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*PHIL HAUCK (1924-1991)*

December 10, 2003

**FILED**

DEC 11 2003

Secretary  
Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65102

**Missouri Public  
Service Commission**

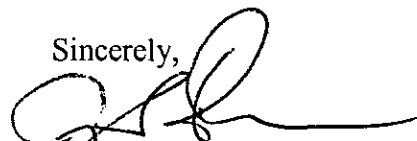
Re: Application of ExOp of Missouri, Inc. For Waiver of § 392.300.1 RSMo, Or In  
The Alternative For Authority And Approval Of The Issuance Of Encumbrance  
And Mortgage On Assets

Dear Secretary:

Enclosed please find an original and eight copies of the Notice of the Application of  
ExOp of Missouri, Inc. For Waiver of § 392.300.1 RSMo, Or In The Alternative For Authority  
And Approval Of The Issuance Of Encumbrance And Mortgage On Assets.

Thank you for seeing this filed.

Sincerely,



Craig S. Johnson

CSJ:lw

Encl.

CC: Mike Dandino  
Dan Joyce

Trenton Office  
9<sup>th</sup> And Washington  
Trenton, Missouri 64683  
660-359-2244  
Fax 660-359-2116

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P.O. Box 4929  
Springfield, Missouri 65808  
417-864-6401  
Fax 417-864-4967

Princeton Office  
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Princeton, Missouri 64673  
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P.O. Box. 654  
Smithville, Missouri 64089  
816-532-3895  
Fax 816-532-3899

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

FILED

DEC 11 2003

Missouri Public Service Commission

In the Matter of the Application of )  
 ExOp of Missouri Inc for Waiver of )  
 §392.300.1 RSMo, or in the alternative ) Case No. \_\_\_\_\_  
 for Authority and Approval of the )  
 Issuance of Encumbrance of Assets. )

**APPLICATION OF EXOP OF MISSOURI INC. FOR WAIVER OF §392.300.1 RSMO, OR IN THE ALTERNATIVE FOR AUTHORITY AND APPROVAL OF THE ISSUANCE OF ENCUMBRANCE AND MORTGAGE ON ASSETS**

Comes now Applicant ExOp of Missouri Inc. (ExOp), and requests Commission waiver of §392.300.1 RSMo, or alternatively authority to execute security instruments constituting an encumbrance on assets pursuant to §392.300.1 RSMo. In support of this Application, ExOp states as follows:

1. Applicant ExOp is a Missouri corporation in good standing. ExOp's Certificate of Good Standing issued by the Missouri Secretary of State is attached to this Application as Attachment 1. ExOp has been incorporated for the purpose of, and in fact is engaged in the business of, operating a competitive local exchange telecommunications company, and other business operations.

2. The street and mailing address of ExOp's principal office and place of business is:

Ron Reckrodt  
 Chief Operations Officer  
 ExOp of Missouri Inc. d/b/a Unite  
 303 N. Jefferson  
 Kearney, Mo 64060  
 (816) 903-3901  
 (816) 903-3900 fax

3. Correspondence, communications, pleadings, and orders and decisions in this proceeding should be sent to ExOp at the above address, and also to ExOp's counsel of record in this proceeding:

Craig S. Johnson MO Bar No. 28179  
ANDERECK, EVANS, MILNE,  
PEACE & JOHNSON, L.L.C.  
700 East Capitol Ave  
Post Office Box 1438  
Jefferson City, Missouri 65102  
Telephone: (573) 634-3422  
Facsimile: (573) 634-7822  
email: CJohnson@AEMPB.com

4. ExOp has no pending action or final unsatisfied judgments or decisions against them from any state or federal agency or court which involve customer service or rates, which action, judgment or decision has occurred within three years of the date of this Application.

5. ExOp has no any annual report or assessment fees which are overdue.

6. ExOp of Missouri Inc. provides basic local telecommunications services, and exchange access services, to customers within the state of Missouri, pursuant to prior Orders of the Commission granting ExOp certificates of authority, approving tariffs, and granting certain waivers of statutes and Commission rules as routinely provided to a competitively classified competitive local exchange company.

7. As a CLEC, ExOp has previously been granted waivers of the following statutes:

§ 392.210 RSMo (uniform system of accounts)

§ 392.270 RSMo (valuation of property for ratemaking)

§ 392.280 RSMo (depreciation accounts)

§ 392.290.1 RSMo (issuance of securities)

§ 392.300.2 RSMo (acquisition of stock)

§ 392.310 RSMo (stock and debt issuance)

§ 392.320 RSMo (stock dividend payments)

§ 392.330 RSMo (issuance securities, debts, notes)

§ 392.340 RSMo (reorganizations).

8. Although ExOp has been granted waiver of the requirement to obtain Commission approval of the issuances of debt by waiver of § 392.290.1 RSMo, § 392.310 RSMo, and § 392.330, and although ExOp has been granted waiver of the requirement to obtain Commission approval to create “liens” as that term is used in § 392.290.1 RSMo, apparently the Commission has not waived the requirement of ExOp to obtain permission to create an “encumbrance” or “mortgage”. The following subsection of § 392.300.1 RSMo has not been waived for ExOp:

"no telecommunications company shall hereafter sell, assign, lease, transfer, **mortgage** or dispose of or **encumber** the whole or part of its franchise, facilities or system, necessary or useful in the performance of its duties to the public.....without having first secured from the Commission an Order authorizing it so to do." (bolding added for emphasis)

9. It appears to Ex Op that there may be an inconsistency in not being required to obtain Commission approval to borrow money, but in being required to obtain Commission approval for the creation of mortgages, encumbrances, or other security interests. It further appears that, with respect to the creation of security interests, there is an inconsistency in not being required to obtain Commission approval to create a “lien” on its property, but in being required to obtain Commission approval to enter into a

mortgage or to encumber property. It appears to Ex Op that this seeming inconsistency may be due to oversight at the time of determining the statutory waivers Ex Op would be granted.

10. ExOp desires to refinance an existing note. The lender is willing to refinance, but wants security in the form of a deed of trust on the real estate upon which ExOp's headquarters is situated, and by Security Agreements and Financing Statements providing security in other business property of ExOp, copies of which are collectively attached hereto and incorporated by reference as Attachment 2.

#### **REQUEST FOR WAIVER**

11. Pursuant to 4 CSR 240-2.060 (4), ExOp requests that it be granted a permanent waiver of the requirement of §392.300.1 RSMo to obtain Commission approval of a mortgage or encumbrance. ExOp incorporates by reference the allegations of paragraphs 1-10 above in support of this request. Ex Op states that no public utility will be affected by the variance or waiver.

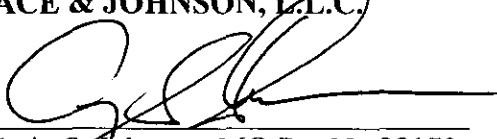
#### **ALTERNATIVE REQUEST FOR APPROVAL**

12. In the alternative, Ex Op requests that the Commission enter an Order granting ExOp approval of the issuance of the deed of trust, security agreements, and financing statements pursuant to § 392.300.1 RSMo.

WHEREFORE, on the basis of the foregoing, Ex Op respectfully requests an Order granting permanent waiver of § 392.300.1 RSMo, or in the alternative an Order granting approval to ExOp of the issuance of a mortgage to encumber its property in accordance with § 392.300.1 RSMo.

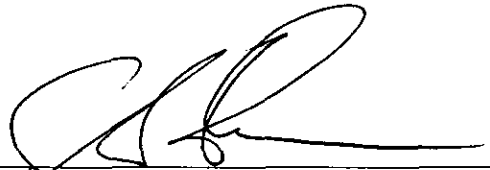
**ANDERECK, EVANS, MILNE,  
PEACE & JOHNSON, L.L.C.**

By

  
Craig S. Johnson MO Bar No. 28179  
Lisa Cofe Chase MO Bar No. 51502  
700 East Capitol Avenue  
The Col. Darwin Marmaduke House  
Post Office Box 1438  
Jefferson City, Missouri 65102  
Telephone: (573) 634-3422  
Facsimile: (573) 634-7822

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and accurate copy of the foregoing was mailed, via U.S. Mail, postage prepaid, this 10 day of December, 2003, to Staff General Counsel Dan Joyce, and to Office of Public Counsel Michael Dandino.

  
Craig S. Johnson MO Bar No. 28179

VERIFICATION

State of Missouri )  
 ) ss.  
County of Clay )

Comes now Ronald Reckrodt, being of lawful age and duly sworn, swears and affirms that:

1. My name is Ronald Reckrodt. I am the Chief Operations Officer of ExOp of Missouri, Inc. In that capacity I am authorized by ExOp of Missouri, Inc. to apply for Missouri Commission approval and authority to apply for Missouri Commission approval and authority for the requests contained in this Application.

2. The information contained in this Application is true and accurate to the best of my knowledge, information, and belief.

3. ExOp of Missouri, Inc. has authorized Craig S. Johnson and the firm of Andereck, Evans, Milne, Peace, and Johnson, LLC to file and prosecute this application before the Missouri Public Service Commission.



TONYA DAWN LAKIN  
Clay County  
My Commission Expires  
March 24, 2007

Ronald Reckrodt  
Ronald Reckrodt

Subscribed and sworn to before me this 8 day of December, 2003.

Tonya Dawn Lakin  
Notary Public

My Commission expires 3-24-07

# STATE OF MISSOURI



Matt Blunt  
Secretary of State


## CORPORATION DIVISION CERTIFICATE OF GOOD STANDING

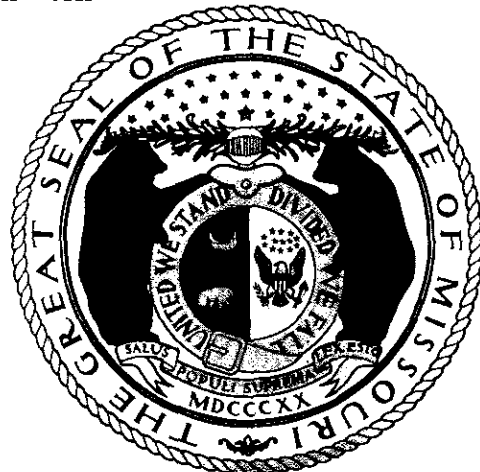
I, MATT BLUNT, Secretary of the State of Missouri, do hereby certify that the records in my office and in my care and custody reveal that

**EXOP OF MISSOURI, INC.**  
**00429604**

was created under the laws of this State on the 2nd day of August, 1996, and is in good standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I have set my hand and an imprinted the GREAT SEAL of the State of Missouri, on this, the 9th day of December, 2003

  
Secretary of State



Certification Number: 6269674-1 Page 1 of 1 Reference:

Verify this certificate online at <http://www.sos.mo.gov/businessentity/verification/>



**REAL ESTATE DEED OF TRUST**  
(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Deed of Trust (Security Instrument) is ..NOVEMBER 25, 2003.....  
and the parties, their addresses and tax identification numbers, if required, are as follows:

**GRANTOR:**

EXOP OF MISSOURI, INC.  
PO BOX 891  
KEARNEY MO 64060

If checked, refer to the attached Addendum incorporated herein, for additional Grantors, their signatures,  
addresses and acknowledgments. The Addendum is on page(s) .....

**TRUSTEE:**

ROBERT H. BENDER  
2900 BROOKTREE LANE, SUITE 100  
GLADSTONE, MO 64119

**LENDER/GRANTEE:**

KEARNEY COMMERCIAL BANK  
100 WEST 92 HIGHWAY-PO BOX 888  
KEARNEY, MO 64060

ORGANIZED & EXISTING UNDER THE LAWS  
OF THE STATE OF MISSOURI

2. **CONVEYANCE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined below) and Grantor's performance under this Security Instrument, Grantor irrevocably grants, bargains, sells and conveys to Trustee, in trust for the benefit of Lender, with power of sale, the following described property: (If the legal description of the Property is not on page one of this Security Instrument, it is on page(s) .....

LOTS 1, 2 AND 3, BLOCK 12, IN THE OLD TOWN (NOW CITY) OF KEARNEY, CLAY COUNTY, MISSOURI, ACCORDING TO THE RECORDED PLAT THEREOF.

COPY

Attachment 2

The property is located in CLAY at .....  
(County)  
303 N. JEFFERSON KEARNEY Missouri 64060  
(Address) (City) (ZIP Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, all water and riparian rights, wells, ditches, reservoirs, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property").

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Security Instrument at any one time shall not exceed \$ 164,500.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument.

4. **SECURED DEBT AND FUTURE ADVANCES.** The term "Secured Debt" is defined as follows:

A. Debt incurred under the terms of all promissory note(s), contract(s), guaranty(s) or other evidence of debt described below and all their extensions, renewals, modifications or substitutions. *(When referencing the debts below it is suggested that you include items such as borrowers' names, note amounts, interest rates, maturity dates, etc.)* PROMISSORY NOTE #1005382

Note Dated NOVEMBER 25, 2003 In The Amount Of ~~REDACTED~~

Accruing At a Rate of 7.000% With a Maturity Date NOVEMBER 25, 2008

Said Loan In The Name(s) Of EXOP OF MISSOURI, INC.

**Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Security Instrument will remain in effect until released.

**Construction Loan.** This Security Instrument secures an obligation incurred for the construction of an improvement on the Property.

B. All future advances from Lender to Grantor or other future obligations of Grantor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Security Instrument whether or not this Security Instrument is specifically referenced. If more than one person signs this Security Instrument, each Grantor agrees that this Security Instrument will secure all future advances and future obligations that are given to or incurred by any one or more Grantor, or any one or more Grantor and others. All future advances and other future obligations are secured by this Security Instrument even though all or part may not yet be advanced. All future advances and other future obligations are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment must be agreed to in a separate writing.

C. All obligations Grantor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Grantor and Lender.

D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

This Security Instrument will not secure any other debt if Lender fails to give any required notice of the right of rescission.

5. **PAYMENTS.** Grantor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt and this Security Instrument.

6. **WARRANTY OF TITLE.** Grantor warrants that Grantor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to irrevocably grant, convey and sell the Property to Trustee, in trust, with power of sale. Grantor also warrants that the Property is unencumbered, except for encumbrances of record.

7. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Grantor agrees:

- A. To make all payments when due and to perform or comply with all covenants.
  - B. To promptly deliver to Lender any notices that Grantor receives from the holder.
  - C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.
8. **CLAIMS AGAINST TITLE.** Grantor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Grantor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Grantor's payment. Grantor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Grantor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Grantor may have against parties who supply labor or materials to maintain or improve the Property.
9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Security Instrument is released.
10. **TRANSFER OF AN INTEREST IN THE GRANTOR.** If Grantor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if:
- A. A beneficial interest in Grantor is sold or transferred.
  - B. There is a change in either the identity or number of members of a partnership or similar entity.
  - C. There is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity.

However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Security Instrument.

11. **ENTITY WARRANTIES AND REPRESENTATIONS.** If Grantor is an entity other than a natural person (such as a corporation or other organization), Grantor makes to Lender the following warranties and representations which shall continue as long as the Secured Debt remains outstanding:
- A. Grantor is duly organized and validly existing in the Grantor's state of incorporation or organization. Grantor is in good standing in all states in which Grantor transacts business. Grantor has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Grantor operates.
  - B. The execution, delivery and performance of this Security Instrument by Grantor and the obligation evidenced by the Secured Debt are within the power of Grantor, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.
  - C. Other than previously disclosed in writing to Lender, Grantor has not changed its name within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Grantor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Secured Debt is satisfied.

12. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Grantor will keep the Property in good condition and make all repairs that are reasonably necessary. Grantor shall not commit or allow any waste, impairment, or deterioration of the Property. Grantor will keep the Property free of noxious weeds and grasses. Grantor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Grantor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Grantor will notify Lender of all demands, proceedings, claims, and actions against Grantor, and of any loss or damage to the Property.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Grantor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Security Instrument. Grantor shall not partition or subdivide the Property without Lender's prior written consent.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender shall give Grantor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property shall be entirely for Lender's benefit and Grantor will in no way rely on Lender's inspection.

**13. AUTHORITY TO PERFORM.** If Grantor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Grantor appoints Lender as attorney in fact to sign Grantor's name or pay any amount necessary for performance. Lender's right to perform for Grantor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.

**14. ASSIGNMENT OF LEASES AND RENTS.** Grantor irrevocably grants, conveys and sells to Trustee, in trust for the benefit of the Lender, as additional security all the right, title and interest in and to any and all:

A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of any portion of the Property, including any extensions, renewals, modifications or substitutions of such agreements (all referred to as "Leases").

B. Rents, issues and profits (all referred to as "Rents"), including but not limited to security deposits, minimum rent, percentage rent, additional rent, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Grantor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property.

In the event any item listed as Leases or Rents is determined to be personal property, this Security Instrument will also be regarded as a security agreement.

Grantor will promptly provide Lender with true and correct copies of all existing and future Leases. Grantor may collect, receive, enjoy and use the Rents so long as Grantor is not in default. Except for one lease period's rent, Grantor will not collect in advance any future Rents without Lender's prior written consent. Upon default, Grantor will receive Rents in trust for Lender and Grantor will not commingle the Rents with any other funds. Amounts collected shall be applied at Lender's discretion to payments on the Secured Debt as therein provided, to costs of managing, protecting and preserving the Property and to any other necessary related expenses including Lender's attorneys' fees and court costs.

Grantor agrees that this assignment is immediately effective between the parties to this Security Instrument and effective as to third parties on Grantor's default when Lender or Trustee takes an affirmative action as prescribed by the law of the state where the Property is located. This assignment will remain effective during any period of redemption by the Grantor until the Secured Debt is satisfied. Unless otherwise provided by state law, Grantor agrees that Lender or Trustee may take actual possession of the Property without commencing any legal action or proceeding. Actual possession of the Property is deemed to occur when Lender notifies Grantor of Grantor's default and demands that Grantor and Grantor's tenants pay all Rents due or to become due directly to Lender. Thereafter, either Lender or Grantor may notify the tenants and demand that all future Rents be paid directly to Lender. On receiving the notice of default, Grantor will endorse and deliver to Lender any payments of Rents.

Grantor warrants that no default exists under the Leases or any applicable landlord law. Grantor also agrees to maintain, and to require the tenants to comply with, the Leases and any applicable law. Grantor will promptly notify Lender of any noncompliance. If Grantor neglects or refuses to enforce compliance with the terms of the Leases, then Lender or Trustee may opt to enforce compliance. Grantor will obtain Lender's written authorization before Grantor consents to sublet, modify, cancel, or otherwise alter the Leases, to accept the surrender of the Property covered by such Leases (unless the Leases so require), or to assign, compromise or encumber the Leases or any future Rents. If Lender acts to manage, protect and preserve the Property, Lender does not assume or become liable for its maintenance, depreciation, or other losses or damages, except those due to Lender's gross negligence or intentional torts. Otherwise, Grantor will hold Lender harmless and indemnify Lender for any and all liability, loss or damage that Lender may incur as a consequence of the assignment under this section.

**15. LEASEHOLDS; CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS.** Grantor agrees to comply with the provisions of any lease if this Security Instrument is on a leasehold. If the Property includes a unit in a condominium or a planned unit development, Grantor will perform all of Grantor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

**16. DEFAULT.** Grantor will be in default if any of the following occur:

A. Any party obligated on the Secured Debt fails to make payment when due;

- B. A breach of any term or covenant in this Security Instrument or any other document executed for the purpose of creating, securing or guarantying the Secured Debt;
- C. The making or furnishing of any verbal or written representation, statement or warranty to Lender that is false or incorrect in any material respect by Grantor or any person or entity obligated on the Secured Debt;
- D. The death, dissolution, or insolvency of, appointment of a receiver for, or application of any debtor relief law to, Grantor or any other person or entity obligated on the Secured Debt;
- E. A good faith belief by Lender at any time that Lender is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment is impaired or the value of the Property is impaired;
- F. A material adverse change in Grantor's business including ownership, management, and financial conditions, which Lender in its opinion believes impairs the value of the Property or repayment of the Secured Debt; or
- G. Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

17. **REMEDIES ON DEFAULT.** In some instances, federal and state law will require Lender to provide Grantor with notice of the right to cure, or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Security Instrument in a manner provided by law if Grantor is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the terms of the Secured Debt, this Security Instrument and any related documents, including without limitation, the power to sell the Property.

If there is a default, Trustee shall, in addition to any other permitted remedy, at the request of the Lender, advertise and sell the Property as a whole or in separate parcels at public auction to the highest bidder for cash and convey absolute title free and clear of all right, title and interest of Grantor at such time and place as Trustee designates. Trustee shall give notice of sale including the time, terms and place of sale and a description of the Property to be sold as required by the applicable law in effect at the time of the proposed sale.

Upon sale of the Property and to the extent not prohibited by law, Trustee shall make and deliver a deed to the Property sold which conveys absolute title to the purchaser, and after first paying all fees, charges and costs, shall pay to Lender all moneys advanced for repairs, taxes, insurance, liens, assessments and prior encumbrances and interest thereon, and the principal and interest on the Secured Debt, paying the surplus, if any, to Grantor. Lender may purchase the Property. The recitals in any deed of conveyance shall be prima facie evidence of the facts set forth therein.

All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy on Grantor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

18. **EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS.** Except when prohibited by law, Grantor agrees to pay all of Lender's expenses if Grantor breaches any covenant in this Security Instrument. Grantor will also pay on demand any amount incurred by Lender for insuring, inspecting, preserving or otherwise protecting the Property and Lender's security interest. These expenses will bear interest from the date of the payment until paid in full at the highest interest rate in effect as provided in the terms of the Secured Debt. Grantor agrees to pay all costs and expenses incurred by Lender in collecting, enforcing or protecting Lender's rights and remedies under this Security Instrument. This amount may include, but is not limited to, attorneys' fees, court costs, and other legal expenses. This Security Instrument shall remain in effect until released. Grantor agrees to pay for any recordation costs of such release.
19. **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste,

pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste," "hazardous substance," or "regulated substance" under any Environmental Law.

Grantor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
  - B. Except as previously disclosed and acknowledged in writing to Lender, Grantor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
  - C. Grantor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Grantor will take all necessary remedial action in accordance with Environmental Law.
  - D. Except as previously disclosed and acknowledged in writing to Lender, Grantor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Grantor or any tenant of any Environmental Law. Grantor will immediately notify Lender in writing as soon as Grantor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
  - E. Except as previously disclosed and acknowledged in writing to Lender, Grantor and every tenant have been, are and shall remain in full compliance with any applicable Environmental Law.
  - F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
  - G. Grantor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
  - H. Grantor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Grantor and any tenant are in compliance with applicable Environmental Law.
  - I. Upon Lender's request and at any time, Grantor agrees, at Grantor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
  - J. Lender has the right, but not the obligation, to perform any of Grantor's obligations under this section at Grantor's expense.
  - K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Grantor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Security Instrument and in return Grantor will provide Lender with collateral of at least equal value to the Property secured by this Security Instrument without prejudice to any of Lender's rights under this Security Instrument.
  - L. Notwithstanding any of the language contained in this Security Instrument to the contrary, the terms of this section shall survive any foreclosure or satisfaction of this Security Instrument regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.
- 20. CONDEMNATION.** Grantor will give Lender prompt notice of any pending or threatened action, by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Grantor authorizes Lender to intervene in Grantor's name in any of the above described actions or claims. Grantor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other

taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

**21. INSURANCE.** Grantor agrees to maintain insurance as follows:

A. Grantor shall keep the Property insured against loss by fire, flood, theft and other hazards and risks reasonably associated with the Property due to its type and location. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding sentence can change during the term of the loan. The insurance carrier providing the insurance shall be chosen by Grantor subject to Lender's approval, which shall not be unreasonably withheld. If Grantor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Security Instrument.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "loss payee clause." Grantor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Grantor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Grantor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Grantor.

Unless otherwise agreed in writing, all insurance proceeds shall be applied to restoration or repair of the Property or to the Secured Debt, whether or not then due, at Lender's option. Any application of proceeds to principal shall not extend or postpone the due date of scheduled payment nor change the amount of any payments. Any excess will be paid to the Grantor. If the Property is acquired by Lender, Grantor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

B. Grantor agrees to maintain comprehensive general liability insurance naming Lender as an additional insured in an amount acceptable to Lender, insuring against claims arising from any accident or occurrence in or on the Property.

C. Grantor agrees to maintain rental loss or business interruption insurance, as required by Lender, in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing), under a form of policy acceptable to Lender.

**22. ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Grantor will not be required to pay to Lender funds for taxes and insurance in escrow.

**23. FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Grantor will provide to Lender upon request, any financial statement or information Lender may deem reasonably necessary. Grantor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Grantor's obligations under this Security Instrument and Lender's lien status on the Property.

**24. JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Security Instrument are joint and individual. If Grantor signs this Security Instrument but does not sign an evidence of debt, Grantor does so only to mortgage Grantor's interest in the Property to secure payment of the Secured Debt and Grantor does not agree to be personally liable on the Secured Debt. If this Security Instrument secures a guaranty between Lender and Grantor, Grantor agrees to waive any rights that may prevent Lender from bringing any action or claim against Grantor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws. Grantor agrees that Lender and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Grantor's consent. Such a change will not release Grantor from the terms of this Security Instrument. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Grantor and Lender.

**25. APPLICABLE LAW; SEVERABILITY; INTERPRETATION.** This Security Instrument is governed by Mo. Rev. Stat. § 443.055 and the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.

26. **SUCCESSOR TRUSTEE.** Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee without any other formality than the designation in writing. The successor trustee, without conveyance of the Property, shall succeed to all the title, power and duties conferred upon Trustee by this Security Instrument and applicable law.
27. **LEASE OF THE PROPERTY.** Trustee hereby leases the Property to Grantor until this Security Instrument is either satisfied and released or until there is a default under the provisions of this Security Instrument. The Property is leased upon the following terms and conditions: Grantor, and every person claiming an interest in or possessing the property or any part of it, shall pay rent during the term of the lease for one cent per month, payable on demand, and without notice or demand shall and will surrender peaceable possession of the Property to Trustee upon default or to the purchaser of the Property at the foreclosure sale.
28. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Security Instrument, or to any other address designated in writing. Notice to one grantor will be deemed to be notice to all grantors.
29. **WAIVERS.** Except to the extent prohibited by law, Grantor waives all appraisal and homestead exemption rights relating to the Property.

**Oral agreements or commitments to loan money, extend credit or to forbear from enforcing repayment of a debt including promises to extend or renew such debt are not enforceable. To protect you (Grantor) and us (Lender) from misunderstanding or disappointment, any agreements we reach covering such matters are contained in this writing, which is the complete and exclusive statement of the agreement between us, except as we may later agree in writing to modify it.**

**SIGNATURES:** By signing below, Grantor agrees to the terms and covenants contained in this Security Instrument and in any attachments. Grantor also acknowledges receipt of a copy of this Security Instrument on the date stated on page 1.

Entity Name: EXOP OF MISSOURI, INC. Entity Name: .....  
A MISSOURI CORPORATION

.....  
DENNIS DEVOY, CHIEF FINANCIAL OFFICER (Date) (Date)  
.....  
..... (Date) (Date)

**ACKNOWLEDGMENT:**

STATE OF MISSOURI County OF CLAY } ss.  
On this 25th day of NOVEMBER, 2003, before me appeared .....  
DENNIS DEVOY, CHIEF FINANCIAL OFFICER,  
 to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged that  
He ..... executed the same as ..... His ..... free act and deed.  
 to me personally known, who, being by me duly sworn did say that s/he is the CHIEF FINANCIAL OFFICER (Title(s))  
of EXOP OF MISSOURI, INC.  
A MISSOURI CORPORATION (Name of Business or Entity)  
and that the seal affixed to foregoing instrument is the corporate seal of said corporation or association, and that said instrument was signed and sealed in behalf of said corporation or association by authority of its board of directors or trustees, and said DENNIS DEVOY, CHIEF FINANCIAL OFFICER acknowledged said instrument to be the free act and deed of said corporation or association.  
 to me personally known, who, being by me duly sworn did say that s/he is the ..... (Title(s))  
of ..... (Name of Business or Entity)  
and that said instrument was signed and sealed in behalf of said corporation or association by authority of its board of directors or trustees, and said ..... acknowledged said instrument to be the free act and deed of said corporation or association and that said corporation or association has no corporate seal.

My commission expires:  
(Seal)

.....  
(Notary Public)



## COLLATERAL PROTECTION INSURANCE NOTICE

Unless you provide evidence of the insurance coverage required by your agreement with us, we may purchase insurance at your expense to protect our interests in your collateral. This insurance may, but need not, protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection with the collateral. You may later cancel any insurance purchased by us, but only after providing evidence that you have obtained insurance as required by our agreement. If we purchase insurance for the collateral, you will be responsible for the costs of that insurance, including the insurance premium, interest and any other charges we may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to your total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own.

You acknowledge receipt of a copy of this notice.

Signature \_\_\_\_\_  
Date \_\_\_\_\_

Signature \_\_\_\_\_  
Date \_\_\_\_\_

# SECURITY AGREEMENT

(Collateral Pledge Agreement)

DATE DECEMBER 03, 2003

DEBTOR	EXOP OF MISSOURI, INC.	SECURED PARTY	KEARNEY COMMERCIAL BANK
BUSINESS OR RESIDENCE ADDRESS	PO BOX 891	ADDRESS	100 WEST 92 HIGHWAY-PO BOX 888
CITY, STATE & ZIP CODE	KEARNEY MO 64060	CITY, STATE & ZIP CODE	KEARNEY, MO 64060

**1. Security Interest and Collateral.** To secure (check one):

the payment and performance of each and every debt, liability and obligation of every type and description which Debtor may now or at any time hereafter owe to Secured Party (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several or joint and several; all such debts, liabilities and obligations being herein collectively referred to as the "Obligations"),

the debt, liability or obligation of the Debtor to secured party evidenced by the following: Promissory Note #1005414  
Dated 12/03/03 In The Amount of [REDACTED], and any extensions, renewals or replacements thereof (herein referred to as the "Obligations"),

Debtor hereby grants Secured Party a security interest (herein called the "Security Interest") in (check one):

all property of any kind now or at any time hereafter owned by Debtor, or in which Debtor may now or hereafter have an interest, which may now be or may at any time hereafter come into the possession or control of Secured Party or into the possession or control of Secured Party's agents or correspondents, whether such possession or control is given for collateral purposes or for safekeeping, together with all rights in connection with such property (herein called the "Collateral"),

the property owned by Debtor and held by Secured Party that is described as follows: Attached equipment list, and all business assets now owned and hereafter acquired

together with all rights in connection with such property (herein called the "Collateral").

**2. Representations, Warranties and Covenants.** Debtor represents, warrants and covenants that:

(a) Debtor will duly endorse, in blank, each and every instrument constituting Collateral by signing on said instrument or by signing a separate document of assignment or transfer, if required by Secured Party.

(b) Debtor is the owner of the Collateral free and clear of all liens, encumbrances, security interests and restrictions, except the Security Interest and any restrictive legend appearing on any instrument constituting Collateral.

(c) Debtor will keep the Collateral free and clear of all liens, encumbrances and security interests, except the Security Interest.

(d) Debtor will pay, when due, all taxes and other governmental charges levied or assessed upon or against any Collateral.

(e) At any time, upon request by Secured Party, Debtor will deliver to Secured Party all notices, financial statements, reports or other communications received by Debtor as an owner or holder of the Collateral.

(f) Debtor will upon receipt deliver to Secured Party in pledge as additional Collateral all securities distributed on account of the Collateral such as stock dividends and securities resulting from stock splits, reorganizations and recapitalizations.

**THIS AGREEMENT CONTAINS ADDITIONAL PROVISIONS SET FORTH ON PAGE 2 HEREOF,  
ALL OF WHICH ARE MADE A PART HEREOF.**

EXOP OF MISSOURI, INC.

Debtor's Name

By Dennis Devoy

Title: DENNIS DEVOY, CHIEF FIN. OFFICER

By \_\_\_\_\_

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

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

---

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

KEARNEY COMMERCIAL BANK  
 100 WEST 92 HIGHWAY-PO BOX 888  
 KEARNEY, MO 64060

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME  
 OR  
 EXOP OF MISSOURI, INC.

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
 PO BOX 891 KEARNEY MO 64060

1d. TAX ID #: SSN OR EIN ADD'L INFO RE ORGANIZATION DEBTOR 1e. TYPE OF ORGANIZATION 1f. JURISDICTION OF ORGANIZATION 1g. ORGANIZATIONAL ID #, if any  
 43-1816542 CORPORATION MISSOURI 431816542  NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME  
 OR  
 2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
 00000

2d. TAX ID #: SSN OR EIN ADD'L INFO RE ORGANIZATION DEBTOR 2e. TYPE OF ORGANIZATION 2f. JURISDICTION OF ORGANIZATION 2g. ORGANIZATIONAL ID #, if any  
 NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME  
 OR  
 KEARNEY COMMERCIAL BANK

3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
 100 WEST 92 HIGHWAY-PO BOX 888 KEARNEY MO 64060 USA

4. This FINANCING STATEMENT covers the following collateral:

SEE ATTACHED LIST

5. ALTERNATIVE DESIGNATION (if applicable):  LESSEE/LESSOR  CONSIGNEE/CONSIGNOR  BAILEE/BAILOR  SELLER/BUYER  AG. LIEN  NON-UCC FILING

6.  This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable) 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (ADDITIONAL FEE) (optional)  All Debtors  Debtor 1  Debtor 2

8. OPTIONAL FILER REFERENCE DATA

# SECURITY AGREEMENT

(Collateral Pledge Agreement)

DATE March 3, 2004

DEBTOR	EXOP OF MISSOURI, INC. D2R2 Inc.	SECURED PARTY	KEARNEY COMMERCIAL BANK
BUSINESS OR RESIDENCE ADDRESS	PO BOX 891	ADDRESS	100 WEST 92 HIGHWAY-PO BOX 888
CITY, STATE & ZIP CODE	KEARNEY MO 64060	CITY, STATE & ZIP CODE	KEARNEY, MO 64060

**1. Security Interest and Collateral.** To secure (check one):

the payment and performance of each and every debt, liability and obligation of every type and description which Debtor may now or at any time hereafter owe to Secured Party (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several or joint and several; all such debts, liabilities and obligations being herein collectively referred to as the "Obligations"),

the debt, liability or obligation of the Debtor to secured party evidenced by the following: Promissory Note in the amount of [REDACTED], and any extensions, renewals or replacements thereof (herein referred to as the "Obligations"),

Debtor hereby grants Secured Party a security interest (herein called the "Security Interest") in (check one):

all property of any kind now or at any time hereafter owned by Debtor, or in which Debtor may now or hereafter have an interest, which may now be or may at any time hereafter come into the possession or control of Secured Party or into the possession or control of Secured Party's agents or correspondents, whether such possession or control is given for collateral purposes or for safekeeping, together with all rights in connection with such property (herein called the "Collateral"),

the property owned by Debtor and held by Secured Party that is described as follows: \_\_\_\_\_

All Business Assets, EXOP OF MISSOURI, INC. Stock, and D2R2 Inc. Stock, now owned and hereafter acquired.

together with all rights in connection with such property (herein called the "Collateral").

**2. Representations, Warranties and Covenants.** Debtor represents, warrants and covenants that:

(a) Debtor will duly endorse, in blank, each and every instrument constituting Collateral by signing on said instrument or by signing a separate document of assignment or transfer, if required by Secured Party.

(b) Debtor is the owner of the Collateral free and clear of all liens, encumbrances, security interests and restrictions, except the Security Interest and any restrictive legend appearing on any instrument constituting Collateral.

(c) Debtor will keep the Collateral free and clear of all liens, encumbrances and security interests, except the Security Interest.

(d) Debtor will pay, when due, all taxes and other governmental charges levied or assessed upon or against any Collateral.

(e) At any time, upon request by Secured Party, Debtor will deliver to Secured Party all notices, financial statements, reports or other communications received by Debtor as an owner or holder of the Collateral.

(f) Debtor will upon receipt deliver to Secured Party in pledge as additional Collateral all securities distributed on account of the Collateral such as stock dividends and securities resulting from stock splits, reorganizations and recapitalizations.

**THIS AGREEMENT CONTAINS ADDITIONAL PROVISIONS SET FORTH ON PAGE 2 HEREOF,  
ALL OF WHICH ARE MADE A PART HEREOF.**

EXOP OF MISSOURI, INC.

Debtor's Name

By \_\_\_\_\_

Title: DENNIS DEVOY, CHIEF FIN. OFFICER  
R2D2 INC.

By \_\_\_\_\_

Title: DENNIS DEVOY, CHIEF FIN. OFFICER

## ADDITIONAL PROVISIONS

**3. Rights of Secured Party.** Debtor agrees that Secured Party may at any time, whether before or after the occurrence of an Event of Default and without notice or demand of any kind, (i) notify the obligor on or issuer of any Collateral to make payment to Secured Party of any amounts due or distributable thereon, (ii) in Debtor's name or Secured Party's name enforce collection of any Collateral by suit or otherwise, or surrender, release or exchange all or any part of it, or compromise, extend or renew for any period any obligation evidenced by the Collateral, (iii) receive all proceeds of the Collateral, and (iv) hold any increase or profits received from the Collateral as additional security for the Obligations, except that any money received from the Collateral shall, at Secured Party's option, be applied in reduction of the Obligations, in such order of application as Secured Party may determine, or be remitted to Debtor.

**4. Events of Default.** Each of the following occurrences shall constitute an event of default under this Agreement (herein called "Event of Default"); (i) Debtor shall fail to pay any or all of the Obligations when due or (if payable on demand) on demand, or shall fail to observe or perform any covenant or agreement herein binding on it; (ii) any representation or warranty by Debtor set forth in this Agreement or made to Secured Party in any financial statements or reports submitted to Secured Party by or on behalf of Debtor shall prove materially false or misleading; (iii) a garnishment summons or a writ of attachment shall be issued against or served upon the Secured Party for the attachment of any property of the Debtor or any indebtedness owing to Debtor; (iv) Debtor or any guarantor of any Obligation shall (A) be or become insolvent (however defined); (B) voluntarily file, or have filed against it involuntarily, a petition under the United States Bankruptcy Code; or (C) if a corporation, partnership or organization, be dissolved or liquidated or, if a partnership, suffer the death of a partner or, if an individual, die; or (D) go out of business; (v) Secured Party shall in good faith believe that the value then realizable by collection or disposition of the Collateral, after deduction of expenses of collection and disposition, is less than the aggregate unpaid balance of all Obligations then outstanding; (vi) Secured Party shall in good faith believe that the prospect of due and punctual payment of any or all of the Obligations is impaired.

**5. Remedies upon Event of Default.** Upon the occurrence of an Event of Default and at any time thereafter, Secured Party may exercise any one or more of the following rights or remedies: (i) declare all unmatured Obligations to be immediately due and payable, and the same shall thereupon be immediately due and payable, without presentment or other notice or demand; (ii) exercise all voting and other rights as a holder of the Collateral; (iii) exercise and enforce any or all rights and remedies available upon default to a secured party under the Uniform Commercial Code, including the right to offer and sell the Collateral privately to purchasers who will agree to take the Collateral for investment and not with a view to distribution and who will agree to the imposition of restrictive legends on the certificates representing the Collateral, and the right to arrange for a sale which would otherwise qualify as exempt from registration under the Securities Act of 1933; and if notice to Debtor of any intended disposition of the Collateral or any other intended action is required by law in a particular instance, such notice shall be deemed commercially reasonable if given at least 10 calendar days prior to the date of intended disposition or other action; (iv) exercise or enforce any or all other rights or remedies available to Secured Party by law or agreement against the Collateral, against Debtor or against any other person or property. Upon the occurrence of the Event of Default described in Section 4 (iv) (B), all Obligations shall be immediately due and payable without demand or notice thereof.

**6. Miscellaneous.** Any disposition of the Collateral in the manner provided in Section 5 shall be deemed commercially reasonable. This Agreement can be waived, modified, amended, terminated or discharged, and the Security Interest can be released, only explicitly in a writing signed by Secured Party. A waiver signed by Secured Party shall be effective only in the specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of Secured Party's rights or remedies. All rights and remedies of Secured Party shall be cumulative and may be exercised singularly or concurrently, at Secured Party's option, and the exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other. All notices to be given to Debtor shall be deemed sufficiently given if delivered or mailed by registered or certified mail, postage prepaid, to Debtor at its address set forth above or at the most recent address shown on Secured Party's records. Secured Party's duty of care with respect to Collateral in its possession (as imposed by law) shall be deemed fulfilled if Secured Party exercises reasonable care in physically safekeeping such Collateral or, in the case of Collateral in the custody or possession of a bailee or other third person, exercises reasonable care in the selection of the bailee or other third person, and Secured Party need not otherwise preserve, protect, insure or care for any Collateral. Secured Party shall not be obligated to preserve any rights Debtor may have against prior parties, to exercise at all or in any particular manner any voting rights which may be available with respect to any Collateral, to realize on the Collateral at all or in any particular manner or order, or to apply any cash proceeds of Collateral in any particular order of application. Debtor will reimburse Secured Party for all expenses (including reasonable attorney's fees and legal expenses) incurred by Secured Party in the protection, defense or enforcement of the Security Interest, including expenses incurred in any litigation or bankruptcy or insolvency proceedings. This Agreement shall be binding upon and inure to the benefit of Debtor and Secured Party and their respective heirs, representatives, successors and assigns and shall take effect when signed by Debtor and delivered to Secured Party, and Debtor waives notice of Secured Party's acceptance hereof. This Agreement shall be governed by laws of the state in which it is executed and, unless the context otherwise requires, all terms used herein which are defined in Articles 1 and 9 of the Uniform Commercial Code, as in effect in said state, shall have the meanings therein stated. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications which can be given effect, and this Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby. All representations and warranties contained in this Agreement shall survive the execution, delivery and performance of this Agreement and the creation and payment of the Obligations. If this Agreement is signed by more than one person as Debtor, the term "Debtor" shall refer to each of them separately and to both or all of them jointly, all such persons shall be bound both severally and jointly with the other(s); and the Obligations shall include all debts, liabilities and obligations owed to Secured Party by a Debtor solely or by both or several or all Debtors jointly or jointly and severally, and all property described in Section 1 shall be included as part of the Collateral, whether it is owned jointly by both or all Debtors or is owned in whole or in part by one (or more) of them.