

06-06-2002



Form PTO-159  
(Rev. 03/01)

OMB No. 0651-0027 (exp. 5/31/2002)

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OFFICE OF

102162994

TRADEMARKS ONLY

U.S. DEPARTMENT OF COMMERCE  
U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

High Appalachian Limited Liability Company

6-3-02

- Individual(s)
- Association
- General Partnership
- Limited Partnership
- Corporation-State
- Other Limited Liability Company

Additional name(s) of conveying party(ies) attached?  Yes  No

3. Nature of conveyance:

- Assignment
- Merger
- Security Agreement
- Change of Name
- Other

Execution Date: May 25, 1999

2. Name and address of receiving party(ies)

Name: West Virginia Jobs Investment Trust Board

Internal

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

Street Address: 814 Virginia St., E., Ste 202

City: Charleston State: WV Zip: 25301

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State WV Public Corporation
- Other

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
(Designations must be a separate document from assignment)  
Additional name(s) & address(es) attached?  Yes  No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

75014728

B. Trademark Registration No.(s)

2,023,573

Additional number(s) attached  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Richard C. Ross

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

Street Address: 814 Virginia St. E.

Suite 202

City: Charleston State: WV Zip: 25301

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41).....\$ 40.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Richard C. Ross

Name of Person Signing

Signature

5/16/02

Date

Total number of pages including cover sheet, attachments, and document: 1

Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patent & Trademarks, Box Assignments  
Washington, D.C. 20231

06/05/2002 ANNED1 00000068 75014728

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40.00 OP

TRADEMARK  
REEL: 002519 FRAME: 0537

**AFFIDAVIT OF ASSIGNEE TO ACCOMPANY  
REQUEST FOR ASSIGNMENT OF REGISTRATION**

STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, to-wit:

May 16, 2002, Affidavit of Richard C. Ross

The undersigned, Richard C. Ross ("Affiant"), being first duly sworn, deposes and says:

1. That Affiant has served as Executive Director of the West Virginia Jobs Investment Trust Board, a West Virginia public corporation (the "WVJIT" or "Assignee") with an address of 814 Virginia Street, East, Suite 202, Charleston, West Virginia 25301, continuously since March 30, 1994.

2. That Affiant was serving in such capacity as executive director at the time of the public auction held by virtue of default in payment of the indebtedness secured by those certain Security Agreements dated August 31, 1995, and July 15, 1998, copies of which are attached hereto marked Exhibit A and Exhibit B respectively, made and executed by High Appalachian Limited Liability Company, a West Virginia limited liability company ("High Appalachian" or "Assignor"), with an address of Post Office Box 514, Daniels, West Virginia 25832, to the WVJIT.

3. That pursuant to the terms of said Security Agreements, the WVJIT sold at public auction to the highest bidder the collateral described therein, which included among other things, all general intangibles and other personal property owned or acquired by High Appalachian including, without limitation, "all license rights, governmental permits, governmental subsidy payments, copyrights, patents and trademarks."

4. Assignor had adopted and used the mark referenced in Schedule A attached hereto, which is registered in the United States Patent and Trademark Office;

5. Assignee, as the highest bidder at said public auction acquired all right, title and interest in and to the said mark, together with the good will of the business symbolized by the mark, and the above-identified registration thereof;

6. That Assignor is no longer available to execute this Assignment of Registration and assign to Assignee said mark and the registration thereof acquired by the Assignee for good and valuable consideration.

5. That based on all the above, Assignee hereby request that this affidavit and accompanying documents be recorded as evidence that it is the proper owner of the above-identified mark and registration thereof.

And further the affiant saith not.

**WEST VIRGINIA JOBS  
INVESTMENT TRUST BOARD**

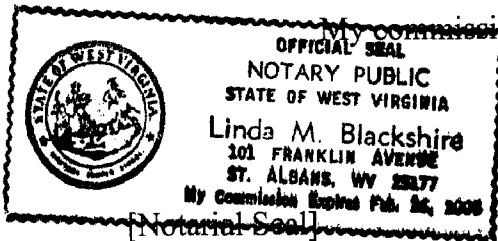
Date: 5/16/02

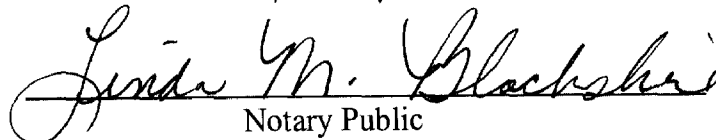
By: 

Name: Richard C. Ross  
Title: Executive Director

Subscribed and sworn to before me this 16<sup>th</sup> day of May 2002.

My commission expires February 26, 2002.



  
Notary Public

**SCHEDULE A**

*Mark*

High Appalachian High Quality Est.1988

*Registration Number*

2,023,573

*Registration Date*

December 17, 1996

**EXHIBIT**

A

**SECURITY AGREEMENT**

**THIS AGREEMENT**, Made and entered into this 31st day of August, 1995, by and between **HIGH APPALACHIAN LIMITED LIABILITY COMPANY** (hereinafter sometimes referred to as the "Debtor"), a limited liability company organized and existing under the laws of the State of West Virginia and having an office and place of business situate in Shady Springs District, Raleigh County, West Virginia, Rural Route 66, C & O Dam Road, Daniels, West Virginia 25832, and having a mailing address of P. O. Box 514, Daniels, West Virginia 25832; and **WEST VIRGINIA JOBS INVESTMENT TRUST BOARD** (hereinafter sometimes referred to as the "Secured Party"), and having an office and place of business at 814 Virginia Street, East, Charleston, West Virginia 25301. ■■■

1. **Obligations Secured.** The security interest, pledges and assignments granted in this agreement are to secure punctual payment and performance of the following, all of which are separately and collectively referred to as the "Obligations":

(a) That certain guaranty of even date herewith by and between the parties hereto guaranteeing payment of certain obligations of Minaqua Limited Liability Company ("Minaqua") to Secured Party, including, but not limited to, the obligations existing pursuant to the promissory note described in subparagraph 1.(b) below.

(b) That certain promissory note of even date herewith in the original principal sum of \$1,500,000.00, executed by Minaqua and payable to the order of the Secured Party, and any and all extensions, renewals, modifications and rearrangements thereof.

(c) Any and all other indebtedness, liabilities and obligations of Debtor to Secured Party arising under or pursuant to that certain Loan Agreement by and between Minaqua Limited Liability Company, Aqua Holdings Limited Liability Company, High Appalachian Limited Liability Company, Lillybrook Aquafarm Limited Liability Company and West Virginia Jobs Investment Trust Board and of even date herewith (the "Loan Agreement"), or arising under or pursuant to any of the Loan Documents as that term is defined in the Loan Agreement or arising under or pursuant to this Agreement.

(d) Any and all other indebtedness, liabilities and obligations whatsoever and of whatever nature of Debtor to Secured Party whether direct or indirect, absolute or contingent, primary or secondary, due or to become due and whether now existing or hereafter arising and howsoever evidenced or acquired, whether joint or several, or joint and several.

Debtor acknowledges that the security interest, pledges and assignments as applicable granted in this Agreement secure all future advances as well as any and all other indebtedness, liabilities and obligations of Debtor to Secured Party whether now in existence or hereafter arising.

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2. **Use of Collateral.** Debtor represents, warrants and covenants that the collateral will be used by the Debtor solely for business use, and in its aquaculture farms operation.

3. **Description of Collateral.** Debtor hereby grants to Secured Party a security interest in and agrees that Secured Party shall continue to have a security interest in the following property, all of which are separately and collectively referred to as the "Collateral":

a. **All Accounts.** A security interest in all accounts now owned or existing as well as any and all that may hereafter arise or be acquired by Debtor, and all the proceeds and products thereof, including without limitation, all notes, drafts, acceptances, instruments and chattel paper arising therefrom, and all returned or repossessed goods arising from or relating to any such accounts, or other proceeds of any sale or other disposition of inventory.

b. **Specific Accounts.** A security interest in the accounts and/or contracts listed and described in Schedule A attached or which may hereafter be attached hereto, and all the proceeds and products thereof, including without limitation, all notes, drafts, acceptances, instruments and chattel paper arising therefrom, and all returned or repossessed goods arising from or relating to any such accounts or other proceeds of any sale or other disposition of inventory.

c. **All Inventory.** A security interest in all of Debtor's inventory, including all goods, merchandise, raw materials, goods in process, finished goods and other tangible personal property, wherever located, now owned or hereafter acquired and held for sale or lease or furnished or to be furnished under contracts for service or used or consumed in Debtor's business and all additions and accessions thereto, and contracts with respect thereto and all documents of title evidencing or representing any part thereof, and all products, rents and proceeds thereof. The inventory includes, but is not limited to all of the inventory now or hereafter located at or near the facilities situate at the above address in Raleigh, County, West Virginia. ■■■■

d. **Farm Products.** A security interest in all of Debtor's interest in any and all crops, livestock, fish, fingerlings and supplies used or produced by Debtor in its present and in its future farming operations (including, but not limited to fish hatchery and fish farming operations) wheresoever located, now owned or hereafter acquired, and the proceeds or products thereof including, without limitation, any governmental subsidies, rebates or other payments with respect to farming, ranching or related operations of the debtor. All of Debtor's crops, farm products, fingerlings and fish are presently and will in the future be located in Raleigh County, West Virginia, situate or to be situate on the real estate owned by Edsel E. and Debbie S. Redden which is described on Exhibit B attached. ■■■■

e. **Fixtures.** A security interest in all of Debtor's fixtures and appurtenances thereto, and such other goods, chattels, fixtures, equipment and personal

property affixed or in any manner attached to the real estate and/or building(s) or structure(s), be same now owned or hereafter acquired by Debtor, (including all additions and accessions thereto and replacements or substitutions thereof), situate or to be situate on the real estate which is described on Exhibit B attached.

f. **Equipment.** A security interest in all equipment of every nature and description whatsoever (including but not limited to motor vehicles, machinery, farming machinery, fish hatchery machinery, fish farming machinery, tools, water collection systems, piping, plumbing, tanks, buildings, plants, etc.) now owned or hereafter acquired by Debtor including all accessions, appurtenances and additions thereto, wherever located, including all tools, parts and accessories used in connection with the equipment.

g. **General Intangibles.** A security interest in all general tangibles and other personal property now owned or hereafter acquired by Debtor, including, without limitation, all license rights, governmental permits, governmental subsidy payments, copyrights, patents and trademarks now or hereafter acquired.

h. **Chattel Paper.** A security interest in all of Debtor's interest in chattel paper, lease agreements and other instruments or documents, now existing or owned by Debtor or hereafter arising or acquired by Debtor, evidencing both a debt and security interest in or lease of specific goods, and a security interest in all of Debtor's rights of reversion, repossession or ownership of goods covered by such chattel paper.

Debtor's only place of business is in the State of West Virginia and in Raleigh County and at the location shown at the beginning of this Agreement, and Debtor agrees to notify promptly Secured Party of any change in or additional business location. ■■■

4. **Representations, Warranties and Covenants of Debtor.** Debtor represents and warrants as follows:

a. **Ownership; No Senior Encumbrances.** Except for the security interests pledges and assignments granted in this Agreement, the Debtor is and Debtor will be, the owner of all Collateral free and clear from all charges, liens, security interests, adverse claims and encumbrances of any and every nature.

b. **No Financing Statements.** There is no financing statement or similar filing now on file in any public office covering any part of the Collateral, Debtor will not execute one, and there will not be on file in any public office any financing statement or similar filing except the financing statements filed or to be filed in favor of Second Party.

c. **Accuracy of Information.** All information furnished to Secured Party concerning Debtor, the Collateral and the Obligations, or otherwise for the purpose of obtaining or maintaining credit, is or will be at the time the same as furnished, accurate and complete in all material respects.

d. Authority. Debtor has full right and authority to execute and perform this Agreement and to create the security interest created by this Agreement. The making and performance by Debtor of this Agreement will not violate any articles of organization or operating agreements or similar document respecting Debtor, any provision of law, any order of court or governmental agency, or any indenture or other agreement to which Debtor is a party, or by which Debtor or any of Debtor's property is bound, or be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture or other agreement, or result in the creation or imposition of any charge, lien, security interest, claim or encumbrance of any and every nature whatsoever upon the Collateral, except as contemplated by this Agreement.

e. Addresses. The address of Debtor designated at the beginning of this Agreement is Debtor's place of business if Debtor had only one place of business; Debtor's chief executive office if Debtor had more than one place of business; or Debtor's residence if Debtor had no place of business. Debtor agrees not to change such address without advance written notice to Secured Party. ■■■

5. **General Covenants.** Debtor covenants and agrees as follows:

a. Operation of the Collateral. Debtor agrees to maintain and to use the Collateral solely in the conduct of its own business, in a careful and proper manner, and in conformity with all applicable permits or licenses. Debtor shall comply in all respects with all applicable statutes, laws, ordinances, and regulations. Debtor shall not use the Collateral in any unlawful manner or for any unlawful purposes, or in any manner for any purpose that would expose the Collateral to unusual risk, or to penalty, forfeiture or capture, or that would render inoperative any insurance in connection with the Collateral.

b. Condition. Debtor shall maintain, service and repair the Collateral so as to keep it in good operating condition. Debtor shall replace within a reasonable time all parts that may be worn out, lost, destroyed or otherwise rendered unfit for use, with appropriate replacement parts. Debtor shall obtain and maintain in good standing at all times all applicable permits, licenses, registrations and certificates respecting the Collateral.

c. Assessments. Debtor shall promptly pay when due all taxes, assessments, license fees, registration fees, and governmental charges levied or assessed against Debtor or with respect to the Collateral or any part thereof.

d. No Encumbrances. Debtor agrees not to suffer or permit any charge, lien, security interest, adverse claim or encumbrance of any and every nature whatsoever against the Collateral or any part thereof.

e. No Removal. Except as otherwise provided in the Agreement, Debtor shall not remove the Collateral from the county or counties designated at the beginning of this Agreement without Secured Party's prior written consent. ■■■



f. Insurance. Debtor will have and maintain insurance in such amounts, with such coverages and written by such insurance companies as are acceptable to the Secured Party, at all times with respect to all Collateral, such insurance to be payable to the Secured Party and the Debtor, as their interests may appear; all policies of insurance shall provide for not less than 10 days' written notice to the Secured Party of any cancellation, nonrenewal or reduction of coverage of such policies; and the Debtor shall furnish the Secured Party with certificates or other evidence satisfactory to the Secured Party of compliance with the foregoing insurance provisions.

g. No Transfer. Except as otherwise provided in this Agreement with respect to inventory, Debtor shall not, without prior written consent of Secured Party, sell, assign, transfer, lease, charter, encumber, hypothecate or dispose of the Collateral, or any part thereof, or interest therein, or offer to do any of the foregoing.

h. Notices and Reports. Debtor shall promptly notify Secured Party in writing of any change in the name, identity or the structure of Debtor, any charge, lien, security interest, claim or encumbrance asserted against the Collateral, any litigation against Debtor or the Collateral, any theft, loss, injury or similar incident involving the Collateral, and any other material matter adversely affecting Debtor or the Collateral. Debtor shall furnish such other reports, information and data regarding Debtor's financial condition and operations, the Collateral and such other matters as Secured Party may request from time to time.

i. Additional Filings. Debtor agrees to execute and deliver such financing statement or statements, or amendments thereof or supplements thereto, or other documents as Secured Party may from time to time require in order to comply with the applicable state or federal law and to preserve and protect the Secured Party's rights to the Collateral.

j. Inspection. Debtor shall at all reasonable times allow Secured Party by or through any of its officers, agents, attorneys or accountants, to examine the Collateral, wherever located, and to examine and make extracts from Debtor's books and records.

k. Landlord's Waivers. Debtor shall furnish to Secured Party, if requested, a landlord's waiver of all liens with respect to any Collateral covered by this Agreement that is or may be located upon leased premises, such landlord's waivers to be in such form and upon such terms as are acceptable to Secured Party.

l. Protection of Collateral. Secured Party, at its option and without prior notice to Debtor, whether before or after default, but without any obligation whatsoever to do so, may (a) discharge taxes, claims, charges, liens, security interests, assessments or other encumbrances of any and every nature whatsoever at any time levied, placed upon or asserted against the Collateral; (b) place and pay for insurance on the Collateral, including insurance that only protects the Secured Party's interest; (c) pay for the

repair, improvement, testing, maintenance and preservation of the Collateral; (d) pay any filing, recording, registration, licensing or certification fees or other fees and charges related to the Collateral; or (e) take any other action to preserve and protect the Collateral and Secured Party's rights and remedies under this Agreement as Secured Party may deem necessary or appropriate. Debtor agrees that Secured Party shall have no duty or obligation whatsoever to take any of the foregoing action. Debtor further agrees to reimburse Secured Party promptly upon demand for any payment made or any expense incurred by the Secured Party pursuant to this authorization. These payments and expenditures, together with interest thereon from date incurred until paid by Debtor at the maximum contract are allowed under applicable laws, which Debtor agrees to pay, shall constitute additional Obligations and shall be secured by and entitled to the benefits of this Agreement.

m. Further Assurances. Debtor shall do, make, procure, execute and deliver all such additional and further acts, things, deeds, interests and assurances as Secured Party may require from time to time to protect, assure and enforce Secured Party's rights and remedies.

6. **Additional Provisions Regarding Accounts.** The following provisions shall apply to all accounts (including but not limited to the accounts and contracts identified on Schedule A attached) which are Collateral hereunder.

a. Definitions. The term "account," as used in this Agreement, shall have the same meaning as set forth in the Uniform Commercial Code of West Virginia in effect as of the date of execution hereof, and as set forth in any amendment to the Uniform Commercial Code of West Virginia to become effective after the date of execution thereof, and also shall include all present and future notes, instruments, documents, general intangibles, drafts, acceptances and chattel paper of Debtor, and the proceeds thereof.

b. Additional Warranties. As of the time any account becomes subject to the security interest granted hereby, Debtor shall be deemed further to have warranted as to each and all of such accounts as follows:

(i) each account and all papers and documents relating thereto are genuine and in all respects what they purport to be;

(ii) each account is valid and subsisting and arises out of a bona fide sale of goods sold and delivered to, or out of and for services theretofore actually rendered by the Debtor to, the account debtor named in the account;

(iii) the amount of the account represented as owing is the correct amount actually and unconditionally owing except for normal cash discounts and is not subject to any setoffs, credits, defenses or countercharges; and

(iv) Debtor is the owner thereof free and clear of any charges, liens, security interests, adverse claims and encumbrances of any and every nature whatsoever.

c. Collection of Accounts.

(i) Secured Party shall have the right in its own name or in the name of the Debtor, whether before or after default, to require Debtor forthwith to transmit all proceeds of collection of accounts to Secured Party, to notify any and all account debtors (including but not limited to persons and entities identified on Schedule A attached) to make payments of the accounts directly to Secured Party, to demand, collect, receive, receipt for, sue for, compound and give acquittal for, any and all amounts due or to become due on the accounts and to endorse the name of the Debtor on all commercial paper given in payment or part payment thereof, and in Secured Party's discretion to file any claim or take any other action or proceeding that Secured Party may deem necessary or appropriate to protect and preserve and realize upon the accounts and related Collateral.

(ii) Unless and until Secured Party elects to collect accounts, and the privilege of Debtor to collect accounts is revoked by Secured Party in writing, Debtor shall continue to collect accounts, account for same to Secured Party, and shall not commingle the proceeds of collection of accounts with any funds of the Debtor.

(iii) In order to assure collection of accounts in which Secured Party has an interest hereunder, Secured Party may notify the post office authorities to change the address for delivery of mail addressed to Debtor to such address as Secured Party may designate, and to open and dispose of such mail and receive the collections of accounts included herewith. Secured Party shall have no duty or obligation whatsoever to collect any account, or to take any other action to preserve or protect the Collateral; however, should Secured Party elect to collect any account or take possession of any Collateral, debtor releases Secured Party from any claim or claims for loss or damage arising from any act or omission in connection therewith.

d. Identification and Assignment of Accounts. On Secured Party's request whether before or after default, Debtor shall take such action and execute and deliver such documents as Secured Party may reasonably request in order to identify, confirm, mark, segregate and assign accounts and to evidence Secured Party's interest in same. Without limiting the foregoing, Debtor upon request, agrees to assign accounts to Secured Party, identify and mark accounts as being subject to the security interest granted hereby, mark

Debtor's books and records to reflect such, and forthwith to transmit to Secured Party in the form as received by Debtor any and all proceeds of collection of such accounts.

e. **Account Reports.** Upon written request by Secured Party, Debtor will deliver to Secured Party, prior to the 10th day of each month, or on such other frequency as Secured Party may request, a written report in form and content satisfactory to Secured Party, showing a listing and aging of accounts and such other information as Secured Party may request from time to time. After receipt of such written request, Debtor shall immediately notify Secured Party of the assertion by any account debtor of any setoff, defense or claim regarding an account or any other matter adversely affecting an account.

f. **Segregation of Returned Goods.** Returned or repossessed goods arising from or relating to any accounts included within the Collateral shall if requested by Secured Party be held separate and apart from any other property. Debtor on request by Secured Party, but not less than weekly even though no request has been made, shall report to Secured Party identifying information with respect to any such goods relating to accounts included in transaction under this Agreement.

7. **Additional Provisions Regarding Inventory and Crops** (including fingerlings and fish). The following provisions shall apply to all inventory and crops included within the Collateral, and for the purposes of the following subparagraphs the word "inventory" shall be read to mean (i) "inventory," or (ii) "crops," or (iii) "inventory and crops," or (iv) "inventory or crops," or (v) fingerlings, or (vi) inventory and fingerlings, or (vii) inventory or fingerlings, or (viii) fish, or (ix) inventory and fish, or (x) inventory or fish, or (xi) fingerlings and fish, or (xii) inventory and fingerlings and fish, or (xiii) inventory or fingerlings and fish, to the end that the broadest possible definition will apply:

a. **Inventory Reports.** Upon written request by Secured Party, Debtor will deliver to Secured Party, prior to the 10th day of each month, or on such other frequency as Secured Party may request, a written report in form and content satisfactory to Secured Party, with respect to the preceding month or other applicable period, showing Debtor's opening inventory, inventory acquired, inventory sold, inventory returned, inventory used in Debtor's business, closing inventory, any other inventory not within the preceding categories, and such other information as Secured Party may request from time to time. After receipt of such written request, Debtor shall immediately notify Secured Party of any matter adversely affecting the inventory, including, without limitation, any event causing loss or depreciation in the value of the inventory and the amount of such possible loss or depreciation.

b. **Location of Inventory.** Debtor will promptly notify Secured Party in writing of any addition to, change in or discontinuance of its place of business as shown in this agreement, the places at which inventory is located as shown herein, the location of its chief executive office and the location of the office where it keeps its records as set forth herein.

All Collateral will be located at the place of business shown at the beginning of this agreement as modified by any written notice given pursuant hereto.

c. **Use of Inventory.** Unless and until the privilege of Debtor to use inventory in the ordinary course of Debtor's business is revoked by Secured Party in the event of default or if Secured Party deems itself insecure, Debtor may use the inventory in any manner not inconsistent with this Agreement, may sell that part of the Collateral consisting of inventory provided that all such sales are in the ordinary course of business, and may use and consume any raw materials or supplies that are necessary in order to carry on Debtor's business. A sale in the ordinary course of business does not include a transfer in partial or total satisfaction of a debt.

d. **Accounts as Proceeds.** All accounts that are proceeds of the inventory included within the Collateral shall be subject to all of the terms and provisions hereof pertaining to accounts.

e. **Protection of Inventory.** Debtor shall take all action necessary to protect and preserve the inventory.

8. **Events of Default.** Debtor shall be in default hereunder upon the happening of any of the following events or conditions:

a. Nonpayment when due (whether by acceleration of maturity or otherwise) of any payment of principal, interest or other amount due on any Obligation;

b. The occurrence of any event which under the terms of any evidence of indebtedness, indenture, deed of trust, security agreement or similar instrument permits the acceleration of maturity of any obligation of Debtor (whether to Secured Party or to others);

c. Any representation or warranty made by Debtor to Secured Party in connection with this Agreement, the Collateral or the Obligations, or in any statements or certificates, proves incorrect in any material respect as of the date of the making or the issuance thereof;

d. Default occurs in the observance or performance of, or if Debtor fails to furnish adequate evidence of performance of, any provision of this Agreement or of any note, assignment, transfer, other agreement, document or instrument delivered by Debtor to Secured Party in connection with this Agreement, the Collateral or the Obligations.

e. Death, dissolution, liquidation, termination of existence, insolvency, business failure or winding-up of Debtor or any maker, endorser, guarantor, surety or other party liable in any capacity for any of the Obligations.

f. The commission of an act of bankruptcy (including, but not limited to the making of a fraudulent conveyance) by, or the application for appointment of a receiver or any other legal custodian for any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceedings under any bankruptcy, arrangement, reorganization, insolvency or similar laws for the relief of debtors by or against, the Debtor or any maker, endorser, guarantor, surety or other party primarily or secondarily liable for any of the Obligations;

g. The Collateral becomes, in the judgment of Secured Party, impaired, unsatisfactory or insufficient in character or value; or

h. The filing of any levy, attachment, execution, garnishment or other process against the Debtor or any of the Collateral or any maker, endorser, guarantor, surety, or other party liable in any capacity for any of the Obligations.

9. **Remedies.** Upon the occurrence of an event of default, Secured Party, at its option, shall be entitled to exercise any one or more of the following remedies (all of which are cumulative):

a. **Declare Obligations Due.** Secured Party, at its option, may declare the Obligations or any part thereof immediately due and payable, without demand, notice of intention to accelerate, notice of acceleration, notice of nonpayment, presentment, protest, notice of dishonor, or any other notice whatsoever, all of which are hereby waived by Debtor and any maker, endorser, guarantor, surety or other party liable in any capacity for any of the Obligations.

b. **Remedies.** Secured Party shall have all of the rights and remedies provided for in this Agreement and in any other agreements executed by Debtor, the rights and remedies in the Uniform Commercial Code of West Virginia, and any and all of the rights and remedies at law and equity, all of which shall be deemed cumulative. Without limiting the foregoing, Debtor agrees that Secured Party shall have the right to: (i) require Debtor to assemble the Collateral and make it available to Secured Party at a place designated by Secured Party that is reasonably convenient to both parties, which Debtor agrees to do; (ii) take possession of the Collateral, with or without process of law, and in this connection, enter any premises where the Collateral is located to remove same, to render it unusable, or to dispose of same on such premises; (iii) sell, lease or otherwise dispose of the Collateral, by public or private proceedings, for cash or credit, without assumption of credit risk; and/or (iv) whether before or after default, collect and receipt for, compound, compromise, and settle, and give release, discharges and acquittances with respect to, any and all amounts owed by any person or entity with respect to the Collateral. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Secured Party will send Debtor reasonable notice of the time and place of any public sale or of the time after which any private sale or other disposition will be made. Any requirement of reasonable notice to Debtor shall be met if

such notice is mailed, postage prepaid, to Debtor at the address of Debtor designated at the beginning of this Agreement, at least five days before the day of any public sale or at least five days before the time after which any private sale or other disposition will be made.

c. **Expenses.** Debtor shall be liable for and agrees to pay the reasonable expenses incurred by Secured Party in enforcing its rights and remedies, in retaking, holding, testing, repairing, improving, selling, leasing or disposing of the Collateral, or like expenses, including, without limitation, attorneys' fees and legal expenses incurred by Secured Party. These expenses, together with interest thereon from date incurred until paid by Debtor at the interest rate specified in the promissory note identified above in subparagraph 1(a), which Debtor agrees to pay, shall constitute additional Obligations and shall be secured by and entitled to the benefits of this Agreement.

d. **Proceeds; Surplus; Deficiencies.** Proceeds received by Secured Party from disposition of the Collateral shall be applied toward Secured Party's expenses and other Obligations in such order or manner as Secured Party may elect. Debtor shall be entitled to any surplus if one results after lawful application of the proceeds. Debtor shall remain liable for any deficiency.

e. **Remedies Cumulative.** The rights and remedies of Secured Party are cumulative and the exercise of anyone or more of the rights or remedies shall not be deemed an election of rights or remedies or a waiver of any other right or remedy. Secured Party may remedy any default and may waive any default without waiving the default remedied or without waiving any other prior or subsequent default.

#### **10. Other Agreements.**

a. **Waivers.** Debtor and any maker, endorser, guarantor, surety or other party liable in any capacity respecting the Obligations hereby waive demand, notice of intention to accelerate, notice of acceleration, notice of nonpayment, presentment, protest, notice of dishonor and any other similar notice whatsoever.

b. **Severability.** Any provision hereof found to be invalid by the courts having jurisdiction shall be invalid only with respect to such provision (and then only to the extent necessary to avoid such invalidity). The offending provision shall be modified to the maximum extent possible to confer upon Secured Party the benefits intended thereby. Such provision as modified and the remaining provisions hereof shall be construed and enforced to the same effect as if such offending provision (or portion thereof) had not been contained herein, to the maximum extent possible.

c. **Notices.** Any notice or demand given by Secured Party to Debtor in connection with this Agreement, the Collateral or the Obligations, shall be deemed given and effective upon deposit in the United States mail, postage prepaid, addressed to Debtor

at the address of Debtor designated at the beginning of this Agreement. Actual notice to Debtor shall always be effective no matter how given or received. ■■■

d. **Headings and Gender.** Paragraph and subparagraph headings in this Agreement are for convenience only and shall be given no meaning or significance in interpreting this Agreement. All words used herein shall be construed to be of such gender or number as the circumstances require.

e. **Amendments.** Neither this Agreement nor any of its provisions may be changed, amended, modified, waived or discharged orally, but only by an instrument in writing signed by the party against whom enforcement of the change, amendment, modification, waiver or discharge is sought.


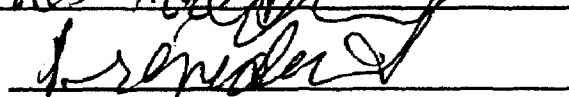
f. **Binding Effect.** The provisions of this Security Agreement shall be binding upon the heirs, personal representatives, successors and assigns of Debtor and the rights, powers and remedies of Secured Party hereunder shall inure to the benefit of the successors and assigns of Secured Party.

g. **Governing Law.** This Security Agreement shall be governed by the law of the State of West Virginia.

**IN WITNESS WHEREOF,** the parties hereto have caused this Security Agreement to be executed in their respective names on the day and year first above written.

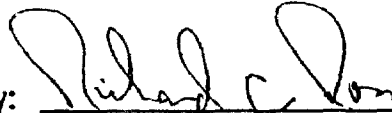
**DEBTOR:**

**HIGH APPALACHIAN LIMITED LIABILITY COMPANY,**  
a West Virginia limited liability company

By:   
Its: 

**SECURED PARTY:**

**WEST VIRGINIA JOBS INVESTMENT TRUST BOARD**

By:   
Its: Exec. Dir.



August 31, 1995

**SCHEDULE A, SECURITY AGREEMENT**

**SPECIFIC ACCOUNTS**

NONE

Description of Property Leased by High Appalachian Limited Liability Company from Debbie and Edsel Redden.

The leased property consists of portions of Lot 99 and Lot 100 of the Willow Wood Tracts, Map Book 9, Page 104, Shady Spring District, Raleigh County, WV, conveyance of said Tracts being of record in the Raleigh County Courthouse, Deed Book ~~565~~, Page ~~613~~, said leased property having the following additional description; beginning at a point fifteen feet south of the center line of Forest Road off of C & O Dam Road, said point of beginning also being 465 feet, S 50° E of the intersection of Forest Road with C & O Dam Road, thence leaving said point of beginning and running with the southern Right of Way of Forest Road for the following courses and distances;

S 50° E, 125 feet;

S 64° E, 90 feet;

N 89° E, 318 feet, leaving said southern Right of Way of Forest Road, thence;

S 27° W 347 feet, to a point on the western bank of Beaver Creek, thence;

N 72° 30' W, 554 feet, thence;

N 35° 56' E, 359 feet, to the point of beginning, containing four acres, more or less.

Description of Property Leased by High Appalachian Limited Liability Company from Debbie and Edsel Redden.

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S 50° E, 125 feet;

S 64° E, 90 feet;

N 89° E, 318 feet, leaving said southern Right of Way of Forest Road, thence;

S 27° W 347 feet, to a point on the western bank of Beaver Creek, thence;

N 72° 30' W, 554 feet, thence;

N 35° 56' E, 359 feet, to the point of beginning, containing four acres, more or less.

**EXHIBIT**

B

**SECURITY AGREEMENT**

**THIS AGREEMENT**, made and entered into this 15<sup>th</sup> day of July, 1998, by and between **HIGH APPALACHIAN LIMITED LIABILITY COMPANY** (hereinafter sometimes referred to as the "Debtor"), a limited liability company organized and existing under the laws of the State of West Virginia and having an office and place of business situate at Crab Orchard, Town District, Raleigh County, West Virginia, and having a mailing address of 750 Robert C. Byrd Drive, P. O. Box 880, Sophia, West Virginia 25921; and **WEST VIRGINIA JOBS INVESTMENT TRUST BOARD** (hereinafter sometimes referred to as the "Secured Party"), and having an office and place of business at 814 Virginia Street, East, Charleston, West Virginia 25301.

1. **Obligations Secured.** The security interest, pledges and assignments granted in this agreement are to secure punctual payment and performance of the following, all of which are separately and collectively referred to as the "Obligations":

(a) That certain guaranty of even date herewith by and between the parties hereto guaranteeing payment of certain obligations of Minaqua LLC ("Minaqua") to Secured Party, including, but not limited to, the obligations existing pursuant to the promissory note described in subparagraph 1.(b) below.

(b) That certain promissory note of even date herewith in the original principal sum of \$300,000.00, executed by Minaqua and payable to the order of the Secured Party, and any and all extensions, renewals, modifications and rearrangements thereof.

(c) Any and all other indebtedness, liabilities and obligations of Debtor to Secured Party arising under or pursuant to that certain Loan Agreement by and between Minaqua LLC, Aqua Holdings Limited Liability Company, High Appalachian Limited Liability Company, and West Virginia Jobs Investment Trust Board and of even date herewith (the "Loan Agreement"), or arising under or pursuant to any of the Loan Documents as that term is defined in the Loan Agreement or arising under or pursuant to this Agreement.

(d) Any and all other indebtedness, liabilities and obligations whatsoever and of whatever nature of Debtor to Secured Party whether direct or indirect, absolute or contingent, primary or secondary, due or to become due and whether now existing or hereafter arising and howsoever evidenced or acquired, whether joint or several, or joint and several.

Debtor acknowledges that the security interest, pledges and assignments as applicable granted in this Agreement secure all future advances as well as any and all other indebtedness, liabilities and obligations of Debtor to Secured Party whether now in existence or hereafter arising.

2. **Use of Collateral.** Debtor represents, warrants and covenants that the collateral will be used by the Debtor solely for business use, and in its aquaculture farms venture and operation.

3. **Description of Collateral.** Debtor hereby grants to Secured Party a security interest in and agrees that Secured Party shall continue to have a security interest in the following property located at the processing facility at or near Sophia, West Virginia, the real estate where said processing facility is located being described on Exhibit A attached, all of which are separately and collectively referred to as the "Collateral":

a. **All Accounts.** A security interest in all accounts now owned or existing as well as any and all that may hereafter arise or be acquired by Debtor, and all the proceeds and products thereof, including without limitation, all notes, drafts, acceptances, instruments and chattel paper arising therefrom, and all returned or repossessed goods arising from or relating to any such accounts, or other proceeds of any sale or other disposition of inventory.

b. **All Inventory.** A security interest in all of Debtor's inventory, including all goods, merchandise, raw materials, goods in process, finished goods and other tangible personal property, wherever located, now owned or hereafter acquired and held for sale or lease or furnished or to be furnished under contracts for service or used or consumed in Debtor's business and all additions and accessions thereto, and contracts with respect thereto and all documents of title evidencing or representing any part thereof, and all products, rents and proceeds thereof. The inventory includes, but is not limited to all of the inventory now or hereafter located at or near Debtor's said processing facilities situate in Raleigh, County, West Virginia, which real estate is described on Exhibit A attached.

c. **Farm Products.** A security interest in all of Debtor's interest in any and all crops, livestock, fish, fingerlings and supplies used or produced or processed by Debtor in its present and in its future farming operations (including, but not limited to fish hatchery and fish farming operations) and/or processing operations wheresoever located, now owned or hereafter acquired, and the proceeds or products thereof including, without limitation, any governmental subsidies, rebates or other payments with respect to farming, ranching or related operations of the debtor. All of Debtor's crops, farm products, fingerlings and fish are presently and will in the future be located in Raleigh County, West Virginia, situate or to be situate on the real estate described on Exhibit A attached.

d. **Fixtures.** A security interest in all of Debtor's fixtures and appurtenances thereto, and such other goods, chattels, fixtures, equipment and personal property affixed or in any manner attached to the real estate and/or building(s) or structure(s), be same now owned or hereafter acquired by Debtor, (including all additions and accessions thereto and replacements or substitutions thereof), situate or to be situate on the real estate which is described on Exhibit A attached.

e. **Equipment.** A security interest in all equipment of every nature and description whatsoever (including but not limited to motor vehicles, machinery, farming machinery, fish hatchery machinery, fish farming machinery, fish processing and packaging equipment, tools, water collection systems, piping, plumbing, tanks, buildings, plants, etc.) now owned or hereafter acquired by Debtor including all accessions, appurtenances and additions thereto, wherever located, including all tools, parts and accessories used in connection with the equipment.

f. **General Intangibles.** A security interest in all general tangibles and other personal property now owned or hereafter acquired by Debtor, including, without limitation, all license rights, governmental permits, governmental subsidy payments, copyrights, patents and trademarks now or hereafter acquired.

g. **Chattel Paper.** A security interest in all of Debtor's interest in chattel paper, lease agreements and other instruments or documents, now existing or owned by Debtor or hereafter arising or acquired by Debtor, evidencing both a debt and security interest in or lease of specific goods, and a security interest in all of Debtor's rights of reversion, repossession or ownership of goods covered by such chattel paper.

Debtor's only place of business is in the State of West Virginia and in Raleigh County and at the location shown at the beginning of this Agreement, and Debtor agrees to notify promptly Secured Party of any change in or additional business location.

**4. Representations, Warranties and Covenants of Debtor.** Debtor represents and warrants as follows:

a. **Ownership; No Senior Encumbrances.** Except for the security interests pledges and assignments granted in this Agreement, the Debtor is and Debtor will be, the owner of all Collateral free and clear from all charges, liens, security interests, adverse claims and encumbrances of any and every nature.

b. **No Financing Statements.** There is no financing statement or similar filing now on file in any public office covering any part of the Collateral, Debtor will not execute one, and there will not be on file in any public office any financing statement or similar filing except the financing statements filed or to be filed in favor of Secured Party.

c. **Accuracy of Information.** All information furnished to Secured Party concerning Debtor, the Collateral and the Obligations, or otherwise for the purpose of obtaining or maintaining credit, is or will be at the time the same as furnished, accurate and complete in all material respects.

d. **Authority.** Debtor has full right and authority to execute and perform this Agreement and to create the security interest created by this Agreement. The making and performance by Debtor of this Agreement will not violate any articles of organization or operating agreements or similar document respecting Debtor, any provision of law, any order of court or governmental agency, or any indenture or other agreement to which Debtor is a party, or

by which Debtor or any of Debtor's property is bound, or be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture or other agreement, or result in the creation or imposition of any charge, lien, security interest, claim or encumbrance of any and every nature whatsoever upon the Collateral, except as contemplated by this Agreement.

e. **Addresses.** The address of Debtor designated at the beginning of this Agreement is Debtor's place of business if Debtor had only one place of business; Debtor's chief executive office if Debtor had more than one place of business; or Debtor's residence if Debtor had no place of business. Debtor agrees not to change such address without advance written notice to Secured Party.

**5. General Covenants.** Debtor covenants and agrees as follows:

a. **Operation of the Collateral.** Debtor agrees to maintain and to use the Collateral solely in the conduct of its own business, in a careful and proper manner, and in conformity with all applicable permits or licenses. Debtor shall comply in all respects with all applicable statutes, laws, ordinances, and regulations. Debtor shall not use the Collateral in any unlawful manner or for any unlawful purposes, or in any manner for any purpose that would expose the Collateral to unusual risk, or to penalty, forfeiture or capture, or that would render inoperative any insurance in connection with the Collateral.

b. **Condition.** Debtor shall maintain, service and repair the Collateral so as to keep it in good operating condition. Debtor shall replace within a reasonable time all parts that may be worn out, lost, destroyed or otherwise rendered unfit for use, with appropriate replacement parts. Debtor shall obtain and maintain in good standing at all times all applicable permits, licenses, registrations and certificates respecting the Collateral.

c. **Assessments.** Debtor shall promptly pay when due all taxes, assessments, license fees, registration fees, and governmental charges levied or assessed against Debtor or with respect to the Collateral or any part thereof.

d. **No Encumbrances.** Debtor agrees not to suffer or permit any charge, lien, security interest, adverse claim or encumbrance of any and every nature whatsoever against the Collateral or any part thereof.

e. **No Removal.** Except as otherwise provided in the Agreement, Debtor shall not remove the Collateral from the county or counties designated at the beginning of this Agreement without Secured Party's prior written consent.

f. **Insurance.** Debtor will have and maintain insurance in such amounts, with such coverages and written by such insurance companies as are acceptable to the Secured Party, at all times with respect to all Collateral, such insurance to be payable to the Secured Party and the Debtor, as their interests may appear; all policies of insurance shall provide for not less than 10 days' written notice to the Secured Party of any cancellation, nonrenewal or reduction of

coverage of such policies; and the Debtor shall furnish the Secured Party with certificates or other evidence satisfactory to the Secured Party of compliance with the foregoing insurance provisions.

g. **No Transfer.** Except as otherwise provided in this Agreement with respect to inventory, Debtor shall not, without prior written consent of Secured Party, sell, assign, transfer, lease, charter, encumber, hypothecate or dispose of the Collateral, or any part thereof, or interest therein, or offer to do any of the foregoing.

h. **Notices and Reports.** Debtor shall promptly notify Secured Party in writing of any change in the name, identity or the structure of Debtor, any charge, lien, security interest, claim or encumbrance asserted against the Collateral, any litigation against Debtor or the Collateral, any theft, loss, injury or similar incident involving the Collateral, and any other material matter adversely affecting Debtor or the Collateral. Debtor shall furnish such other reports, information and data regarding Debtor's financial condition and operations, the Collateral and such other matters as Secured Party may request from time to time.

i. **Additional Filings.** Debtor agrees to execute and deliver such financing statement or statements, or amendments thereof or supplements thereto, or other documents as Secured Party may from time to time require in order to comply with the applicable state or federal law and to preserve and protect the Secured Party's rights to the Collateral.

j. **Inspection.** Debtor shall at all reasonable times allow Secured Party by or through any of its officers, agents, attorneys or accountants, to examine the Collateral, wherever located, and to examine and make extracts from Debtor's books and records.

k. **Landlord's Waivers.** Debtor shall furnish to Secured Party, if requested, a landlord's waiver of all liens with respect to any Collateral covered by this Agreement that is or may be located upon leased premises, such landlord's waivers to be in such form and upon such terms as are acceptable to Secured Party.

l. **Protection of Collateral.** Secured Party, at its option and without prior notice to Debtor, whether before or after default, but without any obligation whatsoever to do so, may (a) discharge taxes, claims, charges, liens, security interests, assessments or other encumbrances of any and every nature whatsoever at any time levied, placed upon or asserted against the Collateral; (b) place and pay for insurance on the Collateral, including insurance that only protects the Secured Party's interest; (c) pay for the repair, improvement, testing, maintenance and preservation of the Collateral; (d) pay any filing, recording, registration, licensing or certification fees or other fees and charges related to the Collateral; or (e) take any other action to preserve and protect the Collateral and Secured Party's rights and remedies under this Agreement as Secured Party may deem necessary or appropriate. Debtor agrees that Secured Party shall have no duty or obligation whatsoever to take any of the foregoing action. Debtor further agrees to reimburse Secured Party promptly upon demand for any payment made or any expense incurred by the Secured Party pursuant to this authorization. These payments and expenditures, together with interest thereon from date incurred until paid by Debtor at the maximum contract



are allowed under applicable laws, which Debtor agrees to pay, shall constitute additional Obligations and shall be secured by and entitled to the benefits of this Agreement.

m. Further Assurances. Debtor shall do, make, procure, execute and deliver all such additional and further acts, things, deeds, interests and assurances as Secured Party may require from time to time to protect, assure and enforce Secured Party's rights and remedies.

6. **Additional Provisions Regarding Accounts.** The following provisions shall apply to all accounts (including but not limited to the accounts and contracts identified on Schedule A attached, if any) which are Collateral hereunder.

a. Definitions. The term "account," as used in this Agreement, shall have the same meaning as set forth in the Uniform Commercial Code of West Virginia in effect as of the date of execution hereof, and as set forth in any amendment to the Uniform Commercial Code of West Virginia to become effective after the date of execution thereof, and also shall include all present and future notes, instruments, documents, general intangibles, drafts, acceptances and chattel paper of Debtor, and the proceeds thereof.

b. Additional Warranties. As of the time any account becomes subject to the security interest granted hereby, Debtor shall be deemed further to have warranted as to each and all of such accounts as follows:

(i) each account and all papers and documents relating thereto are genuine and in all respects what they purport to be;

(ii) each account is valid and subsisting and arises out of a bona fide sale of goods sold and delivered to, or out of and for services theretofore actually rendered by the Debtor to, the account debtor named in the account;

(iii) the amount of the account represented as owing is the correct amount actually and unconditionally owing except for normal cash discounts and is not subject to any setoffs, credits, defenses or countercharges; and

(iv) Debtor is the owner thereof free and clear of any charges, liens, security interests, adverse claims and encumbrances of any and every nature whatsoever.

c. Collection of Accounts.

(i) Secured Party shall have the right in its own name or in the name of the Debtor, whether before or after default, to require Debtor forthwith to transmit all proceeds of collection of accounts to Secured Party, to notify any and all account debtors (including but not limited to persons and entities identified on Schedule A attached, if any) to make

payments of the accounts directly to Secured Party, to demand, collect, receive, receipt for, sue for, compound and give acquittal for, any and all amounts due or to become due on the accounts and to endorse the name of the Debtor on all commercial paper given in payment or part payment thereof, and in Secured Party's discretion to file any claim or take any other action or proceeding that Secured Party may deem necessary or appropriate to protect and preserve and realize upon the accounts and related Collateral.

(ii) Unless and until Secured Party elects to collect accounts, and the privilege of Debtor to collect accounts is revoked by Secured Party in writing, Debtor shall continue to collect accounts, account for same to Secured Party, and shall not commingle the proceeds of collection of accounts with any funds of the Debtor.

(iii) In order to assure collection of accounts in which Secured Party has an interest hereunder, Secured Party may notify the post office authorities to change the address for delivery of mail addressed to Debtor to such address as Secured Party may designate, and to open and dispose of such mail and receive the collections of accounts included herewith. Secured Party shall have no duty or obligation whatsoever to collect any account, or to take any other action to preserve or protect the Collateral; however, should Secured Party elect to collect any account or take possession of any Collateral, debtor releases Secured Party from any claim or claims for loss or damage arising from any act or omission in connection therewith.

d. Identification and Assignment of Accounts. On Secured Party's request whether before or after default, Debtor shall take such action and execute and deliver such documents as Secured Party may reasonably request in order to identify, confirm, mark, segregate and assign accounts and to evidence Secured Party's interest in same. Without limiting the foregoing, Debtor upon request, agrees to assign accounts to Secured Party, identify and mark accounts as being subject to the security interest granted hereby, mark Debtor's books and records to reflect such, and forthwith to transmit to Secured Party in the form as received by Debtor any and all proceeds of collection of such accounts.

e. Account Reports. Upon written request by Secured Party, Debtor will deliver to Secured Party, prior to the 10th day of each month, or on such other frequency as Secured Party may request, a written report in form and content satisfactory to Secured Party, showing a listing and aging of accounts and such other information as Secured Party may request from time to time. After receipt of such written request, Debtor shall immediately notify Secured Party of the assertion by any account debtor of any setoff, defense or claim regarding an account or any other matter adversely affecting an account.

f. Segregation of Returned Goods. Returned or repossessed goods arising from or relating to any accounts included within the Collateral shall if requested by Secured Party be held separate and apart from any other property. Debtor on request by Secured Party, but not less than weekly even though no request has been made, shall report to Secured Party identifying information with respect to any such goods relating to accounts included in transaction under this Agreement.

7. **Additional Provisions Regarding Inventory and Crops** (including fingerlings and fish). The following provisions shall apply to all inventory and crops included within the Collateral, and for the purposes of the following subparagraphs the word "inventory" shall be read to mean (i) "inventory," or (ii) "crops," or (iii) "inventory and crops," or (iv) "inventory or crops," or (v) fingerlings, or (vi) inventory and fingerlings, or (vii) inventory or fingerlings, or (viii) fish, or (ix) inventory and fish, or (x) inventory or fish, or (xi) fingerlings and fish, or (xii) inventory and fingerlings and fish, or (xiii) inventory or fingerlings and fish, to the end that the broadest possible definition will apply:

a. **Inventory Reports.** Upon written request by Secured Party, Debtor will deliver to Secured Party, prior to the 10th day of each month, or on such other frequency as Secured Party may request, a written report in form and content satisfactory to Secured Party, with respect to the preceding month or other applicable period, showing Debtor's opening inventory, inventory acquired, inventory sold, inventory returned, inventory used in Debtor's business, closing inventory, any other inventory not within the preceding categories, and such other information as Secured Party may request from time to time. After receipt of such written request, Debtor shall immediately notify Secured Party of any matter adversely affecting the inventory, including, without limitation, any event causing loss or depreciation in the value of the inventory and the amount of such possible loss or depreciation.

b. **Location of Inventory.** Debtor will promptly notify Secured Party in writing of any addition to, change in or discontinuance of its place of business as shown in this agreement, the places at which inventory is located as shown herein, the location of its chief executive office and the location of the office where it keeps its records as set forth herein. All Collateral will be located at the place of business shown at the beginning of this agreement as modified by any written notice given pursuant hereto.

c. **Use of Inventory.** Unless and until the privilege of Debtor to use inventory in the ordinary course of Debtor's business is revoked by Secured Party in the event of default or if Secured Party deems itself insecure, Debtor may use the inventory in any manner not inconsistent with this Agreement, may sell that part of the Collateral consisting of inventory provided that all such sales are in the ordinary course of business, and may use and consume any raw materials or supplies that are necessary in order to carry on Debtor's business. A sale in the ordinary course of business does not include a transfer in partial or total satisfaction of a debt.

d. **Accounts as Proceeds.** All accounts that are proceeds of the inventory included within the Collateral shall be subject to all of the terms and provisions hereof pertaining to accounts.

e. **Protection of Inventory.** Debtor shall take all action necessary to protect and preserve the inventory.

8. **Events of Default.** Debtor shall be in default hereunder upon the happening of any of the following events or conditions:

a. Nonpayment when due (whether by acceleration of maturity or otherwise) of any payment of principal, interest or other amount due on any Obligation;

b. The occurrence of any event which under the terms of any evidence of indebtedness, indenture, deed of trust, security agreement or similar instrument permits the acceleration of maturity of any obligation of Debtor (whether to Secured Party or to others);

c. Any representation or warranty made by Debtor to Secured Party in connection with this Agreement, the Collateral or the Obligations, or in any statements or certificates, proves incorrect in any material respect as of the date of the making or the issuance thereof;

d. Default occurs in the observance or performance of, or if Debtor fails to furnish adequate evidence of performance of, any provision of this Agreement or of any note, assignment, transfer, other agreement, document or instrument delivered by Debtor to Secured Party in connection with this Agreement, the Collateral or the Obligations.

e. Death, dissolution, liquidation, termination of existence, insolvency, business failure or winding-up of Debtor or any maker, endorser, guarantor, surety or other party liable in any capacity for any of the Obligations.

f. The commission of an act of bankruptcy (including, but not limited to the making of a fraudulent conveyance) by, or the application for appointment of a receiver or any other legal custodian for any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceedings under any bankruptcy, arrangement, reorganization, insolvency or similar laws for the relief of debtors by or against, the Debtor or any maker, endorser, guarantor, surety or other party primarily or secondarily liable for any of the Obligations;

g. The Collateral becomes, in the judgment of Secured Party, impaired, unsatisfactory or insufficient in character or value; or

h. The filing of any levy, attachment, execution, garnishment or other process against the Debtor or any of the Collateral or any maker, endorser, guarantor, surety, or other party liable in any capacity for any of the Obligations.

9. **Remedies.** Upon the occurrence of an event of default, Secured Party, at its option, shall be entitled to exercise any one or more of the following remedies (all of which are cumulative):

a. **Declare Obligations Due.** Secured Party, at its option, may declare the Obligations or any part thereof immediately due and payable, without demand, notice of intention to accelerate, notice of acceleration, notice of nonpayment, presentment, protest, notice of dishonor, or any other notice whatsoever, all of which are hereby waived by Debtor and any maker, endorser, guarantor, surety or other party liable in any capacity for any of the Obligations.

b. **Remedies.** Secured Party shall have all of the rights and remedies provided for in this Agreement and in any other agreements executed by Debtor, the rights and remedies in the Uniform Commercial Code of West Virginia, and any and all of the rights and remedies at law and equity, all of which shall be deemed cumulative. Without limiting the foregoing, Debtor agrees that Secured Party shall have the right to: (i) require Debtor to assemble the Collateral and make it available to Secured Party at a place designated by Secured Party that is reasonably convenient to both parties, which Debtor agrees to do; (ii) take possession of the Collateral, with or without process of law, and in this connection, enter any premises where the Collateral is located to remove same, to render it unusable, or to dispose of same on such premises; (iii) sell, lease or otherwise dispose of the Collateral, by public or private proceedings, for cash or credit, without assumption of credit risk; and/or (iv) whether before or after default, collect and receipt for, compound, compromise, and settle, and give release, discharges and acquittances with respect to, any and all amounts owed by any person or entity with respect to the Collateral. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Secured Party will send Debtor reasonable notice of the time and place of any public sale or of the time after which any private sale or other disposition will be made. Any requirement of reasonable notice to Debtor shall be met if such notice is mailed, postage prepaid, to Debtor at the address of Debtor designated at the beginning of this Agreement, at least five days before the day of any public sale or at least five days before the time after which any private sale or other disposition will be made.

c. **Expenses.** Debtor shall be liable for and agrees to pay the reasonable expenses incurred by Secured Party in enforcing its rights and remedies, in retaking, holding, testing, repairing, improving, selling, leasing or disposing of the Collateral, or like expenses, including, without limitation, attorneys' fees and legal expenses incurred by Secured Party. These expenses, together with interest thereon from date incurred until paid by Debtor at the interest rate specified in the promissory note identified above in subparagraph 1(a), which Debtor agrees to pay, shall constitute additional Obligations and shall be secured by and entitled to the benefits of this Agreement.

d. **Proceeds; Surplus; Deficiencies.** Proceeds received by Secured Party from disposition of the Collateral shall be applied toward Secured Party's expenses and other Obligations in such order or manner as Secured Party may elect. Debtor shall be entitled to any surplus if one results after lawful application of the proceeds. Debtor shall remain liable for any deficiency.

e. Remedies Cumulative. The rights and remedies of Secured Party are cumulative and the exercise of anyone or more of the rights or remedies shall not be deemed an election of rights or remedies or a waiver of any other right or remedy. Secured Party may remedy any default and may waive any default without waiving the default remedied or without waiving any other prior or subsequent default.

## 10. Other Agreements.

a. Waivers. Debtor and any maker, endorser, guarantor, surety or other party liable in any capacity respecting the Obligations hereby waive demand, notice of intention to accelerate, notice of acceleration, notice of nonpayment, presentment, protest, notice of dishonor and any other similar notice whatsoever.

b. Severability. Any provision hereof found to be invalid by the courts having jurisdiction shall be invalid only with respect to such provision (and then only to the extent necessary to avoid such invalidity). The offending provision shall be modified to the maximum extent possible to confer upon Secured Party the benefits intended thereby. Such provision as modified and the remaining provisions hereof shall be construed and enforced to the same effect as if such offending provision (or portion thereof) had not been contained herein, to the maximum extent possible.

c. Notices. Any notice or demand given by Secured Party to Debtor in connection with this Agreement, the Collateral or the Obligations, shall be deemed given and effective upon deposit in the United States mail, postage prepaid, addressed to Debtor at the address of Debtor designated at the beginning of this Agreement. Actual notice to Debtor shall always be effective no matter how given or received.

d. Headings and Gender. Paragraph and subparagraph headings in this Agreement are for convenience only and shall be given no meaning or significance in interpreting this Agreement. All words used herein shall be construed to be of such gender or number as the circumstances require.

e. Amendments. Neither this Agreement nor any of its provisions may be changed, amended, modified, waived or discharged orally, but only by an instrument in writing signed by the party against whom enforcement of the change, amendment, modification, waiver or discharge is sought.

f. Binding Effect. The provisions of this Security Agreement shall be binding upon the heirs, personal representatives, successors and assigns of Debtor and the rights, powers and remedies of Secured Party hereunder shall inure to the benefit of the successors and assigns of Secured Party.

g. Governing Law. This Security Agreement shall be governed by the law of the State of West Virginia.

IN WITNESS WHEREOF, the parties hereto have caused this Security Agreement to be executed in their respective names on the day and year first above written.

**DEBTOR:**

**HIGH APPALACHIAN LIMITED LIABILITY COMPANY,**  
a West Virginia limited liability company

By: Carl F. Kilduff

Its: President

**SECURED PARTY:**

**WEST VIRGINIA JOBS INVESTMENT TRUST BOARD**

By: Richard C. Ross

Its: Executive Director

**EXHIBIT A, High Appalachian Limited Liability Company real property:**

**Tract 1:** Description of Property Owned by High Appalachian Limited Liability Company

Surface land situate in Town District, Raleigh County, West Virginia and more particularly described as follows: BEGINNING at a point on the south side of and 50 feet from the right of way of West Virginia Route No. 16, and said point being S 01° 57' 46" E a distance of 1.048.35 feet, from a set stone on the south westerly corner of a five acre parcel conveyed by Beaver Coal Company to Pocahontas Land Corp.; thence running away from said right of way toward a drain, S 36° 15' 58" E a distance of 208.71 feet to a point; thence running S 53° 44' 02" W a distance of 208.71 feet to a point; thence running N 36° 15' 58" W a distance of 208.71 feet to a point 50 feet from said West Virginia Route No. 16; thence running parallel with a 50 feet from the said right of way N 53° 44' 02" E a distance of 208.71 feet to the point of beginning, containing 43,560.00 square feet of 1.00 acre more or less, together with a 30 foot wide easement from West Virginia Route No. 16, as shown on map entitled "High Appalachian, LLC. Processing Site from Beaver Coal Company Ltd. Survey & Topographic Map Part of Fee Tract No. 14 Crab Orchard, Raleigh County, West Virginia, November 27, 1996."

And being the same property conveyed to Grantor by Beaver Coal Company Limited, a Pennsylvania limited partnership, dated January 14, 1997, and recorded in the Office of the Clerk of the County Commission of Raleigh County, West Virginia, in Roll No. 106, page 1200.

**Tract 2:** Description of Property Leased by High Appalachian Limited Liability Company from Beaver Coal Company, Limited, pursuant to the lease attached hereto marked Exhibit B, situate at Crab Orchard, Town District, Raleigh County, West Virginia.

BEGINNING at a point on the south side of and 50 feet from the right of way of West Virginia Route No. 16, and said point being S 01° 57' 46" E, a distance of 1,048.35 feet, from a set stone on the south westerly corner of a five acre parcel conveyed by Beaver Coal Company to Pocahontas Land Corp.; thence running parallel to and 50 feet from said route, N 53° 44' 02" E, a distance of 80.00 feet to a point; thence running away from the right of way S 36° 15' 58" E, a distance of 308.71 feet to a point; thence running S 53° 44' 02" W, a distance of 288.71 feet to a point; thence running N 36° 15' 58" W, a distance of 100.00 feet to a point; thence running N 53° 44' 02" E, a distance of 208.71 feet to a point; thence running back toward said right of way, N 36° 15' 58" W, a distance of 208.71 feet to the point of beginning, containing 45567.8586 square feet or 1.05 acre, more or less.