

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:		NEW ASSIGNMENT	
NATURE OF CONVEYANCE:		SECURITY INTEREST	
CONVEYING PARTY DATA			
Name		Formerly	Execution Date
Entity Type			
MERMAID, LLC			03/06/2009
		LIMITED LIABILITY COMPANY: WEST VIRGINIA	
RECEIVING PARTY DATA			
Name:		THE HUNTINGTON NATIONAL BANK	
Street Address:		201 High Street	
City:		Morgantown	
State/Country:		WEST VIRGINIA	
Postal Code:		26505	
Entity Type:		INC. ASSOCIATION:	
PROPERTY NUMBERS Total: 2			
Property Type	Number	Word Mark	
Registration Number:	3386665	WATERFRONT PLACE HOTEL	
Registration Number:	3393245	WP WATERFRONT PLACE HOTEL	
CORRESPONDENCE DATA			
Fax Number:		(304)624-8183	
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>			
Phone:		(304) 624-8000	
Email:		trademarks@steptoe-johnson.com	
Correspondent Name:		Michael B. Pallay	
Address Line 1:		P.O. Box 2190	
Address Line 4:		Clarksburg, WEST VIRGINIA 26302-2190	
ATTORNEY DOCKET NUMBER:		697450/00940	
NAME OF SUBMITTER:		Michael B. Pallay	
Signature:		/Michael B. Pallay/	

CH \$65.00 3386665

Date:

04/15/2009

**Total Attachments: 18**

source=Mermaid#page1.tif  
source=Mermaid#page2.tif  
source=Mermaid#page3.tif  
source=Mermaid#page4.tif  
source=Mermaid#page5.tif  
source=Mermaid#page6.tif  
source=Mermaid#page7.tif  
source=Mermaid#page8.tif  
source=Mermaid#page9.tif  
source=Mermaid#page10.tif  
source=Mermaid#page11.tif  
source=Mermaid#page12.tif  
source=Mermaid#page13.tif  
source=Mermaid#page14.tif  
source=Mermaid#page15.tif  
source=Mermaid#page16.tif  
source=Mermaid#page17.tif  
source=Mermaid#page18.tif

**COMMERCIAL  
SECURITY AGREEMENT**

**THIS SECURITY AGREEMENT** is entered into as of the 6th day of MARCH, 2009, by and between **MERMAID, LLC**, a West Virginia limited liability company, whose address is 2 WATERFRONT PLACE SUITE 1201, Morgantown, West Virginia 26505 ("Debtor"), and **THE HUNTINGTON NATIONAL BANK**, a national banking association, whose address is 201 High Street, Morgantown, WV 26505 (referred to below as "Secured Party").

**WITNESSETH;** For valuable consideration, Debtor grants to Secured Party a security interest in the Collateral to secure the Secured Debt and agrees that Secured Party shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights which Secured Party may have by law.

1. **DEFINITIONS.** The following words shall have the following meanings when used in this Agreement. Terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code as enacted in West Virginia. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

**Agreement.** The word "Agreement" means this Commercial Security Agreement, as amended or modified from time to time, together with all exhibits and schedules attached to this Security Agreement from time to time.

**Collateral.** The word "Collateral" means the following described property of Debtor, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located:

a) All goods, equipment, inventory, furniture, fixtures of the Debtor now or hereafter located on the Real Property more particularly described in Exhibit A attached hereto, together with all tools, equipment, machinery, studies, data, architectural drawings, engineering drawings, plans and specifications, and supply contracts relating to construction on the real property more particularly described in Exhibit A attached hereto;

b) All accounts (including accounts receivable), inventory, documents, contracts, contract rights, instruments, chattel paper, certificates of deposit, letter of credit rights, investment property, securities, money, general intangibles (including payment intangibles and all software) of the Debtor and the trademarked name "Waterfront Place" owned by Debtor.

In addition, the word "Collateral" includes all the following, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located:

(a) All attachments, accessions, accessories, tools, parts, supplies, increases, and additions to and all replacements of and substitutions for any such property.

(b) All products and produce of any of such property.

- (c) All accounts, general intangibles, instruments , rents, monies, payments, chattel paper, supporting obligations and all other rights, arising out of a sale, lease, or other disposition of any of such property.
- (d) All proceeds (including insurance proceeds) from the sale, destruction, loss, or other disposition of any of such property.
- (e) All records and data relating to any of the property described herein, whether in the form of a writing, photograph microfilm, microfiche, or electronic media, together with all of Debtor's right, title, and interest in and to all computer software required to utilize, create, maintain, and process any such records or data on electronic media.
- (f) All property of the Debtor which may be in the possession of the Secured Party at any time and from time to time.

**Debtor.** The word "Debtor" means Mermaid, LLC, a West Virginia limited liability company, its successors and assigns.

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

**Guarantor.** The word "Guarantor" means and includes without limitation each and all of the guarantors, sureties, and accommodation parties in connection with the Secured Debt.

**Loan Agreement.** The words "Loan Agreement" mean that certain Loan Agreement by and between Debtor, Secured Party and Guarantor of even date herewith, evidencing a term loan in the principal amount of \$31, 915,000.00 and a term loan in the principal amount of \$12,212,510.00.

**Note.** The word "Note" means collectively that certain promissory note of even date made and executed by Debtor, payable to Secured Party in the principal amount of Thirty-One Million Nine Hundred Fifteen Thousand and 00/100 Dollars (\$31,915,000.00), and that certain Promissory Note of even date made and executed by Milan Puskar and Parry Petroplus and payable to secured party in the amount of Twelve Million Two Hundred Twelve Thousand Five Hundred and Ten and 00/100 Dollars (\$12,212,510.00) and any and all extensions, modifications, renewals or refinancings of the promissory notes, as well as any and all other promissory notes executed by Debtor, Milan Puskar or Parry Petroplus evidencing the indebtedness described in the aforementioned promissory notes or any part thereof, however changed in form, manner or amount, including consolidations of that indebtedness with other indebtedness of Debtor, Milan Puskar or Parry Petroplus to Secured Party.

**Related Documents.** The words "Related Documents" mean and include without limitation all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, and all other instruments,

agreements and documents, whether now or hereafter existing, executed in connection with the Secured Debt.

**Secured Debt.** The word "Secured Debt" means: (i) the indebtedness evidenced by the Note, including all principal and interest; (ii) Secured Party's swap credit exposure of \$ \_\_\_\_\_ derived from the Rate Management Transaction (defined in the Loan Agreement) entered into by and between Debtor and Secured Party; (iii) all other indebtedness, costs, expenses, and obligations for which Debtor is responsible under this Agreement or under any of the Related Documents, (iv) all other indebtedness and obligations of Debtor to Secured Party outstanding as of the date of this Agreement, and (v) all future indebtedness and obligations of Debtor to Secured Party.

**Secured Party.** The word "Secured Party" means The Huntington National Bank, a national banking association, its successors and assigns.

2. **POSSESSION, ETC. AND RIGHT OF SETOFF.** Debtor hereby grants Secured Party a contractual possessory security interest in and hereby assigns, conveys, delivers, pledges, and transfers to Secured Party all of Debtor's right, title and interest in and to all of Debtor's property that may be in the possession of the Secured Party at any time and from time to time, including, but not limited to, money, instruments, documents of title, chattel paper, certificates of deposit, and Debtor's deposit accounts with Secured Party (whether checking, savings, or some other type of deposit account), including all deposit accounts held jointly with someone else and all deposit accounts Debtor may open in the future, excluding however, all IRA and Keogh accounts and all trust accounts for which the grant of a security interest or setoff would be prohibited by law. Debtor authorizes Secured Party to charge or setoff all Secured Debt against any and all such money, certificates of deposit, or deposit accounts, without notice, upon the occurrence of an Event of Default.

3. **OBLIGATIONS OF DEBTOR.** Debtor warrants and covenants to Secured Party as follows:

**Perfection of Security Interest.** Debtor authorizes Secured Party to file such financing statements and other writings and authorizes Secured Party to take whatever other actions are necessary to perfect and continue Secured Party's security interest in the Collateral. If necessary, Debtor agrees to execute such further documents or take such further actions to allow Secured Party to perfect the security interest granted herein or otherwise act hereunder. Upon request of Secured Party, Debtor will deliver to Secured Party any and all of the documents evidencing or constituting the Collateral, and Debtor will note Secured Party's interest upon any and all chattel paper if not delivered to Secured Party for possession by Secured Party. Debtor hereby appoints Secured Party as its irrevocable attorney-in-fact for the purpose of filing any documents necessary to perfect or to continue the security interest granted in this Agreement. Secured Party may at any time, and without further authorization from Debtor, file an original or a carbon, photographic or other reproduction of any financing statement or of this Agreement for use as a financing statement. Secured Party shall receive prior to closing, a UCC-1 lien search or similar official report from the West Virginia Secretary

of State and of each state where collateral is located and the state of Debtor's incorporation or organization, each indicating that Secured Party's security interest is prior to, or will be prior to all other security interests or other interests reflected in the searches or reports. Debtor will reimburse Secured Party for all expenses for the perfection and the continuation of the perfection of Secured Party's security interest in the Collateral. This is a continuing security agreement and will continue in effect even though all or any part of the Secured Debt is paid in full and even though for a period of time Debtor may not be indebted to Secured Party. Upon payment of all indebtedness owed to Secured Party by the Debtor, the Secured Party will execute a release of its security interest created hereby and any related UCC filings if the Debtor makes a written request for such release.

**No Violation.** The execution and delivery of this Agreement will not violate any law or agreement governing Debtor or its property or to which Debtor is a party.

**Enforceability of Collateral.** To the extent the Collateral consists of goods, accounts, chattel paper, letters of credit, deposit accounts or general intangibles, the Collateral is enforceable in accordance with its terms, is genuine, and complies with applicable laws concerning form, content and manner of preparation and execution and all persons appearing to be obligated on the Collateral have authority and capacity to contract and are in fact obligated as they appear to be on the Collateral.

**Change of Name.** Debtor shall notify Secured Party in writing within ten (10) days after any change of its name, identity, or entity structure.

**Location of the Collateral.** Debtor represents that all Tangible Collateral will be located on the Real Property described in Exhibit A attached hereto and upon request of Secured Party, will deliver to Secured Party in form satisfactory to Secured Party a schedule of real properties and Collateral locations relating to Debtor's operations, including without limitation the following: (a) all real property owned or being purchased by Debtor; (b) all real property being rented or leased by Debtor; (c) all storage facilities owned, rented, leased, or being used by Debtor, and (d) all other properties where Collateral is or may be located.

**Removal of Collateral.** Debtor shall keep the Collateral (or to the extent the Collateral consists of intangible property such as accounts, the records concerning the Collateral) at Debtor's address shown above, or at such other locations as are acceptable to Secured Party. Except in ordinary course of its business, including the sales of inventory, Debtor shall not remove the Collateral from its existing locations without the prior written consent of Secured Party. To the extent that the Collateral consists of vehicles, or other titled property, Debtor shall not take or permit any action which would require application for certificates of title for the vehicles outside the State of Pennsylvania.

**Location, State of Formation and Name of Debtor.** Debtor's (i) offices are located in Morgantown, West Virginia; (ii) state of formation is West Virginia; and (iii) exact legal name as set forth on its Articles of Organization and Operating Agreement is exactly as shown in the first paragraph of this Security Agreement.

**Purchase Money Security Interests.** To the extent Debtor uses the proceeds of the Note to purchase Collateral, Debtor's repayment of the Loan shall apply on a "first-in-first-out" basis so that the portion of the Loan used to purchase a particular item of Collateral shall be paid in the chronological order the Debtor purchased the Collateral.

**Transactions Involving Collateral.** Except for inventory sold or accounts collected in the ordinary course of Debtor's business, Debtor shall not sell, offer to sell, or otherwise transfer or dispose of the Collateral. While Debtor is not in default under this Agreement, Debtor may sell inventory, but only in the ordinary course of its business and only to buyers who qualify as a buyer in the ordinary course of business. A sale in the ordinary course of Debtor's business does not include a transfer in partial or total satisfaction of a debt or any bulk sale. Debtor shall not pledge, mortgage, encumber or otherwise permit the Collateral to be subject to any lien, security interest, encumbrance, or charge, other than the security interest provided for in this Agreement. This includes security interests even if junior in right to the security interests granted under this Agreement. Unless waived by Secured Party, all proceeds from any disposition of the Collateral (for whatever reason) shall be held in trust for Secured Party and shall not be commingled with any other funds; provided however, this requirement shall not constitute consent by Secured Party to any sale or other disposition. Upon receipt, Debtor shall immediately deliver any such proceeds to Secured Party.

**Title.** Debtor represents and warrants to Secured Party that it holds good and marketable title to the Collateral, free and clear of all security interests, liens, and encumbrances, except for the security interest and lien of this Agreement, and existing liens in favor of Secured Party. Debtor has provided a release for any financing statement covering any of the Collateral which is on file in any public office other than those which reflect the security interest created by this Agreement. Debtor shall defend Secured Party's rights in the Collateral against the claims and demands of all other persons.

**Collateral Schedules and Locations.** Debtor shall deliver to Secured Party, as often as Secured Party shall require, such lists, descriptions, and designations of Collateral as Secured Party may require. Such information shall be submitted for Debtor and each of its subsidiaries or related companies.

**Maintenance and Inspection of Collateral.** Debtor shall maintain all tangible Collateral in good condition and repair. Debtor will not commit or permit damage to or destruction of the Collateral or any part of the Collateral. Secured Party and its designated representatives and agents shall have the right at all reasonable times to examine, inspect, and audit the Collateral wherever located. Debtor shall immediately notify Secured Party of all cases involving the return, rejection, repossession, loss or damage of or to any Collateral; of any request for credit or adjustment or of any other dispute arising with respect to the Collateral; and generally of all happenings and events affecting the Collateral or the value or the amount of the Collateral.

**Rents, Taxes, Assessments and Liens .** Debtor will pay when due all rents, taxes, assessments, and liens upon the Collateral, its use or operation, upon this

Agreement, upon any promissory note or notes evidencing the Secured Debt, or upon any of the other Related Documents. Debtor may escrow any such payment and elect to contest any lien if Debtor is in good faith conducting an appropriate proceeding to contest the obligation to pay and so long as Secured Party's interest in the Collateral is not jeopardized in Secured Party's sole and absolute opinion. If the Collateral is subjected to a lien which is not discharged within fifteen (15) days, Debtor shall deposit with Secured Party cash, a sufficient corporate surety bond, or other security satisfactory to Secured Party in an amount adequate to provide for the discharge of the lien plus any interest, costs, attorneys' fees or other charges that could accrue as a result of foreclosure or sale of the Collateral. In any contest Debtor shall defend itself and Secured Party and shall satisfy any final adverse judgment before enforcement against the Collateral. Debtor shall name Secured Party as an additional obligee under any surety bond furnished in the contest proceedings.

**Compliance With Governmental Requirements.** Debtor shall comply promptly with all laws, ordinances, rules, and regulations of all governmental authorities, now or hereafter in effect, applicable to the ownership, production, disposition, or use of the Collateral. Debtor may contest in good faith any such law, ordinance or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Secured Party's interest in the Collateral, in Secured Party's sole and absolute opinion, is not jeopardized. Debtor hereby (a) releases and waives any future claims against Secured Party for indemnity or contribution in the event Debtor becomes liable for any costs for violation of any such laws, ordinances, and regulations, and (b) agrees to indemnify and hold harmless Secured Party against any and all claims, losses, liabilities, damages, penalties, and expenses which Secured Party may directly or indirectly sustain or suffer resulting from a breach of this provision of this Agreement or as a consequence of any violation of any such laws, ordinances, and regulations.

**Hazardous Substances.** Debtor represents and warrants that the Collateral never has been, and never will be so long as this Agreement remains a lien on the Collateral, used for the generation, manufacture, storage, transportation, treatment, disposal, release or threatened release of any hazardous waste or substance, as those terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, *et seq.* ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*, or other applicable state or Federal laws, rules, or regulations adopted pursuant to any of the foregoing. The terms "hazardous waste" and "hazardous substance" shall also include, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos. The representations and warranties contained herein are based on Debtor's due diligence in investigating the Collateral for hazardous wastes and substances. Debtor hereby (a) releases and waives any future claims against Secured Party for indemnity or contribution in the event Debtor becomes liable for cleanup or other costs under



any such laws, and (b) agrees to indemnify and hold harmless Secured Party against any and all claims and losses resulting from a breach of this provision of this Agreement.

**Maintenance of Insurance.** Debtor shall procure and maintain all risks insurance, including without limitation fire, theft, and liability coverage, together with such other insurance as Secured Party may require with respect to the Collateral and Grantor's business, in form, amounts, coverages and basis reasonably acceptable to Secured Party and issued by a company or companies reasonably acceptable to Secured Party. Debtor, upon request of Secured Party, will deliver to Secured Party from time to time the policies or certificates of insurance in form satisfactory to Secured Party, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days' prior written notice to Secured Party and not including any disclaimer of the insurer's liability for failure to give such a notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Secured Party will not be impaired in any way by any act, omission or default of Debtor or any other person. In connection with all policies covering assets in which Secured Party holds or is offered a security interest, Debtor will provide Secured Party with such loss payable or other endorsements as Secured Party may require. The Secured Party shall be named as an additional insured in all liability insurance policies. If Debtor at any time fails to obtain or maintain any insurance as required under this Agreement, Secured Party may (but shall not be obligated to) obtain such insurance as Secured Party deems appropriate, including if it so chooses "single interest insurance," which will cover only Secured Party's interest in the Collateral.

**Application of Insurance Proceeds.** Debtor shall promptly notify Secured Party of any loss or damage to the Collateral. Secured Party may make proof of loss if Debtor fails to do so within fifteen (15) days of the casualty. All proceeds of any insurance on the Collateral, including accrued proceeds thereon, shall be held by Secured Party as part of the Collateral. If Secured Party consents to repair or replacement of the damaged or destroyed Collateral, Secured Party shall, upon satisfactory proof of expenditure, pay or reimburse Debtor from the proceeds for the reasonable cost of repair or restoration. If Secured Party does not consent to repair or replacement of the Collateral, Secured Party shall retain a sufficient amount of the proceeds to pay all of the Secured Debt, and shall pay the balance to Debtor. Any proceeds which have not been disbursed within six (6) months after their receipt and which Debtor has not committed to the repair or restoration of the Collateral shall be used to prepay the Secured Debt. Any application of insurance proceeds to the Secured Debt shall not extend or postpone the due date of any payment or installment due on the Secured Debt.

**Insurance Reserves.** Secured Party may require Debtor to maintain with Secured Party reserves for payment of insurance premiums, which reserves shall be created by monthly payments from Debtor of a sum estimated by Secured Party to be sufficient to produce, at least fifteen (15) days before the premium due date, amounts at least equal to the insurance premiums to be paid. If fifteen (15) days before payment is due, the reserve funds are insufficient, Debtor shall upon demand pay any deficiency to Secured Party. The reserve funds shall be held by Secured Party as a general deposit and shall constitute a non-interest-bearing

account which Secured Party may satisfy by payment of the insurance premiums required to be paid by Debtor as they become due. Secured Party does not hold the reserve funds in trust for Debtor, and Secured Party is not the agent of Debtor for payment of the insurance premiums required to be paid by Debtor. The responsibility for the payment of premiums shall remain Debtor's sole responsibility.

**Insurance Reports.** Debtor, upon request of Secured Party, shall furnish to Secured Party reports on each existing policy of insurance showing such information as Secured Party may reasonably request including the following: (a) the name of the insurer; (b) the risks insured; (c) the amount of the policy; (d) the property insured; (e) the then current value on the basis of which insurance has been obtained and the manner of determining that value; and (f) the expiration date of the policy. In addition, Debtor shall upon request by Secured Party (however not more often than annually) have an independent appraiser satisfactory to Secured Party determine, as applicable, the cash value or replacement cost of the Collateral.

**Survival of Provisions.** The provisions of this section of this Agreement containing waivers and releases and requiring the Debtor to indemnify and hold harmless the Secured Party, shall survive the payment of the Secured Debt and the satisfaction and reconveyance of the lien of this Agreement and shall not be affected by Secured Party's acquisition of any interest in the Collateral, whether by foreclosure or otherwise.

4. **DEBTOR'S RIGHT TO POSSESSION.** Except as provided below with regard to collection of accounts, until the occurrence of an Event of Default, Debtor may have possession of the tangible personal property and beneficial use of all the Collateral and may use it in any lawful manner not inconsistent with this Agreement or the Related Documents, provided that Debtor's right to possession and beneficial use shall not apply to any Collateral where possession of the Collateral by Secured Party is required or permitted by law to perfect Secured Party's security interest in such Collateral, or Secured Party elects to perfect its security interest by possession along with the filing of a financing statement. If Secured Party at any time has possession of any Collateral, whether before or after an Event of Default, Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral if Secured Party takes such action for that purpose as Debtor shall request or as Secured Party, in Secured Party's sole discretion, shall deem appropriate under the circumstances, but failure to honor any request by Debtor shall not of itself be deemed to be a failure to exercise reasonable care. Secured Party shall not be required to take any steps necessary to preserve any rights in the Collateral against prior parties, nor to protect, preserve or maintain any security interest given to secure the Secured Debt. Where collateral is in the possession of a third party, Debtor will join with Secured Party in notifying the third party of Secured Party's security interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Secured Party.

5. **COLLECTION OF ACCOUNTS.** Secured Party may at any time, and upon request of Secured Party, Debtor shall, notify the account debtors on Debtor's accounts of the security interest of Secured Party in, or of the assignment to Secured Party of, the accounts

on which the account debtors are liable to Debtor, and may notify the account debtors to make payment on the accounts directly to Secured Party. Secured Party also may take control of the cash and other proceeds of any of Debtor's accounts. Cost of collection and enforcement of the accounts, including attorneys' fees and out-of-pocket expenses, shall be borne solely by Debtor whether incurred by Secured Party or by Debtor. With respect to all accounts, the collection and enforcement of the accounts by Debtor shall be as agent for Secured Party and all collections and proceeds of accounts shall be promptly turned over by Debtor to Secured Party in the form in which they are received by Debtor, either by mailing or delivering them to Secured Party not later than the banking business day following receipt by Debtor. All checks, drafts and other instruments shall be endorsed by Debtor to Secured Party. If Debtor fails to make the endorsement, Secured Party is irrevocably authorized to endorse them on behalf of Debtor. Debtor will not commingle the collections or proceeds with any of Debtor's other funds or property but will hold the collections or proceeds separate and apart and on an express trust for Secured Party. Secured Party shall have the right at any time to enforce Debtor's rights against the account debtors.

6. **CONTROL AGREEMENTS.** Debtor will cooperate with Secured Party in obtaining a control agreement in a form and substance satisfactory to Secured Party with respect to Collateral consisting of deposit accounts, investment property, letter of credit rights and electronic chattel paper.

7. **EXPENDITURES BY SECURED PARTY.** If not discharged or paid when due, Secured Party may (but shall not be obligated to) discharge or pay any amounts required to be discharged or paid by Debtor under this Agreement, including without limitation all taxes, liens, security interests encumbrances, and other claims, at any time levied or placed on the Collateral. Secured Party also may (but shall not be obligated to) pay all costs for insuring, maintaining and preserving the Collateral. All such expenditures incurred or paid by Secured Party for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Secured Party to the date of repayment by Debtor. All such expenses shall become a part of the Secured Debt and at Secured Party's option, will (a) be payable on demand, (b) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (i) the term of any applicable insurance policy or (ii) the remaining term of the Note, or (c) be treated as a balloon payment which will be due and payable at the Note's maturity. This Agreement also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Secured Party may be entitled upon the occurrence of an Event of Default.

8. **EVENTS OF DEFAULT.** Each of the following shall constitute an Event of Default under this Agreement:

**Default on Secured Debt.** Failure of Debtor to make any payment when due on the Secured Debt.

**Other Defaults.** Failure of Debtor to comply with or to perform any other term, obligation, covenant, agreement, or condition contained in this Agreement, the Loan

Agreement in any of the Related Documents, or in any other agreement between Secured Party and Debtor.

**Default in Favor of Third Parties.** Should Debtor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person.

**False Statements.** Any warranty, representation or statement made or furnished to Secured Party by or on behalf of Debtor under this Agreement, the Note, or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished.

**Defective Collateralization.** This Agreement or any of the Related Documents ceases to be in full force and effect (including (i) failure of any collateral documents and the recordation or lack thereof to create or continue a valid and perfected security interest or lien and (ii) the receipt by Secured Party of a lien search report indicating that Secured Party's security interest is not prior to another security interest or other interests reflected in the report) at any time and for any reason.

**Death or Insolvency.** The dissolution or any other termination of Debtor's existence as a going business, the insolvency of Debtor, the appointment of a receiver for any part of Debtor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Debtor.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Debtor or by any governmental agency against the Collateral or any other collateral securing the Secured Debt. This includes a garnishment of any of Debtor's deposit accounts with Secured Party. However, this Event of Default shall not apply if there is a good faith dispute by Debtor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Debtor gives Secured Party written notice of the creditor or forfeiture proceeding and deposits with Secured Party monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Secured Party, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Change in Beneficial Interests.** Any of the shares of stock, membership interests, partnership interest, or other beneficial interest in Debtor is sold or transferred, including the creation of a lien or encumbrance, without Secured Party's prior written consent.

**Changes and Impairment.** A material adverse change occurs in Debtor's financial condition, or Beneficiary reasonably believes the prospect of payment or performance of the Secured Debt is impaired.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the Secured Debt or such Guarantor dies or becomes incompetent. Secured Party, at its option, may, but shall not be required to, permit the

Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Secured Party, and, in doing so, cure the Event of Default.

8. **RIGHTS AND REMEDIES ON DEFAULT.** If an Event of Default occurs under this Agreement, at any time thereafter, Secured Party shall have all the rights of a secured party under the West Virginia Uniform Commercial Code. In addition and without limitation, Secured Party may exercise any one or more of the following rights and remedies:

**Accelerate Secured Debt.** Secured Party may declare the entire Secured Debt, including any prepayment penalty which Debtor would be required to pay, immediately due and payable, without notice.

**Assemble Collateral.** Secured Party may require Debtor to deliver to Secured Party all or any portion of the Collateral and any and all certificates of title and other documents relating to the Collateral. Secured Party may require Debtor to assemble the Collateral and make it available to Secured Party at a place to be designated by Secured Party. Secured Party also shall have full power to enter upon the property of Debtor to take possession of and remove the Collateral or to remain upon the property and operate the Collateral and other property used in the Debtor's business and affairs. If the Collateral contains other goods not covered by this Agreement at the time of repossession, Debtor agrees Secured Party may take or operate such other goods, provided that Secured Party makes reasonable efforts to return them to Debtor after repossession.

**Sell the Collateral.** Secured Party shall have full power to sell, lease, transfer, or otherwise deal with the Collateral or proceeds thereof in its own name or that of Debtor. Secured Party may sell the Collateral at public auction or private sale. Unless the Collateral threatens to decline speedily in value or is of a type customarily sold on a recognized market, Secured Party will give Debtor and other parties entitled to notice reasonable notice of the time and place of any public sale and reasonable notice of the time after which any private sale or any other intended disposition of the Collateral is to be made. The requirements of reasonable notice shall be met if such notice is given at least ten (10) days before the time of the sale or disposition. All expenses relating to the disposition of the Collateral and any collateral under any Related Documents, including without limitation, the expenses of retaking, holding, insuring, preparing for sale and selling the Collateral, shall become a part of the Secured Debt secured by this Agreement and shall be payable on demand, with interest at the Note rate from date of expenditure until repaid. Secured Party has no obligation to clean up or otherwise prepare the Collateral for sale. Secured Party shall sell the Collateral without giving any warranties as to the Collateral. Secured Party shall specifically disclaim any warranties of title or the like.

**Appoint Receiver.** Secured Party shall have the following rights and remedies regarding the appointment of a receiver: (a) Secured Party may have a receiver appointed as a matter of right, (b) the receiver may be an employee of Secured Party and may serve without bond, and (c) all fees of the receiver and his or her attorney shall become part of

the Secured Debt secured by this Agreement and shall be payable on demand, with interest at the Note rate from date of expenditure until repaid.

**Collect Revenues, Apply Accounts.** Secured Party, either itself or through a receiver, may collect the Debtor's account receivable and/or the payments, rents, income, and revenues from the Collateral. Secured Party may at any time in its discretion transfer any Collateral into its own name or that of its nominee and receive the payments, rents, income, and revenues therefrom and hold the same as security for the Secured Debt or apply it to payment of the Secured Debt in such order of preference as Secured Party may determine. Insofar as the Collateral consists of accounts, general intangibles, insurance policies, instruments, chattel paper, choses in action, or similar property, Secured Party may demand, collect, receipt for, settle, compromise, adjust, sue for, foreclose, or realize on the Collateral as Secured Party may determine, whether or not Secured Debt or Collateral is then due. For these purposes, Secured Party may, on behalf of and in the name of Debtor, receive, open and dispose of mail addressed to Debtor; change any address to which mail and payments are to be sent; and endorse notes, checks, drafts, money orders, documents of title, instruments and items pertaining to payment, shipment, or storage of any Collateral. To facilitate collection, Secured Party may notify account debtors and obligors on any Collateral to make payments directly to Secured Party.

**Setoff.** Secured Party may charge or setoff all Secured Debt against any and all Collateral in its possession.

**Obtain Deficiency.** If Secured Party chooses to sell any or all of the Collateral, Secured Party may obtain a judgment against Debtor for any deficiency remaining on the Secured Debt due to Secured Party after application of all amounts received from the exercise of the rights provided in this Agreement. Debtor shall be liable for a deficiency even if the transaction described in this subsection is a sale of accounts or chattel paper.

**Other Rights and Remedies.** Secured Party shall have all the rights and remedies of a secured creditor under the provisions of the Uniform Commercial Code, as may be amended from time to time. In addition, Secured Party shall have and may exercise any or all other rights and remedies it may have available at law, in equity, or otherwise.

**Cumulative Remedies.** All of Secured Party's rights and remedies, whether evidenced by this Agreement or the Related Documents or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by Secured Party to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Debtor under this Agreement, after Debtor's failure to perform, shall not affect Secured Party's right to declare a default and to exercise its remedies.

10. **MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Agreement:

**Amendments.** The Note and this Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the

matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Applicable Law.** This Agreement has been delivered to Secured Party and accepted by Secured Party in the State of West Virginia. If there is a lawsuit, Debtor consents to the jurisdiction of the courts of the State of West Virginia. This Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia, except to the extent that the UCC provides for the application of the law of the Debtor's state of incorporation or for the state where the Collateral is located for perfection, the laws of those states shall apply.

**Attorneys' Fees; Expenses.** Debtor agrees to pay upon demand all of Secured Party's costs and expenses, including attorneys' fees and Secured Party's legal expenses, incurred in connection with the enforcement of this Agreement. Secured Party may pay someone else to help enforce this Agreement and Debtor shall pay the costs and expenses of such enforcement. Costs and expenses include Secured Party's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (and including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Debtor also shall pay all court costs and such additional fees as may be directed by the court.

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

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

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

**Power of Attorney.** Debtor hereby appoints Secured Party as its true and lawful attorney-in-fact, irrevocably, with full power of substitution, coupled with an interest, to do the following: (a) to demand, collect, receive, receipt for, sue and recover all sums of money or other property which may now or hereafter become due, owing or payable from the Collateral; (b) to execute, sign and endorse any and all claims, instruments, receipts, checks, drafts or

warrants issued in payment for the Collateral; (c) to settle or compromise any and all claims arising under the Collateral, and, in the place and stead of Debtor, to execute and deliver its release and settlement for the claim; and (d) to file any claim or claims or to take any action or institute or take part in any proceedings, either in its own name or in the name of Debtor, or otherwise, which in the discretion of Secured Party may seem to be necessary or advisable. This power is given as security for the Secured Debt, and the authority hereby conferred is and shall be irrevocable and shall remain in full force and effect until renounced by Secured Party.

**Risk of Loss.** Debtor has the risk of loss of the collateral.

**Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

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

**Time.** Time is of the essence in the performance of this Agreement.

**Waiver.** Secured Party shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Secured Party. No delay or omission on the part of Secured Party in exercising any right shall operate as a waiver of such right or any other right. A waiver by Secured Party of a provision of this Agreement shall not prejudice or constitute a waiver of Secured Party's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Secured Party, nor any course of dealing between Secured Party and Debtor, shall constitute a waiver of any of Secured Party's rights or of any of Debtor's obligations as to any future transactions. Whenever the consent of Secured Party is required under this Agreement, the granting of such consent by Secured Party in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Secured Party.

**Further Assurances.** Debtor agrees to execute any further documents and to take any further actions reasonably requested by Secured Party to evidence or perfect the security interest granted herein or to effectuate the rights granted to or intended to be granted to Secured Party herein.

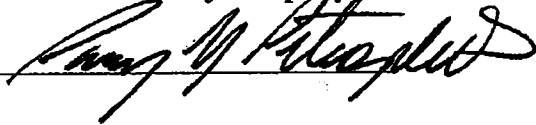


**DEBTOR:**

**MERMAID, LLC**

**a West Virginia limited liability company**

By: \_\_\_\_\_



**SECURED PARTY:**

**THE HUNTINGTON NATIONAL BANK,**

**a national banking association**

By: \_\_\_\_\_



Donald Robinson, Community President

**Exhibit A**

Real Property

**TRACT ONE:**

**LOT 3Ar** - Beginning at a ½ inch reinforcing rod (found) standing on the western right-of-way limits of Don Knotts Boulevard (formerly called South University Avenue) and marking the southernmost corner to Lot No. 2R of the Waterfront Place Complex (see plats of Waterfront Place Complex recorded in Map Cabinet No. 3, at Files No. 44B, 67B and 84A and in Map Cabinet D, at Slides 5A and 14B); Thence with three (3) lines with said limits of U. S. Route 119, South 31°48'00" West 121.11 feet to a ½ inch reinforcing rod (found); Thence South 44°25'50" West 39.32 feet to a ½ inch reinforcing rod (found); Thence South 37°07'30" West 165.12 feet to a 5/8 inch reinforcing rod (set), said rod marking a corner to Lot No. 3B1r; Thence with a new division line with said Lot No. 3B1r and running along the South face of the brick hotel wall, North 60°46'20" West 253.72 feet to a 5/8 inch reinforcing rod (set), said rod standing in a line of lands conveyed to the City of Morgantown by deed recorded in Deed Book 1161, at Page 375; Thence with said City of Morgantown lands, North 28°49'40" East 323.78 feet to a 5/8 inch reinforcing rod (set), said rod marking a corner to said Lot No. 2R; Thence with said Lot No. 2R, South 60°31'20" East 294.41 feet to the beginning, containing 89,603 square feet or 2.0570 acres more or less, and being more particularly shown on a plat of survey prepared by Greenleaf Surveying Company dated January 13, 2009, revised February 17, 2009.

Being a part of Lot No. 3A of the Waterfront Place Complex as conveyed to Mermaid, LLC by deeds recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1215, at Page 444 and Deed Book 1219, at Page 366, and being shown on Morgantown Corporation Tax Map 37A as being a part of Parcel 3.1.

There is excepted and reserved from the aforesaid legal description and coverage under this title commitment the residential community which is situate above the Hotel. The excluded property includes all property in excess of 962' above sea level.

**TRACT TWO:**

**LOT 3B1r** - Beginning at a 5/8 inch reinforcing rod (set) standing on the western right-of-way limits of Don Knotts Boulevard (formerly called South University Avenue) and marking the southernmost corner to Lot No. 3Ar of the Waterfront Place Complex (see plats of Waterfront Place Complex recorded in Map Cabinet No. 3, at Files No. 44B, 67B and 84A and in Map Cabinet D, at Slides 5A and 14B); Thence with said limits of U. S. Route 119, South 37°07'30" West 289.37 feet to a 5/8 inch reinforcing rod (set), said rod marking a corner to Lot No. 3B2r; Thence with a new division line with said Lot No. 3B2r and along the South face of the proposed Event Center building wall, North 60°46'00" West 53.58 feet to a point, said point standing in the centerline of a proposed common wall between the Event Center and the Parking Garage; Thence with a new division line with said Lot No. 3B2r and along the centerline of a proposed

common wall between the Event Center and the Parking Garage, North 29°14'00" East 10.58 feet to a point; Thence with a new division line with said Lot No. 3B2r and along the centerline of a proposed common wall between the Event Center and the Parking Garage, North 60°46'00" West 158.45 feet to a 5/8 inch reinforcing rod (set), said rod standing in a line of lands conveyed to the City of Morgantown by deed recorded in Deed Book 1161, at Page 375; Thence with said City of Morgantown lands, North 28°49'40" East 276.02 feet to a 5/8 inch reinforcing rod (set), said rod marking a corner to said Lot No. 3Ar; Thence with a new division line with said Lot No. 3Ar and running along the South face of the brick hotel wall, South 60°46'20" East 253.72 feet to the beginning, containing 65,059 square feet or 1.4936 acres more or less, and being more particularly shown on a plat of survey prepared by Greenleaf Surveying Company dated January 13, 2009, revised February 17, 2009.

Being a part of Lot No. 3A of the Waterfront Place Complex as conveyed to Mermaid, LLC by deeds recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1215, at Page 444 and Deed Book 1219, at Page 366, and being shown on Morgantown Corporation Tax Map 37A as being a part of Parcel 3.1.

Being all of Lot No. 3B1 of the Waterfront Place Complex as conveyed to The City of Morgantown Building Commission by deed recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1356, at Page 517, and being shown on Morgantown Corporation Tax Map 37A as being a part of Parcels 3 and 4.

Further being all of the parcel of land leased by The City of Morgantown Building Commission to Mermaid, LLC, by lease dated July 1, 2008, a Memorandum of which is recorded in said Clerk's office in Deed Book 1375 at Page 388, it being the intention of the Grantor to grant and convey all of its right title and interest in and to said Lot No. 3B1, including its leasehold interest obtained by said lease dated July 1, 2008 including all modifications, amendments, supplements, additions or restatements of said lease. .

There is further granted and conveyed all of Grantor's right of reversion as reserved in said deed of record in said Clerk's office in Deed Book 1356 at page 517, more particularly described as follows:

"Lot 3B1 described herein shall, without any additional consideration, revert to the Grantor herein upon the earlier of seventeen (17) years from the date of this conveyance or the final payoff of the WVEDA Economic Development Grant Committee Bonds. The Grantee herein, covenants and agrees to execute a deed or other documentation as required by Grantor or Grantor's counsel, to evidence that the reversion has occurred"

Being a part of Lot No. 3B2 of the Waterfront Place Complex as conveyed to Mermaid, LLC by deed recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1356, at Page 523, and being shown on Morgantown Corporation Tax Map 37A as being a part of Parcels 3 and 4.

### TRACT THREE:

LOT 3B2r - Beginning at a 5/8 inch reinforcing rod (set) standing on the western right-of-way limits of Don Knotts Boulevard (formerly called South University Avenue) and marking the southernmost corner to Lot No. 3B1r of the Waterfront Place Complex (see plats of Waterfront Place Complex recorded in Map Cabinet No. 3, at Files No. 44B, 67B and 84A and in Map Cabinet D, at Slides 5A and 14B); Thence with two (2) lines with said limits of U. S. Route 119,

South 37°07'30" West 145.51 feet to a drill hole (found); Thence North 81°55'50" West 36.34 feet to a 5/8 inch reinforcing rod (set), said rod marking a corner to Lot No. 3B3r; Thence with a new division line with said Lot No. 3B3r, North 60°46'00" West 156.98 feet to a 5/8 inch reinforcing rod (set), said rod standing in a line of lands conveyed to the City of Morgantown by deed recorded in Deed Book 1161, at Page 375; Thence with said City of Morgantown lands, North 28°49'40" East 167.84 feet to a 5/8 inch reinforcing rod (set), said rod marking a corner to said Lot No. 3B1r; Thence with a new division line with said Lot No. 3B1r and along the centerline of a proposed common wall between the Event Center and the Parking Garage, South 60°46'00" East 158.45 feet to a point; Thence with a new division line with said Lot No. 3B1r and along the centerline of a proposed common wall between the Event Center and the Parking Garage, South 29°14'00" West 10.58 feet to a point; Thence with a new division line with said Lot No. 3B1r and along the South face of the proposed Event Center building wall, South 60°46'00" East 53.58 feet to the beginning, containing 32,996 square feet or 0.7575 acres more or less, and being more particularly shown on a plat of survey prepared by Greenleaf Surveying Company dated January 13, 2009, revised February 17, 2009.

Being a part of Lot No. 3B2 of the Waterfront Place Complex as conveyed to Mermaid, LLC by deed recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1356, at Page 523, and being shown on Morgantown Corporation Tax Map 37A as being a part of Parcels 3 and 4.

Being a part of Lot No. 3B3 of the Waterfront Place Complex as conveyed to Mermaid, LLC by deed recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1356, at Page 496, and being shown on Morgantown Corporation Tax Map 37A as being a part of Parcel 3.2.