

**Appendix III**  
**Sample Pledge Agreement**

## PLEDGE AGREEMENT

THIS PLEDGE AGREEMENT (this "Agreement") is entered into among \_\_\_\_\_, with an address of \_\_\_\_\_ (referred to below as "Grantor") and the ONEIDA INDIAN NATION, a sovereign Indian nation, with an address of \_\_\_\_\_ (referred to below as the "Nation").

1. Pledge. For valuable consideration, Grantor grants to the Nation a security interest in the Collateral to secure the Indebtedness and agrees that the Nation shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights which the Nation may have under Nation law. This is a continuing Security Agreement and will continue in effect even though all or any part of the Indebtedness is paid in full and even though for a period of time Grantor may not be indebted to the Nation.

2. Definitions. The following words shall have the following meanings when used in this Agreement.

a. The word "Collateral" means the property described on Exhibit A attached hereto and incorporated herein, together with all Income and Proceeds, if any as described below. In addition, the word "Collateral" includes all property of Grantor, in the possession of the Nation (or in the possession of a third party subject to the control of the Nation), whether now or hereafter existing and whether tangible or intangible in character.

b. The words "Event of Default" mean and include without limitation any of the Events of Default set forth below in the section titled "Events of Default."

c. The word "Grantor" means the party specified above. Any Grantor who signs this Agreement, but does not sign the Note, is signing this Agreement only to grant a security interest in Grantor's interest in the Collateral to the Nation and is not personally liable under the Note except as otherwise provided by contract or Nation law (e.g. personal liability under a guaranty or as a surety).

d. The word "Guarantor" means and includes without limitation each and all of the guarantors, sureties, and accommodation parties in connection with the Indebtedness and their personal representatives, successors and assigns.

e. The words "Income and Proceeds" mean all present and future income, proceeds, earnings, increases, and substitutions from or for the Collateral of every kind and nature, including without limitation all payments, interest, profits, benefits, rights, options, warrants, dividends, stock dividends, stock splits, stock rights, regulatory dividends, distributions, subscriptions, monies, claims for money due and to become due, proceeds of any insurance on the Collateral, shares of stock of different par value or no par value issued in substitution or exchange for shares included in the Collateral, and all other property Grantor is entitled to receive on account of such Collateral, including accounts, contract rights, documents, instruments, chattel paper, and general intangibles.

f. The word “Indebtedness” means the indebtedness evidenced by the Note, including all principal, interest and fees, costs, and expenses, if any, together with all modifications of and renewals, replacements and substitutions for any of the foregoing. “Indebtedness” also includes all other present and future liabilities and obligations of Grantor to the Nation, whether direct or indirect, matured or unmatured, and whether absolute or contingent, joint, several or joint and several, and no matter how the same may be evidenced or shall arise.

g. The word “Note” means the note dated of even date herewith in the principal amount of \_\_\_\_\_ from Grantor to the Nation, together with all modifications of and renewals, replacements, and substitutions for the notes.

h. The word “Obligor” means and includes without limitation any and all persons or entities obligated to pay money or to perform some other act under the Collateral.

i. The words “Related Documents” mean and include without limitation all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

3. Grantor’s Waiver. Except as otherwise required under this Agreement or by applicable Nation law, Grantor waives any defenses that may arise because of any action or inaction of the Nation, including without limitation any failure of the Nation to realize upon the Collateral or any delay by the Nation in realizing upon the Collateral; and Grantor agrees to remain liable under the Note no matter what action the Nation takes or fails to take under this Agreement.

4. Rights Of Setoff. Grantor hereby grants the Nation a contractual possessory security interest in and hereby assigns, conveys, delivers, and transfers all of Grantor’s rights, title and interest in and to Grantor’s member distributions with the Nation. Grantor authorizes the Nation, to the extent permitted by applicable Nation law, to charge or setoff all Indebtedness against any and all such distributions.

5. Grantor’s Representations And Warranties With Respect To The Collateral. Grantor represents and warrants to the Nation that:

a. Ownership. Grantor is the lawful owner of the Collateral free and clear of all security interests, liens, encumbrances and claims of others, except as disclosed to and accepted by the Nation in writing prior to execution of this Agreement.

b. Right to Pledge. Grantor has the full right, power and authority to enter into this Agreement and to pledge the Collateral.

c. **Binding Effect.** This Agreement is binding upon Grantor, as well as Grantor's heirs, successors, representatives and assigns, and is legally enforceable in accordance with its terms.

d. **No Further Assignment.** Grantor has not, and will not, sell, assign, transfer, encumber or otherwise dispose of any of Grantor's rights in the Collateral except as provided in this Agreement.

e. **No Defaults.** There are no defaults existing under the Collateral, and there are no offsets or counterclaims to the same. Grantor will strictly and promptly perform each of the terms, conditions, covenants and agreements contained in the Collateral which are to be performed by Grantor, if any.

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

6. **Nation's Rights And Obligations With Respect To Collateral.** The Nation, at the Nation's election, may hold the Collateral until all the Indebtedness has been paid and satisfied and thereafter may deliver the Collateral to any Grantor. The Nation shall have the following rights in addition to all other rights it may have by Nation law:

a. **Income and Proceeds from the Collateral.** The Nation may receive all Income and Proceeds and add it to the Collateral. Grantor agrees to deliver to the Nation immediately upon receipt of demand notice for same, in the exact form received and without commingling with other property, all Income and Proceeds from the Collateral which may be received by, paid, or delivered to Grantor or for Grantor's account whether as an addition to, in discharge of, in substitution of, or in exchange for any of the Collateral.

b. **Application of Cash.** At the Nation's option, the Nation may apply any cash, whether included in the Collateral or received as Income and Proceeds or through liquidation, sale, or retirement, of the Collateral, to the satisfaction of the Indebtedness or such portion thereof as the Nation shall choose, whether or not matured.

c. **Transactions with Others.** The Nation may (a) extend time for payment or other performance, (b) grant a renewal or change in terms or conditions or (c) compromise, compound or release any obligation, with any one or more Obligors, endorsers, or Guarantors of the Indebtedness as the Nation deems advisable without obtaining the prior written consent of Grantor, and no such act or failure to act shall affect the Nation's rights against Grantor or the Collateral.

d. **All Collateral Secures Indebtedness.** All Collateral shall be security for the Indebtedness.

e. Collection of Collateral. The Nation, at the Nation's option may, but need not, collect directly from the Obligor on any of the Collateral all Income and Proceeds or other sums of money and other property due and to become due under the Collateral, and Grantor authorizes and directs the Obligor, if the Nation exercises such option, to pay and deliver to the Nation all Income and Proceeds and other sums of money and other property payable by the terms of the Collateral and to accept the Nation's receipt for the payments.

f. Power of Attorney. Grantor irrevocably appoints the Nation as Grantor's attorney-in-fact, with full power of substitution, (a) to demand, collect, receive, receipt for, sue and recover all Income and Proceeds and other sums of money and other property which may now or hereafter become due, owing or payable from the Obligor in accordance with the terms of the Collateral; (b) to execute, sign and endorse any and all instruments, receipts, checks, drafts and warrants issued in payment for the Collateral; (c) to sell or compromise any and all claims arising under the Collateral, and in the place and stead of Grantor, execute and deliver Grantor's release and acquittance for Grantor; (d) to fill any claim or claims or to take any action or institute or take part in any proceedings, either in the Nation's own name or in the name of Grantor; or otherwise, which in the discretion of the Nation may seem to be necessary or advisable; and (e) to execute in Grantor's name and to deliver to the Obligor on Grantor's behalf, at the time and in the manner specified by the Collateral, any necessary instruments or documents.

g. Perfection of Security Interest. Upon request of the Nation, Grantor will deliver to the Nation any and all of the documents evidencing or constituting the Collateral. If the Collateral consists of securities for which no certificate has been issued, Grantor agrees, at the Nation's option, either to request issuance of an appropriate certificate or to execute appropriate instructions on the Nation's forms instructing the issuer, transfer agent, mutual fund company, or broker, as the case may be, to record on its books or records, by book-entry or otherwise, the Nation's security interest in the Collateral. Grantor hereby appoints the Nation as Grantor's irrevocable attorney-in-fact for the purpose of executing any documents necessary to perfect or to continue the security interest granted in this Agreement.

7. Expenditures By The Nation. If not discharged or paid when due, the Nation may (but shall not be obligated to) discharge or pay any amounts required to be discharged or paid by Grantor under this Agreement, including without limitation all liens, security interests, encumbrances, and other claims, at any time levied or placed on the Collateral. All such expenses shall become a part of the Indebtedness and, at the Nation's option, will (a) be payable on demand, (b) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (i) the term of any applicable insurance policy or (ii) the remaining term of the Note, or (c) be treated as a balloon payment which will be due and payable at the Note's maturity. This Agreement also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which the Nation may be entitled upon the occurrence of an Event of Default.

8. Limitations On Obligations Of Nation. The Nation shall use ordinary reasonable care in the physical preservation and custody of the Collateral in the Nation's possession, but shall have no other obligation to protect the Collateral or its value. The Nation shall have no liability for depreciation or deterioration of the Collateral.

9. Events Of Default. Each of the following shall constitute an Event of Default under this Agreement.

a. Default on Indebtedness. Failure of Grantor to make any payment when due on the Indebtedness.

b. Other Defaults. Failure of Grantor to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, the Note or in any of the Related Documents or failure of Grantor to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between the Nation and Grantor.

c. Death or Insolvency. The death of any Grantor or insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any applicable bankruptcy or insolvency laws by or against Grantor.

d. Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor against the Collateral or any other collateral securing the Indebtedness.

e. Events Affecting Guarantor. Any of the preceding events occur with respect to any Guarantor of any of the Indebtedness or such Guarantor dies or becomes incompetent.

10. Rights And Remedies On Default. If an Event of Default occurs under this Agreement, at any time thereafter, the Nation may exercise any one or more of the following rights and remedies.

a. Accelerate Indebtedness. Declare all Indebtedness immediately due and payable, after giving all required notices of default and after passage of any grace period.

b. Collect the Collateral. Collect any of the Collateral and, at the Nation's option and to the extent permitted by applicable Nation law, retain possession of the Collateral while suing on the Indebtedness.

c. Sell the Collateral. Sell the Collateral, at the Nation's discretion, as a unit or in parcels, at one or more public or private sales. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the Nation shall give or mail to Grantor, or any of them, notice at least ten (10) days in advance of the time

and place of a public sale, or of the date after which any private sale may be made. Grantor agrees that any requirement of reasonable notice is satisfied if the Nation mails notice by ordinary mail addressed to Grantor. The Nation may be a purchaser at any public sale.

d. Register Securities. Register any securities included in the Collateral in the Nation's name and exercise any rights normally incident to the ownership of securities.

e. Sell Securities. Sell any securities included in the Collateral in a manner consistent with applicable laws.

f. Foreclosure. Maintain a judicial suit for foreclosure and sale of the Collateral.

g. Transfer Title. Effect transfer of title upon sale of all or part of the Collateral. For this purpose, Grantor irrevocably appoints the Nation as its attorney-in-fact to execute endorsements, assignments and instruments in the name of Grantor and each of them (if more than one) as shall be necessary or reasonable.

h. Other Rights and Remedies. Have and exercise any or all of the rights and remedies of a secured creditor under Nation law.

i. Application of Proceeds. Apply any cash which is part of the Collateral, or which is received from the collection or sale of the Collateral, to reimbursement of any expenses, including attorney fees and court costs, whether or not there is a lawsuit and including any fees on appeal, incurred by the Nation in connection with the collection and sale of such Collateral and to the payment of the Indebtedness of Grantor to the Nation, with any excess funds to be paid to Grantor as the interests of Grantor may appear. Grantor agrees, to the extent permitted by Nation law, to pay any deficiency after application of the proceeds of the Collateral to the Indebtedness.

j. Cumulative Rights. All of the Nation's rights and remedies, whether evidenced by this Agreement or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by the Nation to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Agreement, after Grantor's failure to perform, shall not affect the Nation's right to declare and to exercise its remedies.

11. Miscellaneous Provisions. The following miscellaneous provisions are part of this Agreement.

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

b. **Applicable Law.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the Oneida Indian Nation.

c. **Attorneys' Fees; Expenses.** Grantor agrees that if the Nation hires an attorney to help enforce this Agreement or to collect any sums owing under this Agreement, Grantor will pay the Nation's attorneys' fees, and all of the Nation's other collection expenses, whether or not there is a lawsuit and including without limitation additional legal expenses for bankruptcy proceedings.

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

e. **Multiple Parties.** All obligations of Grantor under this Agreement shall be joint and several, and all references to Grantor shall mean each and every Grantor. This means that each of the persons signing below is responsible for all obligations in this Agreement.

f. **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered if hand delivered or when deposited with a nationally recognized overnight courier or deposited as certified in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the address shown above. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. If there is more than one Grantor, notice to any Grantor will constitute notice to all Grantors. For notice purposes, Grantor agrees to keep the Nation informed at all times of Grantor's current address(es).

g. **Severability.** If the Nation Court finds any provision of this Agreement to be invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

h. **Successor Interests.** Subject to the limitations set forth above on transfer of the Collateral, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

i. **Waiver.** The Nation shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by the Nation. No delay or omission on the part of the Nation in exercising any right shall operate as a waiver of such right or any other right. A waiver by the Nation of a provision of this Agreement shall not prejudice or constitute a waiver of the Nation's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by the Nation, nor any course of dealing between the Nation and Grantor, shall constitute a waiver of any of the Nation's rights or of any of Grantor's obligation as to any future transactions. Whenever the



consent of the Nation is required under this Agreement, the granting of such consent by the Nation in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of the Nation.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS PLEDGE AGREEMENT, AND GRANTOR AGREES TO ITS TERMS. THIS AGREEMENT IS DATED \_\_\_\_\_.

WITNESS:

GRANTOR:

\_\_\_\_\_

Print Name: \_\_\_\_\_

\_\_\_\_\_

Print Name: \_\_\_\_\_

EXHIBIT A

DESCRIPTION OF COLLATERAL

Grantor hereby grants a continuing security interest in the following:

All of Grantor's right, title and interest in and to \_\_\_\_\_.