

Form: Security agreement with collateral pledge and appointment of escrow agent

# PREVIEW

## SECURITY AGREEMENT

### WITH COLLATERAL PLEDGE AND APPOINTMENT OF ESCROW AGENT

[Secured Party Name], Secured Party, and [Debtor Name], Debtor, make this Security Agreement with Collateral Pledge and Appointment of Escrow Agent and make their agreement as follows:

#### 1. Obligation To Be Secured

1.1 In a Decree of Divorce in cause number [Cause Number], of the [\_\_th] Judicial District Court of [Suit County] County, Texas, Debtor became indebted to Secured Party. The case, styled, "In the Matter of the Marriage of [Petitioner Name] and [Respondent Name]," evidenced the Debtor's obligations by a promissory note of [date] with [in the original principal sum of \$[Amount], called "Debtor's obligations" in this agreement.

#### 2. Security

2.1 The parties mutually desire to grant Secured Party a security interest in collateral as Debtor's security for performance of Debtor's obligations.

#### 3. Security Interest

3.1 Debtor creates a security interest to Secured Party in collateral described below to secure Debtor's obligations further described below.

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#### 4. Collateral

4.1 Debtor's collateral shall consist of [Share] shares of stock in [Company Stock], or such substitute collateral as may be deposited according to the terms of this Collateral Pledge Agreement.

#### 5. Obligation Secured

5.1 Secured Party's security interest makes secure the following:

a. full payment of all of Debtor's obligations and the full performance and discharge of terms and conditions of payment of Debtor's obligations on the promissory note and its successors as to provisions for contractual attorney's stated in the Decree of Divorce; and

b. full performance of all obligations otherwise created by this Collateral Pledge Agreement.

#### 6. Warranty and Representation of Debtor

6.1 Debtor makes warranty and representation that the collateral described herein does not have any encumbrances upon it by other security interests, lien, or restriction, and that Debtor possesses

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the full powers and rights to make transfer of the collateral "free and clear" and to enter and carry out this Collateral Pledge Agreement.

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## 7. Events of Default

7.1 Pursuant to this Collateral Pledge Agreement, "Events of Default" shall include the following:

- a. The failure by Debtor to timely perform or fulfill any covenant, agreement or conditions required by the Collateral Pledge Agreement.
- b. The failure by Debtor to promptly pay or fulfill any of Debtor's obligations in the security or collateral as specified in a promissory note of even date herewith in the original principal sum of \$ Amount.
- c. The determination that any warranty, representation of statement by Debtor to Secured Party was materially false when made or furnished;
- d. The accelerating of any event to the maturity of Debtor's obligation;
- e. The levy, seizure, or attachment of collateral referable to this Collateral Pledge Agreement;
- f. The reasonable belief by Secured Party that there is any impairment of performance or payment of any indebtedness as specified in this Collateral Pledge Agreement.
- g. Death, insolvency, bankruptcy or other disruption of the regular course of personal or commercial business of Debtor or Debtor's guarantors or sureties.

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## 8. Rights of Secured Party on Occurrence of an Event of Default

8.1 If there has been an event of default, the Secured Party's rights of foreclosure on the security interest created herein may be exercised by retention or sale of the collateral as specified below:

a. **Retention of Collateral.** Secured Party may elect to satisfy Debtor's obligation by retention of a portion of the collateral in a "fair value" equaling the amount of unpaid Debtor's obligations. "Fair value" of the collateral shall be defined by the following formula relating to the stock of [Company Stock], a corporation:

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- i. Multiply the book value of common stock times the number of shares which constitute the collateral for this agreement.
- ii. Determine book value per share using generally accepted accounting procedures to deduct the gross liabilities of the corporation from its gross assets and then multiplying by the following formula where  $n$  = the total number of outstanding shares of the corporation and  $x$  = the number of shares of common stock to be sold: 
$$\frac{(A-L)}{n} \times x$$

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b. **Sale of Collateral.** Any such sale may be subject to article 9.504 of the Texas Business and Commerce Code, the Secured Party may elect to have the escrow agent offer for public or private sale with ten days' written notice to Debtor.

## 9. Escrow Agent and Voting Rights

9.1 By the terms of this Collateral Pledge Agreement, Debtor makes appointment of [Escrow Agent] of [City], Texas, as escrow agent for holding of the collateral. Upon the escrow agent's signed receipt for delivery of collateral, Debtor will deliver executed collateral instruments of transfer "in blank" to cover the delivered collateral.

a. **Terms of Escrow.** Upon satisfactory proof made to the Escrow Agent of the completion and full payment of Debtor's obligations to Secured Party, the escrow agent shall make redelivery to Debtor the 10 shares of stock in [Company Stock] held by the escrow agent, and all obligations between Debtor, Secured Party and escrow agent will be terminated. In the event of default by Debtor, Secured Party shall notify escrow agent of such default in writing. Upon receipt of the written notice, the escrow agent will either deliver the collateral to the Secured Party's retention or shall make offer of sale as provided herein.

b. **Voting.** For such time as the collateral remains in the holdings of the escrow agent and for as long as Debtor has not made default, Debtor shall retain voting rights in the collateral. If Debtor requests, proxies and authorizations to confirm said voting rights shall be delivered to Debtor by Secured Party or the escrow agent.

c. **Dividends.** For such time as Debtor is not in default and for such time as the collateral remains in the holdings of the escrow agent, Debtor shall be the owner of all income generated by the collateral, including dividends and interest.

d. **Voting Trust.** For such time as the collateral remains in the holdings of the escrow agent and for as long as Debtor has not made default, Debtor retains the right of assignment to a voting trust of the collateral, if such options are available pursuant to the regular policies of the corporation, and the escrow agent shall accept voting trust certificates as substitute collateral. Upon any event of default, the escrow agent shall deliver said voting trust certificates as if they other collateral.

## 10. Substitution of Escrow Agent

10.1 If Debtor is not then in default of any obligations, Debtor retains the right under this Collateral Pledge Agreement to remove the present escrow agent and appoint a substitute escrow agent, provided that the appointment must be a bank chartered in Texas under state or federal regulations. Any substitute escrow agent shall succeed to the terms and conditions of the Collateral Pledge Agreement as they apply to the present escrow agent.

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11.1 At any time during the operation of this Collateral Pledge Agreement, Debtor may substitute certificates of deposit as security for Debtor's obligations hereunder in amounts equal to the balance of Debtor's obligations provided that said certificates of deposit are issued by any bank chartered in Texas under state or federal regulations.

## 12. No Waiver of Rights or Remedies.

a. **No Waiver.** If there is any failure or delay of the Secured Party in the exercise of any rights, powers or privileges created by this Operating Trust Agreement, such failure or delay shall not be construed to be a waiver of such power, right or privilege and any partial exercise of a right, power or privilege will not operate to preclude any other exercise of such rights, powers or privileges.

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Severability. In the event that any provision is found to be not legal or not capable of enforcement, all other provisions shall remain fully effective and will not be affected by the severance of any provision.

c. **Notices.** In the event of notices or required communications referable to this Operating Trust Agreement, notice shall be given by personal delivery or by certified mail, postage prepaid to the following addresses:

[Debtor Name], [Address]

[Respondent Name], [Respondent Address], Respondent City, TX

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The parties may notify the other party of a change of address by written notice to the other party, which notice will be deemed effective upon deposit in the United States Mail.

d. **Assignment of Secured Party.** Secured Party may make assignment of this Collateral Pledge Agreement and its security interests at the discretion of Secured Party. Any assignment hereof shall inure to the benefit of or is binding upon the heirs, executors, administrators, legal representatives or assigns of Secured Party and Debtor, respectively.

e. **Choice of Law.** This agreement, its validity, any construing of its terms or the agreeing parties' rights and duties shall be governed by the laws of the state of Texas.

SIGNED on \_\_\_\_\_ **THANK YOU**

\_\_\_\_\_  
[Secured Party Name]

Secured Party

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[Debtor Name]  
Debtor

# PREVIEW

[Debtor Name] acknowledged this Collateral Pledge Agreement under oath before me on

\_\_\_\_\_.

State of Texas  
County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_ by

\_\_\_\_\_.

~~PLEASE DO NOT COPY~~  
Notary Public, State of Texas

\_\_\_\_\_  
Notary's typed or printed name

My commission expires:

\_\_\_\_\_

[or Notary's Stamp]

[Secured Party Name] acknowledged this Collateral Pledge Agreement under oath before me on

\_\_\_\_\_.  
**THIS DOCUMENT**

State of Texas  
County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_ by

\_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
**THANK YOU**  
Notary's typed or printed name

My commission expires:

\_\_\_\_\_

[or Notary's Stamp]

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