

Presenting a live 90-minute webinar with interactive Q&A

Financing In-Transit Inventory: Perfecting Security Interests and Resolving Priority Disputes

Lender Due Diligence, Bankruptcy Risks, Intercreditor Agreements
With Third Parties With Competing Interests in the Goods

TUESDAY, NOVEMBER 24, 2015

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

C. Edward Dobbs, Partner, Parker Hudson Rainer & Dobbs, Atlanta

**Thomas S. Hemmendinger, Of Counsel, Brennan Recupero Cascione Scungio & McAllister,
Providence, RI**

The audio portion of the conference may be accessed via the telephone or by using your computer's speakers. Please refer to the instructions emailed to registrants for additional information. If you have any questions, please contact **Customer Service at 1-800-926-7926 ext. 10.**

Sample Intercreditor Agreement with Logistics Provider

INTERCREDITOR AGREEMENT

This Intercreditor Agreement (this “Agreement”) is made as of this ____ day of _____, 20__, by and among ANY LAWFUL BUSINESS, INC. (“Borrower”), LOGISTICS PROVIDER CORP. (together with its subsidiaries, affiliates, and agents, “LPC”), and LAST NATIONAL BANK (“Lender”), and is made with reference to the following facts:

(a) From time to time, LPC performs logistics services for Borrower with respect to present and future goods, documents of title and other property (collectively, with proceeds of the foregoing, the “Collateral”) and in connection with the services LPC makes advances with respect to the Collateral. LPC holds carrier’s and/or warehouse liens on the Collateral and holds a consensual security interest in the Collateral.

(b) Lender is extending certain financial accommodations to Borrower pursuant to certain financing arrangements, and in that connection holds or expects to hold a security interest in certain assets of Borrower, including the Collateral.

(c) The parties desire to establish the relative priorities of the respective liens and security interests of LPC and Lender in the Collateral.

NOW, THEREFORE, the parties hereto agree as follows:

1. Lien Perfection and Priority. LPC acknowledges that it has notification of Lender’s security interest in the Collateral and that it holds the Collateral as bailee for Lender’s benefit for the limited purpose of perfecting Lender’s security interest in the Collateral. Lender acknowledges that it has notification (a) of LPC’s liens and security interest and (b) that LPC has or expects to acquire a purchase-money security interest in the Collateral. Lender is deemed to have such notification each time LPC performs services or makes advances with respect to Collateral. LPC’s liens and security interest in the Collateral have priority over Lender’s security interest in the Collateral.

2. Other Security. LPC’s interests in deposits, prepayments, letters of credit, or guarantees have

priority over Lender's security interest in such items.

3. Attornment. On payment in full of all unpaid freight and other transportation charges, customs duty and other governmental charges, storage charges, warehouse charges, distribution charges, accessorial charges, surcharges, advances, fees, costs, and other charges that Borrower now or hereafter owes to LPC (collectively, including interest or late charges accruing before or after the commencement of bankruptcy or insolvency proceedings, the "Charges") without set-off, recoupment, abatement, or reduction of any kind, LPC shall do the following on written direction by Lender:

(a) Release the Collateral in LPC's possession, custody, or control to Lender or its stated designee.

(b) Not comply with instructions originated by Borrower, its agents, employees, or other representatives with respect to the disposition, delivery or release of Collateral in LPC's possession, custody, or control.

4. Release and Indemnity. Borrower hereby releases LPC from all claims and liability arising from LPC's acting in accordance with any direction which LPC in good faith believes originated from Lender. Lender shall indemnify and hold LPC harmless from and against every claim for damages, personal injury, death, or property damage arising out of or related to any one or more of the following:

(a) Claims against LPC by any individual or organization asserting a direct or indirect interest in any Collateral which claims arise out of or are related to LPC acting in accordance with any direction that LPC in good faith believes originated from Lender.

(b) Any acts or omissions by Lender, its agents, employees or other representatives while on LPC's premises.

5. Notice of Sale. LPC shall not sell or otherwise dispose of Collateral without giving ten (10) days' prior written notice to Lender. During the ten-day period, Lender may cure the Borrower's default by paying all Charges to LPC.

6. Inspection. Subject to LPC's security protocols and confidentiality requirements, on reasonable notice and during normal business hours Lender may enter LPC's premises to inspect the Collateral.

7. Obligations. This Agreement does not impose any obligation or duty on LPC other than those expressed in this Agreement. This Agreement shall not be construed to require LPC to violate applicable law. Nothing in this Agreement limits or modifies any of the Borrower's obligations

to LPC or to Lender.

8. Notices. All communications required or permitted under this Agreement must be in writing and must be delivered or sent to a party at its address set forth on the signature page or to such other address as the party may designate in writing.

9. Miscellaneous.

(a) Notwithstanding any course of dealing or course of performance, (1) no provision of this Agreement may be waived or modified, except by a writing signed by all parties, (2) no failure or delay in exercising a right or remedy impairs or waives the right or remedy, (3) any particular waiver of a right or remedy does not constitute a waiver with respect to other facts and circumstances, and (4) all rights and remedies are cumulative.

(b) If a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable on any occasion or in any circumstance, the holding does not affect or impair the rest of this Agreement.

(c) Only Lender and LPC may enforce this Agreement. Neither Borrower nor any third party may enforce this Agreement.

(d) This Agreement shall be construed under the internal substantive laws of the State of Rhode Island. This Agreement shall be construed without regard to any presumption or rule requiring that it be construed against the one causing all or any part of it to be drafted. In an action to enforce this Agreement, the prevailing party is entitled to its attorneys' fees and costs.

(e) Each party may execute this Agreement in a separate counterpart and may execute or deliver this Agreement electronically.

(f) The captions are included only for convenience and may not be used to contradict or otherwise interpret this Agreement. A single number includes the plural, and the plural includes the singular, as the context may require. Terms such as "includes" and "including" are not limiting.

[Signatures and addresses on next page]

This Agreement is executed under seal as of the date set forth above.

LAST NATIONAL BANK

ANY LAWFUL BUSINESS, INC.

By _____
Name: _____
Title: _____

By _____
Name: _____
Title: _____

Address:

Address:

Fax _____

Fax _____

LOGISTICS PROVIDER CORP.

By _____
Name: _____
Title: _____

Address:

Fax _____

Sample Vendor Agreement

_____, 20__

ANY LAWFUL BUSINESS, INC.
123 Main Street
West Providence, RI 02900
Attn: John Any, Pres.

LAST NATIONAL BANK
One LNB Plaza
Providence, RI 02903
Attn: Commercial Lending

Ladies and Gentlemen:

In connection with that certain Loan Agreement dated as of _____, 20__ (as at any time amended, restated, or otherwise modified, the “Loan Agreement”) between Any Lawful Business, Inc. (“Borrower”) and Last National Bank (“Lender”), this letter agreement confirms our agreement with regard to the matters set forth below.

To induce Lender to make loans under the Loan Agreement to Borrower based in part on the security of goods (the “Goods”) sold by the undersigned (“Vendor”) from a location outside of the United States to Borrower, and to induce Borrower from time to time to purchase the Goods, Vendor agrees with Lender and Borrower as follows:

- 1) In connection with all sales of Goods by Vendor to Borrower, all bills of lading or other documents of title shall be issued in negotiable form under Article 7 of the Uniform Commercial Code.
- 2) All sales of Goods shall be invoiced in a manner consistent with past practices between Vendor and Borrower. All invoices shall include the name and address of Vendor and Borrower, the date of issuance of the invoice, the quantity and type of Goods covered thereby, shipping marks and numbers, shipping details, terms of delivery and confirmation that the sale is made on an open account basis.
- 3) Delivery of any Goods to the port of loading constitutes a final sale to Borrower of the Goods.
- 4) Vendor waives all of the following rights, effective on release of the Goods to the carrier: (i) the right to rescind the sale of or to reclaim the Goods; (ii) the right to divert or stop shipment

of the Goods while in transit or to change shipping instructions with respect to the Goods, whether arising under the Uniform Commercial Code or any other applicable law; and (iii) all right, title or interest in the goods, including all liens and reservation of title, that Vendor may at any time have with respect to the Goods.

Vendor represents and warrants that it has obtained and will at all times possess all applicable export licenses; no tariff, quota restriction, embargo or other governmental policy restricts or limits the export of any Goods to Borrower; and each sale of Goods to Borrower is and will remain free and clear of all liens, claims or encumbrances granted by or through Vendor in favor of any person or entity.

If the foregoing accurately states the terms and conditions of our agreement, please so indicate by executing this letter agreement in the space provided below. When accepted by Lender and Borrower as signified by their signatures below (notice of which acceptance is hereby waived by Vendor), this letter: constitutes an agreement among the parties that shall be governed in all respects by and construed in accordance with the internal laws of the State of Rhode Island; may not be amended except by written agreement of the parties; expresses the entire understanding of the parties with respect to the subject matter hereof; and may be enforced by either Lender or Borrower in any state or federal court of competent jurisdiction in the State of Rhode Island. Vendor consents to venue in such jurisdiction, hereby designating _____ at _____ as Vendor's agent for service of process.

Very truly yours,

[Vendor]

By _____

Accepted and Agreed as of _____, 20__:

ANY LAWFUL BUSINESS, INC.

LAST NATIONAL BANK

By _____

By _____