without limitation, Indebtedness includes the future advances set forth in the Future Advances provision, together with all interest thereon and all amounts that may be indirectly secured by the Cross-Collateralization provision of this Agreement.

CROSS-COLLATERALIZATION.¹⁷ In addition to the Note, this Agreement secures all obligations, debts and liabilities, plus interest thereon, of Grantor to Lender, or any one or more of them, as well as all claims by Lender against Grantor or anyone or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

¹⁴Exhibit F, page 4 under Definitions.

¹⁵Exhibit F, page 4 at the bottom under Definitions.

¹⁶Exhibit F, page 4 at the bottom under Definitions.

¹⁷Exhibit F, page 1.

1 Finally, the trustee notes the Right of Setoff clause as a predicate to her argument that that
2 right is prescribed by the restrictions on FNBA imposed by 11 USC §553(b):

3 **Right of Setoff.**¹⁸ To the extent permitted by applicable law, Lender reserves a
4 right of setoff in all Grantor's accounts with Lender (whether checking,
5 savings, or some other account). This includes all accounts Grantor holds
6 jointly with someone else and all accounts Grantor may open in the future.
7 However, this does not include any IRA or Keogh accounts, or any trust
8 accounts for which setoff would be prohibited by law. Grantor authorizes
9 Lender, to the extent permitted by applicable law, to charge or setoff all
10 sums owing on the indebtedness against any and all such accounts.

11 **3. LEGAL ANALYSIS**

12 **3.1. Summary Judgment Standards**- Both sides agree that there are no material factual
13 disputes and ask that the court enter a summary judgment in its favor pursuant to Rule 56(a) as a
14 matter of law:¹⁹

15 (a) Motion for Summary Judgment or Partial Summary Judgment. A party may
16 move for summary judgment, identifying each claim or defense — or the part of
17 each claim or defense — on which summary judgment is sought. The court shall
18 grant summary judgment if the movant shows that there is no genuine dispute as to
19 any material fact and the movant is entitled to judgment as a matter of law. The
20 court should state on the record the reasons for granting or denying the motion.

21 **3.2. Summary of Arguments**- The trustee has two main arguments: (a) the 2013 Security
22 Agreement has an integration clause and the agreement makes no mention that the Future
23 Advances clause of the 2009 Security Agreement (with its Deposit Accounts collateral) is part of
24 the deal; and, (b) when the 2009 loan was paid off in 2011 the 2009 Security Agreement
25 terminated by virtue of the Survival clause in the 2009 Security Agreement.

26 FNBA argues that the Uniform Commercial Code now favors the use of future advances
27 clauses and the policy is that they should not be restricted by artificial tests seeking to establish

28 ¹⁸Exhibit F, page 1.

¹⁹Rule 7056 of the Fed. R. Bankr.P. incorporates Rule 56 of the Fed. R. Civ. Proc.

1 the “true intent” of the parties. So, FNBA contends, that there is no reason the 2009 Future
2 Advances clause cannot co-exist with the 2013 Security Agreement.²⁰

3 **3.3. Alaska Fur Gallery is Not Dispositive**- FNBA says that the Omni case should be
4 resolved by following Judge MacDonald’s decision in Alaska Fur Gallery.²¹ Judge MacDonald
5 held that a future advances clause in a 2002 UCC security agreement in which business personal
6 property was collateral was enforceable to cover subsequent loans (in 2003 and 2004) secured by
7 real estate. That is, business personal property, by virtue of the 2002 future advances clause in the
8 security agreement (the 2002 loan was paid off in 2004), also secured the 2003 and 2004 loans
9 secured by real estate.

10 The lender relied on AS 45.29.204(c) (2011) that permits security agreements to “provide
11 that collateral secures . . . future advances or other value, whether or not the advances or value
12 are given pursuant to a commitment.”²² Alaska Fur Gallery urged the court to follow the
13 Lundgren case²³ which took a more restrictive approach and sought to determine the “true intent”
14 of the parties to the future advances clause rather than enforcing its literal interpretation.

21 ²⁰FNBA’s opening summary judgment brief. ECF No. 13, page 13-14.

22 ²¹In re Alaska Fur Gallery, Inc., 457 B.R. 764 (Bankr. D. Alaska 2011).

23 ²²*Id.*, at 768.

24 ²³Lundgren v. National Bank of Alaska, 756 P.2d 270 (Alaska 1987).

1 Noting that Lundgren was twenty-four years old and perhaps out of date,²⁴ the court
2 instead adopted the more modern approach of present UCC Article 9. It cited this Official
3 Comment.5 to UCC § 9-204:

4 Future Advances; Obligations Secured. Under subsection (c) collateral may secure
5 future as well as past or present advances if the security agreement so provides. This
6 is in line with the policy of this Article toward security interests in after-acquired
7 property under subsection (a). Indeed, the parties are free to agree that a security
8 interest secures any obligation whatsoever. Determining the obligations secured by
9 collateral is solely a matter of construing the parties' agreement under applicable
10 law. This Article rejects the holdings of cases decided under former Article 9 that
11 applied other tests, such as whether a future advance or other subsequently
12 incurred obligation was of the same or a similar type or class as earlier advances and
13 obligations secured by the collateral.

14 But, the court in Alaska Fur Gallery never addressed the integration clause issue now
15 raised by the trustee. Where a new legal theory is offered, a case involving similar facts which
16 was decided on other grounds is not precedential.²⁵

17 **3.4. Deposit Accounts Under the UCC**- AS 45.29.102(a)(36) states in Article 9 of the
18 Alaska Uniform Commercial Code that “ ‘deposit account’ means a demand, time, savings,
19 passbook, or similar account maintained with a bank except that the term does not include
20
21

22 ²⁴I disagree with the conclusion that the bankruptcy court can disregard the ruling in Lundgren. It is
23 an Alaska Supreme Court opinion that has never been overruled and which the bankruptcy court is bound to
24 follow. In re Kekauoha-Alisa, 674 F.3d 1083, 1087-88 (9th Cir. 2012). In a later case involving a consumer loan,
25 Judge MacDonald provided what I consider to be a better reason – Lundgren applies only to real estate security
26 (generally, deeds of trust in Alaska) and explicitly said it does not apply to the UCC. In re Zaochney, 2011 WL
27 6148727 (Bankr. D. Alaska 2011) (“However, the court [in Lundgren] also indicated that UCC policy
28 considerations were not relevant to its determination of the impact of the dragnet clause in the deed of trust.”)

29 ²⁵Arizona Christian School Tuition Organization v. Winn, 131 S.Ct. 1436, 1448-49 (2011); District of
30 Columbia v. Gould, 852 A.2d 50, 56, fn6 (DC Ct. App. 2004); Lundgren, at 277, fn 9 (“Alaska Statebank v.
31 Kirschbaum, 662 P.2d 939 (Alaska 1983), is not dispositive. There the borrowers did not dispute that the
32 dragnet clause in each of two security agreements meant that the collateral securing that loan also secured the
33 other loan. *See id.* at 940-41 & nn. 4, 6.”).

investment property or accounts evidenced by an instrument.” The Omni checking account which FNBA swept in 2015 was a Deposit Account.

Liens on Deposit Accounts are perfected by “control.”²⁶ A UCC financing statement need not be filed to perfect a security interest in a Deposit Account. The parties agree that if FNBA had a security interest in the Deposit Account in 2015 by virtue on the 2009 dragnet clause, it also had “control” and the right to sweep (as opposed to setoff) the account to cover its 2013 loan.

3.5. The Alaska Law Regarding Integrated Contracts- The law of the state of Alaska governs the property rights of the trustee and FNBA. As in Alaska Fur Gallery²⁷:

“ ‘Property interests are created and defined by state law.’ ” The issues raised here involve interpretation of a security agreement executed between the parties and the scope of a claimed security interest. The Alaska Uniform Commercial Code and applicable state law regarding contract interpretation will govern their resolution.
[footnote omitted]

The goal in this case involves contract interpretation and enforcement of the reasonable expectations of the parties. “The interpretation of words in a contract, where the extrinsic evidence is undisputed, is generally a task for the trial court . . .”²⁸

²⁶AS 45.29.304, **Law governing perfection and priority of security interests in deposit accounts** and AS 45.29.104()(1), **Control of Deposit Accounts** (“(a) A secured party has control of a deposit account if (1) the secured party is the bank with which the deposit account is maintained; . . .”)

²⁷In re Alaska Fur Gallery, 457 B.R. at 765, citing, Travelers Cas. & Sur. Co. of America v. Pac. Gas & Elec. Co., 549 U.S. 443, 451, 127 S.Ct. 1199, 167 L.Ed.2d 178 (2007); quoting Butner v. United States, 440 U.S. 48, 55, 99 S.Ct. 914, 59 L.Ed.2d 136 (1979).

²⁸Municipality of Anchorage v. Gentile, 922 P.2d 248, 256 (Alaska 1996) [citations omitted]; Still v. Cunningham, 94 P.2d 1104, 1109-10 (Alaska 2004); Monzingo v. Alaska Air Group, 112 P.3d 655, 659 (Alaska 2005) [citing K&K Recycling, Inc. v. Alaska Gold Co., 80 P.3d 702, 711-12 (Alaska 2003)].

The 2013 Security Agreement has an integration clause:

Amendments. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

If the court determines that the contract is integrated (a view which both parties espouse), the parol evidence rule is implicated as explained in the Lower Kuskokwim School District opinion²⁹:

The parol evidence rule is a rule of substantive law which holds that an integrated written contract may not be varied or contradicted by prior negotiations or agreements. Before the parol evidence rule can be applied, three preliminary determinations must be made: (1) whether the contract is integrated, (2) what the contract means, and (3) whether the prior agreement conflicts with the integrated agreement. Alaska Northern Dev., Inc. v. Alyeska Pipeline Serv. Co., 666 P.2d 33, 37–40 (Alaska 1983), *cert. denied*, 464 U.S. 1041, 104 S.Ct. 706, 79 L.Ed.2d 170 (1984). Extrinsic evidence may always be received on the question of meaning. Alyeska Pipeline Serv. Co. v. O'Kelley, 645 P.2d 767, 771 n. 1 (Alaska 1982). Once the meaning of the written contract is determined, however, the parol evidence rule precludes the enforcement of prior inconsistent agreements. Alaska Northern, 666 P.2d at 37.

....

This is not to say that the parol evidence rule is easy to apply. There is an obvious tension between using extrinsic evidence of a prior agreement for the purpose of determining the meaning of an integrated contract, and barring the use of a prior agreement to change an integrated contract once its meaning is determined. The evidence which is consulted to determine meaning may be the same evidence which is later excluded, or rendered irrelevant, by the parol evidence rule. However, this apparent conflict is made manageable in most cases by various practical rules. For example, while extrinsic evidence should be consulted in determining the meaning of a written contract, nonetheless “after the transaction has been shown in all its length and breadth, the words of an integrated agreement remain the most important evidence of intention.” *Restatement (Second) of Contracts* § 212 comment b. Further, questions of interpretation of the meaning of written documents are treated as questions of law for the court except where they are dependent for their resolution on conflicting extrinsic evidence. O'Kelley, 645

²⁹Alaska Diversified Contractors, Inc. v. Lower Kuskokwim School Dist., 778 P.2d 581, 583–84 (Alaska 1989) (footnotes omitted).

P.2d at 771 n. 2; *Restatement (Second) of Contracts* § 212, comments d, e. The question of the meaning of a written contract, including a review of the extrinsic evidence to determine whether any of the extrinsic evidence is conflicting, is a preliminary question for the court. Where there is conflicting extrinsic evidence the court, rather than the jury, must nonetheless decide the question of meaning except where the written language, read in context, is reasonably susceptible to both asserted meanings. Alaska Northern, 666 P.2d at 39.

Under the plain wording on the 2013 Amendments clause, it and any related paperwork (such promissory notes, security agreements, etc. covered under the definition of Related Documents, now or hereafter existing) “ constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement.” Indeed, FNBA argues that the 2009 Security Agreement is an integrated agreement (without citing the Amendments clause),³⁰ and it is hard to see that it could claim the 2013 Security Agreement is not.

FNBA argues:³¹

The earlier loan is paid in full, as anticipated by the parties, but the language says the lien will remain in place to secure future loans. Why can't the language of the earlier loan continue to be effective by its terms, by the very language of the agreement itself? Why would this Court ignore the language of this contract when the UCC says a contract can do exactly what this one says? It is a stand-alone contract separate and apart from the 2013 loan. And the 2013 Security Agreement does not say prior agreements are cancelled or terminated. Here, FNBA enforced the 2009 Security Agreement pursuant to its own independent terms, exactly as anticipated by the contract itself and by the UCC.

This begs the question. The court is not ignoring the 2009 Security Agreement, but rather deciding if it is one of the documents contemplated by the Amendment (integration) clause: “This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement.” The 2009 Security

³⁰FNBA's motion for summary judgment. ECF 13, page 8.

³¹FNBA's motion for summary judgment. ECF 13, page 14.

1 Agreement still exists. It was not terminated.³² The question, however, is whether or not the
2 2009 Security Agreement was included it as part of their “entire agreement” with respect to the
3 2013 loan.

4 At oral argument, FNBA acknowledge the 2009 Security Agreement was not expressly
5 mentioned in the 2013 Security Agreement.

6 The answer lies in the somewhat circular definitions of “Related Documents” and
7 “Indebtedness” in the 2013 Security Agreement.³³ It becomes a chicken-and-egg question - does
8 the integration clause exclude the 2009 Security Agreement or not?. Despite this circularity, the
9 Related Documents definition in the 2013 Security Agreement is sufficiently clear to mean, in this
10 case [emphasis and bracket matter added]:

11 **Related Documents.** The words “Related Documents” mean all promissory
12 notes, credit agreements, loan agreements, environmental agreements, guaranties,
13 security agreements [such as the 2009 Security Agreement], mortgages, deeds of
14 trust, security deeds, collateral mortgages, and all other instruments, agreements
and documents, whether now or hereafter existing [such as the 2009 Security
Agreement], executed [by virtue of the Future Advances clause in the 2009
Security Agreement] in connection with the Indebtedness [such as the 2013 loan].

15 I conclude that the Amendment clause in the 2013 Security Agreement is an integration
16 clause. I further conclude that the 2009 Security Agreement with its Deposit Accounts collateral
17 is one of the Related Documents covered by the Indebtedness described in the 2013 Security
18 Agreement. The reference to the 2009 Security Agreement is not specific, and is in fact
19
20

21 ³² See, Section 3.7 of this memorandum.

22 ³³ In State Bank of Toulon v. Covey (In re Duckworth), 776 F3d 453, 457 (7th Cir. 2014) notes the
23 essential circularity in the definitions of “Related Documents” and “Indebtedness” substantially similar to the
24 ones in the present adversary proceeding. Though these definition were not set out verbatim in the circuit
25 court opinion, they were in the bankruptcy court opinion, In re Duckworth, 2012 WL 986766 (Bankr. C.D. Ill.
26 2012). *See, also*, In re Margues, 2008 WL 4286998 (Bankr. E.D. Pa. 2008) at *7.

exceedingly obscure. But, in parsing the meaning of Related Documents, I conclude the 2009 Security Agreement is **not excluded** by the integration clause; it is in fact **included**.

The parties have cited less than a dozen cases which even discuss the defined terms. None really address the issue of the integration clause, which is the key legal issue.³⁴ Nor have I found any in my independent research.

3.6. The 2009 Security Agreement Was Not Terminated by the 2011 Payoff- The trustee's alternative argument is that the 2009 Security Agreement was terminated when the 2009 loan was paid off in 2011. The survival clause reads:

Survival of Representations and Warranties.³⁵ All representations, warranties, and agreements made by Grantor in this Agreement shall survive the execution and delivery of this Agreement, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's Indebtedness shall be paid in full.

FNBA points out that Indebtedness includes Future Advances, so paying off the 2009 loan did not pay off the Indebtedness:

Indebtedness.³⁶ The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Grantor is responsible under this Agreement or under any of the Related Documents. Specifically, without limitation, Indebtedness includes the future advances set forth in the Future Advances provision, together with all interest thereon and all amounts that may be indirectly secured by the Cross-Collateralization provision of this Agreement.

³⁴In re Duckworth, 2013 WL 211231 (Bankr. C. D. Ill. 2013); In re Dumulao, 2011 WL 4501402 (9th Cir. BAP 2011); Pride Hyundai, Inc. v. Chrysler Fin. Co., L.L.C., 369 F.3d 603, 614-15 (1st Cir.2004); Matter of Kazmierczak, 24 F.3d 1020, 1021 - 22 (7th Cir.1994); Metropolitan Life Ins. Co. v. American National Bank & Trust Co., 682 N.E. 2d 72 (Ill.App. Ct. 1997); Universal Guaranty Life Ins. Co v. Coughlin, 481 F.3d 458 (7th Cir. 2007); In re Schmaling, 783 F.2d 680 (7th Cir. 1986).

³⁵Exhibit A, page 4.

³⁶Exhibit A, page 4 at the bottom under Definitions.

1 Additionally, the trustee's interpretation of the Survival clause is called into question by
2 the following perfection duty which is inconsistent with the trustee's conclusion:

3 **GRANTOR'S REPRESENTATIONS AND WARRANTIES WITH RESPECT TO**
4 **THE COLLATERAL** With respect to the Collateral, Grantor represents and
promises the Lender that:

5 **Perfection of Security Interest.** Grantor agrees to take whatever
6 actions are requested by Lender to perfect and continue Lender's
7 security interest in the Collateral. Upon request of Lender, Grantor
8 will deliver to Lender any and all of the documents evidencing or
9 constituting the Collateral, and Grantor will note Lender's interest
upon any and all chattel paper and instruments if not delivered to
Lender for possession by Lender. **This is a continuing Security**
Agreement and will continue in effect even though all or any part
of the Indebtedness is paid in full and even though for a period of
time Grantor may not be indebted to Lender.

10 Although the trustee says FNBA's interpretation will result in a never ending future
11 advances obligation,³⁷ FNBA's literal reading of the Survival clause is correct. The payoff of the
12 2009 loan did not terminate the 2009 Security Agreement.³⁸

13 **3.7. Damages Under 11 USC § 553(b) Are Not Appropriate**- The trustee concedes that if
14 FNBA has a collateral or lien interest in Deposit Accounts the trustee cannot avoid the \$1.3
15 million bank account sweep.

16 **4. CONCLUSION**- At the conclusion of the oral argument on May 9, 2016, I announced
17 that I would hold that the integration clause in the 2013 Security Agreement excluded the 2009
18 Security Agreement. I started to write a memorandum to that effect, but after endlessly reading
19 and rereading the Related Documents and Indebtedness clauses and trying to parse them to fit my
20 original conclusion I found that I was probably wrong. The memorandum would not "write."
21

22 ³⁷Trustee's summary judgment brief. ECF No. 12, pages 20-21. And, trustee's reply brief. ECF 14, pages
23 9-13.

24 ³⁸In re Alaska Fur Gallery, Inc., 457 B.R. 764, 774 (Bankr. D. Alaska 2011) (relying on the cross-
25 collateralization and future advances clauses in the commercial security agreement).
26
27

1 The trustee presented a clever, well thought out argument, but one that the court cannot
2 adopt. And, the inclusion of the 2009 Security Agreement as one of the Related Documents in the
3 2013 Security Agreement is subtle, if not obscure. But, in the end, that is what I think the
4 contract says. A separate order will be entered.

5 DATED: May 31, 2016
6

7
8 /s/ Herb Ross
HERB ROSS
U.S. Bankruptcy Judge
9

10 Serve:
11 Cabot Christianson, Esq., for π
12 Dennis Fenerty, Esq., for Δ
Cheryl Rapp, Adv. Proc. Mgr.
United States Trustee

D7738

COMMERCIAL SECURITY AGREEMENT

Case 15-00076 Claim 40-1 Filed 06/11/15 Desc Main Document

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Principal	Loan Date	Maturity	Loan No	Call Coll	Account	Officer	Initials
\$1,277,883.21	09-02-2009	09-02-2016	3812	681/510	1052802-01	681	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "****" has been omitted due to text length limitations.

Grantor: OMNI ENTERPRISES, INC.
PO BOX 1039
WHITE SALMON, WA 98672

Lender: First National Bank Alaska
Corporate Headquarters
101 West 36th Avenue, Suite 333
P.O. Box 100720
Anchorage, AK 99510

THIS COMMERCIAL SECURITY AGREEMENT dated September 2, 2009, is made and executed between OMNI ENTERPRISES, INC. ("Grantor") and First National Bank Alaska ("Lender").

GRANT OF SECURITY INTEREST. For valuable consideration, Grantor grants to Lender a security interest in the Collateral to secure the Indebtedness and agrees that Lender shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights which Lender may have by law.

COLLATERAL DESCRIPTION. The word "Collateral" as used in this Agreement means the following described property, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located, in which Grantor is giving to Lender a security interest for the payment of the Indebtedness and performance of all other obligations under the Note and this Agreement:

Purchase Money Security Interest in all Inventory, Chattel Paper, Accounts, Equipment, General Intangibles and Deposit Accounts

In addition, the word "Collateral" also includes all the following, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located:

- (A) All accessions, attachments, accessories, tools, parts, supplies, replacements of and additions to any of the collateral described herein, whether added now or later.
- (B) All products and produce of any of the property described in this Collateral section.
- (C) All accounts, general intangibles, instruments, rents, monies, payments, and all other rights, arising out of a sale, lease, consignment or other disposition of any of the property described in this Collateral section.
- (D) All proceeds (including insurance proceeds) from the sale, destruction, loss, or other disposition of any of the property described in this Collateral section, and sums due from a third party who has damaged or destroyed the Collateral or from that party's insurer, whether due to judgment, settlement or other process.
- (E) All records and data relating to any of the property described in this Collateral section, whether in the form of a writing, photograph, microfilm, microfiche, or electronic media, together with all of Grantor's right, title, and interest in and to all computer software required to utilize, create, maintain, and process any such records or data on electronic media.

CROSS-COLLATERALIZATION. In addition to the Note, this Agreement secures all obligations, debts and liabilities, plus interest thereon, of Grantor to Lender, or any one or more of them, as well as all claims by Lender against Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

FUTURE ADVANCES. In addition to the Note, this Agreement secures all future advances made by Lender to Grantor regardless of whether the advances are made a) pursuant to a commitment or b) for the same purposes.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Grantor's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Grantor holds jointly with someone else and all accounts Grantor may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Grantor authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the Indebtedness against any and all such accounts.

GRANTOR'S REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE COLLATERAL. With respect to the Collateral, Grantor represents and promises to Lender that:

Perfection of Security Interest. Grantor agrees to take whatever actions are requested by Lender to perfect and continue Lender's security interest in the Collateral. Upon request of Lender, Grantor will deliver to Lender any and all of the documents evidencing or constituting the Collateral, and Grantor will note Lender's interest upon any and all chattel paper and instruments if not delivered to Lender for possession by Lender. This is a continuing Security Agreement and will continue in effect even though all or any part of the Indebtedness is paid in full and even though for a period of time Grantor may not be indebted to Lender.

Notices to Lender. Grantor will promptly notify Lender in writing at Lender's address shown above (or such other addresses as Lender may designate from time to time) prior to any (1) change in Grantor's name; (2) change in Grantor's assumed business name(s); (3) change in the management of the Corporation Grantor; (4) change in the authorized signers; (5) change in Grantor's principal office address; (6) change in Grantor's state of organization; (7) conversion of Grantor to a new or different type of business entity; or (8) change in any other aspect of Grantor that directly or indirectly relates to any agreements between Grantor and Lender. No change in Grantor's name or state of organization will take effect until after Lender has received notice.

No Violation. The execution and delivery of this Agreement will not violate any law or agreement governing Grantor or to which Grantor is a party, and its certificate or articles of incorporation and bylaws do not prohibit any term or condition of this Agreement.

Enforceability of Collateral. To the extent the Collateral consists of accounts, chattel paper, or general intangibles, as defined by the Uniform Commercial Code, the Collateral is enforceable in accordance with its terms, is genuine, and fully complies with all applicable laws and regulations concerning form, content and manner of preparation and execution, and all persons appearing to be obligated on the Collateral have authority and capacity to contract and are in fact obligated as they appear to be on the Collateral. At the time any account becomes subject to a security interest in favor of Lender, the account shall be a good and valid account representing an undisputed, bona fide indebtedness incurred by the account debtor, for merchandise held subject to delivery instructions or previously shipped or delivered pursuant to a contract of sale, or for services previously performed by Grantor with or for the account debtor. So long as this Agreement remains in effect, Grantor shall not, without Lender's prior written consent, compromise, settle, adjust, or extend payment under or with regard to any such Accounts. There shall be no setoffs or counterclaims against any of the Collateral, and no agreement shall have been made under which any deductions or discounts may be claimed concerning the Collateral except those disclosed to Lender in writing.

Location of the Collateral. Except in the ordinary course of Grantor's business, Grantor agrees to keep the Collateral (or to the extent the Collateral consists of intangible property such as accounts or general intangibles, the records concerning the Collateral) at Grantor's address shown above or at such other locations as are acceptable to Lender. Upon Lender's request, Grantor will deliver to Lender in form satisfactory to Lender a schedule of real properties and Collateral locations relating to Grantor's operations, including without limitation the following: (1) all real property Grantor owns or is purchasing; (2) all real property Grantor is renting or leasing; (3) all storage facilities Grantor owns, rents, leases, or uses; and (4) all other properties where Collateral is or may be located.

Removal of the Collateral. Except in the ordinary course of Grantor's business, including the sales of inventory, Grantor shall not remove the Collateral from its existing location without Lender's prior written consent. To the extent that the Collateral consists of vehicles, or other titled property, Grantor shall not take or permit any action which would require application for certificates of title for the vehicles outside the State of Alaska, without Lender's prior written consent. Grantor shall, whenever requested, advise Lender of the exact location of the Collateral.

Transactions Involving Collateral. Except for inventory sold or accounts collected in the ordinary course of Grantor's business, or as otherwise provided for in this Agreement, Grantor shall not sell, offer to sell, or otherwise transfer or dispose of the Collateral. While Grantor is not in default under this Agreement, Grantor may sell inventory, but only in the ordinary course of its business and only to buyers who qualify as a buyer in the ordinary course of business. A sale in the ordinary course of Grantor's business does not include a transfer in partial or total satisfaction of a debt or any bulk sale. Grantor shall not pledge, mortgage, encumber or otherwise permit the Collateral to be subject to any lien, security interest, encumbrance, or charge, other than the security interest provided for in this Agreement, without

the prior written consent of Lender. This includes security interests even if junior in right to the security interests granted under this Agreement. Unless waived by Lender, all proceeds from any disposition of the Collateral (for whatever reason) shall be held in trust for Lender and shall not be commingled with any other funds; provided however, this requirement shall not constitute consent by Lender to any sale or other disposition. Upon receipt, Grantor shall immediately deliver any such proceeds to Lender.

Title. Grantor represents and warrants to Lender that Grantor holds good and marketable title to the Collateral, free and clear of all liens and encumbrances except for the lien of this Agreement. No financing statement covering any of the Collateral is on file in any public office other than those which reflect the security interest created by this Agreement or to which Lender has specifically consented. Grantor shall defend Lender's rights in the Collateral against the claims and demands of all other persons.

Repairs and Maintenance. Grantor agrees to keep and maintain, and to cause others to keep and maintain, the Collateral in good order, repair and condition at all times while this Agreement remains in effect. Grantor further agrees to pay when due all claims for work done on, or services rendered or material furnished in connection with the Collateral so that no lien or encumbrance may ever attach to or be filed against the Collateral.

Inspection of Collateral. Lender and Lender's designated representatives and agents shall have the right at all reasonable times to examine and inspect the Collateral wherever located.

Taxes, Assessments and Liens. Grantor will pay when due all taxes, assessments and liens upon the Collateral, its use or operation, upon this Agreement, upon any promissory note or notes evidencing the indebtedness, or upon any of the other Related Documents. Grantor may withhold any such payment or may elect to contest any lien if Grantor is in good faith conducting an appropriate proceeding to contest the obligation to pay and so long as Lender's interest in the Collateral is not jeopardized in Lender's sole opinion. If the Collateral is subjected to a lien which is not discharged within fifteen (15) days, Grantor shall deposit with Lender cash, a sufficient corporate surety bond or other security satisfactory to Lender in an amount adequate to provide for the discharge of the lien plus any interest, costs, reasonable attorneys' fees or other charges that could accrue as a result of foreclosure or sale of the Collateral. In any contest Grantor shall defend itself and Lender and shall satisfy any final adverse judgment before enforcement against the Collateral. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings. Grantor further agrees to furnish Lender with evidence that such taxes, assessments, and governmental and other charges have been paid in full and in a timely manner. Grantor may withhold any such payment or may elect to contest any lien if Grantor is in good faith conducting an appropriate proceeding to contest the obligation to pay and so long as Lender's interest in the Collateral is not jeopardized.

Compliance with Governmental Requirements. Grantor shall comply promptly with all laws, ordinances, rules and regulations of all governmental authorities, now or hereafter in effect, applicable to the ownership, production, disposition, or use of the Collateral, including all laws or regulations relating to the undue erosion of highly-erodible land or relating to the conversion of wetlands for the production of an agricultural product or commodity. Grantor may contest in good faith any such law, ordinance or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Lender's interest in the Collateral, in Lender's opinion, is not jeopardized.

Hazardous Substances. Grantor represents and warrants that the Collateral never has been, and never will be so long as this Agreement remains a lien on the Collateral, used in violation of any Environmental Laws or for the generation, manufacture, storage, transportation, treatment, disposal, release or threatened release of any Hazardous Substance. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Collateral for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any Environmental Laws, and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims and losses resulting from a breach of this provision of this Agreement. This obligation to indemnify and defend shall survive the payment of the indebtedness and the satisfaction of this Agreement.

Maintenance of Casualty Insurance. Grantor shall procure and maintain all risks insurance, including without limitation fire, theft and liability coverage together with such other insurance as Lender may require with respect to the Collateral, in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days' prior written notice to Lender and not including any disclaimer of the insurer's liability for failure to give such a notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. In connection with all policies covering assets in which Lender holds or is offered a security interest, Grantor will provide Lender with such loss payable or other endorsements as Lender may require. If Grantor at any time fails to obtain or maintain any insurance as required under this Agreement, Lender may (but shall not be obligated to) obtain such insurance as Lender deems appropriate, including if Lender so chooses "single interest insurance," which will cover only Lender's interest in the Collateral.

Application of Insurance Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Collateral, whether or not such casualty or loss is covered by insurance. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. All proceeds of any insurance on the Collateral, including accrued proceeds thereon, shall be held by Lender as part of the Collateral. If Lender consents to repair or replacement of the damaged or destroyed Collateral, Lender shall, upon satisfactory proof of expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration. If Lender does not consent to repair or replacement of the Collateral, Lender shall retain a sufficient amount of the proceeds to pay all of the indebtedness, and shall pay the balance to Grantor. Any proceeds which have not been disbursed within six (6) months after their receipt and which Grantor has not committed to the repair or restoration of the Collateral shall be used to prepay the indebtedness.

Insurance Reserves. Lender may require Grantor to maintain with Lender reserves for payment of insurance premiums, which reserves shall be created by monthly payments from Grantor of a sum estimated by Lender to be sufficient to produce, at least fifteen (15) days before the premium due date, amounts at least equal to the insurance premiums to be paid. If fifteen (15) days before payment is due, the reserve funds are insufficient, Grantor shall upon demand pay any deficiency to Lender. The reserve funds shall be held by Lender as a general deposit and shall constitute a non-interest-bearing account which Lender may satisfy by payment of the insurance premiums required to be paid by Grantor as they become due. Lender does not hold the reserve funds in trust for Grantor, and Lender is not the agent of Grantor for payment of the insurance premiums required to be paid by Grantor. The responsibility for the payment of premiums shall remain Grantor's sole responsibility.

Insurance Reports. Grantor, upon request of Lender, shall furnish to Lender reports on each existing policy of insurance showing such information as Lender may reasonably request including the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured; (5) the then current value on the basis of which insurance has been obtained and the manner of determining that value; and (6) the expiration date of the policy. In addition, Grantor shall upon request by Lender (however not more often than annually) have an independent appraiser satisfactory to Lender determine, as applicable, the cash value or replacement cost of the Collateral.

Financing Statements. Grantor authorizes Lender to file a UCC financing statement, or alternatively, a copy of this Agreement to perfect Lender's security interest. At Lender's request, Grantor additionally agrees to sign all other documents that are necessary to perfect, protect, and continue Lender's security interest in the Property. Grantor will pay all filing fees, title transfer fees, and other fees and costs involved unless prohibited by law or unless Lender is required by law to pay such fees and costs. Grantor irrevocably appoints Lender to execute documents necessary to transfer title if there is a default. Lender may file a copy of this Agreement as a financing statement. If Grantor changes Grantor's name or address, or the name or address of any person granting a security interest under this Agreement changes, Grantor will promptly notify the Lender of such change.

GRANTOR'S RIGHT TO POSSESSION AND TO COLLECT ACCOUNTS. Until default and except as otherwise provided below with respect to accounts, Grantor may have possession of the tangible personal property and beneficial use of all the Collateral and may use it in any lawful manner not inconsistent with this Agreement or the Related Documents, provided that Grantor's right to possession and beneficial use shall not apply to any Collateral where possession of the Collateral by Lender is required by law to perfect Lender's security interest in such Collateral. Until otherwise notified by Lender, Grantor may collect any of the Collateral consisting of accounts. At any time and even though no Event of Default exists, Lender may exercise its rights to collect the accounts and to notify account debtors to make payments directly to Lender for application to the indebtedness. If Lender at any time has possession of any Collateral, whether before or after an Event of Default, Lender shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral if Lender takes such action for that purpose as Grantor shall request or as Lender, in Lender's sole discretion, shall deem appropriate under the circumstances, but failure to honor any request by Grantor shall not of itself be deemed to be a failure to exercise reasonable care. Lender shall not be required to take any steps necessary to preserve any rights in the Collateral against prior parties, nor to protect, preserve or maintain any security interest given to secure the indebtedness.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Grantor fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Agreement or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Collateral and paying all costs for

insuring, maintaining and preserving the Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note unless payment of interest at that rate would be contrary to applicable law, in which event such expenses shall bear interest at the highest rate permitted by applicable law from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Agreement also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

DEFAULT. Each of the following shall constitute an Event of Default under this Agreement:

Payment Default. Grantor fails to make any payment when due under the Indebtedness.

Other Defaults. Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

False Statements. Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Agreement or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Insolvency. The dissolution or termination of Grantor's existence as a going business, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Foreclosure Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any collateral securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or Guarantor dies or becomes incompetent or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Insecurity. Lender in good faith believes itself insecure.

Cure Provisions. If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Agreement within the preceding twelve (12) months, it may be cured if Grantor, after Lender sends written notice to Grantor demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. If an Event of Default occurs under this Agreement, at any time thereafter, Lender shall have all the rights of a secured party under the Alaska Uniform Commercial Code. In addition and without limitation, Lender may exercise any one or more of the following rights and remedies:

Accelerate Indebtedness. Lender may declare the entire Indebtedness, including any prepayment penalty which Grantor would be required to pay, immediately due and payable, without notice of any kind to Grantor.

Assemble Collateral. Lender may require Grantor to deliver to Lender all or any portion of the Collateral and any and all certificates of title and other documents relating to the Collateral. Lender may require Grantor to assemble the Collateral and make it available to Lender at a place to be designated by Lender. Lender also shall have full power to enter upon the property of Grantor to take possession of and remove the Collateral. If the Collateral contains other goods not covered by this Agreement at the time of repossession, Grantor agrees Lender may take such other goods, provided that Lender makes reasonable efforts to return them to Grantor after repossession.

Sell the Collateral. Lender shall have full power to sell, lease, transfer, or otherwise deal with the Collateral or proceeds thereof in Lender's own name or that of Grantor. Lender may sell the Collateral at public auction or private sale. Unless the Collateral threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender will give Grantor, and other persons as required by law, reasonable notice of the time and place of any public sale, or the time after which any private sale or any other disposition of the Collateral is to be made. However, no notice need be provided to any person who, after Event of Default occurs, enters into and authenticates an agreement waiving that person's right to notification of sale. The requirements of reasonable notice shall be met if such notice is given at least ten (10) days before the time of the sale or disposition. All expenses relating to the disposition of the Collateral, including without limitation the expenses of retaking, holding, insuring, preparing for sale and selling the Collateral, shall become a part of the Indebtedness secured by this Agreement and shall be payable on demand, with interest at the Note rate unless payment of interest at that rate would be contrary to applicable law, in which event such expenses shall bear interest at the highest rate permitted by applicable law from date of expenditure until repaid.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Collateral, with the power to protect and preserve the Collateral, to operate the Collateral preceding foreclosure or sale, and to collect the Rents from the Collateral and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Collateral exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Collect Revenues, Apply Accounts. Lender, either itself or through a receiver, may collect the payments, rents, income, and revenues from the Collateral. Lender may at any time in Lender's discretion transfer any Collateral into Lender's own name or that of Lender's nominee and receive the payments, rents, income, and revenues therefrom and hold the same as security for the Indebtedness or apply it to payment of the Indebtedness in such order of preference as Lender may determine. Insofar as the Collateral consists of accounts, general intangibles, insurance policies, instruments, chattel paper, choses in action, or similar property, Lender may demand, collect, receipt for, settle, compromise, adjust, sue for, foreclose, or realize on the Collateral as Lender may determine, whether or not Indebtedness or Collateral is then due. For these purposes, Lender may, on behalf of and in the name of Grantor, receive, open and dispose of mail addressed to Grantor; change any address to which mail and payments are to be sent; and endorse notes, checks, drafts, money orders, documents of title, instruments and items pertaining to payment, shipment, or storage of any Collateral. To facilitate collection, Lender may notify account debtors and obligors on any Collateral to make payments directly to Lender.

Obtain Deficiency. If Lender chooses to sell any or all of the Collateral, Lender may obtain a judgment against Grantor for any deficiency remaining on the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this Agreement. Grantor shall be liable for a deficiency even if the transaction described in this subsection is a sale of accounts or chattel paper.

Other Rights and Remedies. Lender shall have all the rights and remedies of a secured creditor under the provisions of the Uniform Commercial Code, as may be amended from time to time. In addition, Lender shall have and may exercise any or all other rights and remedies it may have available at law, in equity, or otherwise.

Election of Remedies. Except as may be prohibited by applicable law, all of Lender's rights and remedies, whether evidenced by this Agreement, the Related Documents, or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Agreement, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

FORCE PLACED INSURANCE. I agree that if I fail to provide any required insurance or fail to continue such insurance in force, Lender may do so at my expense. In the event Lender initiates the process of obtaining such insurance I agree to pay Lender, in addition to the expense associated with the force placed insurance, a processing fee of \$100.00. Such fee is fully earned whenever Lender initiates such process regardless of whether the insurance is actually obtained by Lender. The cost of any such insurance and processing fee, at the option of the Lender shall be added to the Indebtedness.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

Amendments. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Attorneys' Fees; Expenses. Grantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's reasonable attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Grantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's reasonable attorneys' fees and legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Grantor also shall pay all court costs and such additional fees as may be directed by the court.

Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

Governing Law. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Alaska without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of Alaska.

Preference Payments. Any monies Lender pays because of an asserted preference claim in Grantor's bankruptcy will become a part of the indebtedness and, at Lender's option, shall be payable by Grantor as provided in this Agreement.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Notices. Unless otherwise provided by applicable law, any notice required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

Power of Attorney. Grantor hereby appoints Lender as Grantor's irrevocable attorney-in-fact for the purpose of executing any documents necessary to perfect, amend, or to continue the security interest granted in this Agreement or to demand termination of filings of other secured parties. Lender may at any time, and without further authorization from Grantor, file a carbon, photographic or other reproduction of any financing statement or of this Agreement for use as a financing statement. Grantor will reimburse Lender for all expenses for the perfection and the continuation of the perfection of Lender's security interest in the Collateral.

Waiver of Co-Obligor's Rights. If more than one person is obligated for the indebtedness, Grantor irrevocably waives, disclaims and relinquishes all claims against such other person which Grantor has or would otherwise have by virtue of payment of the indebtedness or any part thereof, specifically including but not limited to all rights of indemnity, contribution or exoneration.

Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

Successors and Assigns. Subject to any limitations stated in this Agreement on transfer of Grantor's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Collateral becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Agreement and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Agreement or liability under the Indebtedness.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Agreement shall survive the execution and delivery of this Agreement, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's Indebtedness shall be paid in full.

Time is of the Essence. Time is of the essence in the performance of this Agreement.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code:

Agreement. The word "Agreement" means this Commercial Security Agreement, as this Commercial Security Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Commercial Security Agreement from time to time.

Borrower. The word "Borrower" means OMNI ENTERPRISES, INC. and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Collateral. The word "Collateral" means all of Grantor's right, title and interest in and to all the Collateral as described in the Collateral Description section of this Agreement.

Default. The word "Default" means the Default set forth in this Agreement in the section titled "Default".

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement.

Grantor. The word "Grantor" means OMNI ENTERPRISES, INC..

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Indebtedness. The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Grantor is responsible under this Agreement or under any of the Related Documents. Specifically, without limitation, Indebtedness includes the future advances set forth in the Future Advances provision, together with all interest thereon and all amounts that may be indirectly secured by the Cross-Collateralization provision of this Agreement.

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Lender. The word "Lender" means First National Bank Alaska, its successors and assigns.

Note. The word "Note" means the Note executed by OMNI ENTERPRISES, INC. in the principal amount of \$1,277,883.21 dated September 2, 2009, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement.

Property. The word "Property" means all of Grantor's right, title and interest in and to all the Property as described in the "Collateral Description" section of this Agreement.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

GRANTOR HAS READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS COMMERCIAL SECURITY AGREEMENT AND AGREES TO ITS TERMS. THIS AGREEMENT IS DATED SEPTEMBER 2, 2009.

GRANTOR:

OMNI ENTERPRISES, INC.

By:

RUSSELL J LINDSAY, President of OMNI ENTERPRISES, INC.

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Principal	Loan Date	Maturity	Loan No.	Coll / Coll	Account	Officer	Initials
\$2,575,520.00	08-16-2013	08-16-2024	*****4354	424 / 1330	02-01	424	
References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing ***** has been omitted due to text length limitations.							

Grantor: OMNI ENTERPRISES, INC.
PO BOX 1039
WHITE SALMON, WA 98672

Lender: First National Bank Alaska
Corporate Headquarters
101 West 56th Avenue, Suite 333
PO Box 100720
Anchorage, AK 99510-0720

THIS COMMERCIAL SECURITY AGREEMENT dated August 16, 2013, is made and executed between OMNI ENTERPRISES, INC. ("Grantor") and First National Bank Alaska ("Lender").

GRANT OF SECURITY INTEREST. For valuable consideration, Grantor grants to Lender a security interest in the Collateral to secure the indebtedness and agrees that Lender shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights which Lender may have by law.

COLLATERAL DESCRIPTION. The word "Collateral" as used in this Agreement means the following described property, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located, in which Grantor is giving to Lender a security interest for the payment of the indebtedness and performance of all other obligations under the Note and this Agreement:

Purchase Money Security Interest in all see "Exhibit A".

In addition, the word "Collateral" also includes all the following, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located:

- (A) All accessions, attachments, accessories, replacements of and additions to any of the collateral described herein, whether added now or later;
- (B) All products and produce of any of the property described in this Collateral section;
- (C) All accounts, general intangibles, instruments, rents, monies, payments, and all other rights, arising out of a sale, lease, consignment or other disposition of any of the property described in this Collateral section;
- (D) All proceeds (including insurance proceeds) from the sale, destruction, loss, or other disposition of any of the property described in this Collateral section, and sums due from a third party who has damaged or destroyed the Collateral or from that party's insurer, whether due to judgment, settlement or other process;
- (E) All records and data relating to any of the property described in this Collateral section, whether in the form of a writing, photograph, microfilm, microfiche, or electronic media, together with all of Grantor's right, title, and interest in and to all computer software required to utilize, create, maintain, and process any such records or data on electronic media.

CROSS-COLLATERALIZATION. In addition to the Note, this Agreement secures all obligations, debts and liabilities, plus interest thereon, of Grantor to Lender, or any one or more of them, as well as all claims by Lender against Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

FUTURE ADVANCES. In addition to the Note, this Agreement secures all future advances made by Lender to Grantor regardless of whether the advances are made at pursuant to a commitment or at for the same purposes.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Grantor's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Grantor holds jointly with someone else and all accounts Grantor may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Grantor authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts.

GRANTOR'S REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE COLLATERAL. With respect to the Collateral, Grantor represents and promises to Lender that:

Perfection of Security Interest. Grantor agrees to take whatever actions are requested by Lender to perfect and continue Lender's security interest in the Collateral. Upon request of Lender, Grantor will deliver to Lender any and all of the documents evidencing or constituting the Collateral, and Grantor will note Lender's interest upon any and all chattel paper and instruments if not delivered to Lender for possession by Lender. This is a continuing Security Agreement and will continue in effect even though all or any part of the indebtedness is paid in full and even though for a period of time Grantor may not be indebted to Lender.

Notices to Lender. Grantor will promptly notify Lender in writing at Lender's address shown above for such other addresses as Lender may designate from time to time prior to any: (1) change in Grantor's name; (2) change in Grantor's assumed business name(s); (3) change in the management of the Corporation Grantor; (4) change in the authorized signatories; (5) change in Grantor's principal office address; (6) change in Grantor's state of organization; (7) conversion of Grantor to a new or different type of business entity; or (8) change in any other aspect of Grantor that directly or indirectly relates to any agreements between Grantor and Lender. No change in Grantor's name or state of organization will take effect until after Lender has received notice.

No Violation. The execution and delivery of this Agreement will not violate any law or agreement governing Grantor or to which Grantor is a party, and its certificate or articles of incorporation and bylaws do not prohibit any term or condition of this Agreement.

Enforceability of Collateral. To the extent the Collateral consists of accounts, chattel paper, or general intangibles, as defined by the Uniform Commercial Code, the Collateral is enforceable in accordance with its terms, is genuine, and fully complies with all applicable laws and regulations concerning form, content and manner of preparation and execution, and all persons appearing to be obligated on the Collateral have authority and capacity to contract and are in fact obligated as they appear to be on the Collateral. There shall be no setoffs or counterclaims against any of the Collateral, and no agreement shall have been made under which any deductions or discounts may be claimed concerning the Collateral except those disclosed to Lender in writing.

Location of the Collateral. Except in the ordinary course of Grantor's business, Grantor agrees to keep the Collateral at Grantor's address shown above or at such other locations as are acceptable to Lender. Upon Lender's request, Grantor will deliver to Lender in form satisfactory to Lender a schedule of real properties and Collateral locations relating to Grantor's operations, including without limitation the following: (1) all real property Grantor owns or is purchasing; (2) all real property Grantor is renting or leasing; (3) all storage facilities Grantor owns, rents, leases, or uses; and (4) all other properties where Collateral is or may be located.

Removal of the Collateral. Except in the ordinary course of Grantor's business, Grantor shall not remove the Collateral from its existing location without Lender's prior written consent. Grantor shall, whenever requested, advise Lender of the exact location of the Collateral.

Transactions Involving Collateral. Except for inventory sold or accounts collected in the ordinary course of Grantor's business, or as otherwise provided for in this Agreement, Grantor shall not sell, offer to sell, or otherwise transfer or dispose of the Collateral. Grantor shall not pledge, mortgage, encumber or otherwise permit the Collateral to be subject to any lien, security interest, encumbrance, or charge, other than the security interest provided for in this Agreement, without the prior written consent of Lender. This includes security interests even if junior in right to the security interests granted under this Agreement. Unless waived by Lender, all proceeds from any disposition of the Collateral (for whatever reason) shall be held in trust for Lender and shall not be commingled with any other funds; provided however, this requirement shall not constitute consent by Lender to any sale or other disposition. Upon receipt, Grantor shall immediately deliver any such proceeds to Lender.

Title. Grantor represents and warrants to Lender that Grantor holds good and marketable title to the Collateral, free and clear of all liens and encumbrances except for the lien of this Agreement. No financing statement covering any of the Collateral is on file in any public office other than those which reflect the security interest created by this Agreement or to which Lender has specifically consented. Grantor shall defend Lender's rights in the Collateral against the claims and demands of all other persons.

Repairs and Maintenance. Grantor agrees to keep and maintain, and to cause others to keep and maintain, the Collateral in good order.

repair and condition at all times while this Agreement remains in effect. Grantor further agrees to pay when due all claims for work done on, or services rendered or material furnished in connection with the Collateral so that no lien or encumbrance may ever attach to or be filed against the Collateral.

Inspection of Collateral. Lender and Lender's designated representatives and agents shall have the right at all reasonable times to examine and inspect the Collateral wherever located.

Taxes, Assessments and Liens. Grantor will pay when due all taxes, assessments and liens upon the Collateral, its use or operation, upon this Agreement, upon any promissory note or notes evidencing the Indebtedness, or upon any of the other Related Documents. Grantor may withhold any such payment or may elect to contest any lien if Grantor is in good faith conducting an appropriate proceeding to contest the obligation to pay and so long as Lender's interest in the Collateral is not jeopardized in Lender's sole opinion. If the Collateral is subject to a lien which is not discharged within fifteen (15) days, Grantor shall deposit with Lender cash, a sufficient corporate surety bond or other security satisfactory to Lender in an amount adequate to provide for the discharge of the lien plus any interest, costs, reasonable attorneys' fees or other charges that could accrue as a result of foreclosure or sale of the Collateral. In any contest Grantor shall defend itself and Lender and shall satisfy any final adverse judgment before enforcement against the Collateral. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings. Grantor further agrees to furnish Lender with evidence that such taxes, assessments, and governmental and other charges have been paid in full and in a timely manner. Grantor may withhold any such payment or may elect to contest any lien if Grantor is in good faith conducting an appropriate proceeding to contest the obligation to pay and so long as Lender's interest in the Collateral is not jeopardized.

Compliance with Governmental Requirements. Grantor shall comply promptly with all laws, ordinances, rules and regulations of all governmental authorities, now or hereafter in effect, applicable to the ownership, production, disposition, or use of the Collateral, including all laws or regulations relating to the undue erosion of highly-erodible land or relating to the conversion of wetlands for the production of an agricultural product or commodity. Grantor may contest in good faith any such law, ordinance or regulation and without compliance during any proceeding, including appropriate appeals, so long as Lender's interest in the Collateral, in Lender's opinion, is not jeopardized.

Hazardous Substances. Grantor represents and warrants that the Collateral never has been, and never will be so long as this Agreement remains a lien on the Collateral, used in violation of any Environmental Laws or for the generation, manufacture, storage, transportation, treatment, disposal, release or threatened release of any Hazardous Substance. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Collateral for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any Environmental Laws, and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims and losses resulting from a breach of this provision of this Agreement. This obligation to indemnify and defend shall survive the payment of the Indebtedness and the satisfaction of this Agreement.

Maintenance of Casualty Insurance. Grantor shall procure and maintain all risks insurance, including without limitation fire, theft and liability coverage together with such other insurance as Lender may require with respect to the Collateral, in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days' prior written notice to Lender and not including any disclaimer of the insurer's liability for failure to give such a notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. In connection with all policies covering assets in which Lender holds or is offered a security interest, Grantor will provide Lender with such loss payable or other endorsements as Lender may require. If Grantor at any time fails to obtain or maintain any insurance as required under this Agreement, Lender may (but shall not be obligated to) obtain such insurance as Lender deems appropriate, including if Lender so chooses "single interest insurance," which will cover only Lender's interest in the Collateral.

Application of Insurance Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Collateral, whether or not such casualty or loss is covered by insurance. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. All proceeds of any insurance on the Collateral, including accrued proceeds thereon, shall be held by Lender as part of the Collateral. If Lender consents to repair or replacement of the damaged or destroyed Collateral, Lender shall, upon satisfactory proof of expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration. If Lender does not consent to repair or replacement of the Collateral, Lender shall retain a sufficient amount of the proceeds to pay all of the Indebtedness, and shall pay the balance to Grantor. Any proceeds which have not been disbursed within six (6) months after their receipt and which Grantor has not committed to the repair or restoration of the Collateral shall be used to prepay the Indebtedness.

Insurance Reserves. Lender may require Grantor to maintain with Lender reserves for payment of insurance premiums, which reserves shall be created by monthly payments from Grantor of a sum estimated by Lender to be sufficient to produce, at the time fixed by Lender, the premium due date, amounts at least equal to the insurance premiums to be paid. If fifteen (15) days before payment is due, the reserve funds are insufficient, Grantor shall upon demand pay any deficiency to Lender. The reserve funds shall be held by Lender as a general deposit and shall constitute a non-interest-bearing account which Lender may satisfy by payment of the insurance premiums required to be paid by Grantor as they become due. Lender does not hold the reserve funds in trust for Grantor, and Lender is not the agent of Grantor for payment of the insurance premiums required to be paid by Grantor. The responsibility for the payment of premiums shall remain Grantor's sole responsibility.

Insurance Reports. Grantor, upon request of Lender, shall furnish to Lender reports on each existing policy of insurance showing such information as Lender may reasonably request including the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured; (5) the then current value on the basis of which insurance has been obtained and the manner of determining that value; and (6) the expiration date of the policy. In addition, Grantor shall upon request by Lender (however not more often than annually) have an independent appraiser satisfactory to Lender determine, as applicable, the cash value or replacement cost of the Collateral.

Financing Statements. Grantor authorizes Lender to file a UCC financing statement, or alternatively, a copy of this Agreement to perfect Lender's security interest. At Lender's request, Grantor additionally agrees to sign all other documents that are necessary to perfect, protect, and continue Lender's security interest in the Property. Grantor will pay all filing fees, title transfer fees, and other fees and costs involved unless prohibited by law or unless Lender is required by law to pay such fees and costs. Grantor irrevocably appoints Lender to execute documents necessary to transfer title if there is a default. Lender may file a copy of this Agreement as a financing statement. If Grantor changes Grantor's name or address, or the name or address of any person granting a security interest under this Agreement changes, Grantor will promptly notify the Lender of such change.

GRANTOR'S RIGHT TO POSSESSION. Until default, Grantor may have possession of the tangible personal property and beneficial use of all the Collateral and may use it in any lawful manner not inconsistent with this Agreement or the Related Documents, provided that Grantor's right to possession and beneficial use shall not apply to any Collateral where possession of the Collateral by Lender is required by law to perfect Lender's security interest in such Collateral. If Lender at any time has possession of any Collateral, whether before or after an Event of Default, Lender shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral if Lender takes such action for that purpose as Grantor shall request or as Lender, in Lender's sole discretion, shall deem appropriate under the circumstances, but failure to honor any request by Grantor shall not of itself be deemed to be a failure to exercise reasonable care. Lender shall not be required to take any steps necessary to preserve any rights in the Collateral against prior parties, nor to protect, preserve or maintain any security interest given to secure the Indebtedness.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Grantor fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Agreement or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Collateral and paying all costs for insuring, maintaining and preserving the Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note unless payment of interest at that rate would be contrary to applicable law, in which event such expenses shall bear interest at the highest rate permitted by applicable law from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy or (2) the remaining term of the Note or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Agreement also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

DEFAULT. Each of the following shall constitute an Event of Default under this Agreement:

Payment Default. Grantor fails to make any payment when due under the Indebtedness.

Other Defaults. Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or

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in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

False Statements. Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Agreement or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Insolvency. The dissolution or termination of Grantor's existence as a going business, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Foreclosure Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any collateral securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or foreclosure proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the Indebtedness or guarantor, endorser, surety, or accommodation party dies or becomes incompetent or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Insecurity. Lender in good faith believes itself insecure.

Cure Provisions. If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Agreement within the preceding twelve (12) months, it may be cured if Grantor, after Lender sends written notice to Grantor demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. If an Event of Default occurs under this Agreement, at any time thereafter, Lender shall have all the rights of a secured party under the Alaska Uniform Commercial Code. In addition and without limitation, Lender may exercise any one or more of the following rights and remedies:

Accelerate Indebtedness. Lender may declare the entire Indebtedness, including any prepayment penalty which Grantor would be required to pay, immediately due and payable, without notice of any kind to Grantor.

Assemble Collateral. Lender may require Grantor to deliver to Lender all or any portion of the Collateral and any and all certificates of title and other documents relating to the Collateral. Lender may require Grantor to assemble the Collateral and make it available to Lender at a place to be designated by Lender. Lender also shall have full power to enter upon the property of Grantor to take possession of and remove the Collateral. If the Collateral contains other goods not covered by this Agreement at the time of repossession, Grantor agrees Lender may take such other goods, provided that Lender makes reasonable efforts to return them to Grantor after repossession.

Sell the Collateral. Lender shall have full power to sell, lease, transfer, or otherwise deal with the Collateral or proceeds thereof in Lender's own name or that of Grantor. Lender may sell the Collateral at public auction or private sale. Unless the Collateral threatens to decline speedily in value or of a type customarily sold on a recognized market, Lender will give Grantor, and other persons as required by law, reasonable notice of the time and place of any public sale, or the time after which any private sale or any other disposition of the Collateral is to be made. However, no notice need be provided to any person who, after Event of Default occurs, enters into and authenticates an agreement waiving that person's right to notification of sale. The requirements of reasonable notice shall be met if such notice is given at least ten (10) days before the time of the sale or disposition. All expenses relating to the disposition of the Collateral, including without limitation the expenses of retaking, holding, insuring, preparing for sale and selling the Collateral, shall become a part of the Indebtedness secured by this Agreement and shall be payable on demand, with interest at the Note rate unless payment of interest at that rate would be contrary to applicable law, in which event such expenses shall bear interest at the highest rate permitted by applicable law from date of expenditure until repaid.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Collateral, with the power to protect and preserve the Collateral, to operate the Collateral preceding foreclosure or sale, and to collect the rents from the Collateral and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Collateral exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Collect Revenues, Apply Accounts. Lender, either itself or through a receiver, may collect the payments, rents, income, and revenues from the Collateral. Lender may at any time in Lender's discretion transfer any Collateral into Lender's own name or that of Lender's nominee and receive the payments, rents, income, and revenues therefrom and hold the same as security for the Indebtedness or apply it to payment of the Indebtedness in such order of preference as Lender may determine. Insofar as the Collateral consists of accounts, general intangibles, insurance policies, instruments, chattel paper, choses in action, or similar property, Lender may demand, collect, receipt for, settle, compromise, adjust, sue for, foreclose, or realize on the Collateral as Lender may determine, whether or not Indebtedness or Collateral is then due. For these purposes, Lender may, on behalf of and in the name of Grantor, receive, open and dispose of mail addressed to Grantor; change any address to which mail and payments are to be sent; and endorse notes, checks, drafts, money orders, documents of title, instruments and items pertaining to payment, shipment, or storage of any Collateral. To facilitate collection, Lender may notify account debtors and obligors on any Collateral to make payments directly to Lender.

Obtain Deficiency. If Lender chooses to sell any or all of the Collateral, Lender may obtain a judgment against Grantor for any deficiency remaining on the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this Agreement. Grantor shall be liable for a deficiency even if the transaction described in this subsection is a sale of accounts or chattel paper.

Other Rights and Remedies. Lender shall have all the rights and remedies of a secured creditor under the provisions of the Uniform Commercial Code, as may be amended from time to time. In addition, Lender shall have and may exercise any or all other rights and remedies it may have available at law, in equity, or otherwise.

Election of Remedies. Except as may be prohibited by applicable law, all of Lender's rights and remedies, whether evidenced by this Agreement, the Related Documents, or by any other writing, shall be cumulative and may be exercised singly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Agreement, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

FORCE PLACED INSURANCE. Borrower agrees that if Borrower fails to provide any required insurance or fails to continue such insurance in force, Lender may do so at Borrower's expense. In the event Lender initiates the process of obtaining such insurance Borrower agrees to pay Lender, in addition to the expense associated with the force placed insurance, a processing fee of \$100.00. Such fee is fully earned whenever Lender initiates such process regardless of whether the insurance is actually obtained by Lender. The cost of any such insurance and processing fee, at the option of the Lender shall be added to the indebtedness.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

Amendments. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Attorneys' Fees; Expenses. Grantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's reasonable attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Grantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's reasonable attorneys' fees and legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Grantor also shall pay all court costs and such additional fees as may be directed by the court.

Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

Governing Law. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Alaska without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of Alaska.

Preference Payments. Any monies Lender pays because of an asserted preference claim in Grantor's bankruptcy will become a part of the Indebtedness and, at Lender's option, shall be payable by Grantor as provided in this Agreement.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Notices. Unless otherwise provided by applicable law, any notice required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

Power of Attorney. Grantor hereby appoints Lender as Grantor's irrevocable attorney-in-fact for the purpose of executing any documents necessary to perfect, amend, or to continue the security interest granted in this Agreement or to demand termination of filings of other secured parties. Lender may at any time, and without further authorization from Grantor, file a carbon, photographic or other reproduction of any financing statement or of this Agreement for use as a financing statement. Grantor does hereby appoint as its attorney-in-fact Lender to sign any and all documents related to title and registration of a motor vehicle issued (or to be issued) by the Division of Motor Vehicles of the State of Alaska. Grantor will reimburse Lender for all expenses for the perfection and the continuation of the perfection of Lender's security interest in the Collateral.

Waiver of Co-Debtor's Rights. If more than one person is obligated for the Indebtedness, Grantor irrevocably waives, disclaims and relinquishes all claims against such other person which Grantor has or would otherwise have by virtue of payment of the Indebtedness or any part thereof, specifically including but not limited to all rights of indemnity, contribution or exoneration.

Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

Successors and Assigns. Subject to any limitations stated in this Agreement on transfer of Grantor's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Collateral becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Agreement and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Agreement or liability under the Indebtedness.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Agreement shall survive the execution and delivery of this Agreement, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's Indebtedness shall be paid in full.

Time is of the Essence. Time is of the essence in the performance of this Agreement.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the *Uniform Commercial Code*:

Agreement. The word "Agreement" means this Commercial Security Agreement, as this Commercial Security Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Commercial Security Agreement from time to time.

Borrower. The word "Borrower" means OMNI ENTERPRISES, INC. and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Collateral. The word "Collateral" means all of Grantor's right, title and interest in and to all the Collateral as described in the Collateral Description section of this Agreement.

Default. The word "Default" means the Default set forth in this Agreement in the section titled "Default".

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement.

Grantor. The word "Grantor" means OMNI ENTERPRISES, INC..

Guaranty. The word "Guaranty" means the guaranty from guarantor, endorser, surety, or accommodation party to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Indebtedness. The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Grantor is responsible under this Agreement or under any of the Related Documents. Specifically, without limitation, Indebtedness includes the future advances set forth in the Future Advances provision, together with all interest thereon and all amounts that may be indirectly secured by the Cross-Collateralization provision of this Agreement.

Lender. The word "Lender" means First National Bank Alaska, its successors and assigns.

Note. The word "Note" means the Note dated August 16, 2013 and executed by OMNI ENTERPRISES, INC. in the principal amount of \$2,575,520.00, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement.

Property. The word "Property" means all of Grantor's right, title and interest in and to all the Property as described in the "Collateral Description" section of this Agreement.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

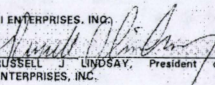
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GRANTOR HAS READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS COMMERCIAL SECURITY AGREEMENT AND AGREES TO ITS TERMS. THIS AGREEMENT IS DATED AUGUST 16, 2013.

GRANTOR:

OMNI ENTERPRISES, INC.

By: 
RUSSELL J. LINDSAY, President of OMNI
ENTERPRISES, INC.

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