



## INVENTORY SECURITY AGREEMENT AND POWER OF ATTORNEY

TO: 21<sup>ST</sup> MORTGAGE CORPORATION ("Secured Party"), which has its principal place of business at 620 Market Street, Suite 100, Knoxville, Tennessee 37902, as of the date set forth in the final paragraph of this Agreement.

The undersigned entity or person ("Debtor") intends to engage or is engaged in the business of buying, selling and generally dealing in goods of various types of retail and, from time to time, may desire Secured Party to finance the acquisition of such goods from manufacturers or other suppliers acceptable to Secured Party.

Therefore, the parties agree as follows:

**1. DEFINITION OF COLLATERAL.** The term "Collateral," as used herein, shall have the same meaning as the following terms, as those definitions under applicable law may be amended from time to time:

**1.1 Inventory.** All Inventory or goods of whatever description held for sale, rent or lease by Debtor, now or hereafter owned, or now or hereafter in the possession, custody or control of Debtor, wherever located, together with all attachments, accessories, additions and substitutions, including all returns and repossessions (hereinafter called "Inventory").

**1.2 Other Items.** All of Debtor's rights to any (a) accounts including but not limited to, rebates, discounts, credits, factory holdbacks and incentive payments which may become due to Debtor by the manufacturer or distributor with respect to any of the Inventory, (b) equipment, (c) fixtures, (d) contract rights, (e) chattel paper, (f) instruments, (g) goods, (h) documents, (i) general intangibles, (j) deposit accounts, (k) investment property, (l) letter-of-credit rights, (m) supporting obligations, and (n) money, whether now owned or hereafter acquired.

**1.3 Proceeds.** All proceeds from the above-described Collateral, including, but not limited to, insurance proceeds payable by reason of loss or damage to any of the Inventory, equipment and fixtures, cash, goods, instruments, accounts, chattel paper, contract rights, and replacement Inventory.

### 2. APPLICATION FOR CREDIT.

**2.1 Request.** Debtor may request financing from Secured Party for the purchase of goods from any supplier and, if Secured Party elects, in its sole discretion, to make such financing available, it shall be made in such amounts and upon such conditions as Secured Party may determine. Debtor agrees that Secured Party may, at any time and without notice, elect not to finance Inventory if the supplier is in default of its obligations to Secured Party or Secured Party is otherwise reasonably insecure.

**2.2 Execution of Documents.** As part of an application for such financing, Debtor shall execute and deliver to Secured Party any and all additional writings that Secured Party deems necessary or desirable to accomplish the purposes of this Agreement, including, but not limited to Financing Statements and any amendments thereto.

**2.3 General Terms.** Debtor and Secured Party agree that the financial terms of any advance by Secured Party hereunder, such as finance charge rates, other fees, maturities and curtailments, are not fully set forth because such terms depend, in part, upon supplier incentives or discounts, general economic conditions, governmental and quasi-governmental actions, Debtor's volume and outstanding indebtedness with Secured Party and other market factors. This Agreement provides the general terms only of Secured Party's financing program with Debtor. Debtor shall be deemed to have accepted the specific terms of each financing transaction hereunder unless Debtor notifies Secured Party in writing of any objection within fifteen (15) days of receipt of Secured Party's confirmation. If Debtor timely objects to the terms of any extension of credit (other than the initial credit transaction which cannot be protested), and mutually agreeable terms cannot be negotiated, Debtor agrees to pay Secured Party for such Financing on the same terms and conditions as the immediately preceding extension of credit for like Inventory from the same supplier, to which Debtor has not objected. In this event, Debtor acknowledges that Secured Party may then elect to suspend or terminate this Agreement. Termination for this reason alone will not be deemed a default of this Agreement, and prior extensions of credit shall not be accelerated, unless Debtor is, otherwise in default under this Agreement. Without limiting the generality of the remainder of this Section 2.3, the parties acknowledge that the interest rate applicable to all notes funded under this Agreement has been

determined based upon a number of factors, including, without limitation, market conditions, usage of the available credit facility and credit quality of Debtor. Debtor expressly agrees that if Secured Party determines that any of these factors has changed, Secured Party may, in the exercise of its discretion, adjust the interest rate, either upwards or downwards, for all existing and future notes upon the delivery of written notice to Debtor. This interest rate adjustment shall be effective thirty (30) days subsequent to the date of such written notice.

**2.4 Credit Verification.** Debtor agrees Secured Party may verify any information provided by Debtor with Debtor's references, other third parties, and through credit reporting agencies, and Debtor agrees that Secured Party may provide to any third party any credit, financial or other information on Debtor that Secured Party may possess.

**2.5 Other Inventory Credit Lines.** If Debtor's total Inventory credit lines with any lenders, including Secured Party, should exceed \$\_\_\_\_\_, Secured Party may at its sole discretion terminate or reduce its credit line. A termination for this reason alone will not be deemed a default of this Agreement, and prior extensions of credit shall not be accelerated, unless Debtor is otherwise in default under this Agreement.

**3. SELECTION OF INVENTORY; DISCLAIMER OF WARRANTY.** Debtor, in its sole discretion, has selected both the Inventory and the supplier from whom Debtor acquired said Inventory and Debtor assumes all responsibility and risk for the existence, character, quality, condition and value of the Inventory. **This is an agreement regarding the extension of credit and not the provision of goods and services.** Debtor irrevocably waives any claims against Secured Party with respect to the Inventory whether for breach of warranty or otherwise and shall not assert against Secured Party any claim or defense Debtor may have against any supplier of Inventory to Debtor. Any such claims shall not alter, diminish or otherwise impair Debtor's liabilities or obligations to Secured Party under this or any other Agreement.

**4. GRANT OF SECURITY INTEREST.** Debtor grants to Secured Party a security interest in all Collateral of Debtor, whether presently owned or after-acquired. The security interest granted under this Agreement or under any other present or future agreement between Debtor and Secured Party or any of Secured Party's affiliates or subsidiaries, shall secure the payment and performance of all debts, liabilities and obligations of Debtor to Secured Party, its affiliates and subsidiaries, whether presently existing or hereafter arising or created. The security interest granted by Debtor will secure all present and future advances made under this Agreement. In granting the security interest, Debtor authorizes Secured Party to perfect its interest by filing a financing statement or by taking any other steps to perfect as authorized by law.

**5. PAYMENT OF DEBTS DUE FROM SUPPLIERS.** Debtor assigns to Secured Party and agrees to pay the amounts described in Paragraph 1.2 to Secured Party, as soon as the same are received, for application to Debtor's obligations hereunder. Debtor authorizes Secured Party to collect any such amounts directly from the manufacturer, supplier or distributor, and, upon request of Secured Party, to so instruct the manufacturer or distributor to make payments directly to Secured Party.

**6. DOCUMENTS OF TITLE.** Debtor shall promptly deliver to Secured Party any Certificate of Title, Certificate of Origin, or Manufacturer's Statement of Origin issued for each item of Inventory, or cause any manufacturer or supplier of Inventory or other third party which may hold such Certificate or Statement to deliver same to Secured Party. Secured Party shall have the right to hold such documents until such items of Inventory are sold and Secured Party has been paid the balance owing on such Inventory. Secured Party shall the right to have its lien or security interest noted thereon.

**7. OBLIGATIONS OF DEBTOR.** Debtor shall have the following obligations to Secured Party:

**7.1 Use and Location.** Debtor will only display and sell Inventory to buyers in the ordinary course of business. Debtor shall not use (except for incidental demonstration for sale), rent, lease, transfer or dispose of Inventory except as provided herein, nor permit, without the written consent of Secured Party, the Collateral to be subject to any lien encumbrance or security interest except that granted herein. All Inventory shall be located at the address(es) listed in Paragraph 19. Secured Party may examine the Inventory and Debtor's books and records regarding the Inventory, wherever located, at any time.

**7.2 Documents.** Debtor will execute all documents Secured Party requests to evidence a credit extension, and to perfect Secured Party's Inventory purchase money security interest, or otherwise assist Secured Party to obtain any necessary subordination agreements, waivers, releases, or amendments to this Agreement to ensure Secured Party has the first priority purchase money security interest in the Inventory.

**7.3 Condition.** Debtor shall keep all Inventory in good order, repair and operating condition, and shall immediately notify Secured Party of any loss, theft or damage to the Inventory.

**7.4 Taxes.** Debtor shall pay immediately all taxes, expenses, assessments and charges that may now or hereafter be levied or assessed against the Collateral. If Debtor fails to pay such taxes, fees or charges, Secured Party may, but shall not be obligated to do so on Debtor's behalf and demand from Debtor repayment of all such amounts plus interest at the highest contract rate allowed by law.

**7.5 Payment.** Time is of the essence with respect to Debtor's performance of obligations hereunder notwithstanding any course of dealings or custom on the part of Secured Party to grant extensions of time. Any extension of time shall be a nonbinding accommodation to Debtor and shall not prejudice Secured Party's right to demand immediate performance. Debtor's payments are due upon receipt of its monthly billing statement. Payment of the Late Fee will not waive the default caused by the failure to make such payment. Debtor shall pay Secured Party promptly when due the amount of any extension of credit according to the terms of any floorplan note or any other writing evidencing such extension of credit, including, but not limited to, all accrued and unpaid interest, any required curtailments, maturities and additional charges and fees as required in any Addendum, Terms Schedule or other written supplement to this Agreement, all without regard to any manufacturer or distributor rebates, credits, holdbacks or discounts. Notwithstanding the foregoing, Debtor agrees to pay Secured Party the amount of any extension of credit on each item of inventory financed hereunder immediately upon the sale thereof or removal from the location listed in Paragraph 19 except for the purposes of incidental demonstration. Debtor recognizes that it has a fiduciary obligation to treat any funds received by Debtor from any party intended as full or partial payment for any item of inventory financed hereunder as funds belonging to Secured Party which are held in trust by Debtor until such time as they are tender to Secured Party.

Secured Party may apply payments received from Debtor toward the payment of any obligations of Debtor in such order of application as Secured Party may determine. Secured Party may apply payments to finance charges first, then to principal, regardless of Debtor's instructions and it may apply payments to oldest (earliest) Inventory floorplan notes. All principal payments will be applied first to such Inventory that is sold, stolen, lost, damaged, rented, leased or otherwise missing. Any payment by the Debtor shall be deemed credited 3 Business Days after received by the Secured Party at the place for payment provided for in the Agreement, or if paid to the Secured Party at any other place, 3 Business Days after deposited by the Secured Party. Should any check received by Secured Party from Debtor be returned to Secured Party due to insufficient funds, Secured Party may, in its sole discretion, chose to inactivate Debtor for a period of thirty (30) days and/or refuse to accept checks from Debtor or any agent/representative of Debtor from that point forward.

If Secured Party determines that the aggregate outstanding credit owed by Debtor exceeds the aggregate wholesale invoice price of the Inventory in Debtor's possession, Debtor shall immediately upon demand pay Secured Party the difference between the two amounts. Acceptance by Secured Party of past due amounts shall not be construed as a waiver of default or an amendment to the terms of this Agreement. Any supplier or third party discount rebate, bonus, or credit paid to Secured Party will not reduce Debtor's obligations to Secured Party until such payment becomes Secured Party's cash.

**7.6 Finance Charge Calculation.** All payments are due upon Debtor's receipt of Secured Party's monthly or other billing statement. Debtor agrees to pay Secured Party finance charges on the outstanding principal indebtedness owing for each item of Inventory at the rate(s) provided in the Terms Schedule in effect on the applicable floorplan note (or other evidence of debt) created related to such Inventory, unless Debtor objects thereto as provided in Section 2.3. Finance charges at the stated rate shall be computed based on a 360 day year and calculated by multiplying the Daily Charge (defined below) by the actual number of days in the applicable billing period. Such finance charges shall accrue from the floorplan note date for the Inventory until Secured Party receives the entire principal amount. The "Daily Charge" is the product of the Daily Rate (defined below) multiplied by the Average Daily Balance (defined below). The "Daily Rate" is the quotient of the annual rate provided in the Terms Schedule divided by 360. The "Average Daily Balance" is the quotient of (i) the sum of the outstanding principal debt owed Secured Party on each day of a billing period for each item of Collateral, divided by (ii) the actual number of days in such billing period.

Whenever used in this agreement, in any other document referring to this agreement, or in the Terms Schedule, the term "Prime Rate" shall mean the higher of: 1.) The prevailing domestic "Prime Rate" as published in the *Wall Street Journal* in its "Money Rates" column on a daily basis or 2.) The Minimum Prime Rate as defined in the Terms Schedule. In the event that the "Prime Rate" as published in the *Wall Street Journal* ceases to exist or the *Wall Street Journal* ceases publishing a "Prime Rate", the Secured Party will substitute a comparable index, which is outside the control of the Secured Party. In the event of an error by the *Wall Street Journal*, the "Prime Rate" will be based upon the "Prime Rate" as corrected.

Notwithstanding the above, Debtor acknowledges that Secured Party intends to strictly comply with all applicable usury laws governing this Agreement. Should such law other than Tennessee apply and the usury rate be less than that billed, any excess finance charges paid shall be deemed payment on the unpaid principal on the applicable floorplan note. If an overpayment of principal results, it may be applied to principal on any other floorplan note, and if none, refunded to Debtor.

**7.7 Additional Charges.** If Secured Party does not receive by the 25<sup>th</sup> day of the month payment of all amounts listed on the monthly billing statement (including principal, interest, curtailment and administrative charges), Debtor will to the maximum extent permitted by applicable law, pay Secured Party a late fee in the amount equal to the greater of \$5.00 or 5% of the amount of such delinquent payments (the "Late Fee"). To the extent permitted by applicable law, Debtor agrees to pay Secured Party \$100 for each check returned unpaid for insufficient funds to cover administrative costs.

Debtor further agrees to pay the Secured Party, promptly as billed, the service charge with respect to each unit of Inventory as specified in the Terms Schedule attached to this agreement. These charges are intended as an administrative fee to defray the costs and expenses of managing the financing and/or monitoring and inspecting of the Inventory.

**7.8 Establishment of Direct Pay Relationship.** It is the responsibility of the Debtor to (i.) notify the Secured Party of the proposed sale of any Collateral prior to such Collateral physically leaving the Debtor's applicable sales location, (ii) provide Lender with a copy of the Form 500 or Purchase Agreement from the proposed sale, and (iii.) establish a contractual direct pay relationship between the Secured Party and the applicable lender, or the purchaser of the Collateral in the event that a lender is not involved in the transaction (i.e., purchase for cash). If the debtor cannot complete both of these tasks then the Collateral becomes immediately due and payable without notice or demand. Failure to comply with these requirements will be treated as an Event of Default under paragraph 11 of the Inventory Security Agreement and Power of Attorney. Furthermore, this default will subject the Debtor to all Remedies as listed in paragraph 12 of the Inventory Security Agreement and Power of Attorney or those provided by applicable law.

**8. INSURANCE.** Debtor shall keep the Inventory insured with an insurance company acceptable to Secured Party for full value against all insurable risks, including flood, with Secured Party as the loss payee, and will notify Secured Party in writing ten (10) days before changing or canceling such insurance. Debtor shall provide Secured Party with written evidence of such coverage and loss payee and lender's clauses. If Debtor should fail to obtain such insurance, Secured Party may obtain coverage, but shall not be obligated to do so on Debtor's behalf. Secured Party can demand from Debtor repayment for all expenditures together with interest at the highest contract rate allowed by law.

**9. DEBTOR'S RECORDS AND FINANCIAL INFORMATION.** Debtor shall keep accurate and complete records of the Collateral that may be examined and copied by Secured Party upon request. Debtor agrees to provide, within 90 days of the end of Debtor's fiscal year, Financial Statements and shall provide management prepared financial Statements within 45 days of the end of each fiscal quarter of Debtor. For the purposes of this Section 9, Financial Statements shall include, without limitation, reasonably detailed balance sheets and reasonably detailed income statements, all prepared in accordance with generally accepted accounting principles, consistently applied. Debtor grants Secured Party an irrevocable license and right to occupy Dealer's business locations during normal business hours without notice to verify the Inventory, examine Debtor's books and records relating to the Inventory and Collateral, and to verify Debtor's compliance with this Agreement. Debtor shall give Secured Party at least 45 days prior written notice of any change in Debtor's identity, name, location, form of business organization, ownership, and additional business locations.

**10. POWER OF ATTORNEY.** Debtor hereby grants a Power of Attorney to Secured Party (which may be exercised by any agents or employees of Secured Party) under which Secured Party may endorse checks, money orders, cashiers checks or other forms of payment and may execute, on behalf of Debtor, any trust receipts, floorplan notes, chattel paper, financing statements and amendments thereto, or other writing in connection with this Agreement as attorney-in-fact for Debtor. Debtor hereby directs Secured Party to sign all floorplan notes on Debtor's behalf. Secured Party agrees to furnish Debtor a copy of such notes upon written request of Debtor. Debtor shall call any errors in such floorplan notes to Secured Party's attention within fifteen (15) days of Debtor's receipt of such note or receipt of Debtor's monthly statement. Secured Party will sign a corrected note in replacement of any incorrect note. Under this Power of Attorney, Secured Party is authorized to execute any such writings manually or by affixing a mechanical facsimile or printed signature. Upon Debtor's request, Secured Party will furnish Debtor with a copy of each writing executed under the Power of Attorney.

**11. EVENTS OF DEFAULT.** The occurrence of one or more of the following events shall constitute a default by Debtor under this Agreement:

**11.1 Failure to Pay.** Any failure by Debtor to pay any portion of its debts to Secured Party, when due and payable hereunder.

**11.2 Breach.** Any breach or failure of Debtor to observe or perform any of its other terms, obligations, representations, warranties, covenants or undertakings hereunder.

**11.3 Misrepresentation.** Any misrepresentation by Debtor to Secured Party in connection with the business and financial condition or organizational structure of Debtor or any misrepresentation relating to the Collateral.

11.4 **Death or Dissolution.** Death or dissolution of Debtor or of any guarantor or surety for Debtor's obligations hereunder.

11.5 **Termination of Guaranty.** The termination by any guarantor or surety of a guaranty or suretyship with respect to Debtor.

11.6 **Insolvency Proceedings.** Debtor or any guarantor or surety; (a) makes an assignment for the benefit of creditors; (b) files or has filed against it a petition in bankruptcy or for the appointment of a receiver.

11.7 **Judgments/Attachment.** Any other creditor, customer or tax authority obtains a judgment or lien against Debtor or any guarantor, or any attachment, sale or seizure issues or is executed against any assets of Debtor or any guarantor.

11.8 **Collateral Impairment/Sale Out of Trust.** Any material reduction in the value of the Collateral or any act of Debtor which imperils the prospect of full performance or satisfaction of Debtor's obligations hereunder; any sale, lease, rental, or other transfer of any Inventory by Debtor without informing Secured Party and promptly paying off the applicable floorplan note and any other charges.

11.9 **Fraudulent Acts.** Debtor has concealed, removed, transferred or permitted to be concealed, removed or transferred, any part of its assets, so as to hinder, delay or defraud any of its creditors or in such manner as would be fraudulent under any bankruptcy, insolvency, fraudulent conveyance or similar law.

11.10 **Loss of Right to Sell.** Debtor has voluntarily or involuntarily given up or lost any franchise, permission, license or right to sell or deal in any product line of Inventory that represents a significant portion of Debtor's sales volume.

11.11 **Insecurity.** Secured Party shall, in good faith, deem itself insecure with respect to any of the Collateral or repayment of any of the amounts described herein.

11.12 **Other Agreement with Secured Party.** If Secured Party has a Retail Financing Agreement(s) with Debtor, a default on one agreement may, at Secured Party's option, constitute a default on the other agreement(s). Any monies due Debtor by Secured Party, under any agreement(s) may be applied to other defaults at the Secured Party's discretion.

12. **REMEDIES.** In the event of a default, as defined in Paragraph 11:

12.1 **Acceleration.** Secured Party shall have, in addition to any and all rights under the Uniform Commercial Code, the option to terminate this Agreement immediately and to declare any and all indebtedness or liabilities of Debtor to Secured Party immediately due and payable without notice or demand.

12.2 **Default Finance Charge.** Secured Party may impose a default finance charge to all of Debtor's outstanding principal indebtedness equal to that default rate, if any, specified in the Terms Schedule, or, if there is none specified, at the lesser of 16% per annum on each outstanding floorplan note, or the highest lawful contract rate of interest permitted under applicable law.

12.3 **Assembly of Collateral.** Debtor shall, if Secured Party so requests, assemble the Inventory and deliver it to Secured Party, in good order and repair at Debtor's expense, at a place designated by Secured Party.

12.4 **Repossession and Sale.** Secured Party shall also have the right to take immediate and exclusive possession of all Collateral or any part thereof, wherever it may be found, and also may enter any of the premises of Debtor with or without process of law, without force, wherever the said Collateral may be or supposed to be and take possession of, and remove, sell, and dispose of, said Collateral, or any part thereof, at public auction or private sale. Secured Party reserves the right to bid and become the purchaser at any such sale. Debtor acknowledges that a manufacturer's repurchase agreement may exist as to the Collateral, and Debtor hereby agrees that, without limiting other methods of disposition, disposition of the Collateral pursuant to such an agreement is a commercially reasonable foreclosure sale under the Uniform Commercial Code. Debtor hereby specifically waives any right to judicial proceedings prior to Secured Party's exercise of this right of "self-help" repossession.

12.5 **Commercial Sale.** Dealer agrees that Secured Party may, at its option, either (i) conduct a private sale of any or all of the Collateral, (ii) liquidate the Collateral to any supplier of Inventory or (iii) liquidate the Collateral at a public sale. Without limiting the methodology of disposing of the Collateral and without excluding other methods of conducting a private sale, Debtor agrees that a private sale is a commercially reasonable sale under the Uniform Commercial Code if Secured Party requests bids from at least three (3) dealers, distributors or suppliers of Inventory of that type and any sale occurs in whole or in parcels within 180 days after Secured Party obtained possession and authority (if needed) to sell the Inventory and the sale is made to the highest bidder making a written cash offer. Debtor agrees that any resale of Inventory to the supplier of inventory (commonly called a

Manufacturer's Repurchase) under any agreement between the supplier and Secured Party is a commercially reasonable private sale of inventory under the Uniform Commercial Code and no requests for bids shall be required.

**12.6 Costs and Expenses.** Debtor shall pay all costs incurred by Secured Party in the collection of any indebtedness or liabilities owed Secured Party by Debtor and the enforcement of any obligations of Debtor to Secured Party, including the costs of repossession, reasonable attorney's fees and other legal expenses, and reasonable costs of maintenance, possession and sale of the Collateral.

**12.7 Notice.** Any notification of collateral disposition shall be deemed reasonably and properly given if mailed at least ten (10) days before such disposition, postage prepaid, addressed to Debtor.

**12.8 Application of Proceeds.** Any proceeds of the Collateral may be applied by Secured Party to the payment of the reasonable expenses of retaking, holding, preparing for sale, selling and the like, including reasonable attorney's fees and legal expenses, and any balance of such proceeds may be applied by Secured Party toward the satisfaction of Debtor's indebtedness or liabilities in such order of application as Secured Party may in its sole discretion determine. Any surplus shall be paid to Debtor, and Debtor agrees to pay any deficiency immediately upon demand.

**12.9 Prepayment Penalty.** If Debtor elects to liquidate inventory advanced upon by Secured Party in an amount exceeding 50% of the outstanding inventory balance at any one time in a manner other than the ordinary course of business, Secured Party may, at its sole discretion, apply a prepayment penalty of up to 5% of the outstanding inventory balance.

**12.10 Access to Premises.** Debtor grants Secured Party an irrevocable license and right to occupy Dealer's business locations twenty-four (24) hours a day, seven (7) days a week. Secured Party may at its sole discretion prohibit the removal of any Collateral from the premises without payment in full.

**13. PRIOR ACTS NOT A WAIVER.** Secured Party shall have the right at all times to enforce the terms and provisions of this Agreement in strict accordance with the terms thereof, notwithstanding the prior failure of Secured Party to take such action.

**14. ASSIGNMENT.** Secured Party may assign this Agreement but Debtor may not assign this Agreement without the prior written consent of Secured Party.

**15. AMENDMENT.** This Agreement and the Terms Schedule attached hereto may not be amended except through a written instrument. Debtor agrees that Secured Party may notify Debtor of amendments to this Agreement. These amendments shall apply to any transactions financed by Secured Party after the date of the amendment without the execution of the amendment by Debtor, but such amendments shall not apply to transactions financed by Secured Party prior to the date of such amendment without Debtor executing and delivering such amendment. Debtor agrees that in addition to the remedies described in Section 12, upon the occurrence of an Event of Default, Secured Party shall have the right to adjust the interest rate for all transactions, including those entered into prior to the date of the adjustment. If Debtor previously signed any Inventory Security Agreement regarding the Collateral with Secured Party, this Agreement will amend and supplement such prior agreement. If this Agreement conflicts with the terms of any prior agreement, the terms of this Agreement shall govern.

**16. CHOICE OF LAW.** This Agreement is deemed to have been entered into and to be performed at Secured Party's office in Knoxville, Tennessee. The validity, enforceability and interpretation of this Agreement and any promissory notes taken, charges made and sums paid in connection herewith shall be governed by the laws of the State of Tennessee. If any provision of this Agreement or its application is deemed invalid or unenforceable, the remainder of this Agreement will not be affected and will remain binding and enforceable.

**17. TERMINATION.** Either Secured Party or Debtor may terminate this Agreement by, sending thirty (30) days written notice by certified mail to the other, but termination of this Agreement does not end Debtor's obligations to Secured Party for those obligations which accrued prior to the effective date of the termination; provided, however, no notice of termination to Debtor will be required if Debtor is in default of this Agreement.

**18. WAIVER OF RIGHT TO JURY TRIAL.** Any legal proceeding with respect to any Dispute will be tried in a court of competent jurisdiction by a judge without a jury. Debtor and Secured Party waive any right to a jury trial in any such proceeding, to the extent permitted by applicable law.

**THIS CONTRACT CONTAINS JURY WAIVER PROVISIONS.**

19. **LOCATION.** Debtor Business and Storage Addresses:

\_\_\_\_\_  
\_\_\_\_\_

To include any and all locations.

**Secured Party Business Address:**

21<sup>ST</sup> MORTGAGE CORPORATION  
Attention: President  
620 Market Street, Suite 100  
Knoxville, Tennessee 37902

20. **NOTIFICATION.** The Parties will be deemed to have received notification if delivered by certified mail to the address indicated in Section 19.

IN WITNESS WHEREOF, the parties hereto have caused their names to be signed by their proper officers/agents as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Debtor)

ATTEST: \_\_\_\_\_  
(or Witness) (Secretary or Witness)

(Corporate Seal, if applicable)

BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

ACCEPTED: 21<sup>ST</sup> MORTGAGE CORPORATION  
(Secured Party)

BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_



## PERSONAL GUARANTY

TO: 21<sup>ST</sup> MORTGAGE CORPORATION  
620 MARKET STREET, SUITE 100  
KNOXVILLE, TN 37902

In consideration of your extension of credit to \_\_\_\_\_, its successors and assigns (hereinafter called "principal debtor"), whether now outstanding or made in the future, for the financing of goods, wares, merchandise and services, the undersigned guarantor hereby unconditionally guarantees payment of whatever sums said principal debtor shall at any time owe you or any company affiliated with you, whether heretofore or hereafter incurred, including interest, finance charges or service charges thereon, and including reasonable attorneys' fees and all court costs incurred in collecting each sums; and you shall be under no obligation of due diligence to enforce any claims against the principal debtor or of otherwise exhausting any of your remedies against the principal debtor, any other obligor or any other guarantor, or of enforcing any rights against any collateral for said indebtedness prior to enforcing payment hereunder by the undersigned guarantor.

This guaranty is to take effect without notice of its acceptance, which notice is hereby waived, and is to be continuing guaranty in full force and effect until the effective date of a written notice of revocation delivered to you either personally or by Registered or Certified mail. It is understood and agreed that the effective date of any revocation shall be 90 days after your receipt of such notice, and that such revocation shall not discharge the obligation of the undersigned guarantor with respect to indebtedness incurred by the principal debtor prior to said effective date of revocation.

You are hereby authorized to change the time and manner of payment of any indebtedness of said principal debtor; to take and make changes in notes, security or other obligations therefore to add or release additional guarantors; to obtain or release additional guaranties; to take such action as you deem advisable for the enforcement, collection, or compromising of any such indebtedness or any part thereof, or enforcing any security interest therefore; and to grant renewals or extensions of the time of payment of any such indebtedness, all without notifying or obtaining the consent of the undersigned guarantor or in any way affecting the consent of the undersigned guarantor under this guaranty.

Protest and demand upon the principal debtor, notice to the undersigned guarantor of defaults of the principal debtor, notice to the undersigned guarantor of your extension of credit from time to time to the principal debtor, and notice of the sale of any collateral are all hereby waived.

The undersigned guarantor hereby consent and agree that your books and records showing the account, obligations, and indebtedness of the principal debtor shall be admissible in evidence and shall be binding upon the undersigned guarantor for the purpose of establishing the items therein set for the, and shall constitute prima facie proof thereof. The undersigned guarantor hereby also agrees to provide full and complete personal financial information at such times as the Company may request.

The undersigned guarantor hereby subordinates any sums now or hereafter due to any or all of them from the principal debtor to the payment of any sums now or hereafter due you from the principal debtor. The undersigned guarantor further assigns to you all sums due or to become due to any or all of them from the principal debtor to the extent of the aggregate obligations of the undersigned guarantor to you, and agrees to execute any further instruments necessary to evidence such assignment.



This guaranty shall inure to the benefit of your successors and assigns and shall be binding upon the personal representatives, administrators, trustees, executors, heirs, legatees, successors and assigns of the undersigned guarantor.

The foregoing constitutes the complete guaranty agreement, there being no other representations or warranties made, and such guaranty cannot be altered, changed or amended in any way except by an instrument in writing signed by your duly authorized officer.

The undersigned agrees that if a dispute between you and the principal debtor is being arbitrated, the responsibility of Guarantor will be included in the same arbitration, subject to the same rules and procedures governing the arbitration between you and the principal debtor.

BY AFFIXING SIGNATURE HERETO, THIS CERTIFIES THAT THE UNDERSIGNED HAS READ THIS GUARANTY AGREEMENT IN ITS ENTIRETY AND EXECUTES IT FOR THE CONSIDERATION THEREIN EXPRESSED.

Dated at \_\_\_\_\_  
this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**Guarantor:**

*Signature* \_\_\_\_\_

Print name \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

Notary Public \_\_\_\_\_

(SEAL)

My Commission expires: \_\_\_\_\_, 20\_\_\_\_\_



**LANDLORD'S WAIVER  
(DEALER INVENTORY FINANCING)**

WHEREAS, \_\_\_\_\_ (“Borrower”) has leased buildings and/or premises located at \_\_\_\_\_ (“Premises”) from the undersigned (“Landlord”);

WHEREAS, Borrower has applied to 21<sup>st</sup> Mortgage Corporation (“21<sup>st</sup>”) for loans to be secured by all of Borrower’s Inventory, wherever located, now owned or hereafter acquired, whether new, used or repossessed (including, but not limited to, manufactured homes, modular homes, and recreational vehicles); all equipment used in connection therewith; all accounts, contract rights, documents, instruments, accounts receivable, general intangibles, and chattel paper, presently existing or hereafter arising; all present and future attachments, accessions, substitutions and proceeds of the foregoing; all rebates, discounts, credits, holdbacks and incentive payments of any type, description or origin, owing to Borrower (the “Collateral”) located or to be located on the Premises; and

WHEREAS, the undersigned Landlord is willing to waive its right of distraint on the Collateral, if any, and execute this Waiver so that Borrower may secure loans from 21<sup>st</sup> to finance Borrower’s Inventory.

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned Landlord, intending to be legally bound, does hereby agree as follows: 1) Landlord hereby waives, relinquishes and releases to 21<sup>st</sup>, its successors and assigns, all right of levy of distraint for rent, whether now claimed or hereafter arising, against the Collateral, and hereby agrees not to assert against 21<sup>st</sup>, its successors and assigns, any right, title or interest in or to the Collateral, this Waiver to continue in effect from time to time so long as Borrower has unpaid obligations to 21<sup>st</sup> secured by any security agreements or agreements, now or hereafter executed; 2) any Collateral of Borrower shall, at all times, be considered to be personal property and shall not become a part of the aforementioned Premises, so long as any monies are owing to 21<sup>st</sup> by Borrower; 3) 21<sup>st</sup> may at any time enter upon the Premises and remove the Collateral, or take possession of the Collateral on the Premises, and may remain on the Premises for a reasonable period of time, in order to dismantle, prepare for disposition, or removal, dispose of or otherwise deal with the Collateral; 4) this waiver shall be binding upon the successors, transferees, and assignees of Landlord.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Landlord)

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

WITNESS: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

City/State: \_\_\_\_\_

City/State: \_\_\_\_\_

Phone: \_\_\_\_\_



**MORTGAGEE WAIVER  
(DEALER INVENTORY FINANCING)**

WHEREAS, \_\_\_\_\_ (“Borrower”) has granted a mortgage for buildings and/or premises located \_\_\_\_\_ (“Premises”) to the undersigned (“Mortgagee”);

WHEREAS, Borrower has applied to 21<sup>st</sup> Mortgage Corporation (“21<sup>st</sup>”) for loans to be secured by all of Borrower’s Inventory, wherever located, now owned or hereafter acquired, whether new, used or repossessed (including, but not limited to, manufactured homes, modular homes, and recreational vehicles); all equipment used in connection therewith; all accounts, contract rights, documents, instruments, accounts receivable, general intangibles, and chattel paper, presently existing or hereafter arising; all present and future attachments, accessions, substitutions and proceeds of the foregoing; all rebates, discounts, credits, holdbacks and incentive payments of any type, description or origin, owing to Borrower (the “Collateral”) located or to be located on the Premises; and

WHEREAS, the undersigned Mortgagee is willing to waive its right of distraint on the Collateral, if any, and execute this Waiver so that Borrower may secure loans from 21<sup>st</sup> to finance Borrower’s Inventory.

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned Mortgagee, intending to be legally bound, does hereby agree as follows: 1) Mortgagee hereby waives, relinquishes and releases to 21<sup>st</sup>, its successors and assigns, all right of levy of distraint for rent, whether now claimed or hereafter arising, against the Collateral, and hereby agrees not to assert against 21<sup>st</sup>, its successors and assigns, any right, title or interest in or to the Collateral, this Waiver to continue in effect from time to time so long as Borrower has unpaid obligations to 21<sup>st</sup> secured by any security agreements or agreements, now or hereafter executed; 2) any Collateral of Borrower shall, at all times, be considered to be personal property and shall not become a part of the aforementioned Premises, so long as any monies are owing to 21<sup>st</sup> by Borrower; 3) 21<sup>st</sup> may at any time enter upon the Premises and remove the Collateral, or take possession of the Collateral on the Premises, and may remain on the Premises for a reasonable period of time, in order to dismantle, prepare for disposition, or removal, dispose of or otherwise deal with the Collateral; 4) this waiver shall be binding upon the successors, transferees, and assignees of Mortgagee.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Mortgagee)

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

WITNESS: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

City/State: \_\_\_\_\_

City/State: \_\_\_\_\_

Phone: \_\_\_\_\_



Mailing Address: P.O. Box 220 • Knoxville, TN 37901
Physical Address: 620 Market Street, Suite 100 • Knoxville, TN 37902
Phone: (865) 523-2120 • Fax: (800) 970-3755 • Toll Free: (888) 810-3538

Certificate of Corporate Resolution and Designation of Agents

This is to certify that a meeting of the Board of Directors of \_\_\_\_\_, a Corporation, incorporated under the Laws of the State of \_\_\_\_\_, with its principal place of business located at \_\_\_\_\_; which meeting was duly called and properly held on \_\_\_\_\_, 20\_\_\_\_, at the principal office of said Corporation, pursuant to its by-laws at which meeting quorum was present, the following resolutions were unanimously duly adopted, to wit:

RESOLVED, that the action of several officers of this corporation is making, executing, and delivering on behalf of this Corporation one or more of the following: Inventory Security Agreement and Power of Attorney, Manufactured Home Dealer Agreement, Consignment Agreement with 21st Mortgage Corporation ("21st") and it hereby is ratified, confirmed, and approved.

RESOLVED FURTHER, that any officer of this Corporation or any person designated by any officer is hereby authorized and empowered on behalf of this Corporation to: (i) discount, sell, endorse, assign, or transfer to 21st any and all assets now or hereafter held, owned, or controlled by this Corporation, and to (ii) transact any and all other business with and through which such persons may at any time deem to be advisable and, in reference to any such business, to make any and all agreements and to execute and deliver to 21st any and all contracts and other writings which such persons my deem necessary or desirable.

RESOLVED, that the Secretary or Assistant Secretary shall certify to 21st the names and signatures of the persons who presently are duly elected, qualified, and acting as the officers named below, and from time to time hereafter, upon a change in the facts so certified, immediately certify to 21st the names and signatures of the officers or person then authorized to sign or act. 21st shall be fully protected in relying upon such certificates and shall be indemnified and saved harmless by this Corporation from any claims, demands, expenses, loss, or damage resulting from honoring or relying on the signature or other authority of any officer or person whose name and signature was so certified, or refusing to honor any signature or authority not so certified.

RESOLVED FURTHER, that these resolutions shall continue in force until express written notice of their rescission or modification has been furnished to and received by 21st.

RESOLVED FURTHER, that any and all transactions by or on behalf of this Corporation, with 21st prior to the adoption of this resolution shall be and the same hereby are in all respects ratified, approved, and confirmed.

An officer of said Corporation and pursuant to the foregoing resolution I do hereby designate the following persons to sign and act individually on behalf of the aforesaid Corporation:

Table with 3 columns: (Print or Type Name), (Title), (Signature). It contains four rows of blank lines for entering names, titles, and signatures.

IN WITNESS WHEREOF, the undersigned Secretary of said Corporation, has set his/her hand and affixed its Corporate seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(CORPORATE SEAL)

\_\_\_\_\_  
Secretary



Mailing Address: P.O. Box 220 • Knoxville, TN 37901
Physical Address: 620 Market Street, Suite 100 • Knoxville, TN 37902
Phone: (865) 523-2120 • Fax: (800) 970-3755 • Toll Free: (888) 810-3538

Limited Liability Company Certificate and Authorized Signers

We, the undersigned, representing that we together constitute all of the members and/or managers, of (name of Limited Liability Company) herby certify and agree as follows:

That the action of several members and/or managers of this Limited Liability Company in making, executing and delivering on behalf of this Limited Liability Company a Dealer Agreement with 21st Mortgage Corporation ("21st) be and hereby is ratified, confirmed and approved.

That any of the undersigned members and/or managers: or the following named individuals: be and are hereby authorized to (i) discount, sell, endorse, assign or transfer to 21st any and all assets now or hereafter held, owned or controlled by this Limited Liability Company, and (ii) transact any and all business with and through 21st which such persons may at any time deem to be advisable and, in reference to any such business, to make any and all agreements and to execute and deliver to 21st any and all contracts and other writings such persons may deem to be necessary or desirable.

That we agree that 21st, in dealing with any of the persons herein authorized to act for the Limited Liability Company, need not request but shall be entitled to accept and rely on any representations by such person(s) that the purpose of exercising the authority hereby granted is within the scope of the business of the Limited Liability Company, and 21st shall not be obligated to make any inquiries in order to verify or confirm any such representation or to assure that any funds or other property of the Limited Liability Company are in fact applied or used for any purposes so represented or for any other property of the Limited Liability Company acquired, encumbered or disposed of pursuant to any authority herein granted.

That this Certificate shall continue in full force until express written notice of its rescission or modification has been furnished and received by 21st. Each of us agree to notify 21st promptly in the event of the dissolution or termination of the Limited Liability Company or the occurrence of any other circumstance under which the rights and powers herby granted might be terminated, curtailed, or in any other affected or changed.

That any and all transactions by or on behalf of this Limited Liability Company with 21st prior to this Certificate be and the same hereby are in all respects ratified, approved and confirmed.

In Witness Whereof, we have hereunto subscribed our names this day of ,

(Member or Manager)

(Member or Manager)

(Member or Manager)

(Member or Manager)

(This Certificate should be signed by all of the managing members and/or managers of the Limited Liability Company)

AUTHORIZED SIGNERS
(other than members and/or managers, if any)

Table with 3 columns: Name, Title, Signature. Includes four rows of blank lines for entry.



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Physical Address: 620 Market Street, Suite 100 • Knoxville, TN 37902  
Phone: (865) 523-2120 • Fax: (800) 970-3755 • Toll Free: (888) 810-3538

<b>Partnership Signature Authorization</b>
--

The undersigned hereby certifies the signature(s) appearing in the following spaces:

_____	_____	_____
(Print or Type Name)	(Title)	(Signature)
_____	_____	_____
(Print or Type Name)	(Title)	(Signature)
_____	_____	_____
(Print or Type Name)	(Title)	(Signature)
_____	_____	_____
(Print or Type Name)	(Title)	(Signature)

These are genuine signature(s) of the persons named in each case and they are each authorized to execute, endorse, and/or sign on behalf of the undersigned, notes, contracts mortgage/deed of trust assignments, chattel mortgages and assignments thereof, used in connection with the financing of manufactured homes with your dealership. This authorization is to be effective until further written notice to the contrary is given to or by you.

Partnership: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_



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**Sole Proprietorship Signature Authorization**

The undersigned hereby certifies the signature(s) appearing in the following spaces:

(Print or Type Name)	(Title)	(Signature)
(Print or Type Name)	(Title)	(Signature)
(Print or Type Name)	(Title)	(Signature)
(Print or Type Name)	(Title)	(Signature)

These are the genuine signature(s) of the person(s) named in each case and they are each authorized to execute, endorse, and/or assign on behalf of the undersigned, notes, contracts, mortgage/deed of trust assignments, chattel mortgages and assignments thereof, used in connection with the financing of manufactured homes with your dealership. This authorization is to be effective until further written notice to the contrary is given to or by you.

Dealership: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*\*Sole Proprietors are required to submit a copy of their birth certificate and/or copy of their social security card for name verification purposes*

## Request for Taxpayer Identification Number and Certification

**Give form to the  
 requester. Do not  
 send to the IRS.**

<b>Print or type See Specific Instructions on page 2</b>	Name (as shown on your income tax return)	
	Business name, if different from above	
	Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other ▶ .....	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	
List account number(s) here (optional)		

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

<b>Social security number</b>									

**OR**

<b>Employer identification number</b>									

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
------------------	----------------------------	--------

### Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

**U.S. person.** Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

In 3 above, if applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

For federal tax purposes, you are considered a person if you are:

- An individual who is a citizen or resident of the United States,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or
- Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,



- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.**

Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments (after December 31, 2002). This is called "backup withholding." Payments that may be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 4 for details),

3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules regarding partnerships* on page 1.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

**Sole proprietor.** Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

**Limited liability company (LLC).** If you are a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Treasury regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line. Check the appropriate box for your filing status (sole proprietor, corporation, etc.), then check the box for "Other" and enter "LLC" in the space provided.

**Other entities.** Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

**Note.** You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

### Exempt From Backup Withholding

If you are exempt, enter your name as described above and check the appropriate box for your status, then check the "Exempt from backup withholding" box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

**Note.** If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

**Exempt payees.** Backup withholding is not required on any payments made to the following payees:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
  2. The United States or any of its agencies or instrumentalities,
  3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
  4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
  5. An international organization or any of its agencies or instrumentalities.
- Other payees that may be exempt from backup withholding include:
6. A corporation,
  7. A foreign central bank of issue,
  8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
  9. A futures commission merchant registered with the Commodity Futures Trading Commission,
  10. A real estate investment trust,
  11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
  12. A common trust fund operated by a bank under section 584(a),
  13. A financial institution,
  14. A middleman known in the investment community as a nominee or custodian, or
  15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt recipients listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt recipients except for 9
Broker transactions	Exempt recipients 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt recipients 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt recipients 1 through 7 <sup>2</sup>

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees; and payments for services paid by a federal executive agency.

## Part I. Taxpayer Identification Number (TIN)

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-owner LLC that is disregarded as an entity separate from its owner (see *Limited liability company (LLC)* on page 2), enter your SSN (or EIN, if you have one). If the LLC is a corporation, partnership, etc., enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at [www.socialsecurity.gov](http://www.socialsecurity.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) and clicking on Employer ID Numbers under Related Topics. You can get Forms W-7 and SS-4 from the IRS by visiting [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Writing "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt recipients, see *Exempt From Backup Withholding* on page 2.

**Signature requirements.** Complete the certification as indicated in 1 through 5 below.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

## What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee <sup>1</sup>
b. So-called trust account that is not a legal or valid trust under state law	The actual owner <sup>1</sup>
5. Sole proprietorship or single-owner LLC	The owner <sup>3</sup>
For this type of account:	Give name and EIN of:
6. Sole proprietorship or single-owner LLC	The owner <sup>3</sup>
7. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN (if you have one). If you are a sole proprietor, IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the legal trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules regarding partnerships* on page 1.

**Note.** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

## Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.