

Form PTO-1594
(Rev. 10/02)

OMB No. 0651-0027 (exp. 6/30/2005)

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RECORDATION FORM COVER SHEET 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):

Waterway Gas & Wash Company

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

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

3. Nature of conveyance:

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

Execution Date: 07-15-2003

2. Name and address of receiving party(ies)

Name: U.S. Bank National Association

Internal

Address: _____

Street Address: 721 Locust Street

City: St. Louis State: MO Zip: 63101

- Individual(s) citizenship _____
- Association _____
- General Partnership _____
- Limited Partnership _____
- Corporation-State _____
- Other National banking association

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) _____

B. Trademark Registration No.(s) 2156411

Additional number(s) attached Yes No

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

Name: Mitzi Cherry

Internal Address: Suite 600

Husch & Eppenberger, LLC

Street Address: 190 Carondelet Plaza

City: St. Louis State: MO Zip: 63105

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:

083460

DO NOT USE THIS SPACE

9. Signature.

Mitzi G. Cherry

Name of Person Signing



Signature

7-29-2003

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

CH \$40.00 083460 2156411

TRADEMARK SECURITY AGREEMENT

THIS AGREEMENT (this "Agreement") is made as of July 15, 2003, by Waterway Gas & Wash Company, a Missouri corporation, (hereinafter referred to as "Debtor"), in favor of U.S. BANK NATIONAL ASSOCIATION, a national banking association, as agent (in such capacity, the "Agent") for Lenders from time to time party to that certain Loan Agreement dated as of the date hereof by and among Debtor, Lenders from time to time party thereto (collectively, the "Lenders"), and Agent, as the same may from time to time be amended, modified, extended, renewed or restated (the "Loan Agreement"; all capitalized terms used and not otherwise defined in this Agreement shall have the respective meanings ascribed to them in the Loan Agreement).

WITNESSETH:

WHEREAS, as a condition precedent to Agent and Lenders entering into the Loan Agreement, Agent and Lenders have required that Debtor execute and deliver this Agreement to Agent for the ratable benefit of Lenders; and

WHEREAS, in order to induce Agent and Lenders to enter into the Loan Agreement, Debtor has agreed to execute and deliver this Agreement to Agent for the ratable benefit of Lenders;

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Debtor hereby covenants and agrees with Agent as follows:

1. Definitions. All terms defined in the Recitals hereto or in the Loan Agreement that are not otherwise defined herein shall have the meanings given to them therein. In addition, the following terms have the meanings set forth below:

"Affiliate" means W. W. Realty Company, L.L.C., Waterway-Colorado, Inc., and any successors and/or assigns of any of the foregoing.

"Obligations" means each and every debt, liability and obligation of every type and description arising under or in connection with any Loan Document (as defined in the Loan Agreement) which the Debtor may now or at any time hereafter owe to the Agent or Lenders, whether such debt, liability or obligation now exists or is hereafter created or incurred and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, independent, joint, several or joint and several, and including specifically, but not limited to, the Obligations (as defined in the Loan Agreement).

"Security Interest" has the meaning given in Section 2.

"Trademarks" means all right, title and interest of Debtor in and to: (i) trademarks, service marks, collective membership marks, registrations and applications for registration for each, and the respective goodwill associated with each, (ii) licenses, fees or royalties with respect to each, (iii) the right to sue for past, present and future infringement, dilution and damages therefor, (iv) and licenses thereunder, all as presently existing or hereafter arising or acquired, including, without limitation, the marks listed on Exhibit A.

2. **Security Interest.** The Debtor hereby irrevocably pledges and assigns to, and grant the Agent, for the benefit of the Lenders, a security interest (the "Security Interest"), with power of sale to the extent permitted by law, in the Trademarks to secure payment of the Obligations. As set forth in the Loan Agreement, the Security Interest is coupled with a security interest in substantially all of the personal property of the Debtor.

3. **Representations, Warranties and Agreements.** The Debtor represents, warrants and agrees as follows:

(a) **Existence; Authority.** Debtor is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation, and this Agreement has been duly and validly authorized by all necessary corporate action on the part of Debtor.

(b) **Trademarks.** Exhibit A accurately lists all Trademarks owned or controlled by the Debtor as of the date hereof and accurately reflects the existence and status of Trademarks and all applications and registrations pertaining thereto as of the date hereof; provided, however, that Exhibit A need not list common law marks (i.e., Trademarks for which there are no applications or registrations) which are not material to any Debtor's or any Affiliate's business(es). If after the date hereof, Debtor owns or controls any Trademarks not listed on Exhibit A (other than common law marks which are not material to the Debtor or any Affiliate's business(es)), or if Exhibit A ceases to accurately reflect the existence and status of applications and registrations pertaining to the Trademarks, then the Debtor shall promptly provide written notice to the Agent with a replacement Exhibit A, which upon acceptance by the Agent shall become part of this Agreement.

(c) **Affiliates.** As of the date hereof, no Affiliate owns, controls, or has a right to have assigned to it any items that would, if such item were owned by the Debtor, constitute Trademarks. If after the date hereof any Affiliate owns, controls, or has a right to have assigned to it any such items, then the Debtor shall promptly either: (i) cause such Affiliate to assign all of its rights in such item(s) to the Debtor; or (ii) notify the Agent of such item(s) and cause such Affiliate to execute and deliver to the Agent a trademark security agreement substantially in the form of this Agreement.

(d) **Title.** The Debtor has absolute title to the Trademarks listed on Exhibit A, free and clear of all Liens except Permitted Liens or other issues shown on Exhibit A. Debtor (i) will have, at the time Debtor acquires any rights in Trademarks hereafter arising, absolute title to each such Trademark free and clear of all Liens except Permitted Liens and except as otherwise shown on Exhibit A, and (ii) will keep all Trademarks free and clear of all Liens except Permitted Liens.

(e) **No Sale.** Except as permitted in the Loan Agreement, Debtor will not assign, transfer, encumber or otherwise dispose of the Trademarks, or any interest therein, without the Agent's prior written consent.

(f) **Defense.** The Debtor will at its own expense and using commercially reasonable efforts, protect and defend the Trademarks which are material to Debtor's business against all claims or demands of all Persons other than those holding Permitted Liens.

(g) **Maintenance.** Debtor will at its own expense maintain the Trademarks which are material to Debtor's business to the extent reasonably advisable in its business including, but not

limited to, filing all applications to obtain trademark registrations and all affidavits, maintenance fees, annuities, and renewals possible with respect to trademark registrations and applications therefor. Debtor covenants that it will not abandon nor fail to pay any maintenance fee or annuity due and payable on any Trademark which is material to Debtor's business, nor fail to file any required affidavit or renewal in support thereof, without first providing the Agent: (i) sufficient written notice, of at least 30 days, to allow the Agent to timely pay any such maintenance fees or annuities which may become due on any Trademarks, or to file any affidavit or renewal with respect thereto, and (ii) a separate written power of attorney or other authorization to pay such maintenance fees or annuities, or to file such affidavit or renewal, should such be necessary or desirable.

(h) **Agent's Right to Take Action.** If Debtor fails to perform or observe any of its covenants or agreements set forth in this Section 3, or if Debtor notifies the Agent that it intends to abandon a Trademark which is material to Debtor's business, the Agent may (but need not) perform or observe such covenant or agreement or take steps to prevent such intended abandonment on behalf and in the name, place and stead of Debtor (or, at the Agent's option, in the Agent's own name) and may (but need not) take any and all other actions which the Agent may reasonably deem necessary to cure or correct such failure or prevent such intended abandonment.

(i) **Costs and Expenses.** Except to the extent that the effect of such payment would be to render any loan or forbearance of money usurious or otherwise illegal under any applicable law, the Debtor shall pay the Agent on demand the amount of all moneys expended and all costs and expenses (including reasonable attorneys' fees and disbursements) incurred by the Agent in connection with or as a result of the Agent's taking action under subsection (h) or exercising its rights under Section 6, together with interest thereon from the date expended or incurred by the Agent at the Default Rate.

(j) **Power of Attorney.** To facilitate the Agent's taking action under subsection (h) and exercising its rights under Section 6, the Debtor hereby irrevocably appoints (which appointment is coupled with an interest) the Agent, or its delegate, as the attorney-in-fact of Debtor with the right (but not the duty) from time to time to create, prepare, complete, execute, deliver, endorse or file, in the name and on behalf of Debtor, any and all instruments, documents, applications, financing statements, and other agreements and writings required to be obtained, executed, delivered or endorsed by Debtor under this Section 3, or, necessary for the Agent, after an Event of Default, to enforce or use the Trademarks or to grant or issue any exclusive or non-exclusive license under the Trademarks to any third party, or to sell, assign, transfer, pledge, encumber or otherwise transfer title in or dispose of the Trademarks to any third party. The Debtor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. The power of attorney granted herein shall terminate upon the termination of the Loan Agreement as provided therein and the payment and performance of all Obligations.

4. **Debtor's Use of the Trademarks.** The Debtor shall be permitted to control and manage the Trademarks, including the right to exclude others from making, using or selling items covered by the Trademarks and any licenses thereunder, in the same manner and with the same effect as if this Agreement had not been entered into, so long as no Event of Default occurs and remains uncured.

5. **Events of Default.** Each of the following occurrences shall constitute an event of default under this Agreement (herein called "Event of Default"): (a) an Event of Default, as defined in

the Loan Agreement, shall occur; or (b) Debtor shall fail to observe or perform any covenant or agreement herein binding on it; or (c) any of the representations or warranties contained in Section 3 shall prove to have been incorrect in any material respect when made.

6. Remedies. Upon the occurrence of an Event of Default and at any time thereafter, the Agent may, at its option, take any or all of the following actions:

- (a) The Agent may exercise any or all remedies available under the Loan Agreement.
- (b) The Agent may sell, assign, transfer, pledge, encumber or otherwise dispose of the Trademarks.
- (c) The Agent may enforce the Trademarks and any licenses thereunder, and if Agent shall commence any suit for such enforcement, Debtor shall, at the request of Agent, do any and all lawful acts and execute any and all proper documents required by Agent in aid of such enforcement.

7. Miscellaneous. This Agreement can be waived, modified, amended, terminated or discharged, and the Security Interest can be released, only explicitly in a writing signed by the Agent. A waiver signed by the Agent shall be effective only in the specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of the Agent's rights or remedies. All rights and remedies of the Agent shall be cumulative and may be exercised singularly or concurrently, at the Agent's option, and the exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other. All notices to be given to Debtor under this Agreement shall be given in the manner and with the effect provided in the Loan Agreement. The Agent shall not be obligated to preserve any rights Debtor may have against prior parties, to realize on the Trademarks at all or in any particular manner or order, or to apply any cash proceeds of Trademarks in any particular order of application. This Agreement shall be binding upon and inure to the benefit of the Debtor and the Agent and their respective participants, successors and assigns and shall take effect when signed by the Debtor and delivered to the Agent, and the Debtor waives notice of the Agent's acceptance hereof. The Agent may execute this Agreement if appropriate for the purpose of filing, but the failure of the Agent to execute this Agreement shall not affect or impair the validity or effectiveness of this Agreement. A carbon, photographic or other reproduction of this Agreement or of any financing statement signed by the Debtor shall have the same force and effect as the original for all purposes of a financing statement. This Agreement shall be governed by the internal law of Missouri without regard to conflicts of law provisions. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications which can be given effect and this Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby. All representations and warranties contained in this Agreement shall survive the execution, delivery and performance of this Agreement and the creation and payment of the Obligations.

THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED ON OR PERTAINING TO THIS AGREEMENT.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Trademark Security Agreement as of the date written above.

Waterway Gas & Wash Company
727 Goddard
Chesterfield, Missouri 63005

Waterway Gas & Wash Company

By: Henry W. Dubinsky
Its: President

U.S. Bank, N.A.
721 Locust
St. Louis, Missouri 63101

U.S. BANK NATIONAL ASSOCIATION,
as Agent

By: James B. Lally
James B. Lally, Vice President

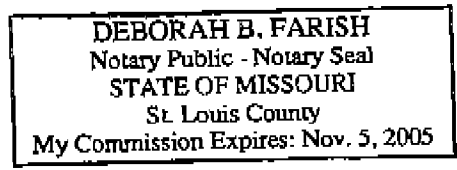
STATE OF MISSOURI)
)
COUNTY OF ST. LOUIS)

On this 15th day of July in the year 2003, before me, Deborah B. Farish, a Notary Public in and for said state, personally appeared Henry W. Dubinsky, President of Waterway Gas & Wash Company, a Missouri corporation, known to me to be the person who executed the foregoing document in behalf of said corporation and acknowledged to me that he executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year above written.

Deborah B. Farish
Notary Public

My Commission Expires:
11-05-2005



STATE OF MISSOURI)
)
COUNTY OF ST. LOUIS)

On this 15th day of July in the year 2003, before me, Deborah B. Farish, a Notary Public in and for said state, personally appeared James B. Lally, Vice President of U.S. Bank National Association, a national banking association, known to me to be the person who executed the foregoing document in behalf of said association and acknowledged to me that he executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year above written.

Deborah B. Farish
Notary Public

My Commission Expires:
11-05-2005

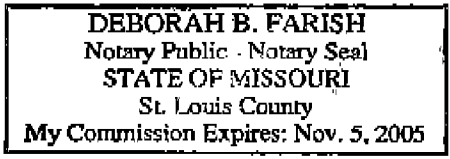


EXHIBIT AUNITED STATES ISSUED TRADEMARKS, SERVICE MARKSAND COLLECTIVE MEMBERSHIP MARKSU.S. PATENT AND TRADEMARK OFFICE REGISTRATIONS

<u>MARK</u>	<u>COUNTRY</u>	<u>Registration(R)/Application(A) No.</u>
CLEAN CAR CLUB	Canada	R 581019
CLEAN CAR CLUB	United States	R 1,378,684
CLEAN CAR CLUB	United States	R 1,780,584
THE WHOLE THING	Canada	A 1093598
THE WHOLE THING	United States	R 1,602,855
WATERWAY	United States	R 2,156,410
WATERWAY (Stylized)	United States	R 2,156,411
WATERWAY GAS & WASH	United States	R 1,629,465
WATERWAY GAS & WASH	Canada	R 581024

PENDING APPLICATIONS FOR REGISTRATION

NONE.

STATE REGISTRATIONS

NONE.

COLLECTIVE MEMBERSHIP MARKS

NONE

UNREGISTERED MARKS

NONE