Filing # 141825238 E-Filed 01/12/2022 10:04:13 AM

IN THE

Supreme Court Of Florida

Case No. SC21-1717
Eleventh Circuit Court of Appeals Case No. 21-11742

1944 BEACH BOULEVARD, LLC,
Plaintiff/Appellant,

v.

LIVE OAK BANKING COMPANY,
Defendant/Appellee.

ON CERTIFIED QUESTIONS FROM THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

AMENDED APPENDIX TO APPELLANT'S INITIAL BRIEF

RECEIVED, 01/12/2022 10:06:24 AM, Clerk, Supreme Court

Richard R. Thames, Esq.
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[1] All references to "Adv. Pro. Docket No." refer to the adversary proceeding styled as *1944 Beach Boulevard, LLC v. Live Oak Banking Company*; United States Bankruptcy Court, Middle District of Florida, Jacksonville Division; Adversary No. 3:20-ap-71-JAF.

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Attorneys for 1944 Beach Boulevard, LLC

CERTIFICATE OF SERVICE

I hereby certify that on January 12, 2022, a true and correct copy of the foregoing was furnished by electronic service through the Florida Court's E-Filing Portal and that a copy has been furnished by U.S. Mail, postage prepaid and by electronic transmission on January 12, 2022 to Ezra Z. Scrivanich, Esq., McMichael Taylor & Gray, LLC, Suite 260, 3550 Engineering Drive, Peachtree Corners, Georgia 30092 (escrivanich@mtglaw.com).

THAMES | MARKEY

/s/ Richard R. Thames
By_____
Richard R. Thames

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Jacksonville, Florida 32202
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Attorneys for 1944 Beach Boulevard, LLC

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re	)	Case Nos.: 3:19-bk-4607-CJJ through 3:19-bk-4622-CJJ
NRP LEASE HOLDINGS, LLC, et al.,[1]	)	Chapter 11
Debtors.	)	Jointly Administered Under
_____	)	Case No.: 3:19-bk-4607-CJJ
1944 BEACH BOULEVARD, LLC,	)	
Plaintiff,	)	Adversary No.:
v.	)	
LIVE OAK BANKING COMPANY	)	
Defendant.	)	
_____	)	

COMPLAINT TO DETERMINE
VALIDITY, PRIORITY AND EXTENT OF LIEN
AND TO AVOID SAME PURSUANT TO 11 U.S.C. § 544

Plaintiff, 1944 Beach Boulevard, LLC, sues defendant, Live Oak Banking Company ("Live Oak" or "Defendant"), and alleges:

[1] The Federal Employer Identification Number of the Debtors are NRP Lease Holdings, LLC (27-2059649), 8333 W 21st Street N, LLC (27-2060433), 1010 N. Webb Road, LLC (27-2062783), 8350 Lyra Drive, LLC (27-2063219), 5890 Scarborough Drive, LLC (27-2059790), 10735 E. Hwy 40, LLC (27-2062982), Adventure Holdings, LLC (20-1287061), 2780 SR16, LLC (26-2453946), 2400 Sheridan Drive, LLC (86-1078288), 1600 Stratford, LLC (20-3214101), 3660 East Franklin Street, LLC (20-0077196), 1944 Beach Boulevard, LLC (56-2472270), 4825 Blanding Boulevard, LLC (20-1287152), 3311 Capital Boulevard, LLC (84-1650790), 17717 Coit Road, LLC (20-1292272) and 2590 Water Park Drive, LLC (46-0657049).

Jurisdiction and Venue

1. This is an action to determine the validity, priority and extent of an asserted lien in Plaintiff's property and to avoid the asserted lien pursuant to 11 U.S.C. § 544.

2. This Court has jurisdiction over adversary complaint pursuant to 28 U.S.C. § 1334(b) as it arises under the Bankruptcy Code and arises in a case under the Bankruptcy Code.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1409.

4. This is a core matter pursuant to 28 U.S.C. §§ 157(b)(2)(A), (B), (K) and (O).

Factual Background

5. Plaintiff is a limited liability company organized and existing under the laws of the State of Florida. A copy of its Articles of Organization is attached as **Exhibit A**. Evidence of the Florida Division of Corporation's registration of the company is attached as **Exhibit B**.

6. Plaintiff is the operator of a family entertainment center located at 1944 Beach Boulevard, Jacksonville, Florida, which operates under the tradename "Adventure Landing." Amenities at the park include miniature golf, laser tag, arcade games, batting cages, go-carts, miniature roller coasters, waterslides and snack bars.

7. On December 5, 2019, Plaintiff and its affiliates filed voluntary petitions for reorganization under Chapter 11 of the United States Bankruptcy Code.

8. On the Petition Date, Plaintiff was jointly and severally indebted to Live Oak in the approximate amount of $3,000,000 on account of two loans, each in the

original principal amount of $2,500,000. The loans are guaranteed by the U.S. Small Business Administration and are identified as SBA Loan Nos. 81146450-00 and 81145550-08.

9. The two loans purport to be secured by a blanket lien on all of Plaintiff's assets.

10. In an attempt to perfect its claimed security interests, Live Oak filed two UCC-1 Financing Statements with the Florida Secured Transaction Registry, the first being filed on January 5, 2016 under File No. 2016061146252, and the second being filed on or about January 25, 2016 under File No. 201606327524. Copies of the foregoing UCC-1 Financing Statements are attached hereto as **Exhibits C** and **D**, respectively.

11. The UCC-1 Financing Statements filed by Live Oak are defective, however, as they improperly identify the debtor as "1944 Beach Blvd., LLC" instead of "1944 Beach Boulevard, LLC." As a result, a search of the Florida Secured Transaction Registry's records utilizing "the name that is stated to be the registered organization's name on the public organic record" most recently filed with the State of Florida will not reveal the existence of Live Oak's asserted liens, as reflected in the search results attached hereto as **Exhibit E** which were obtained from the Florida Secured Transaction Registry's website utilizing the website's ordinary search logic and Plaintiff's correct name.

12. Under § 679.5021(1), Florida Statutes, a financing statement is sufficient only if it (i) *provides the name of the debtor*, (ii) provides the name of the secured party or a representative of the secured party, and (iii) describes the collateral covered by the financing statement.

13. Pursuant to § 679.5031(1)(a), Florida Statutes:

> (1) A financing statement sufficiently provides the name of the debtor:
>
> (a) Except as otherwise provided in paragraph (c), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name that is stated to be the registered organization's name on the public organic record most recently filed with or issued or enacted by the registered organization's jurisdiction of organization that purports to state, amend, or restate the registered organization's name;

14. Pursuant to § 679.5061, Florida Statutes, a financing statement which fails to comply with § 679.5031(1), Florida Statutes, is deemed seriously misleading, and is rendered unperfected.

15. Live Oak's UCC-1 Financing Statements do not correctly identify the name of the debtor entity. As a result, a party searching the Florida Secured Transaction Registry's records utilizing the website's standard search logic and the Plaintiff's correct name would not discover the existence of Live Oak's claimed security interests. Live Oak's UCC-1 Financing Statements are therefore seriously misleading and are not enforceable against subsequent purchasers for value or lienors as a matter of law.

16. Pursuant to 11 U.S.C. § 544, Plaintiff is granted the status of a hypothetical lien creditor and may avoid any lien which is not properly perfected under state law as of the Petition Date.

17. Under § 679.3171(b)(1), Florida Statutes, a judgment lien creditor takes priority over a prior unperfected lien in personal property.

18. As a result of the defective filings described herein, Plaintiff is entitled to a declaration that Live Oak's financing statements are seriously misleading and a judgment avoiding the fixing of Live Oak's lien on its property.

WHEREFORE, Plaintiff respectfully requests the entry of a judgment (i) declaring Live Oak's UCC-1 Financing Statements to be seriously misleading and therefore unperfected, (ii) voiding Live Oak's asserted security interests in Plaintiff's assets, and (iii) granting such other relief as is appropriate.

THAMES MARKEY & HEEKIN, P.A.

/s/ Richard R. Thames
By_____
Richard R. Thames

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(904) 358-4001 (Facsimile)
rrt@tmhlaw.net

Attorneys for 1944 Beach Boulevard, LLC

877

Exhibit “A”

H04000130381

ARTICLES OF ORGANIZATION
OF
1944 BEACH BOULEVARD, LLC

A FLORIDA LIMITED LIABILITY COMPANY

* * *

ARTICLE I
NAME

The name of this limited liability company is 1944 Beach Boulevard, LLC.

ARTICLE II
DURATION

The Company's duration shall be perpetual unless sooner dissolved.

FILED
04 JUN 21 AM 8:14
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

ARTICLE III
PRINCIPAL OFFICE

The mailing address and the street address of the principal office of the Company is 10 S. Third Street, Jacksonville Beach, Florida 32250.

ARTICLE IV
REGISTERED OFFICE AND AGENT

The initial registered office of the Company is 841 Prudential Drive, Ste 1400, Jacksonville, Florida 32207, and its initial registered agent is Stoneburner Berry & Simmons, P.A.

ARTICLE V
PURPOSE AND POWERS

The Company is organized with a general business purpose, has all powers provided by law and may use those powers to any lawful purpose.

H04000130381

ARTICLE VI
MANAGEMENT

The Company shall be managed by a manager. The initial manager shall be

Name	Address
Adventure Holdings, LLC	510 S. Third Street Jacksonville Beach, Florida 32250

The initial manager shall serve until his successor is elected and qualifies.

FILED
04 JUN 21 AM 8:14
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

ARTICLE VII
ADMISSION OF NEW MEMBERS

The Company may admit new members as provided in the Company's Regulations.

ARTICLE VIII
CONTINUATION OF BUSINESS

The remaining Members of the Company may continue its business upon the death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member or the occurrence of any other event which terminates the continued membership of the Member in the Company as provided in the Regulations of the Company.

ARTICLE IX
RELATIONSHIP OF ARTICLES OF ORGANIZATION TO REGULATIONS

If a provision of these Articles of Organization differs from a provision of the Company's Regulations, then, to the extent allowed by law, the Regulations will govern.

IN WITNESS WHEREOF, the undersigned has duly executed these Articles of Organization as of this 21st day of June, 2004.

Sidney S. Simmons, II
Authorized Representative

H04000130381

CERTIFICATE OF DESIGNATION OF REGISTERED OFFICE AND REGISTED AGENT FOR THE SERVICE OF PROCESS WITHIN FLORIDA

In compliance with Sections 608.415 and 608.507, Florida Statutes, the following is submitted:

1944 Beach Boulevard, LLC, desiring to organize or qualify under the laws of the State of Florida hereby designates Stoneburner Berry & Simmons, P.A. as its registered agent to accept service of process within the State of Florida and the address of its registered office shall be 841 Prudential Drive, Ste. 140, Jacksonville, Florida 32207.

DATED this 21st day of June, 2004.

Sidney S. Simmons, II
Authorized Representative

Having been named as registered agent to accept service of process for the above stated Company, at the place designated in this certificate, I hereby agree to accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

DATED this 21st day of June, 2004.

FILED
04 JUN 21 AM 8:14
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

STONEBURNER BERRY & SIMMONS, P.A.

By: Sidney S. Simmons
Sidney S. Simmons, II
Its Vice President

H04000130381

L04000046433

Florida Department of State
Division of Corporations
Public Access System

Electronic Filing Cover Sheet

Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.

(((H04000130381 3)))

Note: DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.

To:
Division of Corporations
Fax Number : (850)205-0383

From:
Account Name : CORPDIRECT AGENTS, INC.
Account Number : 110450000714
Phone : (850)222-1173
Fax Number : (850)224-1640

FILED
04 JUN 21 AM 8:14
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

04 78 27387

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04 JUN 21 AM 7:38
DIVISION OF CORPORATION

LIMITED LIABILITY COMPANY

1944 BEACH BOULEVARD, LLC

Certificate of Status	0
Certified Copy	1
Page Count	04
Estimated Charge	$155.00

Electronic Filing Menu Corporate Filing Public Access Help

Exhibit “B”

DIVISION OF CORPORATIONS

Department of State / Division of Corporations / Search Records / Search by Entity Name /

Detail by Entity Name

Florida Limited Liability Company
1944 BEACH BOULEVARD, LLC

Filing Information

Document Number	L04000046433
FEI/EIN Number	56-2472270
Date Filed	06/21/2004
State	FL
Status	ACTIVE

Principal Address

1944 BEACH BLVD
JACKSONVILLE BEACH, FL 32250

Changed: 05/12/2005

Mailing Address

2315 BEACH BLVD
JACKSONVILLE BEACH, FL 32250-4033

Changed: 05/12/2005

Registered Agent Name & Address

SIMMONS, SIDNEY
1050 RIVERSIDE AVE.
JACKSONVILLE, FL 32204

Name Changed: 04/15/2008

Address Changed: 04/15/2008

Authorized Person(s) Detail

Name & Address

Title MGR

ADVENTURE HOLDINGS, LLC
2315 BEACH BLVD, STE 203
JACKSONVILLE BEACH, FL 32250-4033

Annual Reports

Report Year	Filed Date

2017	03/15/2017
2018	04/30/2018
2019	04/30/2019

Document Images

04/30/2019 -- ANNUAL REPORT	View image in PDF format
04/30/2018 -- ANNUAL REPORT	View image in PDF format
03/15/2017 -- ANNUAL REPORT	View image in PDF format
04/01/2016 -- ANNUAL REPORT	View image in PDF format
04/24/2015 -- ANNUAL REPORT	View image in PDF format
04/03/2014 -- ANNUAL REPORT	View image in PDF format
04/29/2013 -- ANNUAL REPORT	View image in PDF format
04/05/2012 -- ANNUAL REPORT	View image in PDF format
01/14/2011 -- ANNUAL REPORT	View image in PDF format
04/09/2010 -- ANNUAL REPORT	View image in PDF format
03/20/2009 -- ANNUAL REPORT	View image in PDF format
04/15/2008 -- ANNUAL REPORT	View image in PDF format
03/26/2007 -- ANNUAL REPORT	View image in PDF format
04/17/2006 -- ANNUAL REPORT	View image in PDF format
05/12/2005 -- ANNUAL REPORT	View image in PDF format
06/21/2004 -- Florida Limited Liabilites	View image in PDF format

Florida Department of State, Division of Corporations

Exhibit “C”

FLORIDA SECURED TRANSACTION REGISTRY

Search Results Detail

Detail Record For: 201606146252

«PREVIOUS | «BACK TO RESULTS | NEXT»

Status	Date Filed	Expires	Filings Completed Thru	Summary For Filing
FILED	01/05/2016	01/05/2021	05/26/2020	201606146252

Filing Events — Events Filed: 0

Secured Parties — Current Secured Parties: 1

Name & Address

LIVE OAK BANKING COMPANY
1741 TIBURON DRIVE WILMINGTON NC 28403

Debtor Parties — Current Debtor Parties: 12

Name & Address

View All

2590 WATER PARK DRIVE, LLC
2315 BEACH BLVD., SUITE 203 JACKSONVILLE FL 32250

NRP LEASE HOLDINGS, LLC
2315 BEACH BLVD., SUITE 203 JACKSONVILLE FL 32250

1010 N WEBB ROAD, LLC
2315 BEACH BLVD., SUITE 203 JACKSONVILLE FL 32250

Document Images — Pages in all forms/attachments: 16

Document Number	Type	Filing Date	Pages
201606146252	UCC1	01/05/2016	16

FLORIDA SECURED TRANSACTION REGISTRY

Debtor Listing

Debtor Parties For: 201606146252 << BACK TO DETAILS

Debtor Parties
NAME & ADDRESS
2590 WATER PARK DRIVE, LLC 2315 BEACH BLVD., SUITE 203 JACKSONVILLE FL 32250
NRP LEASE HOLDINGS, LLC 2315 BEACH BLVD., SUITE 203 JACKSONVILLE FL 32250
1010 N WEBB ROAD, LLC 2315 BEACH BLVD., SUITE 203 JACKSONVILLE FL 32250
10735 E HWY 40, LLC 2315 BEACH BLVD., SUITE 203 JACKSONVILLE FL 32250
1944 BEACH BLVD., LLC 2315 BEACH BLVD., SUITE 203 JACKSONVILLE FL 32250
2780 SR16, LLC 2315 BEACH BLVD., SUITE 203 JACKSONVILLE FL 32250
4825 BLANDING BOULEVARD, LLC 2315 BEACH BLVD., SUITE 203 JACKSONVILLE FL 32250
5890 SCARBOROUGH DRIVE, LLC 2315 BEACH BLVD., SUITE 203 JACKSONVILLE FL 32250
831 NORTH CENTRAL PARKWAY, LLC 2315 BEACH BLVD., SUITE 203 JACKSONVILLE FL 32250
8333 W. 21ST STREET N, LLC 2315 BEACH BLVD., SUITE 203 JACKSONVILLE FL 32250
8350 LYRA DRIVE, LLC 2315 BEACH BLVD., SUITE 203 JACKSONVILLE FL 32250
ADVENTURE HOLDINGS, LLC 2315 BEACH BLVD., SUITE 203 JACKSONVILLE FL 32250

STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM

A. NAME & DAYTIME PHONE NUMBER OF CONTACT PERSON
Reid H. Harbin, Esq. / 404-446-4995
B. Email Address

C. SEND ACKNOWLEDGEMENT TO:
Name Reid H. Harbin, Esq.
Address Harbin & Miller, LLC
Address 5501 Chamblee Dunwoody Rd. Bldg 1300 Ste. 300
City/State/Zip Dunwoody GA 30338

FLORIDA SECURED TRANSACTION REGISTRY

FILED
2016 Jan 05 08:00 AM
****** 201606146252 ******

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (1a OR 1b) – Do Not Abbreviate or Combine Names

1.a ORGANIZATION'S NAME 2590 Water Park Drive, LLC				
1.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
1.c MAILING ADDRESS Line One 2315 Beach Blvd., Suite 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (2a OR 2b) – Do Not Abbreviate or Combine Names

2.a ORGANIZATION'S NAME NRP Lease Holdings, LLC				
2.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
2.c MAILING ADDRESS Line One 2315 Beach Blvd., Suite 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (3a OR 3b)

3.a ORGANIZATION'S NAME LIVE OAK BANKING COMPANY				
3.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
3.c MAILING ADDRESS Line One 1741 Tiburon Drive	This space not available.			
MAILING ADDRESS Line Two	CITY Wilmington	STATE NC	POSTAL CODE 28403	COUNTRY USA

4. This **FINANCING STATEMENT** covers the following collateral:
A shared best available lien security interest in all assets of Debtor described in Exhibit"A" attached hereto now owned wherever located.

5. ALTERNATE DESIGNATION (if applicable) ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ AG LIEN ☐ NON-UCC FILING ☐ SELLER/BUYER

6. Florida DOCUMENTARY STAMP TAX – YOU ARE REQUIRED TO CHECK **EXACTLY ONE** BOX

☐ All documentary stamps due and payable or to become due and payable pursuant to s. 201.22 F.S., have been paid.

☒ Florida Documentary Stamp Tax is not required.

7. OPTIONAL FILER REFERENCE DATA
FILE WITH FLORIDA SECRETARY OF STATE SBA LOAN # 81146450-00

STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	**FIRST PERSONAL NAME**	**ADDITIONAL NAME(S)/INITIAL(S)**	**SUFFIX**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 1010 N Webb Road, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd.. Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

12. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☐ fixture filing.

13. Description of real estate:

14. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

15. Additional collateral description:

16. Check only if applicable and check only one box.

Collateral is ☐ Held in Trust
☐ Being administered by Decedent's Personal Representative

17. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☐ Filed in connection with a Manufactured-Home Transaction – effective 30 years

STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	**FIRST PERSONAL NAME**	**ADDITIONAL NAME(S)/INITIAL(S)**	**SUFFIX**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 10735 E Hwy 40, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

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11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

12. This FINANCING STATEMENT covers ☐ as-extracted collateral, or is filed as a ☐ timber to be cut or fixture filing.

13. Description of real estate:

14. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

15. Additional collateral description:

16. Check only if applicable and check only one box.

Collateral is ☐ Held in Trust

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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 1944 Beach Blvd., LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

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11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

12. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☐ fixture filing.

13. Description of real estate:

14. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

15. Additional collateral description:

16. Check only if applicable and check only one box.

Collateral is ☐ Held in Trust
☐ Being administered by Decedent's Personal Representative

17. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☐ Filed in connection with a Manufactured-Home Transaction – effective 30 years

STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	**FIRST PERSONAL NAME**	**ADDITIONAL NAME(S)/INITIAL(S)**	**SUFFIX**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 2780 SR16, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

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13. Description of real estate:

14. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

15. Additional collateral description:

16. Check only if applicable and check only one box.

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☐ Being administered by Decedent's Personal Representative

17. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 4825 Blanding Boulevard, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd.. Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

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17. Check only if applicable and check only one box.

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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 5890 Scarborough Drive, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

12. This FINANCING STATEMENT covers ☐ as-extracted collateral, or is filed as a ☐ timber to be cut or fixture filing.

13. Description of real estate:

14. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

15. Additional collateral description:

16. Check only if applicable and check only one box.

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☐ Being administered by Decedent's Personal Representative

17. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☐ Filed in connection with a Manufactured-Home Transaction – effective 30 years

STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 831 North Central Parkway, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

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14. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

15. Additional collateral description:

16. Check only if applicable and check only one box.

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☐ Being administered by Decedent's Personal Representative

17. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☐ Filed in connection with a Manufactured-Home Transaction – effective 30 years

STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 8333 W. 21st Street N, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
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15. Additional collateral description:

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☐ Filed in connection with a Manufactured-Home Transaction – effective 30 years

STANDARD FORM - FORM UCC-1 ADDENDUM (REV.05/2013) Filing Office Copy Approved by the Secretary of State, State of Florida

STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 8350 Lyra Drive, LLC					
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)			SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd.. Ste. 203	This space not available.				
MAILING ADDRESS Line Two	CITY Jacksonville		STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME					
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)			SUFFIX
11.c MAILING ADDRESS Line One	This space not available.				
MAILING ADDRESS Line Two	CITY		STATE	POSTAL CODE	COUNTRY

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14. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

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17. Check only if applicable and check only one box.

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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME Adventure Holdings, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
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17. Check only if applicable and check only one box.

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☐ Filed in connection with a Manufactured-Home Transaction – effective 30 years

EXHIBIT "A"

1. The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

   a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.

   b) Secured Party or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Debtor or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Debtor, or defeat any claim of SBA with respect to this Loan.

   Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

   The Debtor shall pay all of the Secured Party's reasonable court costs incurred in any proceeding in any Bankruptcy proceeding filed by or against the Secured Party, which shall include, but shall not be limited to filing a proof of claim, actions to obtain relief of stay or secure adequate protection, and any adversary action in Bankruptcy.

2. Debtor hereby grants a security interest in all of the following property of the Debtor, whether now owned or hereafter acquired or arising, wherever located, including without limitation, on the real property located at 1010 N Webb Road, Wichita, KS, 672036; 10735 E Hwy 40, Independence, MO 64055; 1600 S Stratford Road, Winston-Salem, NC 27103; 17717 Coit Drive, Dallas, TX 75252; 1944 Beach Blvd, Jacksonville Beach, FL 32250; 2400 Sheridan Ave. Tonawanda, NY 14150; 2590 Waterpark Drive, Mason, OH 45040; 2600 East Franklin Blvd. Gastonia, NC; 2780 State Road 16, St. Augustine, FL; 3311 Capital Blvd. Raleigh, NC 27604; 3340 West Ridge Road, Rochester, NY 14626; 3939 Niagara Falls Blvd, Wheatfield, NY 14120; 4825 Blanding Blvd, Jacksonville, FL 32210; 5890 Scarborough Blvd, Columbus, OH 43232; 831 N Central Expressway, Plano, TX 75074; 8333 W 21st St N, Wichita, KS 67205 and 8350 Lyra Drive, Columbus, OH:

   a. All rights of the Debtor to payment for goods sold or leased, or to be sold or to be leased, or for services rendered, howsoever evidenced or incurred, including, without limitation, all accounts, instruments, chattel paper and general intangibles, all returned or repossessed goods and all books, records, including, but not limited to, Debtor's client records, computer tapes, programs, and ledger books arising therefrom or relating thereto, whether now owned or hereafter acquired or arising.

b. All inventory of Debtor, whether now owned or hereafter acquired, wherever located, including, without limitation, all goods of Debtor held for sale or lease or furnished or to be furnished under contracts of service, all goods held for display or demonstration, goods on lease or consignment, returned and repossessed goods, all raw materials, work-in-progress, finished goods and supplies used or consumed in Debtor's business, together with all returns, repossessions, substitutions, replacements, parts, additions, accessions and all documents, documents of title, dock warrants, dock receipts, warehouse receipts, bills of lading or orders, for the delivery of all, or any portion, of the foregoing.

c. All equipment of the Debtor, including, without limitation, all machinery, furniture, furnishings, leasehold improvements, fixtures, forklifts, dies and tools and personal property of any kind of Debtor, together with all accessories and attachments thereto, all replacements and substitutes used or useful in the Debtor's business, whether now owned or hereafter acquired or arising. Some of the foregoing are or may become fixtures affixed to the real property described herein.

d. All of Debtor's present and future right, title and interest in and to all contracts, agreements, plans, governmental authorizations, consents, licenses, approvals, permits and other documents that concern or relate to the Land or the business of the Debtor and/or the construction of improvements on the Land.

e. All property of Debtor left with Secured Party or in its possession now or hereafter and any balance or deposit account of Debtor and all drafts, checks and other items deposited in or with Secured Party by Debtor for collection or safekeeping, with full authority given Secured Party, upon the occurrence of any Event of Default as set forth in the various loan documents between Debtor and Secured Party, to charge any or all such indebtedness of Debtor without notice or demand against any obligation secured hereby.

f. All general intangibles now owned or hereafter acquired by the Debtor.

g. All products and proceeds (including insurance proceeds, pre-petition and post-petition bankruptcy proceeds) arising from or in any way relating to any or all of the collateral described above.

3. Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

4. Debtor represents and warrants the following:

a) The following Debtor is organized/existing in the state of Texas:

i) 17717 Coit Road, LLC; and

b) The following Debtors are organized/existing in the state of New York:

i) 2400 Sheridan Drive, LLC;
ii) 3340 West Ridge Road, LLC;
iii) 3939 Niagara Falls Boulevard, LLC; and

c) The following Debtors are organized/existing in the state of North Carolina:

i) 1600 Stratford, LLC;
ii) 3660 East Franklin, LLC;
iii) 3311 Capital Boulevard, LLC;

d) The following Debtors are organized/existing in the state of Florida:

i) 2590 Water Park Drive, LLC;
ii) NRP Lease Holdings, LLC;
iii) 1010 N Webb Road, LLC;
iv) 10735 E Hwy 40, LLC;
v) 1944 Beach Blvd., LLC;
vi) 2780 SR16, LLC;
vii) 4825 Blanding Boulevard, LLC;
viii) 5890 Scarborough Drive, LLC;
ix) 831 North Central Parkway, LLC;
x) 8333 W. 21st Street N, LLC;
xii) 8350 Lyra Drive, LLC; and
xiii) Adventure Holdings, LLC.

b) "2590 Water Park Drive, LLC, NRP Lease Holdings, LLC, 1010 N Webb Road, LLC, 10735 E Hwy 40, LLC, 1600 Stratford, LLC, 17717 Coit Road, LLC, 1944 Beach Blvd., LLC, 2400 Sheridan Drive, LLC, 2780 SR16, LLC, 3311 Capital Boulevard, LLC, 3340 West Ridge Road, LLC, 3660 East Franklin, LLC, 3939 Niagara Falls Boulevard, LLC, 4825 Blanding Boulevard, LLC, 5890 Scarborough Drive, LLC, 831 North Central Parkway, LLC, 8333 W. 21st Street N, LLC, 8350 Lyra Drive, LLC, Adventure Holdings, LLC" are the correct legal names of the Debtor indicated on the public record of the Debtor's jurisdiction of organization that shows the Debtor to be organized.

5. Debtor covenants the following so long as any of the Obligations shall remain outstanding and unless Secured Party shall otherwise consent in writing:

a) The Debtor shall not merge or consolidate into, or transfer of any of the Collateral to any other Person.

b) The Debtor shall not change its name unless it has given the Secured Party thirty (30) days' prior written notice thereof and executed or authorized, at the request of the Secured Party, such additional financing statements to be filed in such jurisdictions as the Secured Party may deem necessary or desirable in its sole discretion.

c) The Debtor shall, at any time and from time to time, whether or not the Official Text of Revised Article 9, 2000 Revision, of the Uniform Commercial Code promulgated by the American Law Institute and the National Conference of Commissioners on Uniform State Laws or a version thereof ("Uniform Revised Article 9") has been adopted in any particular jurisdiction, take such steps as the Secured Party may reasonably request for the Secured Party (i) to obtain an acknowledgment, in form and substance reasonably satisfactory to the Secured Party, of any bailee having possession of any of the Collateral, stating that the bailee holds possession of such Collateral on behalf of the Secured Party, (ii) to obtain "control" of any investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper (as such terms are defined by Revised Article 9 with corresponding provisions thereof defining what constitutes "control" for such items of Collateral), with any agreements establishing control to be in form and substance reasonably satisfactory to the Secured Party, and (iii) otherwise to insure the continued perfection and priority of the Secured Party's security interest in any of the Collateral and of the preservation of its rights therein, whether in anticipation of or following the effectiveness of Revised Article 9 in any jurisdiction. If the Debtor shall at any time, whether or not Uniform Revised Article 9 has been adopted in any particular jurisdiction, acquire a "commercial tort claim" (as such term is defined in Revised Article 9) [with a claim for damages in excess of $1,000,000], the Debtor, as the case may be, shall promptly notify the Secured Party thereof in writing, providing a reasonable description and summary thereof, and shall execute a supplement to this Security Agreement granting a security interest in such commercial tort claim to the Secured Party.

6. The Debtor hereby authorizes Secured Party, its counsel or its representative, at any time and from time to time, to file without the signature of the Debtor, as permitted by law, financing statements and amendments that describe the collateral covered by such financing statements as "all assets of the Debtor", "all personal property of the Debtor" or words of similar effect, in such jurisdictions as the Agent may deem necessary or desirable in order to perfect the security interests granted by the Debtor under this Security Agreement.

7. It is a default of the Loan if any one or more of the following events occur (an "Event of Default") under this Agreement: (a) failure of the Debtor to pay any of the Debtor's liabilities as and when due and payable, after giving effect to any applicable grace period; (b) failure of the Debtor to perform, observe, or comply with any of the provisions of this Agreement or of any of the other Loan Documents, after giving effect to any applicable grace period; (c) the occurrence of an Event of Default (as defined therein) under any of the other Loan Documents; (d) any information contained in any financial statement, application, schedule, report, or any other document given by the Debtor or by any other person in connection with the Debtor's liabilities, with the Collateral, or in any of the Loan Documents, is not in all material respects true and accurate or the Debtor or such other person omitted to state any material fact or any fact necessary to make such information not misleading; (e) the Debtor is generally not paying debts as such debts become due; (f) the filing of any petition for relief under any provision of the Federal Bankruptcy Code or any similar state law is brought by or against the Debtor; (g) an application for the appointment of a receiver for, the making of a general assignment for the benefit of creditors by or the insolvency of, the Debtor, which is not discharged within thirty (30) days; (h) the dissolution, merger, consolidation, or

reorganization of the Debtor; (i) suspension of the operation of the Debtor's present business; (j) the determination in good faith by the Secured Party that a material adverse change has occurred in the financial condition of the Debtor from the condition set forth in the most recent financial statement of the Debtor heretofore furnished to the Secured Party, or from the financial condition of the Debtor as heretofore most recently disclosed to the Secured Party in any other manner; or (k) any amendment to or termination of a financing statement naming the Debtor as debtor and the Secured Party as secured party, or any correction statement with respect thereto, is filed in any jurisdiction by any party other than the Secured Party or its counsel without the prior written consent of the Secured Party.

Exhibit “D”

FLORIDA SECURED TRANSACTION REGISTRY

Search Results Detail

Detail Record For: 201606327524

«PREVIOUS «BACK TO RESULTS NEXT»

Status	Date Filed	Expires	Filings Completed Thru	Summary For Filing
FILED	01/25/2016	01/25/2021	05/26/2020	201606327524

Filing Events

Events Filed: 0

Secured Parties

Current Secured Parties: 1

Name & Address

LIVE OAK BANKING COMPANY
1741 TIBURON DRIVE WILMINGTON NC 28403

Debtor Parties

Current Debtor Parties: 12

Name & Address

View All

2590 WATER PARK DRIVE, LLC
2315 BEACH BLVD., SUITE 203 JACKSONVILLE FL 32250

NRP LEASE HOLDINGS, LLC
2315 BEACH BLVD., SUITE 203 JACKSONVILLE FL 32250

1010 N WEBB ROAD, LLC
2315 BEACH BLVD., SUITE 203 JACKSONVILLE FL 32250

Document Images

Pages in all forms/attachments: 16

Document Number	Type	Filing Date	Pages
201606327524	UCC1	01/25/2016	16

FLORIDA SECURED TRANSACTION REGISTRY

Debtor Listing

Debtor Parties For: 201606327524 «BACK TO DETAILS

Debtor Parties
NAME & ADDRESS
2590 WATER PARK DRIVE, LLC 2315 BEACH BLVD., SUITE 203 JACKSONVILLE FL 32250
NRP LEASE HOLDINGS, LLC 2315 BEACH BLVD., SUITE 203 JACKSONVILLE FL 32250
1010 N WEBB ROAD, LLC 2315 BEACH BLVD., SUITE 203 JACKSONVILLE FL 32250
10735 E HWY 40, LLC 2315 BEACH BLVD., SUITE 203 JACKSONVILLE FL 32250
1944 BEACH BLVD., LLC 2315 BEACH BLVD., SUITE 203 JACKSONVILLE FL 32250
2780 SR16, LLC 2315 BEACH BLVD., SUITE 203 JACKSONVILLE FL 32250
4825 BLANDING BOULEVARD, LLC 2315 BEACH BLVD., SUITE 203 JACKSONVILLE FL 32250
5890 SCARBOROUGH DRIVE, LLC 2315 BEACH BLVD., SUITE 203 JACKSONVILLE FL 32250
831 NORTH CENTRAL PARKWAY, LLC 2315 BEACH BLVD., SUITE 203 JACKSONVILLE FL 32250
8333 W. 21ST STREET N, LLC 2315 BEACH BLVD., SUITE 203 JACKSONVILLE FL 32250
8350 LYRA DRIVE, LLC 2315 BEACH BLVD., SUITE 203 JACKSONVILLE FL 32250
ADVENTURE HOLDINGS, LLC 2315 BEACH BLVD., SUITE 203 JACKSONVILLE FL 32250

STATE OF FLORIDA UNIFORM COMMERCIAL CODE
FINANCING STATEMENT FORM

A. NAME & DAYTIME PHONE NUMBER OF CONTACT PERSON
Reid H. Harbin, Esq. / 404-446-4995
B. Email Address

C. SEND ACKNOWLEDGEMENT TO:
Name Reid H. Harbin, Esq.
Address Harbin & Miller, LLC
Address 5501 Chamblee Dunwoody Rd. Bldg 1300 Ste. 300
City/State/Zip Dunwoody GA 30338

FLORIDA SECURED TRANSACTION REGISTRY

FILED
2016 Jan 25 08:00 AM
****** 201606327524 ******

THE ABOVE SP

1. DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (1a OR 1b) – Do Not Abbre

1.a ORGANIZATION'S NAME 2590 Water Park Drive, LLC					
1.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADD			IX
1.c MAILING ADDRESS Line One 2315 Beach Blvd., Suite 203	This space not available.				
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA	

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (2a OR 2b) – Do Not Abbreviate or Combine Names

2.a ORGANIZATION'S NAME NRP Lease Holdings, LLC					
2.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)			SUFFIX
2.c MAILING ADDRESS Line One 2315 Beach Blvd., Suite 203	This space not available.				
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA	

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (3a OR 3b)

3.a ORGANIZATION'S NAME LIVE OAK BANKING COMPANY					
3.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)			SUFFIX
3.c MAILING ADDRESS Line One 1741 Tiburon Drive	This space not available.				
MAILING ADDRESS Line Two	CITY Wilmington	STATE NC	POSTAL CODE 28403	COUNTRY USA	

4. This FINANCING STATEMENT covers the following collateral:
A shared best available lien security interest in all assets of Debtor described in Exhibit"A" attached hereto now owned wherever located.

5. ALTERNATE DESIGNATION (if applicable) ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ AG LIEN ☐ NON-UCC FILING ☐ SELLER/BUYER

6. Florida DOCUMENTARY STAMP TAX – YOU ARE REQUIRED TO CHECK EXACTLY ONE BOX
☐ All documentary stamps due and payable or to become due and payable pursuant to s. 201.22 F.S., have been paid.
■ Florida Documentary Stamp Tax is not required.

7. OPTIONAL FILER REFERENCE DATA
FILE WITH FLORIDA SECRETARY OF STATE SBA LOAN # 81145550-08

STANDARD FORM - FORM UCC-1 (REV.05/2013) Filing Office Copy Approved by the Secretary of State, State of Florida

STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	**FIRST PERSONAL NAME**	**ADDITIONAL NAME(S)/INITIAL(S)**	**SUFFIX**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 1010 N Webb Road, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

12. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a fixture filing.

13. Description of real estate:

14. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

15 Additional collateral description:

16. Check only if applicable and check only one box.

Collateral is ☐ Held in Trust
☐ Being administered by Decedent's Personal Representative

17. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☐ Filed in connection with a Manufactured-Home Transaction – effective 30 years

STANDARD FORM - FORM UCC-1 ADDENDUM (REV.05/2013) Filing Office Copy Approved by the Secretary of State, State of Florida

STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	**FIRST PERSONAL NAME**	**ADDITIONAL NAME(S)/INITIAL(S)**	**SUFFIX**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 10735 E Hwy 40, LLC					
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)			SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.				
MAILING ADDRESS Line Two	CITY Jacksonville		STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME					
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)			SUFFIX
11.c MAILING ADDRESS Line One	This space not available.				
MAILING ADDRESS Line Two	CITY		STATE	POSTAL CODE	COUNTRY

12. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☐ fixture filing.

13. Description of real estate:

14. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

15. Additional collateral description:

16. Check only if applicable and check only one box.

Collateral is ☐ Held in Trust

☐ Being administered by Decedent's Personal Representative

17. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☐ Filed in connection with a Manufactured-Home Transaction – effective 30 years

STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	**FIRST PERSONAL NAME**	**ADDITIONAL NAME(S)/INITIAL(S)**	**SUFFIX**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 1944 Beach Blvd., LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd.. Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

12. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☐ fixture filing.

13. Description of real estate:

14. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

15. Additional collateral description:

16. Check only if applicable and check only one box.

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☐ Being administered by Decedent's Personal Representative

17. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	**FIRST PERSONAL NAME**	**ADDITIONAL NAME(S)/INITIAL(S)**	**SUFFIX**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 2780 SR16, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

12. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☐ fixture filing.

13. Description of real estate:

14. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

15. Additional collateral description:

16. Check only if applicable and check only one box.

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☐ Being administered by Decedent's Personal Representative

17. Check only if applicable and check only one box.

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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 4825 Blanding Boulevard, LLC					
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME		ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.				
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250		COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME		ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

12. This FINANCING STATEMENT covers ☐ as-extracted collateral, or is filed as a ☐ timber to be cut or fixture filing.

13. Description of real estate:

14. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

15. Additional collateral description:

16. Check only if applicable and check only one box.

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17. Check only if applicable and check only one box.

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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	**FIRST PERSONAL NAME**	**ADDITIONAL NAME(S)/INITIAL(S)**	**SUFFIX**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 5890 Scarborough Drive, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

12. This FINANCING STATEMENT covers ☐ as-extracted collateral, or is filed as a ☐ timber to be cut or fixture filing.

13. Description of real estate:

14. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

15. Additional collateral description:

16. Check only if applicable and check only one box.

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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	**FIRST PERSONAL NAME**	**ADDITIONAL NAME(S)/INITIAL(S)**	**SUFFIX**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 831 North Central Parkway, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd.. Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

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17. Check only if applicable and check only one box.

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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	**FIRST PERSONAL NAME**	**ADDITIONAL NAME(S)/INITIAL(S)**	**SUFFIX**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 8333 W. 21st Street N, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd.. Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	**FIRST PERSONAL NAME**	**ADDITIONAL NAME(S)/INITIAL(S)**	**SUFFIX**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 8350 Lyra Drive, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

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17. Check only if applicable and check only one box.

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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	**FIRST PERSONAL NAME**	**ADDITIONAL NAME(S)/INITIAL(S)**	**SUFFIX**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME Adventure Holdings, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd.. Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

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17. Check only if applicable and check only one box.

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EXHIBIT "A"

1. The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

   a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.

   b) Secured Party or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Debtor or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Debtor, or defeat any claim of SBA with respect to this Loan.

   Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

   The Debtor shall pay all of the Secured Party's reasonable court costs incurred in any proceeding in any Bankruptcy proceeding filed by or against the Secured Party, which shall include, but shall not be limited to filing a proof of claim, actions to obtain relief of stay or secure adequate protection, and any adversary action in Bankruptcy.

2. Debtor hereby grants a security interest in all of the following property of the Debtor, whether now owned or hereafter acquired or arising, wherever located, including without limitation, on the real property located at 1010 N Webb Road, Wichita, KS, 672036; 10735 E Hwy 40, Independence, MO 64055; 1600 S Stratford Road, Winston-Salem, NC 27103; 17717 Coit Drive, Dallas, TX 75252; 1944 Beach Blvd, Jacksonville Beach, FL 32250; 2400 Sheridan Ave. Tonawanda, NY 14150; 2590 Waterpark Drive, Mason, OH 45040; 2600 East Franklin Blvd. Gastonia, NC; 2780 State Road 16, St. Augustine, FL; 3311 Capital Blvd. Raleigh, NC 27604; 3340 West Ridge Road, Rochester, NY 14626; 3939 Niagara Falls Blvd, Wheatfield, NY 14120; 4825 Blanding Blvd, Jacksonville, FL 32210; 5890 Scarborough Blvd, Columbus, OH 43232; 831 N Central Expressway, Plano, TX 75074; 8333 W 21st St N, Wichita, KS 67205 and 8350 Lyra Drive, Columbus, OH:

   a. All rights of the Debtor to payment for goods sold or leased, or to be sold or to be leased, or for services rendered, howsoever evidenced or incurred, including, without limitation, all accounts, instruments, chattel paper and general intangibles, all returned or repossessed goods and all books, records, including, but not limited to, Debtor's client records, computer tapes, programs, and ledger books arising therefrom or relating thereto, whether now owned or hereafter acquired or arising.

b. All inventory of Debtor, whether now owned or hereafter acquired, wherever located, including, without limitation, all goods of Debtor held for sale or lease or furnished or to be furnished under contracts of service, all goods held for display or demonstration, goods on lease or consignment, returned and repossessed goods, all raw materials, work-in-progress, finished goods and supplies used or consumed in Debtor's business, together with all returns, repossessions, substitutions, replacements, parts, additions, accessions and all documents, documents of title, dock warrants, dock receipts, warehouse receipts, bills of lading or orders, for the delivery of all, or any portion, of the foregoing.

c. All equipment of the Debtor, including, without limitation, all machinery, furniture, furnishings, leasehold improvements, fixtures, forklifts, dies and tools and personal property of any kind of Debtor, together with all accessories and attachments thereto, all replacements and substitutes used or useful in the Debtor's business, whether now owned or hereafter acquired or arising. Some of the foregoing are or may become fixtures affixed to the real property described herein.

d. All of Debtor's present and future right, title and interest in and to all contracts, agreements, plans, governmental authorizations, consents, licenses, approvals, permits and other documents that concern or relate to the Land or the business of the Debtor and/or the construction of improvements on the Land.

e. All property of Debtor left with Secured Party or in its possession now or hereafter and any balance or deposit account of Debtor and all drafts, checks and other items deposited in or with Secured Party by Debtor for collection or safekeeping, with full authority given Secured Party, upon the occurrence of any Event of Default as set forth in the various loan documents between Debtor and Secured Party, to charge any or all such indebtedness of Debtor without notice or demand against any obligation secured hereby.

f. All general intangibles now owned or hereafter acquired by the Debtor.

g. All products and proceeds (including insurance proceeds, pre-petition and post-petition bankruptcy proceeds) arising from or in any way relating to any or all of the collateral described above.

3. Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

4. Debtor represents and warrants the following:

a) The following Debtor is organized/existing in the state of Texas:

i) 17717 Coit Road, LLC; and

b) The following Debtors are organized/existing in the state of New York:

i) 2400 Sheridan Drive, LLC;
ii) 3340 West Ridge Road, LLC;
iii) 3939 Niagara Falls Boulevard, LLC; and

c) The following Debtors are organized/existing in the state of North Carolina:

i) 1600 Stratford, LLC;
ii) 3660 East Franklin, LLC;
iii) 3311 Capital Boulevard, LLC;

d) The following Debtors are organized/existing in the state of Florida:

i) 2590 Water Park Drive, LLC;
ii) NRP Lease Holdings, LLC;
iii) 1010 N Webb Road, LLC;
iv) 10735 E Hwy 40, LLC;
v) 1944 Beach Blvd., LLC;
vi) 2780 SR16, LLC;
vii) 4825 Blanding Boulevard, LLC;
viii) 5890 Scarborough Drive, LLC;
ix) 831 North Central Parkway, LLC;
x) 8333 W. 21st Street N, LLC;
xii) 8350 Lyra Drive, LLC; and
xiii) Adventure Holdings, LLC.

b) "2590 Water Park Drive, LLC, NRP Lease Holdings, LLC, 1010 N Webb Road, LLC, 10735 E Hwy 40, LLC, 1600 Stratford, LLC, 17717 Coit Road, LLC, 1944 Beach Blvd., LLC, 2400 Sheridan Drive, LLC, 2780 SR16, LLC, 3311 Capital Boulevard, LLC, 3340 West Ridge Road, LLC, 3660 East Franklin, LLC, 3939 Niagara Falls Boulevard, LLC, 4825 Blanding Boulevard, LLC, 5890 Scarborough Drive, LLC, 831 North Central Parkway, LLC, 8333 W. 21st Street N, LLC, 8350 Lyra Drive, LLC, Adventure Holdings, LLC" are the correct legal names of the Debtor indicated on the public record of the Debtor's jurisdiction of organization that shows the Debtor to be organized.

5. Debtor covenants the following so long as any of the Obligations shall remain outstanding and unless Secured Party shall otherwise consent in writing:

a) The Debtor shall not merge or consolidate into, or transfer of any of the Collateral to any other Person.

b) The Debtor shall not change its name unless it has given the Secured Party thirty (30) days' prior written notice thereof and executed or authorized, at the request of the Secured Party, such additional financing statements to be filed in such jurisdictions as the Secured Party may deem necessary or desirable in its sole discretion.

c) The Debtor shall, at any time and from time to time, whether or not the Official Text of Revised Article 9, 2000 Revision, of the Uniform Commercial Code promulgated by the American Law Institute and the National Conference of Commissioners on Uniform State Laws or a version thereof ("Uniform Revised Article 9") has been adopted in any particular jurisdiction, take such steps as the Secured Party may reasonably request for the Secured Party (i) to obtain an acknowledgment, in form and substance reasonably satisfactory to the Secured Party, of any bailee having possession of any of the Collateral, stating that the bailee holds possession of such Collateral on behalf of the Secured Party, (ii) to obtain "control" of any investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper (as such terms are defined by Revised Article 9 with corresponding provisions thereof defining what constitutes "control" for such items of Collateral), with any agreements establishing control to be in form and substance reasonably satisfactory to the Secured Party, and (iii) otherwise to insure the continued perfection and priority of the Secured Party's security interest in any of the Collateral and of the preservation of its rights therein, whether in anticipation of or following the effectiveness of Revised Article 9 in any jurisdiction. If the Debtor shall at any time, whether or not Uniform Revised Article 9 has been adopted in any particular jurisdiction, acquire a "commercial tort claim" (as such term is defined in Revised Article 9) [with a claim for damages in excess of $1,000,000], the Debtor, as the case may be, shall promptly notify the Secured Party thereof in writing, providing a reasonable description and summary thereof, and shall execute a supplement to this Security Agreement granting a security interest in such commercial tort claim to the Secured Party.

6. The Debtor hereby authorizes Secured Party, its counsel or its representative, at any time and from time to time, to file without the signature of the Debtor, as permitted by law, financing statements and amendments that describe the collateral covered by such financing statements as "all assets of the Debtor", "all personal property of the Debtor" or words of similar effect, in such jurisdictions as the Agent may deem necessary or desirable in order to perfect the security interests granted by the Debtor under this Security Agreement.

7. It is a default of the Loan if any one or more of the following events occur (an "Event of Default") under this Agreement: (a) failure of the Debtor to pay any of the Debtor's liabilities as and when due and payable, after giving effect to any applicable grace period; (b) failure of the Debtor to perform, observe, or comply with any of the provisions of this Agreement or of any of the other Loan Documents, after giving effect to any applicable grace period; (c) the occurrence of an Event of Default (as defined therein) under any of the other Loan Documents; (d) any information contained in any financial statement, application, schedule, report, or any other document given by the Debtor or by any other person in connection with the Debtor's liabilities, with the Collateral, or in any of the Loan Documents, is not in all material respects true and accurate or the Debtor or such other person omitted to state any material fact or any fact necessary to make such information not misleading; (e) the Debtor is generally not paying debts as such debts become due; (f) the filing of any petition for relief under any provision of the Federal Bankruptcy Code or any similar state law is brought by or against the Debtor; (g) an application for the appointment of a receiver for, the making of a general assignment for the benefit of creditors by or the insolvency of, the Debtor, which is not discharged within thirty (30) days; (h) the dissolution, merger, consolidation, or

reorganization of the Debtor; (i) suspension of the operation of the Debtor's present business; (j) the determination in good faith by the Secured Party that a material adverse change has occurred in the financial condition of the Debtor from the condition set forth in the most recent financial statement of the Debtor heretofore furnished to the Secured Party, or from the financial condition of the Debtor as heretofore most recently disclosed to the Secured Party in any other manner; or (k) any amendment to or termination of a financing statement naming the Debtor as debtor and the Secured Party as secured party, or any correction statement with respect thereto, is filed in any jurisdiction by any party other than the Secured Party or its counsel without the prior written consent of the Secured Party.

Exhibit “E”

FLORIDA SECURED TRANSACTION REGISTRY

FLORIDA BANKERS ASSOCIATION

Search Results

Today's Date: 05/29/2020
UCC Filings Completed Through: 05/26/2020

Result for **Filed Compact Debtor Name List** Search on **1944 Beach Boulevard**
Use the Previous and Next buttons to display additional search results

«PREVIOUS NEXT »

Name	UCC Number	Address	City	State	Zip Code	Status
1944 BEACH BOULEVARD, LLC	201505920319	1944 BEACH BLVD	JACKSONVILLE BEACH	FL	32250	FILED
1944 BEACH BOULEVARD, LLC	201609631674	1944 BEACH BLVD	JACKSONVILLE BEACH	FL	32250	FILED
1944 BEACH BOULEVARD, LLC	201703071415	1944 BEACH BLVD	JACKSONVILLE BEACH	FL	32250	FILED
1944 BEACH BOULEVARD, LLC DBA ADVENTURE LANDING	201504500731	1944 BEACH BOULEVARD (US 90)	JACKSONVILLE BEACH	FL	32250	FILED
1944 BEACH BOULEVARD LLC DBA ADVENTURE LANDING	20160640846X	1944 BEACH BOULEVARD	JACKSONVILLE BEACH	FL	32837	FILED
1944 BLANDING BOULEVARD, LLC	201805377858	2315 BEACH BLVD SUITE 203	JACKSONVILLE BEACH	FL	32250	FILED
1944 BLANDING BOULEVARD, LLC,	201807187177	2315 BEACH BLVD #203	JACKSONVILLE BEACH	FL	32250	FILED
1947 DREW ST TRUST, A LAND TRUST, MANHATTAN LAWYERS SERVICES LLC, AS TRUSTE	201804935881	1430 W BUSCH BLVD, SUITE 9	TAMPA	FL	33612	FILED
1948 BLDG LLC, A FLORIDA LIMITED LIABILITY COMPANY	201506105996	1545 NW 8 AVENUE	MIAMI	FL	33136	FILED
1948 HILLSBOROUGH AVENUE LIQUORS, INC.	201702175756	1948 E. HILLSBOROUGH AVENUE	TAMPA	FL	33610	FILED
1948 HILLSBOROUGH AVENUE LIQUORS, INC.	201702230331	1948 E HILLSBOROUGH AVENUE	TAMPA	FL	33610	FILED
1949 SW DAVIS STREET, LLC, A FLORIDA LIMITED LIABILITY COMPANY	201805596851	1272 SE LADNER STREET	PORT ST. LUCIE	FL	34983	FILED
194 NW 187 LLC	20190051607X	194 NW 187 STREET	MIAMI	FL	33131	FILED
194 NW 187 LLC	201900516185	194 NW 187 STREET	MIAMI	FL	33131	FILED
194 TRINIDAD STREET LLC, A FLORIDA LIMITED LIABILITY COMPANY	202001505998	194 TRINIDAD STREET	NAPLES	FL	34113	FILED
1950	201907850250	502 NE 43RD STREET	OAKLAND PARK	FL	33334	FILED
1950 LAKE WORTH, LLC	201608567255	1601 S. FEDERAL HIGHWAY	BOYNTON BEACH	FL	33435	FILED
1950 SW 7 Pl., LLC	201703648518	3225 MCLEAD DRIVE , SUITE 100	LAS VEGAS	NV	82001	FILED
1951-1997 SOUTH MILITARY TRAIL, L.L.C.	201909742277	1941 S. MILITARY TRAIL	WEST PALM BEACH	FL	33415	FILED
1951-1997 SOUTH MILITARY TRAIL, L.L.C.	201909742358	1941 S. MILITARY TRAIL	WEST PALM BEACH	FL	33415	FILED

IN THE UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:	)	
NRP LEASE HOLDINGS, LLC, et al.,	)	Case No.: 3:19-bk-04607-JAF through 3:19-bk-04622-JAF
Debtors.	)	Chapter 11
	)	Jointly Administered Under Case No.: 3:19-bk-04607-JAF
1944 BEACH BOULEVARD, LLC,	)	
Plaintiff,	)	Adversary Case No.: 3:20-ap-00071-CJJ
v.	)	
LIVE OAK BANKING COMPANY,	)	
Defendant.	)	

ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT TO DETERMINE VALIDITY, PRIORITY AND EXTENT OF LIEN AND TO AOVID SAME PURSUANT TO 11 U.S.C. §544

COMES NOW the Defendant, LIVE OAK BANKING COMPANY (herein after referred to as "Live Oak" or "Defendant"), by and through his undersigned attorney and hereby files its Answer and Affirmative Defenses to the Complaint filed by Plaintiff, 1944 BEACH BOULEVARD, LLC (herein after referred to as "1944 Beach Blvd" or "Plaintiff"), as follows:

1. Admit for jurisdictional purposes only, but deny that Plaintiff is entitled to the relief sought.
2. Admit for jurisdictional purposes only, but deny that Plaintiff is entitled to the relief sought.
3. Admit for jurisdictional purposes only, but deny that Plaintiff is entitled to the relief sought.
4. Admit for jurisdictional purposes only, but deny that Plaintiff is entitled to the relief sought.
5. Admit.

6. Without knowledge as to the specific business operations of Plaintiff.

7. Admit.

8. Admit.

9. Admit.

10. Admit.

11. Deny.

12. Defendant states that §679.5021(1), Fla. Stat., speaks for itself and no response to the allegations set forth in this paragraph is required. To the extent a response is required, Defendant neither admits nor denies the allegations set forth and demands strict proof thereof.

13. Defendant states that §679.5031(1)(a), Fla. Stat., speaks for itself and no response to the allegations set forth in this paragraph is required. To the extent a response is required, Defendant neither admits nor denies the allegations set forth and demands strict proof thereof.

14. Defendant states that §679.5061, Fla. Stat., speaks for itself and no response to the allegations set forth in this paragraph is required. To the extent a response is required, Defendant neither admits nor denies the allegations set forth and demands strict proof thereof.

15. Deny.

16. Defendant states that 11 U.S.C. §544 speaks for itself and no response to the allegations set forth in this paragraph is required. To the extent a response is required, Defendant neither admits nor denies the allegations set forth and demands strict proof thereof.

17. Defendant states that §679.3171(b)(1), Fla. Stat., speaks for itself and no response to the allegations set forth in this paragraph is required. To the extent a response is required, Defendant neither admits nor denies the allegations set forth and demands strict proof thereof.

18. Deny.

FIRST AFFIRMATIVE DEFENSE

In the subject case, Live Oak filed two (2) UCC-1 Financing Statements with the Florida Secured Transaction Registry pursuant to the two (2) SBA Security Agreements executed by Plaintiff. In the UCC-1 Financing Statements, Plaintiff's name was listed as "1944 Beach Blvd., LLC". Additionally, in the Security Agreements, Plaintiff was also listed as "1944 Beach Blvd., LLC". True and correct copies of the two (2) UCC-1 Financing Statements are attached hereto as **Composite Exhibit "A"**, and true and correct copies of the two (2) SBA Security Agreements are attached hereto as **Composite Exhibit "B"**.

Pursuant to §679.5061(1), Fla. Stat., "[a] financing statement substantially complying with the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading." The Financing Statements filed by Defendant substantially comply with the requirements of Chapter 679 of the Florida Statutes. Identifying Plaintiff as "1944 Beach Blvd., LLC" instead of "1944 Beach Boulevard, LLC" in the Financing Statements does not render them "seriously misleading". At worst, the mere abbreviation of the word "Boulevard" may be considered a "minor" error or omission within meaning of §679.5061(1), that does not make the Statements defective.

Furthermore, pursuant to §679.5061(3), "[i]f a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with s. 679.5031(1), the name provided does not make the financing statement seriously misleading." In the present case, a search of the Florida Secured Transaction Registry under "1944 Beach Boulevard, LLC" does in fact reveal and disclose the subject Financing Statements that identify Plaintiff as "1944 Beach Blvd., LLC". True and correct copies of the search results from the Florida Secured Transaction Registry under "1944 Beach Boulevard, LLC", conducted June 29, 2020, are attached

hereto as **Composite Exhibit "C"**. A review of the search results reveal that both of the Financing Statements that identify "1944 Beach Blvd., LLC" as the debtor by merely clicking the blue "<<PREVIOUS" tab one time. In fact, they are the very first two entries that appear immediately before three (3) other financing statements for "1944 Beach Boulevard, LLC", due to the fact that the search results are displayed in alphabetical order. Accordingly, the mere abbreviation of "Boulevard" by Defendant does not make the financing statement seriously misleading. Please see, *In re Summit Staffing Polk County, Inc.*, 305 B.R. 347, 353-354 (M.D. Fla., 2003) (Court found a financing statement to not be seriously misleading where a search under the complete corporate name of the debtor disclosed the financing statement by clicking the "Previous" tab once, since "clearly a searcher should check the preceding names on the alphabetical list".)

SECOND AFFIRMATIVE DEFENSE

Plaintiff is barred from obtaining the relief requested based upon Equitable Estoppel. In the two (2) SBA Security Agreements executed by Plaintiff, Plaintiff certified that "1944 Beach Blvd., LLC" was the correct legal name "of the Debtor indicated on the public records of Debtor's jurisdiction of organization that shows the Debtor to be organized". Please see **Composite Exhibit "B"**, specifically Paragraph 14 and Exhibit A attached thereto. Defendant justifiably relied on Plaintiff's certifications that "1944 Beach Blvd., LLC" was the correct legal name of Debtor. Accordingly, Plaintiff should be equitably estopped from obtaining the relief requested.

THIRD AFFIRMATIVE DEFENSE

Plaintiff is barred from obtaining the relief requested based upon the doctrine of Unclean Hands. In the two (2) SBA Security Agreements executed by Plaintiff, Plaintiff certified that "1944 Beach Blvd., LLC" was the correct legal name "of the Debtor indicated on the public records of Debtor's jurisdiction of organization that shows the Debtor to be organized". Please see **Composite Exhibit "B"**, specifically Paragraph 14 and Exhibit A attached thereto. Defendant justifiably relied

on Plaintiff's certifications that "1944 Beach Blvd., LLC" was the correct legal name of Debtor. Accordingly, Plaintiff should be precluded from obtaining the relief requested based upon the doctrine of Unclean Hands.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff is barred from obtaining the relief requested based upon Ratification. In the two (2) SBA Security Agreements executed by Plaintiff, Plaintiff certified that "1944 Beach Blvd., LLC" was the correct legal name "of the Debtor indicated on the public records of Debtor's jurisdiction of organization that shows the Debtor to be organized". Please see **Composite Exhibit "B"**, specifically Paragraph 14 and Exhibit A attached thereto. Defendant justifiably relied on Plaintiff's certifications that "1944 Beach Blvd., LLC" was the correct legal name of Debtor. Accordingly, Plaintiff should be precluded from obtaining the relief requested based Plaintiff's Ratification.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff is barred from obtaining the relief requested based upon the doctrine of Waiver. In the two (2) SBA Security Agreements executed by Plaintiff, Plaintiff certified that "1944 Beach Blvd., LLC" was the correct legal name "of the Debtor indicated on the public records of Debtor's jurisdiction of organization that shows the Debtor to be organized". Please see **Composite Exhibit "B"**, specifically Paragraph 14 and Exhibit A attached thereto. Defendant justifiably relied on Plaintiff's certifications that "1944 Beach Blvd., LLC" was the correct legal name of Debtor. Accordingly, Plaintiff should be precluded from obtaining the relief requested based upon the doctrine of Waiver.

[Remainder of page intentionally left blank]

WHEREFORE, Defendant, LIVE OAK BANKING COMPANY, hereby Answers Plaintiff's Complaint, and respectfully requests that the Complaint be dismissed, or in the alternative, that the Court deny the relief sought by Plaintiff and enter judgment in favor of Defendant, LIVE OAK BANKING COMPANY, award Live Oak all its attorneys' fees and costs incurred, and that the Court award any further relief deemed just and proper.

Dated this July 01, 2020.

Respectfully submitted,

/s/ Ezra Z. Scrivanich

Ezra Scrivanich, Esq.
Florida Bar No. 28415

[Remainder of page intentionally left blank]

CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of the foregoing was served by CM/ECF, facsimile transmission and/or U.S. Mail on July 01, 2020, to the following parties:

VIA CM/ECF

NRP Lease Holdings, LLC
c/o Richard R Thames
Bradley Markey
Thames Markey & Heekin, P.A.
50 N Laura Street Suite 1600
Jacksonville, FL 32202-3614
Email: rrt@tmhlaw.net
Email: brm@tmhlaw.net

United States Trustee - JAX 11
Office of the United States Trustee
George C Young Federal Building
400 West Washington Street, Suite 1100
Orlando, FL 32801

Scott E Bomkamp
United States Trustee
400 W. Washington Street
Suite 1100
Orlando, FL 32801
Email: scott.e.bomkamp@usdoj.gov

Respectfully submitted,

/s/Ezra Scrivanich
Ezra Scrivanich, Esq.
Florida Bar No.28415
McMichael Taylor Gray, LLC
3550 Engineering Drive, Suite 260
Peachtree Corners, GA 30092
Telephone: (404) 474-7149
Facsimile: (404) 745-8121
E-mail:escrivanch@mtglaw.com

COMPOSITE EXHIBIT "A"

STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM

A. NAME & DAYTIME PHONE NUMBER OF CONTACT PERSON
Reid H. Harbin, Esq. / 404-446-4995
B. Email Address
C. SEND ACKNOWLEDGEMENT TO:
Name Reid H. Harbin, Esq.
Address Harbin & Miller, LLC
Address 5501 Chamblee Dunwoody Rd. Bldg 1300 Ste. 300
City/State/Zip Dunwoody GA 30338

FLORIDA SECURED TRANSACTION REGISTRY

FILED

2016 Jan 05 08:00 AM

******** 201606146252 ********

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY **ONE** DEBTOR NAME (**1a OR 1b**) – Do Not Abbreviate or Combine Names

1.a ORGANIZATION'S NAME 2590 Water Park Drive, LLC				
1.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
1.c MAILING ADDRESS Line One 2315 Beach Blvd., Suite 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY **ONE** DEBTOR NAME (**2a OR 2b**) – Do Not Abbreviate or Combine Names

2.a ORGANIZATION'S NAME NRP Lease Holdings, LLC				
2.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
2.c MAILING ADDRESS Line One 2315 Beach Blvd., Suite 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) – INSERT ONLY **ONE** SECURED PARTY (**3a OR 3b**)

3.a ORGANIZATION'S NAME LIVE OAK BANKING COMPANY				
3.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
3.c MAILING ADDRESS Line One 1741 Tiburon Drive	This space not available.			
MAILING ADDRESS Line Two	CITY Wilmington	STATE NC	POSTAL CODE 28403	COUNTRY USA

4. This **FINANCING STATEMENT** covers the following collateral:
A shared best available lien security interest in all assets of Debtor described in Exhibit"A" attached hereto now owned wherever located.

5. ALTERNATE DESIGNATION (if applicable) ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ AG LIEN ☐ NON-UCC FILING ☐ SELLER/BUYER

6. Florida DOCUMENTARY STAMP TAX – YOU ARE REQUIRED TO CHECK **EXACTLY ONE** BOX

☐ All documentary stamps due and payable or to become due and payable pursuant to s. 201.22 F.S., have been paid.

☒ Florida Documentary Stamp Tax is not required.

7. OPTIONAL FILER REFERENCE DATA
FILE WITH FLORIDA SECRETARY OF STATE [redacted]

STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1a OR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 1944 Beach Blvd., LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

12. This FINANCING STATEMENT covers ☐ as-extracted collateral, or is filed as a ☐ timber to be cut or fixture filing.

13. Description of real estate:

14. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

15. Additional collateral description:

16. Check only if applicable and check only one box.

Collateral is ☐ Held in Trust

☐ Being administered by Decedent's Personal Representative

17. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☐ Filed in connection with a Manufactured-Home Transaction – effective 30 years

EXHIBIT "A"

1. The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

   a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.

   b) Secured Party or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Debtor or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Debtor, or defeat any claim of SBA with respect to this Loan.

   Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

   The Debtor shall pay all of the Secured Party's reasonable court costs incurred in any proceeding in any Bankruptcy proceeding filed by or against the Secured Party, which shall include, but shall not be limited to filing a proof of claim, actions to obtain relief of stay or secure adequate protection, and any adversary action in Bankruptcy.

2. Debtor hereby grants a security interest in all of the following property of the Debtor, whether now owned or hereafter acquired or arising, wherever located, including without limitation, on the real property located at 1010 N Webb Road, Wichita, KS, 672036; 10735 E Hwy 40, Independence, MO 64055; 1600 S Stratford Road, Winston-Salem, NC 27103; 17717 Coit Drive, Dallas, TX 75252; 1944 Beach Blvd, Jacksonville Beach, FL 32250; 2400 Sheridan Ave. Tonawanda, NY 14150; 2590 Waterpark Drive, Mason, OH 45040; 2600 East Franklin Blvd. Gastonia, NC; 2780 State Road 16, St. Augustine, FL; 3311 Capital Blvd. Raleigh, NC 27604; 3340 West Ridge Road, Rochester, NY 14626; 3939 Niagara Falls Blvd, Wheatfield, NY 14120; 4825 Blanding Blvd, Jacksonville, FL 32210; 5890 Scarborough Blvd, Columbus, OH 43232; 831 N Central Expressway, Plano, TX 75074; 8333 W 21st St N, Wichita, KS 67205 and 8350 Lyra Drive, Columbus, OH:

   a. All rights of the Debtor to payment for goods sold or leased, or to be sold or to be leased, or for services rendered, howsoever evidenced or incurred, including, without limitation, all accounts, instruments, chattel paper and general intangibles, all returned or repossessed goods and all books, records, including, but not limited to, Debtor's client records, computer tapes, programs, and ledger books arising therefrom or relating thereto, whether now owned or hereafter acquired or arising.

b. All inventory of Debtor, whether now owned or hereafter acquired, wherever located, including, without limitation, all goods of Debtor held for sale or lease or furnished or to be furnished under contracts of service, all goods held for display or demonstration, goods on lease or consignment, returned and repossessed goods, all raw materials, work-in-progress, finished goods and supplies used or consumed in Debtor's business, together with all returns, repossessions, substitutions, replacements, parts, additions, accessions and all documents, documents of title, dock warrants, dock receipts, warehouse receipts, bills of lading or orders, for the delivery of all, or any portion, of the foregoing.

c. All equipment of the Debtor, including, without limitation, all machinery, furniture, furnishings, leasehold improvements, fixtures, forklifts, dies and tools and personal property of any kind of Debtor, together with all accessories and attachments thereto, all replacements and substitutes used or useful in the Debtor's business, whether now owned or hereafter acquired or arising. Some of the foregoing are or may become fixtures affixed to the real property described herein.

d. All of Debtor's present and future right, title and interest in and to all contracts, agreements, plans, governmental authorizations, consents, licenses, approvals, permits and other documents that concern or relate to the Land or the business of the Debtor and/or the construction of improvements on the Land.

e. All property of Debtor left with Secured Party or in its possession now or hereafter and any balance or deposit account of Debtor and all drafts, checks and other items deposited in or with Secured Party by Debtor for collection or safekeeping, with full authority given Secured Party, upon the occurrence of any Event of Default as set forth in the various loan documents between Debtor and Secured Party, to charge any or all such indebtedness of Debtor without notice or demand against any obligation secured hereby.

f. All general intangibles now owned or hereafter acquired by the Debtor.

g. All products and proceeds (including insurance proceeds, pre-petition and post-petition bankruptcy proceeds) arising from or in any way relating to any or all of the collateral described above.

3. Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

4. Debtor represents and warrants the following:

a) The following Debtor is organized/existing in the state of Texas:

i) 1771 7 Coit Road, LLC; and

b) The following Debtors are organized/existing in the state of New York:

i) 2400 Sheridan Drive, LLC;
ii) 3340 West Ridge Road, LLC;
iii) 3939 Niagara Falls Boulevard, LLC; and

c) The following Debtors are organized/existing in the state of North Carolina:

i) 1600 Stratford, LLC;
ii) 3660 East Franklin, LLC;
iii) 3311 Capital Boulevard, LLC;

d) The following Debtors are organized/existing in the state of Florida:

i) 2590 Water Park Drive, LLC;
ii) NRP Lease Holdings, LLC;
iii) 1010 N Webb Road, LLC;
iv) 10735 E Hwy 40, LLC;
v) 1944 Beach Blvd., LLC;
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b) "2590 Water Park Drive, LLC, NRP Lease Holdings, LLC, 1010 N Webb Road, LLC, 10735 E Hwy 40, LLC, 1600 Stratford, LLC, 17717 Coit Road, LLC, 1944 Beach Blvd., LLC, 2400 Sheridan Drive, LLC, 2780 SR16, LLC, 3311 Capital Boulevard, LLC, 3340 West Ridge Road, LLC, 3660 East Franklin, LLC, 3939 Niagara Falls Boulevard, LLC, 4825 Blanding Boulevard, LLC, 5890 Scarborough Drive, LLC, 831 North Central Parkway, LLC, 8333 W. 21st Street N, LLC, 8350 Lyra Drive, LLC, Adventure Holdings, LLC" are the correct legal names of the Debtor indicated on the public record of the Debtor's jurisdiction of organization that shows the Debtor to be organized.

5. Debtor covenants the following so long as any of the Obligations shall remain outstanding and unless Secured Party shall otherwise consent in writing:

a) The Debtor shall not merge or consolidate into, or transfer of any of the Collateral to any other Person.

b) The Debtor shall not change its name unless it has given the Secured Party thirty (30) days' prior written notice thereof and executed or authorized, at the request of the Secured Party, such additional financing statements to be filed in such jurisdictions as the Secured Party may deem necessary or desirable in its sole discretion.

c) The Debtor shall, at any time and from time to time, whether or not the Official Text of Revised Article 9, 2000 Revision, of the Uniform Commercial Code promulgated by the American Law Institute and the National Conference of Commissioners on Uniform State Laws or a version thereof ("Uniform Revised Article 9") has been adopted in any particular jurisdiction, take such steps as the Secured Party may reasonably request for the Secured Party (i) to obtain an acknowledgment, in form and substance reasonably satisfactory to the Secured Party, of any bailee having possession of any of the Collateral, stating that the bailee holds possession of such Collateral on behalf of the Secured Party, (ii) to obtain "control" of any investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper (as such terms are defined by Revised Article 9 with corresponding provisions thereof defining what constitutes "control" for such items of Collateral), with any agreements establishing control to be in form and substance reasonably satisfactory to the Secured Party, and (iii) otherwise to insure the continued perfection and priority of the Secured Party's security interest in any of the Collateral and of the preservation of its rights therein, whether in anticipation of or following the effectiveness of Revised Article 9 in any jurisdiction. If the Debtor shall at any time, whether or not Uniform Revised Article 9 has been adopted in any particular jurisdiction, acquire a "commercial tort claim" (as such term is defined in Revised Article 9) [with a claim for damages in excess of $1,000,000], the Debtor, as the case may be, shall promptly notify the Secured Party thereof in writing, providing a reasonable description and summary thereof, and shall execute a supplement to this Security Agreement granting a security interest in such commercial tort claim to the Secured Party.

6. The Debtor hereby authorizes Secured Party, its counsel or its representative, at any time and from time to time, to file without the signature of the Debtor, as permitted by law, financing statements and amendments that describe the collateral covered by such financing statements as "all assets of the Debtor", "all personal property of the Debtor" or words of similar effect, in such jurisdictions as the Agent may deem necessary or desirable in order to perfect the security interests granted by the Debtor under this Security Agreement.

7. It is a default of the Loan if any one or more of the following events occur (an "Event of Default") under this Agreement: (a) failure of the Debtor to pay any of the Debtor's liabilities as and when due and payable, after giving effect to any applicable grace period; (b) failure of the Debtor to perform, observe, or comply with any of the provisions of this Agreement or of any of the other Loan Documents, after giving effect to any applicable grace period; (c) the occurrence of an Event of Default (as defined therein) under any of the other Loan Documents; (d) any information contained in any financial statement, application, schedule, report, or any other document given by the Debtor or by any other person in connection with the Debtor's liabilities, with the Collateral, or in any of the Loan Documents, is not in all material respects true and accurate or the Debtor or such other person omitted to state any material fact or any fact necessary to make such information not misleading; (e) the Debtor is generally not paying debts as such debts become due; (f) the filing of any petition for relief under any provision of the Federal Bankruptcy Code or any similar state law is brought by or against the Debtor; (g) an application for the appointment of a receiver for, the making of a general assignment for the benefit of creditors by or the insolvency of, the Debtor, which is not discharged within thirty (30) days; (h) the dissolution, merger, consolidation, or

reorganization of the Debtor; (i) suspension of the operation of the Debtor's present business; (j) the determination in good faith by the Secured Party that a material adverse change has occurred in the financial condition of the Debtor from the condition set forth in the most recent financial statement of the Debtor heretofore furnished to the Secured Party, or from the financial condition of the Debtor as heretofore most recently disclosed to the Secured Party in any other manner; or (k) any amendment to or termination of a financing statement naming the Debtor as debtor and the Secured Party as secured party, or any correction statement with respect thereto, is filed in any jurisdiction by any party other than the Secured Party or its counsel without the prior written consent of the Secured Party.

STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM

FLORIDA SECURED TRANSACTION REGISTRY

FILED
2016 Jan 25 08:00 AM
****** 201606327524 ******

A. NAME & DAYTIME PHONE NUMBER OF CONTACT PERSON
Reid H. Harbin, Esq. / 404-446-4995
B. Email Address
C. SEND ACKNOWLEDGEMENT TO:
Name Reid H. Harbin, Esq.
Address Harbin & Miller, LLC
Address 5501 Chamblee Dunwoody Rd. Bldg 1300 Ste. 300
City/State/Zip Dunwoody GA 30338

THE ABOVE SP[illegible] Y

1. DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (1a OR 1b) – Do Not Abbre[illegible]

1.a ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
1.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADD[illegible]	[illegible]IX
1.c MAILING ADDRESS Line One	This space not available.		
2315 Beach Blvd., Suite 203			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY
	Jacksonville	FL	32250	USA

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (2a OR 2b) – Do Not Abbreviate or Combine Names

2.a ORGANIZATION'S NAME			
NRP Lease Holdings, LLC			
2.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2.c MAILING ADDRESS Line One	This space not available.		
2315 Beach Blvd., Suite 203			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY
	Jacksonville	FL	32250	USA

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (3a OR 3b)

3.a ORGANIZATION'S NAME			
LIVE OAK BANKING COMPANY			
3.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3.c MAILING ADDRESS Line One	This space not available.		
1741 Tiburon Drive			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY
	Wilmington	NC	28403	USA

4. This FINANCING STATEMENT covers the following collateral:
A shared best available lien security interest in all assets of Debtor described in Exhibit"A" attached hereto now owned wherever located.

5. ALTERNATE DESIGNATION (if applicable) ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ AG LIEN ☐ NON-UCC FILING ☐ SELLER/BUYER

6. Florida DOCUMENTARY STAMP TAX – YOU ARE REQUIRED TO CHECK **EXACTLY ONE** BOX

☐ All documentary stamps due and payable or to become due and payable pursuant to s. 201.22 F.S., have been paid.

■ Florida Documentary Stamp Tax is not required.

7. OPTIONAL FILER REFERENCE DATA
FILE WITH FLORIDA SECRETARY OF STATE [redacted]

STANDARD FORM - FORM UCC-1 (REV.05/2013) Filing Office Copy Approved by the Secretary of State, State of Florida

STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 1944 Beach Blvd., LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

12. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☐ fixture filing.

13. Description of real estate:

14. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

15. Additional collateral description:

16. Check only if applicable and check only one box.

Collateral is ☐ Held in Trust

☐ Being administered by Decedent's Personal Representative

17. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☐ Filed in connection with a Manufactured-Home Transaction – effective 30 years

STANDARD FORM - FORM UCC-1 ADDENDUM (REV.05/2013) Filing Office Copy Approved by the Secretary of State, State of Florida

EXHIBIT "A"

1. The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

   a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.

   b) Secured Party or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Debtor or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Debtor, or defeat any claim of SBA with respect to this Loan.

   Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

   The Debtor shall pay all of the Secured Party's reasonable court costs incurred in any proceeding in any Bankruptcy proceeding filed by or against the Secured Party, which shall include, but shall not be limited to filing a proof of claim, actions to obtain relief of stay or secure adequate protection, and any adversary action in Bankruptcy.

2. Debtor hereby grants a security interest in all of the following property of the Debtor, whether now owned or hereafter acquired or arising, wherever located, including without limitation, on the real property located at 1010 N Webb Road, Wichita, KS, 672036; 10735 E Hwy 40, Independence, MO 64055; 1600 S Stratford Road, Winston-Salem, NC 27103; 17717 Coit Drive, Dallas, TX 75252; 1944 Beach Blvd, Jacksonville Beach, FL 32250; 2400 Sheridan Ave. Tonawanda, NY 14150; 2590 Waterpark Drive, Mason, OH 45040; 2600 East Franklin Blvd. Gastonia, NC; 2780 State Road 16, St. Augustine, FL; 3311 Capital Blvd. Raleigh, NC 27604; 3340 West Ridge Road, Rochester, NY 14626; 3939 Niagara Falls Blvd, Wheatfield, NY 14120; 4825 Blanding Blvd, Jacksonville, FL 32210; 5890 Scarborough Blvd, Columbus, OH 43232; 831 N Central Expressway, Plano, TX 75074; 8333 W 21st St N, Wichita, KS 67205 and 8350 Lyra Drive, Columbus, OH:

   a. All rights of the Debtor to payment for goods sold or leased, or to be sold or to be leased, or for services rendered, howsoever evidenced or incurred, including, without limitation, all accounts, instruments, chattel paper and general intangibles, all returned or repossessed goods and all books, records, including, but not limited to, Debtor's client records, computer tapes, programs, and ledger books arising therefrom or relating thereto, whether now owned or hereafter acquired or arising.

b. All inventory of Debtor, whether now owned or hereafter acquired, wherever located, including, without limitation, all goods of Debtor held for sale or lease or furnished or to be furnished under contracts of service, all goods held for display or demonstration, goods on lease or consignment, returned and repossessed goods, all raw materials, work-in-progress, finished goods and supplies used or consumed in Debtor's business, together with all returns, repossessions, substitutions, replacements, parts, additions, accessions and all documents, documents of title, dock warrants, dock receipts, warehouse receipts, bills of lading or orders, for the delivery of all, or any portion, of the foregoing.

c. All equipment of the Debtor, including, without limitation, all machinery, furniture, furnishings, leasehold improvements, fixtures, forklifts, dies and tools and personal property of any kind of Debtor, together with all accessories and attachments thereto, all replacements and substitutes used or useful in the Debtor's business, whether now owned or hereafter acquired or arising. Some of the foregoing are or may become fixtures affixed to the real property described herein.

d. All of Debtor's present and future right, title and interest in and to all contracts, agreements, plans, governmental authorizations, consents, licenses, approvals, permits and other documents that concern or relate to the Land or the business of the Debtor and/or the construction of improvements on the Land.

e. All property of Debtor left with Secured Party or in its possession now or hereafter and any balance or deposit account of Debtor and all drafts, checks and other items deposited in or with Secured Party by Debtor for collection or safekeeping, with full authority given Secured Party, upon the occurrence of any Event of Default as set forth in the various loan documents between Debtor and Secured Party, to charge any or all such indebtedness of Debtor without notice or demand against any obligation secured hereby.

f. All general intangibles now owned or hereafter acquired by the Debtor.

g. All products and proceeds (including insurance proceeds, pre-petition and post-petition bankruptcy proceeds) arising from or in any way relating to any or all of the collateral described above.

3. Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

4. Debtor represents and warrants the following:

a) The following Debtor is organized/existing in the state of Texas:

i) 17717 Coit Road, LLC; and

b) The following Debtors are organized/existing in the state of New York:

i) 2400 Sheridan Drive, LLC;
ii) 3340 West Ridge Road, LLC;
iii) 3939 Niagara Falls Boulevard, LLC; and

c) The following Debtors are organized/existing in the state of North Carolina:

i) 1600 Stratford, LLC;
ii) 3660 East Franklin, LLC;
iii) 3311 Capital Boulevard, LLC;

d) The following Debtors are organized/existing in the state of Florida:

i) 2590 Water Park Drive, LLC;
ii) NRP Lease Holdings, LLC;
iii) 1010 N Webb Road, LLC;
iv) 10735 E Hwy 40, LLC;
v) 1944 Beach Blvd., LLC;
vi) 2780 SR16, LLC;
vii) 4825 Blanding Boulevard, LLC;
viii) 5890 Scarborough Drive, LLC;
ix) 831 North Central Parkway, LLC;
x) 8333 W. 21st Street N, LLC;
xii) 8350 Lyra Drive, LLC; and
xiii) Adventure Holdings, LLC.

b) "2590 Water Park Drive, LLC, NRP Lease Holdings, LLC, 1010 N Webb Road, LLC, 10735 E Hwy 40, LLC, 1600 Stratford, LLC, 17717 Coit Road, LLC, 1944 Beach Blvd., LLC, 2400 Sheridan Drive, LLC, 2780 SR16, LLC, 3311 Capital Boulevard, LLC, 3340 West Ridge Road, LLC, 3660 East Franklin, LLC, 3939 Niagara Falls Boulevard, LLC, 4825 Blanding Boulevard, LLC, 5890 Scarborough Drive, LLC, 831 North Central Parkway, LLC, 8333 W. 21st Street N, LLC, 8350 Lyra Drive, LLC, Adventure Holdings, LLC" are the correct legal names of the Debtor indicated on the public record of the Debtor's jurisdiction of organization that shows the Debtor to be organized.

5. Debtor covenants the following so long as any of the Obligations shall remain outstanding and unless Secured Party shall otherwise consent in writing:

a) The Debtor shall not merge or consolidate into, or transfer of any of the Collateral to any other Person.

b) The Debtor shall not change its name unless it has given the Secured Party thirty (30) days' prior written notice thereof and executed or authorized, at the request of the Secured Party, such additional financing statements to be filed in such jurisdictions as the Secured Party may deem necessary or desirable in its sole discretion.

c) The Debtor shall, at any time and from time to time, whether or not the Official Text of Revised Article 9, 2000 Revision, of the Uniform Commercial Code promulgated by the American Law Institute and the National Conference of Commissioners on Uniform State Laws or a version thereof ("Uniform Revised Article 9") has been adopted in any particular jurisdiction, take such steps as the Secured Party may reasonably request for the Secured Party (i) to obtain an acknowledgment, in form and substance reasonably satisfactory to the Secured Party, of any bailee having possession of any of the Collateral, stating that the bailee holds possession of such Collateral on behalf of the Secured Party, (ii) to obtain "control" of any investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper (as such terms are defined by Revised Article 9 with corresponding provisions thereof defining what constitutes "control" for such items of Collateral), with any agreements establishing control to be in form and substance reasonably satisfactory to the Secured Party, and (iii) otherwise to insure the continued perfection and priority of the Secured Party's security interest in any of the Collateral and of the preservation of its rights therein, whether in anticipation of or following the effectiveness of Revised Article 9 in any jurisdiction. If the Debtor shall at any time, whether or not Uniform Revised Article 9 has been adopted in any particular jurisdiction, acquire a "commercial tort claim" (as such term is defined in Revised Article 9) [with a claim for damages in excess of $1,000,000], the Debtor, as the case may be, shall promptly notify the Secured Party thereof in writing, providing a reasonable description and summary thereof, and shall execute a supplement to this Security Agreement granting a security interest in such commercial tort claim to the Secured Party.

6. The Debtor hereby authorizes Secured Party, its counsel or its representative, at any time and from time to time, to file without the signature of the Debtor, as permitted by law, financing statements and amendments that describe the collateral covered by such financing statements as "all assets of the Debtor", "all personal property of the Debtor" or words of similar effect, in such jurisdictions as the Agent may deem necessary or desirable in order to perfect the security interests granted by the Debtor under this Security Agreement.

7. It is a default of the Loan if any one or more of the following events occur (an "Event of Default") under this Agreement: (a) failure of the Debtor to pay any of the Debtor's liabilities as and when due and payable, after giving effect to any applicable grace period; (b) failure of the Debtor to perform, observe, or comply with any of the provisions of this Agreement or of any of the other Loan Documents, after giving effect to any applicable grace period; (c) the occurrence of an Event of Default (as defined therein) under any of the other Loan Documents; (d) any information contained in any financial statement, application, schedule, report, or any other document given by the Debtor or by any other person in connection with the Debtor's liabilities, with the Collateral, or in any of the Loan Documents, is not in all material respects true and accurate or the Debtor or such other person omitted to state any material fact or any fact necessary to make such information not misleading; (e) the Debtor is generally not paying debts as such debts become due; (f) the filing of any petition for relief under any provision of the Federal Bankruptcy Code or any similar state law is brought by or against the Debtor; (g) an application for the appointment of a receiver for, the making of a general assignment for the benefit of creditors by or the insolvency of, the Debtor, which is not discharged within thirty (30) days; (h) the dissolution, merger, consolidation, or

reorganization of the Debtor; (i) suspension of the operation of the Debtor's present business; (j) the determination in good faith by the Secured Party that a material adverse change has occurred in the financial condition of the Debtor from the condition set forth in the most recent financial statement of the Debtor heretofore furnished to the Secured Party, or from the financial condition of the Debtor as heretofore most recently disclosed to the Secured Party in any other manner; or (k) any amendment to or termination of a financing statement naming the Debtor as debtor and the Secured Party as secured party, or any correction statement with respect thereto, is filed in any jurisdiction by any party other than the Secured Party or its counsel without the prior written consent of the Secured Party.

COMPOSITE EXHIBIT "B"

U.S. Small Business Administration

SECURITY AGREEMENT

SBA Loan #	[redacted]-08
SBA Loan Name	2590 Water Park Drive, LLC
Debtor *(Exact full legal name of individual(s), corporation, LLC, partnership, or other organization)*	2590 Water Park Drive, LLC, NRP Lease Holdings, LLC, 1010 N Webb Road, LLC, 10735 E Hwy 40, LLC, 1600 Stratford, LLC, 17717 Coit Road, LLC, 1944 Beach Blvd., LLC, 2400 Sheridan Drive, LLC, 2780 SR16, LLC, 3311 Capital Boulevard, LLC, 3340 West Ridge Road, LLC, 3660 East Franklin, LLC, 3939 Niagara Falls Boulevard, LLC, 4825 Blanding Boulevard, LLC, 5890 Scarborough Drive, LLC, 831 North Central Parkway, LLC, 8333 W. 21st Street N, LLC, 8350 Lyra Drive, LLC, Adventure Holdings, LLC
Borrower	2590 Water Park Drive, LLC, NRP Lease Holdings, LLC, 1010 N Webb Road, LLC, 10735 E Hwy 40, LLC, 1600 Stratford, LLC, 17717 Coit Road, LLC, 1944 Beach Blvd., LLC, 2400 Sheridan Drive, LLC, 2780 SR16, LLC, 3311 Capital Boulevard, LLC, 3340 West Ridge Road, LLC, 3660 East Franklin, LLC, 3939 Niagara Falls Boulevard, LLC, 4825 Blanding Boulevard, LLC, 5890 Scarborough Drive, LLC, 831 North Central Parkway, LLC, 8333 W. 21st Street N, LLC, 8350 Lyra Drive, LLC, Adventure Holdings, LLC
Secured Party	LIVE OAK BANKING COMPANY
Date	December 18, 2015
Note Amount	$2,500,000.00

1. DEFINITIONS.

Unless otherwise specified, all terms used in this Agreement will have the meanings ascribed to them under the Official Text of the Uniform Commercial Code, as it may be amended from time to time, ("UCC"). "SBA" means the Small Business Administration, an Agency of the U.S. Government.

2. GRANT OF SECURITY INTEREST.

For value received, the Debtor grants to the Secured Party a shared best available lien position security interest in the property described below in paragraph 4 (the "Collateral").

3. OBLIGATIONS SECURED.

This Agreement secures the payment and performance of: (a) all obligations under a Note dated of even date, made by 2590 Water Park Drive, LLC, NRP Lease Holdings, LLC, 1010 N Webb Road, LLC, 10735 E Hwy 40, LLC, 1600 Stratford, LLC, 17717 Colt Road, LLC, 1944 Beach Blvd., LLC, 2400 Sheridan Drive, LLC, 2780 SR16, LLC, 3311 Capital Boulevard, LLC, 3340 West Ridge Road, LLC, 3660 East Franklin, LLC, 3939 Niagara Falls Boulevard, LLC, 4825 Blanding Boulevard, LLC, 5890 Scarborough Drive, LLC, 831 North Central Parkway, LLC, 8333 W. 21st Street N, LLC, 8350 Lyra Drive, LLC, Adventure Holdings, LLC, made payable to LIVE OAK BANKING COMPANY, in the amount of $2,500,000.00 ("Note"), including all costs and expenses (including reasonable attorney's fees), incurred by Secured Party in the disbursement, administration and collection of the loan evidenced by the Note; (b) all costs and expenses (including reasonable attorney's fees), incurred by Secured Party in the protection, maintenance and enforcement of the security interest hereby granted; (c) all obligations of the Debtor in any other agreement relating to the Note; and (d) any modifications, renewals, refinancings, or extensions of the foregoing obligations.

The Note and all other obligations secured hereby are collectively called the "Obligations."

4. COLLATERAL DESCRIPTION.

The Collateral in which this security interest is granted is all of the Debtor's property described below, and indicated by an "X" or other mark on the applicable line, now owned or hereafter acquired, together with all replacements, accessions, proceeds, and products.

- [X] a. Equipment
- [X] b. Fixtures
- [X] c. Inventory
- [X] d. Accounts
- [X] e. Instruments
- [X] f. Chattel paper
- [X] g. General intangibles
- [X] h. Documents
- [ ] i. Farm products
- [X] j. Deposit accounts
- [ ] k. Investment property

[ ] l. Titled motor vehicles, including mobile or manufactured homes (list make, model, and serial #):

_____

_____

[X] m. Other: Insert specific description of other forms of Collateral not included in categories a through k above (for example, specific commercial tort claim, letter-of-credit rights):

Including, but not limited to all property set forth in Exhibit "A". The Collateral is located on the real/leasehold property described in Exhibit "B" or wherever located.

5. RESTRICTIONS ON COLLATERAL TRANSFER.

Debtor will not sell, lease, license or otherwise transfer (including by granting security interests, liens, or other encumbrances in) all or any part of the Collateral or Debtor's interest in the Collateral without Secured Party's written or electronically communicated approval, except that Debtor may sell inventory in the ordinary course of business on customary terms. Debtor may collect and use amounts due on accounts and other rights to payment arising or created in the ordinary course of business, until notified otherwise by Secured Party in writing or by electronic communication.

6. MAINTENANCE AND LOCATION OF COLLATERAL; INSPECTION; INSURANCE.

Debtor must promptly notify Secured Party by written or electronic communication of any change in location of the Collateral, specifying the new location. Debtor hereby grants to Secured Party the right to inspect the Collateral at all reasonable times and upon reasonable notice. Debtor must: (a) maintain the Collateral in good condition; (b) pay promptly all taxes, judgments, or charges of any kind levied or assessed thereon; (c) keep current all rent or mortgage payments due, if any, on premises where the Collateral is located; and (d) maintain hazard insurance on the Collateral, with an insurance company and in an amount approved by Secured Party (but in no event less than the replacement cost of that Collateral), and including such terms as Secured Party may require including a Lender's Loss Payable Clause in favor of Secured Party. Debtor hereby assigns to Secured Party any proceeds of such policies and all unearned premiums thereon and authorizes and empowers Secured Party to collect such sums and to execute and endorse in Debtor's name all proofs of loss, drafts, checks and any other documents necessary for Secured Party to obtain such payments.

7. CHANGES TO DEBTOR'S LEGAL STRUCTURE, PLACE OF BUSINESS, JURISDICTION OF ORGANIZATION, OR NAME.

Debtor must notify Secured Party by written or electronic communication not less than 30 days before taking any of the following actions: (a) changing or reorganizing the type of organization or form under which it does business; (b) moving, changing its place of business or adding a place of business; (c) changing its jurisdiction of organization; or (d) changing its name. Debtor will pay for the preparation and filing of all documents, Secured Party deems necessary to maintain, perfect and continue the perfection of Secured Party's security interest in the event of any such change.

8. PERFECTION OF SECURITY INTEREST.

Debtor consents, without further notice, to Secured Party's filing or recording of any documents necessary to perfect, continue, amend or terminate its security interest. Upon request of Secured Party, Debtor must sign or otherwise authenticate all documents that Secured Party deems necessary at any time to allow Secured Party to acquire, perfect, continue or amend its security interest in the Collateral. Debtor will pay the filing and recording costs of any documents relating to Secured Party's security interest. Debtor ratifies all previous filings and recordings, including financing statements and notations on certificates of title. Debtor will cooperate with Secured Party in obtaining a Control Agreement satisfactory to Secured Party with respect to any Deposit Accounts or Investment Property, or in otherwise obtaining control or possession of that or any other Collateral.

9. DEFAULT.

Debtor is in default under this Agreement if: (a) Debtor fails to pay, perform or otherwise comply with any provision of this Agreement; (b) Debtor makes any materially false representation, warranty or certification in, or in connection with, this Agreement, the Note, or any other agreement related to the Note or this Agreement; (c) another secured party or judgment creditor exercises its rights against the Collateral; or (d) an event defined as a "default" under the Obligations occurs. In the event of default and if Secured Party requests, Debtor must assemble and make available all Collateral at a place and time designated by Secured Party. Upon default and at any time thereafter, Secured Party may declare all Obligations secured hereby immediately due and payable, and, in its sole discretion, may proceed to enforce payment of same and exercise any of the rights and remedies available to a secured party by law including those available to it under Article 9 of the UCC that is in effect in the jurisdiction where Debtor or the Collateral is located. Unless otherwise required under applicable law, Secured Party has no obligation to clean or otherwise prepare the Collateral for sale or other disposition and Debtor waives

any right it may have to require Secured Party to enforce the security interest or payment or performance of the Obligations against any other person.

10. FEDERAL RIGHTS.

When SBA is the holder of the Note, this Agreement will be construed and enforced under federal law, including SBA regulations. Secured Party or SBA may use state or local procedures for filing papers, recording documents, giving notice, enforcing security interests or liens, and for any other purposes. By using such procedures, SBA does not waive any federal immunity from state or local control, penalty, tax or liability. As to this Agreement, Debtor may not claim or assert any local or state law against SBA to deny any obligation, defeat any claim of SBA, or preempt federal law.

11. GOVERNING LAW.

Unless SBA is the holder of the Note, in which case federal law will govern, Debtor and Secured Party agree that this Agreement will be governed by the laws of the jurisdiction where the Debtor is located, including the UCC as in effect in such jurisdiction and without reference to its conflicts of laws principles.

12. SECURED PARTY RIGHTS.

All rights conferred in this Agreement on Secured Party are in addition to those granted to it by law, and all rights are cumulative and may be exercised simultaneously. Failure of Secured Party to enforce any rights or remedies will not constitute an estoppel or waiver of Secured Party's ability to exercise such rights or remedies. Unless otherwise required under applicable law, Secured Party is not liable for any loss or damage to Collateral in its possession or under its control, nor will such loss or damage reduce or discharge the Obligations that are due, even if Secured Party's actions or inactions caused or in any way contributed to such loss or damage.

13. SEVERABILITY.

If any provision of this Agreement is unenforceable, all other provisions remain in effect.

14. DEBTOR CERTIFICATIONS.

Debtor certifies that: (a) its Name (or Names) as stated above is correct; (b) all Collateral is owned or titled in the Debtor's name and not in the name of any other organization or individual; (c) Debtor has the legal authority to grant the security interest in the Collateral; (d) Debtor's ownership in or title to the Collateral is free of all adverse claims, liens, or security interests (unless expressly permitted by Secured Party); (e) none of the Obligations are or will be primarily for personal, family or household purposes; (f) none of the Collateral is or will be used, or has been or will be bought primarily for personal, family or household purposes; and (g) Debtor has read and understands the meaning and effect of all terms of this Agreement.

15. DEBTOR NAME(S) AND SIGNATURE(S).

By signing or otherwise authenticating below, each individual and each organization becomes jointly and severally obligated as a Debtor under this Agreement.

IN WITNESS WHEREOF, 2590 Water Park Drive, LLC, NRP Lease Holdings, LLC, 1010 N Webb Road, LLC, 10735 E Hwy 40, LLC, 1600 Stratford, LLC, 17717 Coit Road, LLC, 1944 Beach Blvd., LLC, 2400 Sheridan Drive, LLC, 2780 SR16, LLC, 3311 Capital Boulevard, LLC, 3340 West Ridge Road, LLC, 3660 East Franklin, LLC, 3939 Niagara Falls Boulevard, LLC, 4825 Blanding Boulevard, LLC, 5890 Scarborough Drive, LLC, 831 North Central Parkway, LLC, 8333 W. 21st Street N, LLC, 8350 Lyra Drive, LLC, Adventure Holdings, LLC have executed this Security Agreement this 18th day of December, 2015.

[SIGNATURE PAGE ATTACHED HERETO]

SIGNATURES CONTINUED FROM PREVIOUS PAGE
(Security Agreement)

2590 Water Park Drive, LLC
By: _____ (L.S.)
Henry P. Woodburn, III, Manager

NRP Lease Holdings, LLC
By: _____ (L.S.)
Henry P. Woodburn, III, Manager

1010 N Webb Road, LLC

By: NRP Lease Holdings, LLC, its Member
By: _____ (L.S.)
Henry P. Woodburn, III, Manager

10735 E Hwy 40, LLC

By: NRP Lease Holdings, LLC, its Member
By: _____ (L.S.)
Henry P. Woodburn, III, Manager

1600 Stratford, LLC
By: _____ (L.S.)
Henry P. Woodburn, III, Manager

17717 Coit Road, LLC

By: Adventure Holdings, LLC, its Manager
By: _____ (L.S.)
Henry P. Woodburn, III, Manager

1944 Beach Blvd., LLC

By: Adventure Holdings, LLC, its Manager
By: _____ (L.S.)
Henry P. Woodburn, III, Manager

2400 Sheridan Drive, LLC
By: _____ (L.S.)
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By: _____ (L.S.)
Henry P. Woodburn, III, Manager

3311 Capital Boulevard, LLC

By: Adventure Holdings, LLC, its Manager
By: _____ (L.S.)
Henry P. Woodburn, III, Manager

3340 West Ridge Road, LLC
By: _____ (L.S.)
Henry P. Woodburn, III, Manager

3660 East Franklin, LLC
By: _____ (L.S.)
Henry P. Woodburn, III, Manager

3939 Niagara Falls Boulevard, LLC
By: _____ (L.S.)
Henry P. Woodburn, III, Manager

4825 Blanding Boulevard, LLC

By: Adventure Holdings, LLC, its Manager
By: _____ (L.S.)
Henry P. Woodburn, III, Manager

5890 Scarborough Drive, LLC

By: NRP Lease Holdings, LLC, its Member
By: _____ (L.S.)
Henry P. Woodburn, III, Manager

831 North Central Parkway, LLC

By: NRP Lease Holdings, LLC, its Member
By: _____ (L.S.)
Henry P. Woodburn, III, Manager

8333 W. 21st Street N, LLC

By: NRP Lease Holdings, LLC, its Member
By: _____ (L.S.)
Henry P. Woodburn, III, Manager

8350 Lyra Drive, LLC

By: NRP Lease Holdings, LLC, its Member
By: _____ (L.S.)
Henry P. Woodburn, III, Manager

Adventure Holdings, LLC
By: _____ (L.S.)
Henry P. Woodburn, III, Manager

EXHIBIT "A"

1. The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

   a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.

   b) Secured Party or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Debtor or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Debtor, or defeat any claim of SBA with respect to this Loan.

   Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

   The Debtor shall pay all of the Secured Party's reasonable court costs incurred in any proceeding in any Bankruptcy proceeding filed by or against the Secured Party, which shall include, but shall not be limited to filing a proof of claim, actions to obtain relief of stay or secure adequate protection, and any adversary action in Bankruptcy.

2. Debtor hereby grants a security interest in all of the following property of the Debtor, whether now owned or hereafter acquired or arising, wherever located, including without limitation, on the real property located at 1010 N Webb Road, Wichita, KS, 672036; 10735 E Hwy 40, Independence, MO 64055; 1600 S Stratford Road, Winston-Salem, NC 27103; 17717 Coit Drive, Dallas, TX 75252; 1944 Beach Blvd, Jacksonville Beach, FL 32250; 2400 Sheridan Ave. Tonawanda, NY 14150; 2590 Waterpark Drive, Mason, OH 45040; 2600 East Franklin Blvd. Gastonia, NC; 2780 State Road 16, St. Augustine, FL; 3311 Capital Blvd. Raleigh, NC 27604; 3340 West Ridge Road, Rochester, NY 14626; 3939 Niagara Falls Blvd, Wheatfield, NY 14120; 4825 Blanding Blvd, Jacksonville, FL 32210; 5890 Scarborough Blvd, Columbus, OH 43232; 831 N Central Expressway, Plano, TX 75074; 8333 W 21st St N, Wichita, KS 67205 and 8350 Lyra Drive, Columbus, OH:

   a. All rights of the Debtor to payment for goods sold or leased, or to be sold or to be leased, or for services rendered, howsoever evidenced or incurred, including, without limitation, all accounts, instruments, chattel paper and general intangibles, all returned or repossessed goods and all books, records, including, but not limited to, Debtor's client records, computer tapes, programs, and ledger books arising therefrom or relating thereto, whether now owned or hereafter acquired or arising.

b. All inventory of Debtor, whether now owned or hereafter acquired, wherever located, including, without limitation, all goods of Debtor held for sale or lease or furnished or to be furnished under contracts of service, all goods held for display or demonstration, goods on lease or consignment, returned and repossessed goods, all raw materials, work-in-progress, finished goods and supplies used or consumed in Debtor's business, together with all returns, repossessions, substitutions, replacements, parts, additions, accessions and all documents, documents of title, dock warrants, dock receipts, warehouse receipts, bills of lading or orders, for the delivery of all, or any portion, of the foregoing.

c. All equipment of the Debtor, including, without limitation, all machinery, furniture, furnishings, leasehold improvements, fixtures, forklifts, dies and tools and personal property of any kind of Debtor, together with all accessories and attachments thereto, all replacements and substitutes used or useful in the Debtor's business, whether now owned or hereafter acquired or arising. Some of the foregoing are or may become fixtures affixed to the real property described herein.

d. All of Debtor's present and future right, title and interest in and to all contracts, agreements, plans, governmental authorizations, consents, licenses, approvals, permits and other documents that concern or relate to the Land or the business of the Debtor and/or the construction of improvements on the Land.

e. All property of Debtor left with Secured Party or in its possession now or hereafter and any balance or deposit account of Debtor and all drafts, checks and other items deposited in or with Secured Party by Debtor for collection or safekeeping, with full authority given Secured Party, upon the occurrence of any Event of Default as set forth in the various loan documents between Debtor and Secured Party, to charge any or all such indebtedness of Debtor without notice or demand against any obligation secured hereby.

f. All general intangibles now owned or hereafter acquired by the Debtor.

g. All products and proceeds (including insurance proceeds, pre-petition and post-petition bankruptcy proceeds) arising from or in any way relating to any or all of the collateral described above.

3. Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

4. Debtor represents and warrants the following:

a) The following Debtor is organized/existing in the state of Texas:

i) 177 17 Coit Road, LLC; and

b) The following Debtors are organized/existing in the state of New York:

i) 2400 Sheridan Drive, LLC;
ii) 3340 West Ridge Road, LLC;
iii) 3939 Niagara Falls Boulevard, LLC; and

c) The following Debtors are organized/existing in the state of North Carolina:

i) 1600 Stratford, LLC;
ii) 3660 East Franklin, LLC;
iii) 3311 Capital Boulevard, LLC;

d) The following Debtors are organized/existing in the state of Florida:

i) 2590 Water Park Drive, LLC;
ii) NRP Lease Holdings, LLC;
iii) 1010 N Webb Road, LLC;
iv) 10735 E Hwy 40, LLC;
v) 1944 Beach Blvd., LLC;
vi) 2780 SR16, LLC;
vii) 4825 Blanding Boulevard, LLC;
viii) 5890 Scarborough Drive, LLC;
ix) 831 North Central Parkway, LLC;
x) 8333 W. 21st Street N, LLC;
xii) 8350 Lyra Drive, LLC; and
xiii) Adventure Holdings, LLC.

b) "2590 Water Park Drive, LLC, NRP Lease Holdings, LLC, 1010 N Webb Road, LLC, 10735 E Hwy 40, LLC, 1600 Stratford, LLC, 17717 Coit Road, LLC, 1944 Beach Blvd., LLC, 2400 Sheridan Drive, LLC, 2780 SR16, LLC, 3311 Capital Boulevard, LLC, 3340 West Ridge Road, LLC, 3660 East Franklin, LLC, 3939 Niagara Falls Boulevard, LLC, 4825 Blanding Boulevard, LLC, 5890 Scarborough Drive, LLC, 831 North Central Parkway, LLC, 8333 W. 21st Street N, LLC, 8350 Lyra Drive, LLC, Adventure Holdings, LLC" are the correct legal names of the Debtor indicated on the public record of the Debtor's jurisdiction of organization that shows the Debtor to be organized.

5. Debtor covenants the following so long as any of the Obligations shall remain outstanding and unless Secured Party shall otherwise consent in writing:

a) The Debtor shall not merge or consolidate into, or transfer of any of the Collateral to any other Person.

b) The Debtor shall not change its name unless it has given the Secured Party thirty (30) days' prior written notice thereof and executed or authorized, at the request of the Secured Party, such additional financing statements to be filed in such jurisdictions as the Secured Party may deem necessary or desirable in its sole discretion.

c) The Debtor shall, at any time and from time to time, whether or not the Official Text of Revised Article 9, 2000 Revision, of the Uniform Commercial Code promulgated by the American Law Institute and the National Conference of Commissioners on Uniform State Laws or a version thereof ("Uniform Revised Article 9") has been adopted in any particular jurisdiction, take such steps as the Secured Party may reasonably request for the Secured Party (i) to obtain an acknowledgment, in form and substance reasonably satisfactory to the Secured Party, of any bailee having possession of any of the Collateral, stating that the bailee holds possession of such Collateral on behalf of the Secured Party, (ii) to obtain "control" of any investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper (as such terms are defined by Revised Article 9 with corresponding provisions thereof defining what constitutes "control" for such items of Collateral), with any agreements establishing control to be in form and substance reasonably satisfactory to the Secured Party, and (iii) otherwise to insure the continued perfection and priority of the Secured Party's security interest in any of the Collateral and of the preservation of its rights therein, whether in anticipation of or following the effectiveness of Revised Article 9 in any jurisdiction. If the Debtor shall at any time, whether or not Uniform Revised Article 9 has been adopted in any particular jurisdiction, acquire a "commercial tort claim" (as such term is defined in Revised Article 9) [with a claim for damages in excess of $1,000,000], the Debtor, as the case may be, shall promptly notify the Secured Party thereof in writing, providing a reasonable description and summary thereof, and shall execute a supplement to this Security Agreement granting a security interest in such commercial tort claim to the Secured Party.

6. The Debtor hereby authorizes Secured Party, its counsel or its representative, at any time and from time to time, to file without the signature of the Debtor, as permitted by law, financing statements and amendments that describe the collateral covered by such financing statements as "all assets of the Debtor", "all personal property of the Debtor" or words of similar effect, in such jurisdictions as the Agent may deem necessary or desirable in order to perfect the security interests granted by the Debtor under this Security Agreement.

7. It is a default of the Loan if any one or more of the following events occur (an "Event of Default") under this Agreement: (a) failure of the Debtor to pay any of the Debtor's liabilities as and when due and payable, after giving effect to any applicable grace period; (b) failure of the Debtor to perform, observe, or comply with any of the provisions of this Agreement or of any of the other Loan Documents, after giving effect to any applicable grace period; (c) the occurrence of an Event of Default (as defined therein) under any of the other Loan Documents; (d) any information contained in any financial statement, application, schedule, report, or any other document given by the Debtor or by any other person in connection with the Debtor's liabilities, with the Collateral, or in any of the Loan Documents, is not in all material respects true and accurate or the Debtor or such other person omitted to state any material fact or any fact necessary to make such information not misleading; (e) the Debtor is generally not paying debts as such debts become due; (f) the filing of any petition for relief under any provision of the Federal Bankruptcy Code or any similar state law is brought by or against the Debtor; (g) an application for the appointment of a receiver for, the making of a general assignment for the benefit of creditors by or the

insolvency of, the Debtor, which is not discharged within thirty (30) days; (h) the dissolution, merger, consolidation, or reorganization of the Debtor; (i) suspension of the operation of the Debtor's present business; (j) the determination in good faith by the Secured Party that a material adverse change has occurred in the financial condition of the Debtor from the condition set forth in the most recent financial statement of the Debtor heretofore furnished to the Secured Party, or from the financial condition of the Debtor as heretofore most recently disclosed to the Secured Party in any other manner; or (k) any amendment to or termination of a financing statement naming the Debtor as debtor and the Secured Party as secured party, or any correction statement with respect thereto, is filed in any jurisdiction by any party other than the Secured Party or its counsel without the prior written consent of the Secured Party.

U.S. Small Business Administration

SECURITY AGREEMENT

SBA Loan #	[redacted].00
SBA Loan Name	2590 Water Park Drive, LLC
Debtor *(Exact full legal name of individual(s), corporation, LLC, partnership, or other organization)*	2590 Water Park Drive, LLC, NRP Lease Holdings, LLC, 1010 N Webb Road, LLC, 10735 E Hwy 40, LLC, 1600 Stratford, LLC, 17717 Coit Road, LLC, 1944 Beach Blvd., LLC, 2400 Sheridan Drive, LLC, 2780 SR16, LLC, 3311 Capital Boulevard, LLC, 3340 West Ridge Road, LLC, 3660 East Franklin, LLC, 3939 Niagara Falls Boulevard, LLC, 4825 Blanding Boulevard, LLC, 5890 Scarborough Drive, LLC, 831 North Central Parkway, LLC, 8333 W. 21st Street N, LLC, 8350 Lyra Drive, LLC, Adventure Holdings, LLC
Borrower	2590 Water Park Drive, LLC, NRP Lease Holdings, LLC, 1010 N Webb Road, LLC, 10735 E Hwy 40, LLC, 1600 Stratford, LLC, 17717 Coit Road, LLC, 1944 Beach Blvd., LLC, 2400 Sheridan Drive, LLC, 2780 SR16, LLC, 3311 Capital Boulevard, LLC, 3340 West Ridge Road, LLC, 3660 East Franklin, LLC, 3939 Niagara Falls Boulevard, LLC, 4825 Blanding Boulevard, LLC, 5890 Scarborough Drive, LLC, 831 North Central Parkway, LLC, 8333 W. 21st Street N, LLC, 8350 Lyra Drive, LLC, Adventure Holdings, LLC
Secured Party	LIVE OAK BANKING COMPANY
Date	December 18, 2015
Note Amount	$2,500,000.00

1. DEFINITIONS.

Unless otherwise specified, all terms used in this Agreement will have the meanings ascribed to them under the Official Text of the Uniform Commercial Code, as it may be amended from time to time, ("UCC"). "SBA" means the Small Business Administration, an Agency of the U.S. Government.

2. GRANT OF SECURITY INTEREST.

For value received, the Debtor grants to the Secured Party a shared best available lien position security interest in the property described below in paragraph 4 (the "Collateral").

3. OBLIGATIONS SECURED.

This Agreement secures the payment and performance of: (a) all obligations under a Note dated of even date, made by 2590 Water Park Drive, LLC, NRP Lease Holdings, LLC, 1010 N Webb Road, LLC, 10735 E Hwy 40, LLC, 1600 Stratford, LLC, 17717 Coit Road, LLC, 1944 Beach Blvd., LLC, 2400 Sheridan Drive, LLC, 2780 SR16, LLC, 3311 Capital Boulevard, LLC, 3340 West Ridge Road, LLC, 3660 East Franklin, LLC, 3939 Niagara Falls Boulevard, LLC, 4825 Blanding Boulevard, LLC, 5890 Scarborough Drive, LLC, 831 North Central Parkway, LLC, 8333 W. 21st Street N, LLC, 8350 Lyra Drive, LLC, Adventure Holdings, LLC, made payable to LIVE OAK BANKING COMPANY, in the amount of $2,500,000.00 ("Note"), including all costs and expenses (including reasonable attorney's fees), incurred by Secured Party in the disbursement, administration and collection of the loan evidenced by the Note; (b) all costs and expenses (including reasonable attorney's fees), incurred by Secured Party in the protection, maintenance and enforcement of the security interest hereby granted; (c) all obligations of the Debtor in any other agreement relating to the Note; and (d) any modifications, renewals, refinancings, or extensions of the foregoing obligations.

The Note and all other obligations secured hereby are collectively called the "Obligations."

4. COLLATERAL DESCRIPTION.

The Collateral in which this security interest is granted is all of the Debtor's property described below, and indicated by an "X" or other mark on the applicable line, now owned or hereafter acquired, together with all replacements, accessions, proceeds, and products.

- [X] a. Equipment
- [X] b. Fixtures
- [X] c. Inventory
- [X] d. Accounts
- [X] e. Instruments
- [X] f. Chattel paper
- [X] g. General intangibles
- [X] h. Documents
- [ ] i. Farm products
- [X] j. Deposit accounts
- [ ] k. Investment property

[ ] l. Titled motor vehicles, including mobile or manufactured homes (list make, model, and serial #):

_____

_____

[X] m. Other: Insert specific description of other forms of Collateral not included in categories a through k above (for example, specific commercial tort claim, letter-of-credit rights):

Including, but not limited to all property set forth in Exhibit "A". The Collateral is located on the real/leasehold property described in Exhibit "B" or wherever located.

5. RESTRICTIONS ON COLLATERAL TRANSFER.

Debtor will not sell, lease, license or otherwise transfer (including by granting security interests, liens, or other encumbrances in) all or any part of the Collateral or Debtor's interest in the Collateral without Secured Party's written or electronically communicated approval, except that Debtor may sell inventory in the ordinary course of business on customary terms. Debtor may collect and use amounts due on accounts and other rights to payment arising or created in the ordinary course of business, until notified otherwise by Secured Party in writing or by electronic communication.

6. MAINTENANCE AND LOCATION OF COLLATERAL; INSPECTION; INSURANCE.

Debtor must promptly notify Secured Party by written or electronic communication of any change in location of the Collateral, specifying the new location. Debtor hereby grants to Secured Party the right to inspect the Collateral at all reasonable times and upon reasonable notice. Debtor must: (a) maintain the Collateral in good condition; (b) pay promptly all taxes, judgments, or charges of any kind levied or assessed thereon; (c) keep current all rent or mortgage payments due, if any, on premises where the Collateral is located; and (d) maintain hazard insurance on the Collateral, with an insurance company and in an amount approved by Secured Party (but in no event less than the replacement cost of that Collateral), and including such terms as Secured Party may require including a Lender's Loss Payable Clause in favor of Secured Party. Debtor hereby assigns to Secured Party any proceeds of such policies and all unearned premiums thereon and authorizes and empowers Secured Party to collect such sums and to execute and endorse in Debtor's name all proofs of loss, drafts, checks and any other documents necessary for Secured Party to obtain such payments.

7. CHANGES TO DEBTOR'S LEGAL STRUCTURE, PLACE OF BUSINESS, JURISDICTION OF ORGANIZATION, OR NAME.

Debtor must notify Secured Party by written or electronic communication not less than 30 days before taking any of the following actions: (a) changing or reorganizing the type of organization or form under which it does business; (b) moving, changing its place of business or adding a place of business; (c) changing its jurisdiction of organization; or (d) changing its name. Debtor will pay for the preparation and filing of all documents, Secured Party deems necessary to maintain, perfect and continue the perfection of Secured Party's security interest in the event of any such change.

8. PERFECTION OF SECURITY INTEREST.

Debtor consents, without further notice, to Secured Party's filing or recording of any documents necessary to perfect, continue, amend or terminate its security interest. Upon request of Secured Party, Debtor must sign or otherwise authenticate all documents that Secured Party deems necessary at any time to allow Secured Party to acquire, perfect, continue or amend its security interest in the Collateral. Debtor will pay the filing and recording costs of any documents relating to Secured Party's security interest. Debtor ratifies all previous filings and recordings, including financing statements and notations on certificates of title. Debtor will cooperate with Secured Party in obtaining a Control Agreement satisfactory to Secured Party with respect to any Deposit Accounts or Investment Property, or in otherwise obtaining control or possession of that or any other Collateral.

9. DEFAULT.

Debtor is in default under this Agreement if: (a) Debtor fails to pay, perform or otherwise comply with any provision of this Agreement; (b) Debtor makes any materially false representation, warranty or certification in, or in connection with, this Agreement, the Note, or any other agreement related to the Note or this Agreement; (c) another secured party or judgment creditor exercises its rights against the Collateral; or (d) an event defined as a "default" under the Obligations occurs. In the event of default and if Secured Party requests, Debtor must assemble and make available all Collateral at a place and time designated by Secured Party. Upon default and at any time thereafter, Secured Party may declare all Obligations secured hereby immediately due and payable, and, in its sole discretion, may proceed to enforce payment of same and exercise any of the rights and remedies available to a secured party by law including those available to it under Article 9 of the UCC that is in effect in the jurisdiction where Debtor or the Collateral is located. Unless otherwise required under applicable law, Secured Party has no obligation to clean or otherwise prepare the Collateral for sale or other disposition and Debtor waives

any right it may have to require Secured Party to enforce the security interest or payment or performance of the Obligations against any other person.

10. FEDERAL RIGHTS.

When SBA is the holder of the Note, this Agreement will be construed and enforced under federal law, including SBA regulations. Secured Party or SBA may use state or local procedures for filing papers, recording documents, giving notice, enforcing security interests or liens, and for any other purposes. By using such procedures, SBA does not waive any federal immunity from state or local control, penalty, tax or liability. As to this Agreement, Debtor may not claim or assert any local or state law against SBA to deny any obligation, defeat any claim of SBA, or preempt federal law.

11. GOVERNING LAW.

Unless SBA is the holder of the Note, in which case federal law will govern, Debtor and Secured Party agree that this Agreement will be governed by the laws of the jurisdiction where the Debtor is located, including the UCC as in effect in such jurisdiction and without reference to its conflicts of laws principles.

12. SECURED PARTY RIGHTS.

All rights conferred in this Agreement on Secured Party are in addition to those granted to it by law, and all rights are cumulative and may be exercised simultaneously. Failure of Secured Party to enforce any rights or remedies will not constitute an estoppel or waiver of Secured Party's ability to exercise such rights or remedies. Unless otherwise required under applicable law, Secured Party is not liable for any loss or damage to Collateral in its possession or under its control, nor will such loss or damage reduce or discharge the Obligations that are due, even if Secured Party's actions or inactions caused or in any way contributed to such loss or damage.

13. SEVERABILITY.

If any provision of this Agreement is unenforceable, all other provisions remain in effect.

14. DEBTOR CERTIFICATIONS.

Debtor certifies that: (a) its Name (or Names) as stated above is correct; (b) all Collateral is owned or titled in the Debtor's name and not in the name of any other organization or individual; (c) Debtor has the legal authority to grant the security interest in the Collateral; (d) Debtor's ownership in or title to the Collateral is free of all adverse claims, liens, or security interests (unless expressly permitted by Secured Party); (e) none of the Obligations are or will be primarily for personal, family or household purposes; (f) none of the Collateral is or will be used, or has been or will be bought primarily for personal, family or household purposes; and (g) Debtor has read and understands the meaning and effect of all terms of this Agreement.

15. DEBTOR NAME(S) AND SIGNATURE(S).

By signing or otherwise authenticating below, each individual and each organization becomes jointly and severally obligated as a Debtor under this Agreement.

IN WITNESS WHEREOF, 2590 Water Park Drive, LLC, NRP Lease Holdings, LLC, 1010 N Webb Road, LLC, 10735 E Hwy 40, LLC, 1600 Stratford, LLC, 17717 Coit Road, LLC, 1944 Beach Blvd., LLC, 2400 Sheridan Drive, LLC, 2780 SR16, LLC, 3311 Capital Boulevard, LLC, 3340 West Ridge Road, LLC, 3660 East Franklin, LLC, 3939 Niagara Falls Boulevard, LLC, 4825 Blanding Boulevard, LLC, 5890 Scarborough Drive, LLC, 831 North Central Parkway, LLC, 8333 W. 21st Street N, LLC, 8350 Lyra Drive, LLC, Adventure Holdings, LLC have executed this Security Agreement this 18 day of Dec, 2015.

[SIGNATURE PAGE ATTACHED HERETO]

SIGNATURES CONTINUED FROM PREVIOUS PAGE
(Security Agreement)

2590 Water Park Drive, LLC
By: _____ (L.S.)
Henry P. Woodburn, III, Manager

NRP Lease Holdings, LLC
By: _____ (L.S.)
Henry P. Woodburn, III, Manager

1010 N Webb Road, LLC

By: NRP Lease Holdings, LLC, its Member
By: _____ (L.S.)
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By: _____ (L.S.)
Henry P. Woodburn, III, Manager

Adventure Holdings, LLC
By: _____ (L.S.)
Henry P. Woodburn, III, Manager

EXHIBIT "A"

1. The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

   a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.

   b) Secured Party or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Debtor or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Debtor, or defeat any claim of SBA with respect to this Loan.

   Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

   The Debtor shall pay all of the Secured Party's reasonable court costs incurred in any proceeding in any Bankruptcy proceeding filed by or against the Secured Party, which shall include, but shall not be limited to filing a proof of claim, actions to obtain relief of stay or secure adequate protection, and any adversary action in Bankruptcy.

2. Debtor hereby grants a security interest in all of the following property of the Debtor, whether now owned or hereafter acquired or arising, wherever located, including without limitation, on the real property located at 1010 N Webb Road, Wichita, KS, 672036; 10735 E Hwy 40, Independence, MO 64055; 1600 S Stratford Road, Winston-Salem, NC 27103; 17717 Coit Drive, Dallas, TX 75252; 1944 Beach Blvd, Jacksonville Beach, FL 32250; 2400 Sheridan Ave. Tonawanda, NY 14150; 2590 Waterpark Drive, Mason, OH 45040; 2600 East Franklin Blvd. Gastonia, NC; 2780 State Road 16, St. Augustine, FL; 3311 Capital Blvd. Raleigh, NC 27604; 3340 West Ridge Road, Rochester, NY 14626; 3939 Niagara Falls Blvd, Wheatfield, NY 14120; 4825 Blanding Blvd, Jacksonville, FL 32210; 5890 Scarborough Blvd, Columbus, OH 43232; 831 N Central Expressway, Plano, TX 75074; 8333 W 21st St N, Wichita, KS 67205 and 8350 Lyra Drive, Columbus, OH:

   a. All rights of the Debtor to payment for goods sold or leased, or to be sold or to be leased, or for services rendered, howsoever evidenced or incurred, including, without limitation, all accounts, instruments, chattel paper and general intangibles, all returned or repossessed goods and all books, records, including, but not limited to, Debtor's client records, computer tapes, programs, and ledger books arising therefrom or relating thereto, whether now owned or hereafter acquired or arising.

b. All inventory of Debtor, whether now owned or hereafter acquired, wherever located, including, without limitation, all goods of Debtor held for sale or lease or furnished or to be furnished under contracts of service, all goods held for display or demonstration, goods on lease or consignment, returned and repossessed goods, all raw materials, work-in-progress, finished goods and supplies used or consumed in Debtor's business, together with all returns, repossessions, substitutions, replacements, parts, additions, accessions and all documents, documents of title, dock warrants, dock receipts, warehouse receipts, bills of lading or orders, for the delivery of all, or any portion, of the foregoing.

c. All equipment of the Debtor, including, without limitation, all machinery, furniture, furnishings, leasehold improvements, fixtures, forklifts, dies and tools and personal property of any kind of Debtor, together with all accessories and attachments thereto, all replacements and substitutes used or useful in the Debtor's business, whether now owned or hereafter acquired or arising. Some of the foregoing are or may become fixtures affixed to the real property described herein.

d. All of Debtor's present and future right, title and interest in and to all contracts, agreements, plans, governmental authorizations, consents, licenses, approvals, permits and other documents that concern or relate to the Land or the business of the Debtor and/or the construction of improvements on the Land.

e. All property of Debtor left with Secured Party or in its possession now or hereafter and any balance or deposit account of Debtor and all drafts, checks and other items deposited in or with Secured Party by Debtor for collection or safekeeping, with full authority given Secured Party, upon the occurrence of any Event of Default as set forth in the various loan documents between Debtor and Secured Party, to charge any or all such indebtedness of Debtor without notice or demand against any obligation secured hereby.

f. All general intangibles now owned or hereafter acquired by the Debtor.

g. All products and proceeds (including insurance proceeds, pre-petition and post-petition bankruptcy proceeds) arising from or in any way relating to any or all of the collateral described above.

3. Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

4. Debtor represents and warrants the following:

a) The following Debtor is organized/existing in the state of Texas:

i) 177 17 Coit Road, LLC; and

b) The following Debtors are organized/existing in the state of New York:

i) 2400 Sheridan Drive, LLC;
ii) 3340 West Ridge Road, LLC;
iii) 3939 Niagara Falls Boulevard, LLC; and

c) The following Debtors are organized/existing in the state of North Carolina:

i) 1600 Stratford, LLC;
ii) 3660 East Franklin, LLC;
iii) 3311 Capital Boulevard, LLC;

d) The following Debtors are organized/existing in the state of Florida:

i) 2590 Water Park Drive, LLC;
ii) NRP Lease Holdings, LLC;
iii) 1010 N Webb Road, LLC;
iv) 10735 E Hwy 40, LLC;
v) 1944 Beach Blvd., LLC;
vi) 2780 SR16, LLC;
vii) 4825 Blanding Boulevard, LLC;
viii) 5890 Scarborough Drive, LLC;
ix) 831 North Central Parkway, LLC;
x) 8333 W. 21st Street N, LLC;
xii) 8350 Lyra Drive, LLC; and
xiii) Adventure Holdings, LLC.

b) "2590 Water Park Drive, LLC, NRP Lease Holdings, LLC, 1010 N Webb Road, LLC, 10735 E Hwy 40, LLC, 1600 Stratford, LLC, 17717 Coit Road, LLC, 1944 Beach Blvd., LLC, 2400 Sheridan Drive, LLC, 2780 SR16, LLC, 3311 Capital Boulevard, LLC, 3340 West Ridge Road, LLC, 3660 East Franklin, LLC, 3939 Niagara Falls Boulevard, LLC, 4825 Blanding Boulevard, LLC, 5890 Scarborough Drive, LLC, 831 North Central Parkway, LLC, 8333 W. 21st Street N, LLC, 8350 Lyra Drive, LLC, Adventure Holdings, LLC" are the correct legal names of the Debtor indicated on the public record of the Debtor's jurisdiction of organization that shows the Debtor to be organized.

5. Debtor covenants the following so long as any of the Obligations shall remain outstanding and unless Secured Party shall otherwise consent in writing:

a) The Debtor shall not merge or consolidate into, or transfer of any of the Collateral to any other Person.

b) The Debtor shall not change its name unless it has given the Secured Party thirty (30) days' prior written notice thereof and executed or authorized, at the request of the Secured Party, such additional financing statements to be filed in such jurisdictions as the Secured Party may deem necessary or desirable in its sole discretion.

c) The Debtor shall, at any time and from time to time, whether or not the Official Text of Revised Article 9, 2000 Revision, of the Uniform Commercial Code promulgated by the American Law Institute and the National Conference of Commissioners on Uniform State Laws or a version thereof ("Uniform Revised Article 9") has been adopted in any particular jurisdiction, take such steps as the Secured Party may reasonably request for the Secured Party (i) to obtain an acknowledgment, in form and substance reasonably satisfactory to the Secured Party, of any bailee having possession of any of the Collateral, stating that the bailee holds possession of such Collateral on behalf of the Secured Party, (ii) to obtain "control" of any investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper (as such terms are defined by Revised Article 9 with corresponding provisions thereof defining what constitutes "control" for such items of Collateral), with any agreements establishing control to be in form and substance reasonably satisfactory to the Secured Party, and (iii) otherwise to insure the continued perfection and priority of the Secured Party's security interest in any of the Collateral and of the preservation of its rights therein, whether in anticipation of or following the effectiveness of Revised Article 9 in any jurisdiction. If the Debtor shall at any time, whether or not Uniform Revised Article 9 has been adopted in any particular jurisdiction, acquire a "commercial tort claim" (as such term is defined in Revised Article 9) [with a claim for damages in excess of $1,000,000], the Debtor, as the case may be, shall promptly notify the Secured Party thereof in writing, providing a reasonable description and summary thereof, and shall execute a supplement to this Security Agreement granting a security interest in such commercial tort claim to the Secured Party.

6. The Debtor hereby authorizes Secured Party, its counsel or its representative, at any time and from time to time, to file without the signature of the Debtor, as permitted by law, financing statements and amendments that describe the collateral covered by such financing statements as "all assets of the Debtor", "all personal property of the Debtor" or words of similar effect, in such jurisdictions as the Agent may deem necessary or desirable in order to perfect the security interests granted by the Debtor under this Security Agreement.

7. It is a default of the Loan if any one or more of the following events occur (an "Event of Default") under this Agreement: (a) failure of the Debtor to pay any of the Debtor's liabilities as and when due and payable, after giving effect to any applicable grace period; (b) failure of the Debtor to perform, observe, or comply with any of the provisions of this Agreement or of any of the other Loan Documents, after giving effect to any applicable grace period; (c) the occurrence of an Event of Default (as defined therein) under any of the other Loan Documents; (d) any information contained in any financial statement, application, schedule, report, or any other document given by the Debtor or by any other person in connection with the Debtor's liabilities, with the Collateral, or in any of the Loan Documents, is not in all material respects true and accurate or the Debtor or such other person omitted to state any material fact or any fact necessary to make such information not misleading; (e) the Debtor is generally not paying debts as such debts become due; (f) the filing of any petition for relief under any provision of the Federal Bankruptcy Code or any similar state law is brought by or against the Debtor; (g) an application for the appointment of a receiver for, the making of a general assignment for the benefit of creditors by or the

insolvency of, the Debtor, which is not discharged within thirty (30) days; (h) the dissolution, merger, consolidation, or reorganization of the Debtor; (i) suspension of the operation of the Debtor's present business; (j) the determination in good faith by the Secured Party that a material adverse change has occurred in the financial condition of the Debtor from the condition set forth in the most recent financial statement of the Debtor heretofore furnished to the Secured Party, or from the financial condition of the Debtor as heretofore most recently disclosed to the Secured Party in any other manner; or (k) any amendment to or termination of a financing statement naming the Debtor as debtor and the Secured Party as secured party, or any correction statement with respect thereto, is filed in any jurisdiction by any party other than the Secured Party or its counsel without the prior written consent of the Secured Party.

COMPOSITE EXHIBIT "C"

FLORIDA SECURED TRANSACTION REGISTRY

FLORIDA BANKERS ASSOCIATION

Search Results

Today's Date: 06/29/2020
UCC Filings Completed Through: 06/24/2020

Result for Filed Compact Debtor Name List Search on 1944 Beach Boulevard, LLC
Use the Previous and Next buttons to display additional search results

«PREVIOUS NEXT »

Name	UCC Number	Address	City	State	Zip Code	Status
1944 BEACH BOULEVARD, LLC	201505920319	1944 BEACH BLVD	JACKSONVILLE BEACH	FL	32250	FILED
1944 BEACH BOULEVARD, LLC	201609631674	1944 BEACH BLVD	JACKSONVILLE BEACH	FL	32250	FILED
1944 BEACH BOULEVARD, LLC	201703071415	1944 BEACH BLVD	JACKSONVILLE BEACH	FL	32250	FILED
1944 BEACH BOULEVARD, LLC DBA ADVENTURE LANDING	201504500731	1944 BEACH BOULEVARD (US 90)	JACKSONVILLE BEACH	FL	32250	FILED
1944 BEACH BOULEVARD LLC DBA ADVENTURE LANDING	20160640846X	1944 BEACH BOULEVARD	JACKSONVILLE BEACH	FL	32837	FILED
1944 BLANDING BOULEVARD, LLC	201805377858	2315 BEACH BLVD SUITE 203	JACKSONVILLE BEACH	FL	32250	FILED
1944 BLANDING BOULEVARD, LLC.	201807187177	2315 BEACH BLVD #203	JACKSONVILLE BEACH	FL	32250	FILED
1947 DREW ST TRUST, A LAND TRUST, MANHATTAN LAWYERS SERVICES LLC, AS TRUSTE	201804935881	1430 W BUSCH BLVD, SUITE 9	TAMPA	FL	33612	FILED
1948 BLDG LLC, A FLORIDA LIMITED LIABILITY COMPANY	201506105996	1545 NW 8 AVENUE	MIAMI	FL	33136	FILED
1948 HILLSBOROUGH AVENUE LIQUORS, INC.	201702175756	1948 E. HILLSBOROUGH AVENUE	TAMPA	FL	33610	FILED
1948 HILLSBOROUGH AVENUE LIQUORS, INC.	201702230331	1948 E HILLSBOROUGH AVENUE	TAMPA	FL	33610	FILED
1949 SW DAVIS STREET, LLC, A FLORIDA LIMITED LIABILITY COMPANY	201805596851	1272 SE LADNER STREET	PORT ST. LUCIE	FL	34983	FILED
194 NW 187 LLC	20190051607X	194 NW 187 STREET	MIAMI	FL	33131	FILED
194 NW 187 LLC	201900516185	194 NW 187 STREET	MIAMI	FL	33131	FILED
194 TRINIDAD STREET LLC, A FLORIDA LIMITED LIABILITY COMPANY	202001505998	194 TRINIDAD STREET	NAPLES	FL	34113	FILED
1950	201907850250	502 NE 43RD STREET	OAKLAND PARK	FL	33334	FILED
1950 LAKE WORTH, LLC	201608567255	1601 S. FEDERAL HIGHWAY	BOYNTON BEACH	FL	33435	FILED
1950 SW 7 PL, LLC	201703648518	3225 MCLEAD DRIVE , SUITE 100	LAS VEGAS	NV	82001	FILED
1951-1997 SOUTH MILITARY TRAIL, L.L.C.	201909742277	1941 S. MILITARY TRAIL	WEST PALM BEACH	FL	33415	FILED
1951-1997 SOUTH MILITARY TRAIL, L.L.C.	201909742358	1941 S. MILITARY TRAIL	WEST PALM BEACH	FL	33415	FILED

FLORIDA SECURED TRANSACTION REGISTRY

FLORIDA BANKERS ASSOCIATION

This page reveals search results after clicking the "Previous" tab once .

Search Results

Today's Date: 06/29/2020
UCC Filings Completed Through: 06/24/2020

Result for Filed Compact Debtor Name List Search on 1944 Beach Boulevard, LLC
Use the Previous and Next buttons to display additional search results

<<PREVIOUS NEXT >>

Name	UCC Number	Address	City	State	Zip Code	Status
1937 ELSA ST INVESTMENT LLC	201908753739	3897 RADIO ROAD	NAPLES	FL	34104	FILED
1937 JENKS AVENUE OPERATIONS LLC	201300251210	800 CONCOURSE PARKWAY, SUITE 200	MAITLAND	FL	32751	FILED
1938 HILLSBOROUGH AVENUE LIQUORS, INC	201702175934	1948 E HILLSBOROUGH AVENUE	TAMPA	FL	33610	FILED
19390 COLLINS AV.	202002493748	APT PH-24	SUNNY ISLES BEACH	FL	33160	FILED
19400 WEST DIXIE HOLDINGS LLC	201505807237	19400 W. DIXIE HIGHWAY	MIAMI	FL	33137	FILED
19400 WEST DIXIE HOLDINGS, LLC	201609031960	19400 WEST DIXIE HIGHWAY	AVENTURA	FL	33180	FILED
19400 WEST DIXIE HOLDINGS, LLC	20180545612X	19400 WEST DIXIE HIGHWAY	AVENTURA	FL	33180	FILED
1940-1962 ST. LUCIE REALTY ASSOCIATES, LLC	200706402853	3210 S. OCEAN BLVD. APT 204	HIGHLAND BEACH	FL	33487	FILED
1940 HARRISON STREET, LLC	201701263686	2028 HARRISON STREET	HOLLYWOOD	FL	33020	FILED
1940 HARRISON STREET LLC, A FLORIDA LIMITED LIABILITY COMPANY	202001502131	2028 HARRISON STREET SUITE 303	HOLLYWOOD	FL	33020	FILED
1940 N 30 ROAD HOLLYWOOD, LLC	201805585531	1 INVICTA WAY	HOLLYWOOD	FL	33021	FILED
1940 NW 21 LLC, A FLORIDA LIMITED LIABILITY COMPANY	201804384478	45 MAIN STREET, SUITE 502	BROOKLYN	NY	11201	FILED
1940 WASHINGTON, LLC	202001059076	200 EAST LAS OLAS BOULEVARD, SUITE 1000	FORT LAUDERDALE	FL	33301	FILED
1941 LIBERTY LLC	201402099779	411 WASHINGTON AVENUE	MIAMI BEACH	FL	33139	FILED
1941 MARKET, L.L.C.	201505942592	1941 LIBERTY AVENUE	MIAMI BEACH	FL	33139	FILED
1941 SW 2ND STREET, LLC, A FLORIDA LIMITED LIABILITY COMPANY	201505620595	1180 NW 8TH STREET	MIAMI	FL	33136	FILED
1943 NW 2 CT, LLC, A FLORIDA LIMITED LIABILITY COMPANY	201607250282	4770 BISCAYNE BLVD, SUITE 710	MIAMI	FL	33137	FILED
1943 TYLER, LLC	201505840161	1939 TYLER STREET	HOLLYWOOD	FL	33020	FILED
1944 BEACH BLVD., LLC	201606146252	2315 BEACH BLVD., SUITE 203	JACKSONVILLE	FL	32250	FILED
1944 BEACH BLVD., LLC	201606327524	2315 BEACH BLVD., SUITE 203	JACKSONVILLE	FL	32250	FILED

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re	)	Case Nos.: 3:19-bk-4607-CJJ through 3:19-bk-4622-CJJ
NRP LEASE HOLDINGS, LLC, et al.,	)	Chapter 11
Debtors.	)	Jointly Administered Under Case No.: 3:19-bk-4607-CJJ
1944 BEACH BOULEVARD, LLC,	)	
Plaintiff,	)	Adversary No.: 3:20-ap-71-CJJ
v.	)	
LIVE OAK BANKING COMPANY,	)	
Defendant.	)	

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Local Rule 2002-4, the Court will consider the relief requested in this paper without further notice or hearing unless a party in interest files a response within 21 days from the date this paper is served, plus an additional 3 days for service if any party was served by U.S. Mail. If you object to the relief requested in this paper, you must file your objection with the Clerk of the Bankruptcy Court at 300 North Hogan Street, Suite 3-150, Jacksonville, Florida 32202, and serve a copy on the Plaintiff's attorneys, Richard R. Thames, Esq., Thames Markey & Heekin, P.A. 50 North Laura Street, Suite 1600, Jacksonville, Florida 32202. If you file and serve an objection within the time permitted, the Court will either schedule and notify you of a hearing or consider the response and grant or deny the relief requested without a hearing. If you do not file a response within the time permitted, the assignee and the Court will presume that you do not oppose the granting of the relief requested in the paper without further notice or hearing, and may grant the relief requested.

Plaintiff, 1944 Beach Boulevard, LLC ("Plaintiff"), moves the Court, pursuant to Rule 56, Federal Rules of Civil Procedure, made applicable by Rule 7056, Federal Rules of Bankruptcy Procedure, for the entry of summary judgment against defendant, Live Oak Banking Company ("Live Oak" or "Defendant"), and in support of its motion states:

Jurisdiction

1. This adversary proceeding arises from the referenced Chapter 11 case. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157 and § 1334. Plaintiff seeks a declaration that Live Oak's financing statements are seriously misleading and a judgment avoiding the fixing of Live Oak's lien on its property. This action is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K). Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Undisputed Facts

2. Plaintiff is a limited liability company organized and existing under the laws of the State of Florida. Plaintiff's legal name as listed on the public organic record most recently filed with the State of Florida is 1944 Beach Boulevard, LLC, a name that has remained unchanged since its formation in 2004. Woodburn Affidavit, ¶ 2.

3. Plaintiff is the operator of a family entertainment center located at 1944 Beach Boulevard, Jacksonville, Florida, which operates under the tradename "Adventure Landing." Amenities at the park include miniature golf, laser tag, arcade games, batting cages, go-carts, miniature roller coasters, waterslides and snack bars. Woodburn Affidavit, ¶ 3.

4. On December 5, 2019, Plaintiff and its affiliates filed voluntary petitions for reorganization under Chapter 11 of the United States Bankruptcy Code ("Petition Date"). Woodburn Affidavit, ¶ 4.

5. On the Petition Date, Plaintiff was jointly and severally indebted to Live Oak in the approximate amount of $3,000,000 on account of two loans, each in the original principal amount of $2,500,000. The loans are guaranteed by the U.S. Small Business Administration and are identified as SBA Loan Nos. 81146450-00 and 81145550-08. The two loans purport to be secured by a blanket lien on all of Plaintiff's assets. Woodburn Affidavit, ¶ 5.

6. In an attempt to perfect its claimed security interests, Live Oak filed two UCC-1 Financing Statements with the Florida Secured Transaction Registry, the first being filed on January 5, 2016 under File No. 2016061146252, and the second being filed on or about January 25, 2016 under File No. 201606327524 ("Financing Statements"). Admitted in Def's Answer ¶. 10. Copies of the Financing Statements are attached as **Exhibit A.**

7. It is uncontested that the Financing Statements filed by Live Oak are defective, however, as they improperly identify the debtor as "1944 Beach Blvd., LLC" instead of "1944 Beach Boulevard, LLC," the actual name of the corporation as stated in the Articles of Organization filed with the Florida Secretary of State. Def's Answer pg. 3. ("In the UCC-1 Financing Statements, Plaintiff's name was listed as 1944 Beach Blvd., LLC"). *See also* Woodburn Affidavit, ¶ 7.

8. As a result, a search of the Florida Secured Transaction Registry's records utilizing "the name that is stated to be the registered organization's name on the public

organic record" most recently filed with the State of Florida will not reveal the existence of Live Oak's asserted liens, as reflected in the search results attached hereto as **Exhibit B.** These results were obtained from the Florida Secured Transaction Registry's website utilizing the website's ordinary search logic and Plaintiff's correct name. Woodburn Affidavit, ¶ 8 and Jenkins Affidavit, ¶ 3.

Standard for Summary Judgment

Plaintiff moves for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, made applicable here through Rule 7056 of the Federal Rules of Bankruptcy Procedure. Under these rules, A party is entitled to summary judgment if "there is no genuine issue as to any material fact and the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a). "Only disputes over facts that might affect the outcome of the suit under the governing laws will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986). "For cases in which the unresolved issues are primarily legal rather than factual, summary judgment is particularly appropriate." *Lomar Wholesale Grocery v. Dieter's Gourmet Foods*, 824 F.2d 582, 585 (8th Cir. 1987). In the present case, there are no issues of material facts.

Argument

The Financing Statements filed by Live Oak were not perfected, and therefore, are subordinate to the hypothetical lien held by Plaintiff as debtor in possession.

Under 11 U.S.C. § 544, the trustee in a bankruptcy is granted the status of a hypothetical lien creditor and may avoid any lien which is not properly perfected under state law as of the Petition Date. *See Old W. Annuity & Life Ins. Co. v. Apollo Group*, 605 F.3d 856, 863 (11th Cir. 2010) ("[T]he filing of a bankruptcy petition grants the bankruptcy trustee the rights and powers of a hypothetical perfected judgment lien creditor").

Pursuant to § 679.3171(1)(b)(1), Florida Statutes, a lien creditor takes priority over the rights of a holder of any unperfected security interest. Fla. Stat. § 679.3171(1)(b)(1) ("A security interest or agricultural lien is subordinate to the rights of: . . . a person who becomes a lien creditor before the earlier of the time: The security interest or agricultural lien is perfected").

Under the Uniform Commercial Code, as adopted by Florida, a financing statement must be filed with the Florida Secured Transaction Registry in order to perfect a nonpossessory security interest on personal property. *In re John's Bean Farm of Homestead, Inc.*, 378 B.R. 385, 387 (Bankr. S.D. Fla. 2007) ("[P]erfection of a security interest in Florida occurs only when a financing statement is filed in the appropriate place. Fla. Stat. § 679.5011. All financing statements must be filed with Florida's official filing office, the Florida Secured Transaction Registry").

Under § 679.5021(1), Florida Statutes, a financing statement is invalid unless it (i) *provides the name of the debtor*, (ii) provides the name of the secured party or a representative of the secured party, and (iii) describes the collateral covered by the financing statement. Fla. Stat. § 679.5021(1) ("[A] financing statement is sufficient only if it: (a) Provides the name of the debtor; (b) Provides the name of the secured party or a

representative of the secured party; and (c) Indicates the collateral covered by the financing statement").

When the debtor is a registered organization, a financing statement sufficiently provides the name of the debtor only when that statement provides the debtor's exact legal name as listed on the registered organization's most recently filed public organic record:

> (1) A financing statement sufficiently provides the name of the debtor:
>
> > (a) Except as otherwise provided in paragraph (c), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, *only if the financing statement provides the name that is stated to be the registered organization's name on the public organic record most recently filed* with or issued or enacted by the registered organization's jurisdiction of organization that purports to state, amend, or restate the registered organization's name;
>
> § 679.5031(1)(a) Fla. Stat. ("*emphasis added*").

The requirements of § 679.5031, Florida Statutes, are strictly construed when it comes to the name of the debtor because the Florida Secured Transaction Registry is an electronic search system indexed by the debtor's name. If the debtor's name is not properly listed, the financing statement will likely not be found. *See* Fla. Stat. § 679.5031 Cmt. 2. ("The requirement that a financing statement provide the debtor's name is particularly important. Financing statements are indexed under the name of the debtor, and those who wish to find financing statements search for them under the debtor's name').

The Florida Secured Transaction Registry is not a sophisticated search engine like Google, and will not adjust for misspellings or provide intelligently augmented search results that predict what the searcher is actually seeking. Instead, the Florida Secured Transaction Registry is a narrow database query that requires precision with the search terms to operate properly.

Recognizing the shortcomings of the search system and to protect innocent purchasers or lenders who rely on that system, § 679.5061, Florida Statutes, requires strict compliance, providing that any failure to comply with the naming requirements of § 679.5031, Florida Statutes, renders the financing statement seriously misleading:

> (1) A financing statement substantially complying with the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.
>
> (2) Except as otherwise provided in subsection (3), a financing statement that fails sufficiently to provide the name of the debtor in accordance with s. 679.5031(1) is seriously misleading.
>
> (3) If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with s. 679.5031(1), the name provided does not make the financing statement seriously misleading.
>
> § 679.5061, Fla. Stat.

Accordingly, a search using "standard search logic" under § 679.5061(3), Florida Statutes, is narrowly defined to include only the initial results page; a searcher is not required to review any further results:

> Florida's standard search logic is set by statute. The search logic clearly leads to one result—a single page on which names appear. For those, including Klein, that argue the search result is something more, the Registry website makes clear they are wrong. Nothing in the Registry's information page mentions the use of the "previous" or "next" page key in connection with conducting a search using the search criteria.
>
> *In re John's Bean Farm of Homestead, Inc.*, 378 B.R. 385, 395 (Bankr. S.D. Fla. 2007).

Creditors are reminded of the strict naming requirements each time they file a financing statement, as the financing statement form provides in bold and all caps, "**DEBTOR'S EXACT FULL LEGAL NAME** . . . Do Not Abbreviate or Combine Names." See **Exhibit A** attached hereto.

Live Oak did not head those warnings and filed Financing Statements utilizing an abbreviation of Plaintiff's name. As a result, a party searching the Florida Secured Transaction Registry's records utilizing the website's standard search logic and the Plaintiff's correct name would not discover the existence of Live Oak's claimed security interests in Plaintiff's assets. Live Oak's UCC-1 Financing Statements are therefore seriously misleading and inferior to the hypothetical lien created by 11 U.S.C. § 544, and Plaintiff may avoid unperfected liens under state law as of the Petition Date.

In opposition, Live Oak raises five affirmative defenses which, as a matter of law, do not excuse the defects in the Financing Statements. In its First Affirmative Defense, Live Oak claims that despite failing to properly identify the Plaintiff, the Financing Statements is nonetheless not seriously misleading because a searcher should review the results beyond those populated using the standard search logic. In support of its position,

Live Oak relies on *In re Summit Staffing Polk County, Inc.*, 305 B.R. 347, 354 (Bankr. M.D. Fla. 2003), where a variant of the "reasonably diligent searcher" standard was applied to § 679.5061, Florida Statutes, despite abolishment of that test in 2001.

Summit Staffing has, however, been widely rejected as being inconsistent with the intent of Revised Article 9 to add certainty to the recording and lien priority process by placing the responsibility for proper recording squarely on the secured creditor. *See In re John's Bean Farm of Homestead, Inc.*, 378 B.R. 385, 390 (Bankr. S.D. Fla. 2007) ("The object of the revisions [to Article 9] was to shift the responsibility to the filer by requiring the not too heavy burden of using the legal name of the debtor, thereby relieving the searcher from conducting numerous searches using every conceivable name variation of the debtor"); and *In re C.W. Min. Co.*, 488 B.R. 715, 727–28 (D. Utah 2013) ("[T]he better approach is that followed by the majority of courts that have decided this issue and found that revised Article 9 is unforgiving of even minimal errors") and *Receivables Purchasing Co., Inc. v. R & R Directional Drilling, L.L.C.*, 588 S.E.2d 831, 833 (Ga. Ct. App. 2003) ("Accordingly, a party filing a financing statement now acts at his peril if he files the statement under an incorrect name").

Furthermore, § 679.5061, Florida Statutes, is unambiguous and does not contain a reasonableness requirement:

> [T]he statute [§ 679.5061, Florida Statutes] is unambiguous. Moreover, I agree with Klein that the statute does not include a reasonableness requirement. Indeed, as explained in great detail above, the very purpose of this statute was to eliminate the need for, indeed, the ability of, a judge to inject himself or herself in the determination of what is seriously misleading.

> *In re John's Bean Farm of Homestead, Inc.*, 378 B.R. 385, 395 (Bankr. S.D. Fla. 2007).

A clear and unambiguous statute must be read as the statute is written, since to do otherwise would constitute an abrogation of legislative power:

> A basic rule of law controls: When the words of a statute are plain and unambiguous and convey a definite meaning, courts have no occasion to resort to rules of construction—they must read the statute as written, for to do otherwise would constitute an abrogation of legislative power.
>
> *Nicoll v. Baker*, 668 So. 2d 989, 990–91 (Fla. 1996).

In fact, the very purpose of § 679.5061, Florida Statutes was to create a uniform set of bright line rules for creditors to follow when filing financing statements without the need for courts to indulge in their own refined reading of the unambiguous statutory provisions. Fla. Stat. Ann. § 679.5061, cmt. 2. ("It is designed to discourage the fanatical and impossibly refined reading of statutory requirements in which courts occasionally have indulged themselves").

The bright line requirements for indexing debtors are necessary to put potential purchasers and lenders on notice of the encumbrances. Without strict adherence to the naming requirements, the risks associated with a nonconforming financing statement would flow to good faith purchasers and lenders, rather than remain with the party that has the ability to prevent the harm. This is against public policy of protecting innocent third parties from harms created through another party's negligence. In consideration of that policy, there is less tolerance for errors in the debtors name because such errors may

prevent the discovery of the financing statement. *In re Jim Ross Tires, Inc.*, 379 B.R. 670, 675–76 (Bankr. S.D. Tex. 2007) ("[T]here should be 'less tolerance of errors in a debtor's name' since the purposes of the filing system is to give notice to creditors that a security interest exists and 'such errors may prevent a search from discovering the financing statement'').

Pursuant to clear intent of the Legislature, the plain unambiguous language of § 679.5061, Florida Statutes and public policy considerations, the burden of compliance rests solely with the filer and the objective determination does not include a reasonableness component. Accordingly, Live Oak's First Affirmative Defense is not applicable as a matter of law.

In its Second, Third, Fourth and Fifth Affirmative Defenses, Live Oak raises the argument that because the security agreement signed by Plaintiff also contained the abbreviated form of Plaintiff's name, Plaintiff is barred from the relief sought. The four affirmative defenses raise the same argument, under theories of estoppel, unclean hands, ratification and waiver. However, none of these provisions are applicable, because the allowance of such defenses are in opposition to the application of the strict compliance requirements of § 679.5061, Florida Statutes.

Official Comments to § 9-506[1], Effect of Errors or Omissions, makes it clear that defenses like these raised by Live Oak are not available even when the debtor is known by the incorrect name or the searcher has reason to know that the name on the financing statement refers to the debtor:

[1] The revised § 9-506, Uniform Commercial Code was adopted in Florida as § 679.5061, Florida Statues.

> Such a financing statement is ineffective even if the debtor is known in some contexts by the name provided on the financing statement and even if searchers know or have reason to know that the name provided on the financing statement refers to the debtor. *Any suggestion to the contrary in a judicial opinion is incorrect.*
>
> U.C.C. § 9-506 cmt. 2. (*emphasis added*).

Accordingly, even when the debtor is known in some context by the name on the financing statement, a financing statement is still seriously misleading when a name other than the name on the latest public organic record is used:

> [S]uch a financing statement is ineffective even if the debtor is known in some contexts by the name provided on the financing statement and even if searchers know or have reason to know that the name provided on the financing statement refers to the debtor." U.C.C. § 9-506 cmt. 2. Consistent with this Comment, O.C.G.A. § 11-9-503(c) states that a "financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor." See also O.C.G.A. § 11-9-506 (Effect of errors or omissions).
>
> *In re Wastetech, LLC*, 605 B.R. 264, 272 (Bankr. N.D. Ga. 2019).

See also In re Nay, 563 B.R. 535, 540 (Bankr. S.D. Ind. 2017) ("While the result in this case seems harsh, the Court is constrained to interpret the statute in a manner consistent with legislative intent, which is "to simplify formal requisites and filing requirements. *See,* Official Comment 2").

Conclusion

Pursuant to a plain reading of §§ 679.5061 and 679.5031, Florida Statutes, guided by official comments to those Statutes, and the holding in *John's Bean Farm,* there is not a requirement for a searcher to take any action beyond conducting a search using the "standard search logic" required by statute. Since a search of the Florida Secured Transaction Registry using the "standard search logic" did not uncover Live Oak's Financing Statements, its failure to use the Debtor's proper name is seriously misleading and its lien is not perfected and inferior to the hypothetical creditor status of Plaintiff.

WHEREFORE, Plaintiff respectfully requests that the Court enter a summary judgment against Defendant (i) determining that Live Oak's financing statement is seriously misleading, (ii) avoiding the fixing of Live Oak's lien on the property of the estate, and (iii) granting such further relief as the Court deems appropriate.

THAMES MARKEY & HEEKIN, P.A.

/s/ Richard R. Thames
By_____
Richard R. Thames

Florida Bar Number 0718459
50 North Laura Street, Suite 1600
Jacksonville, Florida 32202
(904) 358-4000
(904) 358-4001 (Facsimile)
rrt@tmhlaw.net

Attorneys for 1944 Beach Boulevard, LLC

Certificate of Service

I certify that on August 10, 2020, a copy of the foregoing was filed electronically with the Court's CM/ECF filing system which will generate an electronic notice of filing to all creditors and parties in interest who have consented to receiving electronic notices in this case.

/s/ Richard R. Thames

Attorney

983.2

Exhibit "A"

STATE OF FLORIDA UNIFORM COMMERCIAL CODE
FINANCING STATEMENT FORM

A. NAME & DAYTIME PHONE NUMBER OF CONTACT PERSON
Reid H. Harbin, Esq. / 404-446-4995
B. Email Address
C. SEND ACKNOWLEDGEMENT TO:
Name Reid H. Harbin, Esq.
Address Harbin & Miller, LLC
Address 5501 Chamblee Dunwoody Rd. Bldg 1300 Ste. 300
City/State/Zip Dunwoody GA 30338

FLORIDA SECURED TRANSACTION REGISTRY

FILED

2016 Jan 25 08:00 AM

******** 201606327524 ********

THE ABOVE SP[illegible] Y

1. DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (1a OR 1b) – Do Not Abbre

1.a ORGANIZATION'S NAME 2590 Water Park Drive, LLC				
1.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADD		IX
1.c MAILING ADDRESS Line One 2315 Beach Blvd., Suite 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (2a OR 2b) – Do Not Abbreviate or Combine Names

2.a ORGANIZATION'S NAME NRP Lease Holdings, LLC				
2.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
2.c MAILING ADDRESS Line One 2315 Beach Blvd., Suite 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (3a OR 3b)

3.a ORGANIZATION'S NAME LIVE OAK BANKING COMPANY				
3.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
3.c MAILING ADDRESS Line One 1741 Tiburon Drive	This space not available.			
MAILING ADDRESS Line Two	CITY Wilmington	STATE NC	POSTAL CODE 28403	COUNTRY USA

4. This FINANCING STATEMENT covers the following collateral:

A shared best available lien security interest in all assets of Debtor described in Exhibit"A" attached hereto now owned wherever located.

5. ALTERNATE DESIGNATION (if applicable) ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ AG LIEN ☐ NON-UCC FILING ☐ SELLER/BUYER

6. Florida DOCUMENTARY STAMP TAX – YOU ARE REQUIRED TO CHECK EXACTLY ONE BOX

☐ All documentary stamps due and payable or to become due and payable pursuant to s. 201.22 F.S., have been paid.

■ Florida Documentary Stamp Tax is not required.

7. OPTIONAL FILER REFERENCE DATA

FILE WITH FLORIDA SECRETARY OF STATE SBA LOAN # 81145550-08

STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	**FIRST PERSONAL NAME**	**ADDITIONAL NAME(S)/INITIAL(S)**	**SUFFIX**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 1010 N Webb Road, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd.. Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

12. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☐ fixture filing.

13. Description of real estate:

14. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

15 Additional collateral description:

16. Check only if applicable and check only one box.

Collateral is ☐ Held in Trust

☐ Being administered by Decedent's Personal Representative

17. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☐ Filed in connection with a Manufactured-Home Transaction – effective 30 years

STANDARD FORM - FORM UCC-1 ADDENDUM (REV.05/2013) Filing Office Copy Approved by the Secretary of State, State of Florida

STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	**FIRST PERSONAL NAME**	**ADDITIONAL NAME(S)/INITIAL(S)**	**SUFFIX**

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10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 10735 E Hwy 40, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) – INSERT ONLY **ONE** SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
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8b. INDIVIDUAL'S SURNAME	**FIRST PERSONAL NAME**	**ADDITIONAL NAME(S)/INITIAL(S)**	**SUFFIX**

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10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 1944 Beach Blvd., LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
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2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	**FIRST PERSONAL NAME**	**ADDITIONAL NAME(S)/INITIAL(S)**	**SUFFIX**

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10.a ORGANIZATION'S NAME 2780 SR16, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd.. Ste. 203	This space not available.			
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10.a ORGANIZATION'S NAME 4825 Blanding Boulevard, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

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8b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

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10.a ORGANIZATION'S NAME 5890 Scarborough Drive, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

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8b. INDIVIDUAL'S SURNAME	**FIRST PERSONAL NAME**	**ADDITIONAL NAME(S)/INITIAL(S)**	**SUFFIX**

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10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 831 North Central Parkway, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

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2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	**FIRST PERSONAL NAME**	**ADDITIONAL NAME(S)/INITIAL(S)**	**SUFFIX**

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10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 8333 W. 21st Street N, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

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8b. INDIVIDUAL'S SURNAME	**FIRST PERSONAL NAME**	**ADDITIONAL NAME(S)/INITIAL(S)**	**SUFFIX**

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9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 8350 Lyra Drive, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
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10.a ORGANIZATION'S NAME Adventure Holdings, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

12. This FINANCING STATEMENT covers ☐ as-extracted collateral, or is filed as a ☐ timber to be cut or fixture filing.

13. Description of real estate:

14. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

15. Additional collateral description:

16. Check only if applicable and check only one box.

Collateral is ☐ Held in Trust

☐ Being administered by Decedent's Personal Representative

17. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☐ Filed in connection with a Manufactured-Home Transaction – effective 30 years

STANDARD FORM - FORM UCC-1 ADDENDUM (REV.05/2013) Filing Office Copy Approved by the Secretary of State, State of Florida

EXHIBIT "A"

1. The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

   a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.

   b) Secured Party or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Debtor or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Debtor, or defeat any claim of SBA with respect to this Loan.

   Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

   The Debtor shall pay all of the Secured Party's reasonable court costs incurred in any proceeding in any Bankruptcy proceeding filed by or against the Secured Party, which shall include, but shall not be limited to filing a proof of claim, actions to obtain relief of stay or secure adequate protection, and any adversary action in Bankruptcy.

2. Debtor hereby grants a security interest in all of the following property of the Debtor, whether now owned or hereafter acquired or arising, wherever located, including without limitation, on the real property located at 1010 N Webb Road, Wichita, KS, 672036; 10735 E Hwy 40, Independence, MO 64055; 1600 S Stratford Road, Winston-Salem, NC 27103; 17717 Coit Drive, Dallas, TX 75252; 1944 Beach Blvd, Jacksonville Beach, FL 32250; 2400 Sheridan Ave. Tonawanda, NY 14150; 2590 Waterpark Drive, Mason, OH 45040; 2600 East Franklin Blvd. Gastonia, NC; 2780 State Road 16, St. Augustine, FL; 3311 Capital Blvd. Raleigh, NC 27604; 3340 West Ridge Road, Rochester, NY 14626; 3939 Niagara Falls Blvd, Wheatfield, NY 14120; 4825 Blanding Blvd, Jacksonville, FL 32210; 5890 Scarborough Blvd, Columbus, OH 43232; 831 N Central Expressway, Plano, TX 75074; 8333 W 21st St N, Wichita, KS 67205 and 8350 Lyra Drive, Columbus, OH:

   a. All rights of the Debtor to payment for goods sold or leased, or to be sold or to be leased, or for services rendered, howsoever evidenced or incurred, including, without limitation, all accounts, instruments, chattel paper and general intangibles, all returned or repossessed goods and all books, records, including, but not limited to, Debtor's client records, computer tapes, programs, and ledger books arising therefrom or relating thereto, whether now owned or hereafter acquired or arising.

b. All inventory of Debtor, whether now owned or hereafter acquired, wherever located, including, without limitation, all goods of Debtor held for sale or lease or furnished or to be furnished under contracts of service, all goods held for display or demonstration, goods on lease or consignment, returned and repossessed goods, all raw materials, work-in-progress, finished goods and supplies used or consumed in Debtor's business, together with all returns, repossessions, substitutions, replacements, parts, additions, accessions and all documents, documents of title, dock warrants, dock receipts, warehouse receipts, bills of lading or orders, for the delivery of all, or any portion, of the foregoing.

c. All equipment of the Debtor, including, without limitation, all machinery, furniture, furnishings, leasehold improvements, fixtures, forklifts, dies and tools and personal property of any kind of Debtor, together with all accessories and attachments thereto, all replacements and substitutes used or useful in the Debtor's business, whether now owned or hereafter acquired or arising. Some of the foregoing are or may become fixtures affixed to the real property described herein.

d. All of Debtor's present and future right, title and interest in and to all contracts, agreements, plans, governmental authorizations, consents, licenses, approvals, permits and other documents that concern or relate to the Land or the business of the Debtor and/or the construction of improvements on the Land.

e. All property of Debtor left with Secured Party or in its possession now or hereafter and any balance or deposit account of Debtor and all drafts, checks and other items deposited in or with Secured Party by Debtor for collection or safekeeping, with full authority given Secured Party, upon the occurrence of any Event of Default as set forth in the various loan documents between Debtor and Secured Party, to charge any or all such indebtedness of Debtor without notice or demand against any obligation secured hereby.

f. All general intangibles now owned or hereafter acquired by the Debtor.

g. All products and proceeds (including insurance proceeds, pre-petition and post-petition bankruptcy proceeds) arising from or in any way relating to any or all of the collateral described above.

3. Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

4. Debtor represents and warrants the following:

a) The following Debtor is organized/existing in the state of Texas:

i) 17717 Coit Road, LLC; and

b) The following Debtors are organized/existing in the state of New York:

i) 2400 Sheridan Drive, LLC;
ii) 3340 West Ridge Road, LLC;
iii) 3939 Niagara Falls Boulevard, LLC; and

c) The following Debtors are organized/existing in the state of North Carolina:

i) 1600 Stratford, LLC;
ii) 3660 East Franklin, LLC;
iii) 3311 Capital Boulevard, LLC;

d) The following Debtors are organized/existing in the state of Florida:

i) 2590 Water Park Drive, LLC;
ii) NRP Lease Holdings, LLC;
iii) 1010 N Webb Road, LLC;
iv) 10735 E Hwy 40, LLC;
v) 1944 Beach Blvd., LLC;
vi) 2780 SR16, LLC;
vii) 4825 Blanding Boulevard, LLC;
viii) 5890 Scarborough Drive, LLC;
ix) 831 North Central Parkway, LLC;
x) 8333 W. 21st Street N, LLC;
xii) 8350 Lyra Drive, LLC; and
xiii) Adventure Holdings, LLC.

b) "2590 Water Park Drive, LLC, NRP Lease Holdings, LLC, 1010 N Webb Road, LLC, 10735 E Hwy 40, LLC, 1600 Stratford, LLC, 17717 Coit Road, LLC, 1944 Beach Blvd., LLC, 2400 Sheridan Drive, LLC, 2780 SR16, LLC, 3311 Capital Boulevard, LLC, 3340 West Ridge Road, LLC, 3660 East Franklin, LLC, 3939 Niagara Falls Boulevard, LLC, 4825 Blanding Boulevard, LLC, 5890 Scarborough Drive, LLC, 831 North Central Parkway, LLC, 8333 W. 21st Street N, LLC, 8350 Lyra Drive, LLC, Adventure Holdings, LLC" are the correct legal names of the Debtor indicated on the public record of the Debtor's jurisdiction of organization that shows the Debtor to be organized.

5. Debtor covenants the following so long as any of the Obligations shall remain outstanding and unless Secured Party shall otherwise consent in writing:

a) The Debtor shall not merge or consolidate into, or transfer of any of the Collateral to any other Person.

b) The Debtor shall not change its name unless it has given the Secured Party thirty (30) days' prior written notice thereof and executed or authorized, at the request of the Secured Party, such additional financing statements to be filed in such jurisdictions as the Secured Party may deem necessary or desirable in its sole discretion.

c) The Debtor shall, at any time and from time to time, whether or not the Official Text of Revised Article 9, 2000 Revision, of the Uniform Commercial Code promulgated by the American Law Institute and the National Conference of Commissioners on Uniform State Laws or a version thereof ("Uniform Revised Article 9") has been adopted in any particular jurisdiction, take such steps as the Secured Party may reasonably request for the Secured Party (i) to obtain an acknowledgment, in form and substance reasonably satisfactory to the Secured Party, of any bailee having possession of any of the Collateral, stating that the bailee holds possession of such Collateral on behalf of the Secured Party, (ii) to obtain "control" of any investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper (as such terms are defined by Revised Article 9 with corresponding provisions thereof defining what constitutes "control" for such items of Collateral), with any agreements establishing control to be in form and substance reasonably satisfactory to the Secured Party, and (iii) otherwise to insure the continued perfection and priority of the Secured Party's security interest in any of the Collateral and of the preservation of its rights therein, whether in anticipation of or following the effectiveness of Revised Article 9 in any jurisdiction. If the Debtor shall at any time, whether or not Uniform Revised Article 9 has been adopted in any particular jurisdiction, acquire a "commercial tort claim" (as such term is defined in Revised Article 9) [with a claim for damages in excess of $1,000,000], the Debtor, as the case may be, shall promptly notify the Secured Party thereof in writing, providing a reasonable description and summary thereof, and shall execute a supplement to this Security Agreement granting a security interest in such commercial tort claim to the Secured Party.

6. The Debtor hereby authorizes Secured Party, its counsel or its representative, at any time and from time to time, to file without the signature of the Debtor, as permitted by law, financing statements and amendments that describe the collateral covered by such financing statements as "all assets of the Debtor", "all personal property of the Debtor" or words of similar effect, in such jurisdictions as the Agent may deem necessary or desirable in order to perfect the security interests granted by the Debtor under this Security Agreement.

7. It is a default of the Loan if any one or more of the following events occur (an "Event of Default") under this Agreement: (a) failure of the Debtor to pay any of the Debtor's liabilities as and when due and payable, after giving effect to any applicable grace period; (b) failure of the Debtor to perform, observe, or comply with any of the provisions of this Agreement or of any of the other Loan Documents, after giving effect to any applicable grace period; (c) the occurrence of an Event of Default (as defined therein) under any of the other Loan Documents; (d) any information contained in any financial statement, application, schedule, report, or any other document given by the Debtor or by any other person in connection with the Debtor's liabilities, with the Collateral, or in any of the Loan Documents, is not in all material respects true and accurate or the Debtor or such other person omitted to state any material fact or any fact necessary to make such information not misleading; (e) the Debtor is generally not paying debts as such debts become due; (f) the filing of any petition for relief under any provision of the Federal Bankruptcy Code or any similar state law is brought by or against the Debtor; (g) an application for the appointment of a receiver for, the making of a general assignment for the benefit of creditors by or the insolvency of, the Debtor, which is not discharged within thirty (30) days; (h) the dissolution, merger, consolidation, or

reorganization of the Debtor; (i) suspension of the operation of the Debtor's present business; (j) the determination in good faith by the Secured Party that a material adverse change has occurred in the financial condition of the Debtor from the condition set forth in the most recent financial statement of the Debtor heretofore furnished to the Secured Party, or from the financial condition of the Debtor as heretofore most recently disclosed to the Secured Party in any other manner; or (k) any amendment to or termination of a financing statement naming the Debtor as debtor and the Secured Party as secured party, or any correction statement with respect thereto, is filed in any jurisdiction by any party other than the Secured Party or its counsel without the prior written consent of the Secured Party.

STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM

A. NAME & DAYTIME PHONE NUMBER OF CONTACT PERSON
Reid H. Harbin, Esq. / 404-446-4995
B. Email Address

C. SEND ACKNOWLEDGEMENT TO:
Name Reid H. Harbin, Esq.
Address Harbin & Miller, LLC
Address 5501 Chamblee Dunwoody Rd. Bldg 1300 Ste. 300
City/State/Zip Dunwoody GA 30338

FLORIDA SECURED TRANSACTION REGISTRY

FILED
2016 Jan 05 08:00 AM
******** 201606146252 ********

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (1a OR 1b) – Do Not Abbreviate or Combine Names

1.a ORGANIZATION'S NAME 2590 Water Park Drive, LLC				
1.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
1.c MAILING ADDRESS Line One 2315 Beach Blvd., Suite 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (2a OR 2b) – Do Not Abbreviate or Combine Names

2.a ORGANIZATION'S NAME NRP Lease Holdings, LLC				
2.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
2.c MAILING ADDRESS Line One 2315 Beach Blvd., Suite 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (3a OR 3b)

3.a ORGANIZATION'S NAME LIVE OAK BANKING COMPANY				
3.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
3.c MAILING ADDRESS Line One 1741 Tiburon Drive	This space not available.			
MAILING ADDRESS Line Two	CITY Wilmington	STATE NC	POSTAL CODE 28403	COUNTRY USA

4. This **FINANCING STATEMENT** covers the following collateral:
A shared best available lien security interest in all assets of Debtor described in Exhibit"A" attached hereto now owned wherever located.

5. ALTERNATE DESIGNATION (if applicable) ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ AG LIEN ☐ NON-UCC FILING ☐ SELLER/BUYER

6. Florida DOCUMENTARY STAMP TAX – YOU ARE REQUIRED TO CHECK EXACTLY ONE BOX

☐ All documentary stamps due and payable or to become due and payable pursuant to s. 201.22 F.S., have been paid.

■ Florida Documentary Stamp Tax is not required.

7. OPTIONAL FILER REFERENCE DATA
FILE WITH FLORIDA SECRETARY OF STATE SBA LOAN # 81146450-00

STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 1010 N Webb Road, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

12. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a fixture filing.

13. Description of real estate:

14. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

15. Additional collateral description:

16. Check only if applicable and check only one box.

Collateral is ☐ Held in Trust

☐ Being administered by Decedent's Personal Representative

17. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☐ Filed in connection with a Manufactured-Home Transaction – effective 30 years

STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	**FIRST PERSONAL NAME**	**ADDITIONAL NAME(S)/INITIAL(S)**	**SUFFIX**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (**10a OR 10b**) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 10735 E Hwy 40, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (**11a OR 11b**)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

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13. Description of real estate:

14. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

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16. Check only if applicable and check only one box.

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17. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 1944 Beach Blvd., LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

12. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☐ fixture filing.

13. Description of real estate:

14. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

15. Additional collateral description:

16. Check only if applicable and check only one box.

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STANDARD FORM - FORM UCC-1 ADDENDUM (REV.05/2013) Filing Office Copy Approved by the Secretary of State, State of Florida

STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

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9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 2780 SR16, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

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13. Description of real estate:

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15. Additional collateral description:

16. Check only if applicable and check only one box.

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☐ Being administered by Decedent's Personal Representative

17. Check only if applicable and check only one box.

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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 4825 Blanding Boulevard, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd.. Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

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11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

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13. Description of real estate:

14. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

15. Additional collateral description:

16. Check only if applicable and check only one box.

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☐ Being administered by Decedent's Personal Representative

17. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☐ Filed in connection with a Manufactured-Home Transaction – effective 30 years

STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 5890 Scarborough Drive, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd.. Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

12. This FINANCING STATEMENT covers ☐ as-extracted collateral, or is filed as a ☐ timber to be cut or fixture filing.

13. Description of real estate:

14. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

15. Additional collateral description:

16. Check only if applicable and check only one box.

Collateral is ☐ Held in Trust

☐ Being administered by Decedent's Personal Representative

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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	**FIRST PERSONAL NAME**	**ADDITIONAL NAME(S)/INITIAL(S)**	**SUFFIX**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 831 North Central Parkway, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd.. Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

12. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☐ fixture filing.

13. Description of real estate:

14. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

15. Additional collateral description:

16. Check only if applicable and check only one box.

Collateral is ☐ Held in Trust

☐ Being administered by Decedent's Personal Representative

17. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☐ Filed in connection with a Manufactured-Home Transaction – effective 30 years

STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 8333 W. 21st Street N, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd.. Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

12. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☐ fixture filing.

13. Description of real estate:

14. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

15. Additional collateral description:

16. Check only if applicable and check only one box.

Collateral is ☐ Held in Trust

☐ Being administered by Decedent's Personal Representative

17. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☐ Filed in connection with a Manufactured-Home Transaction – effective 30 years

STANDARD FORM - FORM UCC-1 ADDENDUM (REV.05/2013) Filing Office Copy Approved by the Secretary of State, State of Florida

STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 8350 Lyra Drive, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

12. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☐ fixture filing.

13. Description of real estate:

14. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

15. Additional collateral description:

16. Check only if applicable and check only one box.

Collateral is ☐ Held in Trust

☐ Being administered by Decedent's Personal Representative

17. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☐ Filed in connection with a Manufactured-Home Transaction – effective 30 years

STANDARD FORM - FORM UCC-1 ADDENDUM (REV.05/2013) Filing Office Copy Approved by the Secretary of State, State of Florida

STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME Adventure Holdings, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

12. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☐ fixture filing.

13. Description of real estate:

14. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

15. Additional collateral description:

16. Check only if applicable and check only one box.

Collateral is ☐ Held in Trust

☐ Being administered by Decedent's Personal Representative

17. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☐ Filed in connection with a Manufactured-Home Transaction – effective 30 years

EXHIBIT "A"

1. The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

   a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.

   b) Secured Party or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Debtor or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Debtor, or defeat any claim of SBA with respect to this Loan.

   Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

   The Debtor shall pay all of the Secured Party's reasonable court costs incurred in any proceeding in any Bankruptcy proceeding filed by or against the Secured Party, which shall include, but shall not be limited to filing a proof of claim, actions to obtain relief of stay or secure adequate protection, and any adversary action in Bankruptcy.

2. Debtor hereby grants a security interest in all of the following property of the Debtor, whether now owned or hereafter acquired or arising, wherever located, including without limitation, on the real property located at 1010 N Webb Road, Wichita, KS, 672036; 10735 E Hwy 40, Independence, MO 64055; 1600 S Stratford Road, Winston-Salem, NC 27103; 17717 Coit Drive, Dallas, TX 75252; 1944 Beach Blvd, Jacksonville Beach, FL 32250; 2400 Sheridan Ave. Tonawanda, NY 14150; 2590 Waterpark Drive, Mason, OH 45040; 2600 East Franklin Blvd. Gastonia, NC; 2780 State Road 16, St. Augustine, FL; 3311 Capital Blvd. Raleigh, NC 27604; 3340 West Ridge Road, Rochester, NY 14626; 3939 Niagara Falls Blvd, Wheatfield, NY 14120; 4825 Blanding Blvd, Jacksonville, FL 32210; 5890 Scarborough Blvd, Columbus, OH 43232; 831 N Central Expressway, Plano, TX 75074; 8333 W 21st St N, Wichita, KS 67205 and 8350 Lyra Drive, Columbus, OH:

   a. All rights of the Debtor to payment for goods sold or leased, or to be sold or to be leased, or for services rendered, howsoever evidenced or incurred, including, without limitation, all accounts, instruments, chattel paper and general intangibles, all returned or repossessed goods and all books, records, including, but not limited to, Debtor's client records, computer tapes, programs, and ledger books arising therefrom or relating thereto, whether now owned or hereafter acquired or arising.

b. All inventory of Debtor, whether now owned or hereafter acquired, wherever located, including, without limitation, all goods of Debtor held for sale or lease or furnished or to be furnished under contracts of service, all goods held for display or demonstration, goods on lease or consignment, returned and repossessed goods, all raw materials, work-in-progress, finished goods and supplies used or consumed in Debtor's business, together with all returns, repossessions, substitutions, replacements, parts, additions, accessions and all documents, documents of title, dock warrants, dock receipts, warehouse receipts, bills of lading or orders, for the delivery of all, or any portion, of the foregoing.

c. All equipment of the Debtor, including, without limitation, all machinery, furniture, furnishings, leasehold improvements, fixtures, forklifts, dies and tools and personal property of any kind of Debtor, together with all accessories and attachments thereto, all replacements and substitutes used or useful in the Debtor's business, whether now owned or hereafter acquired or arising. Some of the foregoing are or may become fixtures affixed to the real property described herein.

d. All of Debtor's present and future right, title and interest in and to all contracts, agreements, plans, governmental authorizations, consents, licenses, approvals, permits and other documents that concern or relate to the Land or the business of the Debtor and/or the construction of improvements on the Land.

e. All property of Debtor left with Secured Party or in its possession now or hereafter and any balance or deposit account of Debtor and all drafts, checks and other items deposited in or with Secured Party by Debtor for collection or safekeeping, with full authority given Secured Party, upon the occurrence of any Event of Default as set forth in the various loan documents between Debtor and Secured Party, to charge any or all such indebtedness of Debtor without notice or demand against any obligation secured hereby.

f. All general intangibles now owned or hereafter acquired by the Debtor.

g. All products and proceeds (including insurance proceeds, pre-petition and post-petition bankruptcy proceeds) arising from or in any way relating to any or all of the collateral described above.

3. Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

4. Debtor represents and warrants the following:

a) The following Debtor is organized/existing in the state of Texas:

i) 17717 Coit Road, LLC; and

b) The following Debtors are organized/existing in the state of New York:

i) 2400 Sheridan Drive, LLC;
ii) 3340 West Ridge Road, LLC;
iii) 3939 Niagara Falls Boulevard, LLC; and

c) The following Debtors are organized/existing in the state of North Carolina:

i) 1600 Stratford, LLC;
ii) 3660 East Franklin, LLC;
iii) 3311 Capital Boulevard, LLC;

d) The following Debtors are organized/existing in the state of Florida:

i) 2590 Water Park Drive, LLC;
ii) NRP Lease Holdings, LLC;
iii) 1010 N Webb Road, LLC;
iv) 10735 E Hwy 40, LLC;
v) 1944 Beach Blvd., LLC;
vi) 2780 SR16, LLC;
vii) 4825 Blanding Boulevard, LLC;
viii) 5890 Scarborough Drive, LLC;
ix) 831 North Central Parkway, LLC;
x) 8333 W. 21st Street N, LLC;
xii) 8350 Lyra Drive, LLC; and
xiii) Adventure Holdings, LLC.

b) "2590 Water Park Drive, LLC, NRP Lease Holdings, LLC, 1010 N Webb Road, LLC, 10735 E Hwy 40, LLC, 1600 Stratford, LLC, 17717 Coit Road, LLC, 1944 Beach Blvd., LLC, 2400 Sheridan Drive, LLC, 2780 SR16, LLC, 3311 Capital Boulevard, LLC, 3340 West Ridge Road, LLC, 3660 East Franklin, LLC, 3939 Niagara Falls Boulevard, LLC, 4825 Blanding Boulevard, LLC, 5890 Scarborough Drive, LLC, 831 North Central Parkway, LLC, 8333 W. 21st Street N, LLC, 8350 Lyra Drive, LLC, Adventure Holdings, LLC" are the correct legal names of the Debtor indicated on the public record of the Debtor's jurisdiction of organization that shows the Debtor to be organized.

5. Debtor covenants the following so long as any of the Obligations shall remain outstanding and unless Secured Party shall otherwise consent in writing:

a) The Debtor shall not merge or consolidate into, or transfer of any of the Collateral to any other Person.

b) The Debtor shall not change its name unless it has given the Secured Party thirty (30) days' prior written notice thereof and executed or authorized, at the request of the Secured Party, such additional financing statements to be filed in such jurisdictions as the Secured Party may deem necessary or desirable in its sole discretion.

c) The Debtor shall, at any time and from time to time, whether or not the Official Text of Revised Article 9, 2000 Revision, of the Uniform Commercial Code promulgated by the American Law Institute and the National Conference of Commissioners on Uniform State Laws or a version thereof ("Uniform Revised Article 9") has been adopted in any particular jurisdiction, take such steps as the Secured Party may reasonably request for the Secured Party (i) to obtain an acknowledgment, in form and substance reasonably satisfactory to the Secured Party, of any bailee having possession of any of the Collateral, stating that the bailee holds possession of such Collateral on behalf of the Secured Party, (ii) to obtain "control" of any investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper (as such terms are defined by Revised Article 9 with corresponding provisions thereof defining what constitutes "control" for such items of Collateral), with any agreements establishing control to be in form and substance reasonably satisfactory to the Secured Party, and (iii) otherwise to insure the continued perfection and priority of the Secured Party's security interest in any of the Collateral and of the preservation of its rights therein, whether in anticipation of or following the effectiveness of Revised Article 9 in any jurisdiction. If the Debtor shall at any time, whether or not Uniform Revised Article 9 has been adopted in any particular jurisdiction, acquire a "commercial tort claim" (as such term is defined in Revised Article 9) [with a claim for damages in excess of $1,000,000], the Debtor, as the case may be, shall promptly notify the Secured Party thereof in writing, providing a reasonable description and summary thereof, and shall execute a supplement to this Security Agreement granting a security interest in such commercial tort claim to the Secured Party.

6. The Debtor hereby authorizes Secured Party, its counsel or its representative, at any time and from time to time, to file without the signature of the Debtor, as permitted by law, financing statements and amendments that describe the collateral covered by such financing statements as "all assets of the Debtor", "all personal property of the Debtor" or words of similar effect, in such jurisdictions as the Agent may deem necessary or desirable in order to perfect the security interests granted by the Debtor under this Security Agreement.

7. It is a default of the Loan if any one or more of the following events occur (an "Event of Default") under this Agreement: (a) failure of the Debtor to pay any of the Debtor's liabilities as and when due and payable, after giving effect to any applicable grace period; (b) failure of the Debtor to perform, observe, or comply with any of the provisions of this Agreement or of any of the other Loan Documents, after giving effect to any applicable grace period; (c) the occurrence of an Event of Default (as defined therein) under any of the other Loan Documents; (d) any information contained in any financial statement, application, schedule, report, or any other document given by the Debtor or by any other person in connection with the Debtor's liabilities, with the Collateral, or in any of the Loan Documents, is not in all material respects true and accurate or the Debtor or such other person omitted to state any material fact or any fact necessary to make such information not misleading; (e) the Debtor is generally not paying debts as such debts become due; (f) the filing of any petition for relief under any provision of the Federal Bankruptcy Code or any similar state law is brought by or against the Debtor; (g) an application for the appointment of a receiver for, the making of a general assignment for the benefit of creditors by or the insolvency of, the Debtor, which is not discharged within thirty (30) days; (h) the dissolution, merger, consolidation, or

reorganization of the Debtor; (i) suspension of the operation of the Debtor's present business; (j) the determination in good faith by the Secured Party that a material adverse change has occurred in the financial condition of the Debtor from the condition set forth in the most recent financial statement of the Debtor heretofore furnished to the Secured Party, or from the financial condition of the Debtor as heretofore most recently disclosed to the Secured Party in any other manner; or (k) any amendment to or termination of a financing statement naming the Debtor as debtor and the Secured Party as secured party, or any correction statement with respect thereto, is filed in any jurisdiction by any party other than the Secured Party or its counsel without the prior written consent of the Secured Party.

Exhibit "B"

FLORIDA SECURED TRANSACTION REGISTRY

FLORIDA BANKERS ASSOCIATION

Search Results

Today's Date: 08/10/2020
UCC Filings Completed Through: 08/05/2020

Result for **Filed Compact Debtor Name List** Search on **1944 Beach Boulevard, LLC**
Use the Previous and Next buttons to display additional search results

«PREVIOUS NEXT»

Name	UCC Number	Address	City	State	Zip Code	Status
1944 BEACH BOULEVARD, LLC	201505920319	1944 BEACH BLVD	JACKSONVILLE BEACH	FL	32250	FILED
1944 BEACH BOULEVARD, LLC	201609631674	1944 BEACH BLVD	JACKSONVILLE BEACH	FL	32250	FILED
1944 BEACH BOULEVARD, LLC	201703071415	1944 BEACH BLVD	JACKSONVILLE BEACH	FL	32250	FILED
1944 BEACH BOULEVARD LLC DBA ADVENTURE LANDING	20160640846X	1944 BEACH BOULEVARD	JACKSONVILLE BEACH	FL	32837	FILED
1944 BLANDING BOULEVARD, LLC	201805377858	2315 BEACH BLVD SUITE 203	JACKSONVILLE BEACH	FL	32250	FILED
1944 BLANDING BOULEVARD, LLC.	201807187177	2315 BEACH BLVD #203	JACKSONVILLE BEACH	FL	32250	FILED
1947 DREW ST TRUST, A LAND TRUST, MANHATTAN LAWYERS SERVICES LLC, AS TRUSTE	201804935881	1430 W BUSCH BLVD, SUITE 9	TAMPA	FL	33612	FILED
1948 BLDG LLC, A FLORIDA LIMITED LIABILITY COMPANY	201506105996	1545 NW 8 AVENUE	MIAMI	FL	33136	FILED
1948 HILLSBOROUGH AVENUE LIQUORS, INC.	201702175756	1948 E. HILLSBOROUGH AVENUE	TAMPA	FL	33610	FILED
1948 HILLSBOROUGH AVENUE LIQUORS, INC.	201702230331	1948 E HILLSBOROUGH AVENUE	TAMPA	FL	33610	FILED
1949 SW DAVIS STREET, LLC, A FLORIDA LIMITED LIABILITY COMPANY	201805596851	1272 SE LADNER STREET	PORT ST. LUCIE	FL	34983	FILED
194 NW 187 LLC	20190051607X	194 NW 187 STREET	MIAMI	FL	33131	FILED
194 NW 187 LLC	201900516185	194 NW 187 STREET	MIAMI	FL	33131	FILED
194 TRINIDAD STREET LLC, A FLORIDA LIMITED LIABILITY COMPANY	202001505998	194 TRINIDAD STREET	NAPLES	FL	34113	FILED
1950	201907850250	502 NE 43RD STREET	OAKLAND PARK	FL	33334	FILED
19501 BISCAYNE LLC	202003273296	19565 BISCAYNE BLVD #1944	AVENTURA	FL	33180	FILED
1950 LAKE WORTH, LLC	201608567255	1601 S. FEDERAL HIGHWAY	BOYNTON BEACH	FL	33435	FILED
1950 SW 7 PL, LLC	201703648518	3225 MCLEAD DRIVE , SUITE 100	LAS VEGAS	NV	82001	FILED
1951-1997 SOUTH MILITARY TRAIL, L.L.C.	201909742277	1941 S. MILITARY TRAIL	WEST PALM BEACH	FL	33415	FILED
1951-1997 SOUTH MILITARY TRAIL, L.L.C.	201909742358	1941 S. MILITARY TRAIL	WEST PALM BEACH	FL	33415	FILED

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re	)	Case Nos.: 3:19-bk-4607-CJJ through 3:19-bk-4622-CJJ
NRP LEASE HOLDINGS, LLC, et al.,	)	Chapter 11
Debtors.	)	Jointly Administered Under Case No.: 3:19-bk-4607-CJJ
1944 BEACH BOULEVARD, LLC,	)	
Plaintiff,	)	Adversary No.: 3:20-ap-71-CJJ
v.	)	
LIVE OAK BANKING COMPANY,	)	
Defendant.	)	

AFFIDAVIT OF HENRY P. WOODBURN III IN SUPPORT PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

STATE OF FLORIDA)

COUNTY OF DUVAL)

I, Henry P. Woodburn III, state under oath:

1. I am the Manager of 1944 Beach Boulevard, LLC ("Plaintiff"), the plaintiff in this adversary proceeding, and have personal knowledge of the facts and statements contained herein.

2. Plaintiff is a limited liability company organized and existing under the laws of the State of Florida. Plaintiff's legal name as listed on the public organic record

most recently filed with the State of Florida is 1944 Beach Boulevard, LLC, a name that has remained unchanged since its formation in 2004. A copy of an entity report reflecting Plaintiff's legal name as listed on Sunbiz.org the official State of Florida, Division of Corporations' website is attached as **Exhibit A.**

3. Plaintiff is the operator of a family entertainment center located at 1944 Beach Boulevard, Jacksonville, Florida, which operates under the tradename "Adventure Landing." Amenities at the park include miniature golf, laser tag, arcade games, batting cages, go-carts, miniature roller coasters, waterslides and snack bars.

4. On December 5, 2019, Plaintiff and its affiliates filed voluntary petitions for reorganization under Chapter 11 of the United States Bankruptcy Code ("Petition Date").

5. On the Petition Date, Plaintiff was jointly and severally indebted to Live Oak Banking Company ("Live Oak") in the approximate amount of $3,000,000 on account of two loans, each in the original principal amount of $2,500,000. The loans are guaranteed by the U.S. Small Business Administration and are identified as SBA Loan Nos. 81146450-00 and 81145550-08. The two loans purport to be secured by a blanket lien on all of Plaintiff's assets.

6. It is my understanding that Live Oak filed two UCC-1 Financing Statements with the Florida Secured Transaction Registry, the first being filed on January 5, 2016 under File No. 2016061146252, and the second being filed on or about January 25, 2016 under File No. 201606327524 ("Financing Statements"). Copies of the Financing Statements are attached as **Exhibit B.**

7. The Financing Statements filed by Live Oak are defective, however, as they improperly identify Plaintiff as "1944 Beach Blvd., LLC" instead of "1944 Beach

Boulevard, LLC," the actual name of the corporation as stated in the Articles of Organization filed with the Florida Secretary of State.

8. As a result, when I searched the Florida Secured Transaction Registry's website, utilizing Plaintiff's correct name "1944 Beach Boulevard, LLC," the Financing Statements were not contained in the results. A copy of the results obtained from a search Florida Secured Transaction Registry's website, utilizing Plaintiff's correct is attached hereto as **Exhibit C**.

FURTHER AFFIANT SAYETH NOT.

Dated: August 7, 2020.

Henry P. Woodburn III

Henry P. Woodburn III

ACKNOWLEDGMENT

STATE OF FLORIDA)

COUNTY OF DUVAL)

The foregoing instrument was sworn to and acknowledged before me this 7 day of August, 2020, by Henry P. Woodburn III, who is ☑ personally known to me or ☐ who has produced _____ as identification.

Notary Public, State of Florida
Name: Rebecca Kohlhaas
My Commission Expires: 10/30/2022
My Commission Number is: 266763

1026

Exhibit "A"

Detail by Entity Name

Florida Limited Liability Company
1944 BEACH BOULEVARD, LLC

Filing Information

Document Number	L04000046433
FEI/EIN Number	56-2472270
Date Filed	06/21/2004
State	FL
Status	ACTIVE

Principal Address

1944 BEACH BLVD
JACKSONVILLE BEACH, FL 32250

Changed: 05/12/2005

Mailing Address

2315 BEACH BLVD
JACKSONVILLE BEACH, FL 32250-4033

Changed: 05/12/2005

Registered Agent Name & Address

SIMMONS, SIDNEY
1050 RIVERSIDE AVE.
JACKSONVILLE, FL 32204

Name Changed: 04/15/2008

Address Changed: 04/15/2008

Authorized Person(s) Detail

Name & Address

Title MGR

ADVENTURE HOLDINGS, LLC
2315 BEACH BLVD, STE 203
JACKSONVILLE BEACH, FL 32250-4033

Annual Reports

Report Year	Filed Date
2018	04/30/2018

2019	04/30/2019
2020	06/18/2020

Document Images

06/18/2020 -- ANNUAL REPORT	View image in PDF format
04/30/2019 -- ANNUAL REPORT	View image in PDF format
04/30/2018 -- ANNUAL REPORT	View image in PDF format
03/15/2017 -- ANNUAL REPORT	View image in PDF format
04/01/2016 -- ANNUAL REPORT	View image in PDF format
04/24/2015 -- ANNUAL REPORT	View image in PDF format
04/03/2014 -- ANNUAL REPORT	View image in PDF format
04/29/2013 -- ANNUAL REPORT	View image in PDF format
04/05/2012 -- ANNUAL REPORT	View image in PDF format
01/14/2011 -- ANNUAL REPORT	View image in PDF format
04/09/2010 -- ANNUAL REPORT	View image in PDF format
03/20/2009 -- ANNUAL REPORT	View image in PDF format
04/15/2008 -- ANNUAL REPORT	View image in PDF format
03/26/2007 -- ANNUAL REPORT	View image in PDF format
04/17/2006 -- ANNUAL REPORT	View image in PDF format
05/12/2005 -- ANNUAL REPORT	View image in PDF format
06/21/2004 -- Florida Limited Liabilites	View image in PDF format

Florida Department of State, Division of Corporations

Exhibit "B"

STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM

FLORIDA SECURED TRANSACTION REGISTRY

FILED
2016 Jan 25 08:00 AM
****** 201606327524 ******

A. NAME & DAYTIME PHONE NUMBER OF CONTACT PERSON
Reid H. Harbin, Esq. / 404-446-4995
B. Email Address
C. SEND ACKNOWLEDGEMENT TO:
Name Reid H. Harbin, Esq.
Address Harbin & Miller, LLC
Address 5501 Chamblee Dunwoody Rd. Bldg 1300 Ste. 300
City/State/Zip Dunwoody GA 30338

THE ABOVE SP[illegible] Y

1. DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (1a OR 1b) – Do Not Abbre[illegible]

1.a ORGANIZATION'S NAME 2590 Water Park Drive, LLC				
1.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADD[illegible]		[illegible]IX
1.c MAILING ADDRESS Line One 2315 Beach Blvd., Suite 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (2a OR 2b) – Do Not Abbreviate or Combine Names

2.a ORGANIZATION'S NAME NRP Lease Holdings, LLC				
2.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
2.c MAILING ADDRESS Line One 2315 Beach Blvd., Suite 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (3a OR 3b)

3.a ORGANIZATION'S NAME LIVE OAK BANKING COMPANY				
3.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
3.c MAILING ADDRESS Line One 1741 Tiburon Drive	This space not available.			
MAILING ADDRESS Line Two	CITY Wilmington	STATE NC	POSTAL CODE 28403	COUNTRY USA

4. This FINANCING STATEMENT covers the following collateral:
A shared best available lien security interest in all assets of Debtor described in Exhibit"A" attached hereto now owned wherever located.

5. ALTERNATE DESIGNATION (if applicable) ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ AG LIEN ☐ NON-UCC FILING ☐ SELLER/BUYER

6. Florida DOCUMENTARY STAMP TAX – YOU ARE REQUIRED TO CHECK EXACTLY ONE BOX
☐ All documentary stamps due and payable or to become due and payable pursuant to s. 201.22 F.S., have been paid.
■ Florida Documentary Stamp Tax is not required.

7. OPTIONAL FILER REFERENCE DATA
FILE WITH FLORIDA SECRETARY OF STATE SBA LOAN # 81145550-08

STANDARD FORM - FORM UCC-1 (REV.05/2013) Filing Office Copy Approved by the Secretary of State, State of Florida

STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 1010 N Webb Road, LLC					
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME		ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd.. Ste. 203	This space not available.				
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250		COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

12. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a fixture filing.

13. Description of real estate:

14. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

15 Additional collateral description:

16. Check only if applicable and check only one box.

Collateral is ☐ Held in Trust
☐ Being administered by Decedent's Personal Representative

17. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☐ Filed in connection with a Manufactured-Home Transaction – effective 30 years

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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	**FIRST PERSONAL NAME**	**ADDITIONAL NAME(S)/INITIAL(S)**	**SUFFIX**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 10735 E Hwy 40, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

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9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 1944 Beach Blvd., LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd.. Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	**FIRST PERSONAL NAME**	**ADDITIONAL NAME(S)/INITIAL(S)**	**SUFFIX**

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9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 2780 SR16, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	**FIRST PERSONAL NAME**	**ADDITIONAL NAME(S)/INITIAL(S)**	**SUFFIX**

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9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 4825 Blanding Boulevard, LLC					
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME		ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.				
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250		COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

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8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	**FIRST PERSONAL NAME**	**ADDITIONAL NAME(S)/INITIAL(S)**	**SUFFIX**

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10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 5890 Scarborough Drive, LLC					
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)			SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.				
MAILING ADDRESS Line Two	CITY Jacksonville		STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME					
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)			SUFFIX
11.c MAILING ADDRESS Line One	This space not available.				
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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

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8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	**FIRST PERSONAL NAME**	**ADDITIONAL NAME(S)/INITIAL(S)**	**SUFFIX**

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10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 831 North Central Parkway, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd.. Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

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8b. INDIVIDUAL'S SURNAME	**FIRST PERSONAL NAME**	**ADDITIONAL NAME(S)/INITIAL(S)**	**SUFFIX**

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10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 8333 W. 21st Street N, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd.. Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

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2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

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9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 8350 Lyra Drive, LLC					
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME		ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.				
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250		COUNTRY USA

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2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	**FIRST PERSONAL NAME**	**ADDITIONAL NAME(S)/INITIAL(S)**	**SUFFIX**

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9. MISCELLANEOUS:

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10.a ORGANIZATION'S NAME Adventure Holdings, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
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EXHIBIT "A"

1. The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

   a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.

   b) Secured Party or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Debtor or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Debtor, or defeat any claim of SBA with respect to this Loan.

   Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

   The Debtor shall pay all of the Secured Party's reasonable court costs incurred in any proceeding in any Bankruptcy proceeding filed by or against the Secured Party, which shall include, but shall not be limited to filing a proof of claim, actions to obtain relief of stay or secure adequate protection, and any adversary action in Bankruptcy.

2. Debtor hereby grants a security interest in all of the following property of the Debtor, whether now owned or hereafter acquired or arising, wherever located, including without limitation, on the real property located at 1010 N Webb Road, Wichita, KS, 672036; 10735 E Hwy 40, Independence, MO 64055; 1600 S Stratford Road, Winston-Salem, NC 27103; 17717 Coit Drive, Dallas, TX 75252; 1944 Beach Blvd, Jacksonville Beach, FL 32250; 2400 Sheridan Ave. Tonawanda, NY 14150; 2590 Waterpark Drive, Mason, OH 45040; 2600 East Franklin Blvd. Gastonia, NC; 2780 State Road 16, St. Augustine, FL; 3311 Capital Blvd. Raleigh, NC 27604; 3340 West Ridge Road, Rochester, NY 14626; 3939 Niagara Falls Blvd, Wheatfield, NY 14120; 4825 Blanding Blvd, Jacksonville, FL 32210; 5890 Scarborough Blvd, Columbus, OH 43232; 831 N Central Expressway, Plano, TX 75074; 8333 W 21st St N, Wichita, KS 67205 and 8350 Lyra Drive, Columbus, OH:

   a. All rights of the Debtor to payment for goods sold or leased, or to be sold or to be leased, or for services rendered, howsoever evidenced or incurred, including, without limitation, all accounts, instruments, chattel paper and general intangibles, all returned or repossessed goods and all books, records, including, but not limited to, Debtor's client records, computer tapes, programs, and ledger books arising therefrom or relating thereto, whether now owned or hereafter acquired or arising.

b. All inventory of Debtor, whether now owned or hereafter acquired, wherever located, including, without limitation, all goods of Debtor held for sale or lease or furnished or to be furnished under contracts of service, all goods held for display or demonstration, goods on lease or consignment, returned and repossessed goods, all raw materials, work-in-progress, finished goods and supplies used or consumed in Debtor's business, together with all returns, repossessions, substitutions, replacements, parts, additions, accessions and all documents, documents of title, dock warrants, dock receipts, warehouse receipts, bills of lading or orders, for the delivery of all, or any portion, of the foregoing.

c. All equipment of the Debtor, including, without limitation, all machinery, furniture, furnishings, leasehold improvements, fixtures, forklifts, dies and tools and personal property of any kind of Debtor, together with all accessories and attachments thereto, all replacements and substitutes used or useful in the Debtor's business, whether now owned or hereafter acquired or arising. Some of the foregoing are or may become fixtures affixed to the real property described herein.

d. All of Debtor's present and future right, title and interest in and to all contracts, agreements, plans, governmental authorizations, consents, licenses, approvals, permits and other documents that concern or relate to the Land or the business of the Debtor and/or the construction of improvements on the Land.

e. All property of Debtor left with Secured Party or in its possession now or hereafter and any balance or deposit account of Debtor and all drafts, checks and other items deposited in or with Secured Party by Debtor for collection or safekeeping, with full authority given Secured Party, upon the occurrence of any Event of Default as set forth in the various loan documents between Debtor and Secured Party, to charge any or all such indebtedness of Debtor without notice or demand against any obligation secured hereby.

f. All general intangibles now owned or hereafter acquired by the Debtor.

g. All products and proceeds (including insurance proceeds, pre-petition and post-petition bankruptcy proceeds) arising from or in any way relating to any or all of the collateral described above.

3. Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

4. Debtor represents and warrants the following:

a) The following Debtor is organized/existing in the state of Texas:

i) 17717 Coit Road, LLC; and

b) The following Debtors are organized/existing in the state of New York:

i) 2400 Sheridan Drive, LLC;
ii) 3340 West Ridge Road, LLC;
iii) 3939 Niagara Falls Boulevard, LLC; and

c) The following Debtors are organized/existing in the state of North Carolina:

i) 1600 Stratford, LLC;
ii) 3660 East Franklin, LLC;
iii) 3311 Capital Boulevard, LLC;

d) The following Debtors are organized/existing in the state of Florida:

i) 2590 Water Park Drive, LLC;
ii) NRP Lease Holdings, LLC;
iii) 1010 N Webb Road, LLC;
iv) 10735 E Hwy 40, LLC;
v) 1944 Beach Blvd., LLC;
vi) 2780 SR16, LLC;
vii) 4825 Blanding Boulevard, LLC;
viii) 5890 Scarborough Drive, LLC;
ix) 831 North Central Parkway, LLC;
x) 8333 W. 21st Street N, LLC;
xii) 8350 Lyra Drive, LLC; and
xiii) Adventure Holdings, LLC.

b) "2590 Water Park Drive, LLC, NRP Lease Holdings, LLC, 1010 N Webb Road, LLC, 10735 E Hwy 40, LLC, 1600 Stratford, LLC, 17717 Coit Road, LLC, 1944 Beach Blvd., LLC, 2400 Sheridan Drive, LLC, 2780 SR16, LLC, 3311 Capital Boulevard, LLC, 3340 West Ridge Road, LLC, 3660 East Franklin, LLC, 3939 Niagara Falls Boulevard, LLC, 4825 Blanding Boulevard, LLC, 5890 Scarborough Drive, LLC, 831 North Central Parkway, LLC, 8333 W. 21st Street N, LLC, 8350 Lyra Drive, LLC, Adventure Holdings, LLC" are the correct legal names of the Debtor indicated on the public record of the Debtor's jurisdiction of organization that shows the Debtor to be organized.

5. Debtor covenants the following so long as any of the Obligations shall remain outstanding and unless Secured Party shall otherwise consent in writing:

a) The Debtor shall not merge or consolidate into, or transfer of any of the Collateral to any other Person.

b) The Debtor shall not change its name unless it has given the Secured Party thirty (30) days' prior written notice thereof and executed or authorized, at the request of the Secured Party, such additional financing statements to be filed in such jurisdictions as the Secured Party may deem necessary or desirable in its sole discretion.

c) The Debtor shall, at any time and from time to time, whether or not the Official Text of Revised Article 9, 2000 Revision, of the Uniform Commercial Code promulgated by the American Law Institute and the National Conference of Commissioners on Uniform State Laws or a version thereof ("Uniform Revised Article 9") has been adopted in any particular jurisdiction, take such steps as the Secured Party may reasonably request for the Secured Party (i) to obtain an acknowledgment, in form and substance reasonably satisfactory to the Secured Party, of any bailee having possession of any of the Collateral, stating that the bailee holds possession of such Collateral on behalf of the Secured Party, (ii) to obtain "control" of any investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper (as such terms are defined by Revised Article 9 with corresponding provisions thereof defining what constitutes "control" for such items of Collateral), with any agreements establishing control to be in form and substance reasonably satisfactory to the Secured Party, and (iii) otherwise to insure the continued perfection and priority of the Secured Party's security interest in any of the Collateral and of the preservation of its rights therein, whether in anticipation of or following the effectiveness of Revised Article 9 in any jurisdiction. If the Debtor shall at any time, whether or not Uniform Revised Article 9 has been adopted in any particular jurisdiction, acquire a "commercial tort claim" (as such term is defined in Revised Article 9) [with a claim for damages in excess of $1,000,000], the Debtor, as the case may be, shall promptly notify the Secured Party thereof in writing, providing a reasonable description and summary thereof, and shall execute a supplement to this Security Agreement granting a security interest in such commercial tort claim to the Secured Party.

6. The Debtor hereby authorizes Secured Party, its counsel or its representative, at any time and from time to time, to file without the signature of the Debtor, as permitted by law, financing statements and amendments that describe the collateral covered by such financing statements as "all assets of the Debtor", "all personal property of the Debtor" or words of similar effect, in such jurisdictions as the Agent may deem necessary or desirable in order to perfect the security interests granted by the Debtor under this Security Agreement.

7. It is a default of the Loan if any one or more of the following events occur (an "Event of Default") under this Agreement: (a) failure of the Debtor to pay any of the Debtor's liabilities as and when due and payable, after giving effect to any applicable grace period; (b) failure of the Debtor to perform, observe, or comply with any of the provisions of this Agreement or of any of the other Loan Documents, after giving effect to any applicable grace period; (c) the occurrence of an Event of Default (as defined therein) under any of the other Loan Documents; (d) any information contained in any financial statement, application, schedule, report, or any other document given by the Debtor or by any other person in connection with the Debtor's liabilities, with the Collateral, or in any of the Loan Documents, is not in all material respects true and accurate or the Debtor or such other person omitted to state any material fact or any fact necessary to make such information not misleading; (e) the Debtor is generally not paying debts as such debts become due; (f) the filing of any petition for relief under any provision of the Federal Bankruptcy Code or any similar state law is brought by or against the Debtor; (g) an application for the appointment of a receiver for, the making of a general assignment for the benefit of creditors by or the insolvency of, the Debtor, which is not discharged within thirty (30) days; (h) the dissolution, merger, consolidation, or

reorganization of the Debtor; (i) suspension of the operation of the Debtor's present business; (j) the determination in good faith by the Secured Party that a material adverse change has occurred in the financial condition of the Debtor from the condition set forth in the most recent financial statement of the Debtor heretofore furnished to the Secured Party, or from the financial condition of the Debtor as heretofore most recently disclosed to the Secured Party in any other manner; or (k) any amendment to or termination of a financing statement naming the Debtor as debtor and the Secured Party as secured party, or any correction statement with respect thereto, is filed in any jurisdiction by any party other than the Secured Party or its counsel without the prior written consent of the Secured Party.

STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM

A. NAME & DAYTIME PHONE NUMBER OF CONTACT PERSON
Reid H. Harbin, Esq. / 404-446-4995
B. Email Address
C. SEND ACKNOWLEDGEMENT TO:
Name Reid H. Harbin, Esq.
Address Harbin & Miller, LLC
Address 5501 Chamblee Dunwoody Rd. Bldg 1300 Ste. 300
City/State/Zip Dunwoody GA 30338

FLORIDA SECURED TRANSACTION REGISTRY

FILED
2016 Jan 05 08:00 AM
****** 201606146252 ******

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (1a OR 1b) – Do Not Abbreviate or Combine Names

1.a ORGANIZATION'S NAME 2590 Water Park Drive, LLC				
1.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
1.c MAILING ADDRESS Line One 2315 Beach Blvd., Suite 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (2a OR 2b) – Do Not Abbreviate or Combine Names

2.a ORGANIZATION'S NAME NRP Lease Holdings, LLC				
2.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
2.c MAILING ADDRESS Line One 2315 Beach Blvd., Suite 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (3a OR 3b)

3.a ORGANIZATION'S NAME LIVE OAK BANKING COMPANY				
3.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
3.c MAILING ADDRESS Line One 1741 Tiburon Drive	This space not available.			
MAILING ADDRESS Line Two	CITY Wilmington	STATE NC	POSTAL CODE 28403	COUNTRY USA

4. This **FINANCING STATEMENT** covers the following collateral:
A shared best available lien security interest in all assets of Debtor described in Exhibit "A" attached hereto now owned wherever located.

5. ALTERNATE DESIGNATION (if applicable) ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ AG LIEN ☐ NON-UCC FILING ☐ SELLER/BUYER

6. Florida DOCUMENTARY STAMP TAX – YOU ARE REQUIRED TO CHECK **EXACTLY ONE** BOX

☐ All documentary stamps due and payable or to become due and payable pursuant to s. 201.22 F.S., have been paid.

■ Florida Documentary Stamp Tax is not required.

7. OPTIONAL FILER REFERENCE DATA
FILE WITH FLORIDA SECRETARY OF STATE SBA LOAN # 81146450-00

STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 1010 N Webb Road, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

12. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☐ fixture filing.

13. Description of real estate:

14. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

15. Additional collateral description:

16. Check only if applicable and check only one box.

Collateral is ☐ Held in Trust

☐ Being administered by Decedent's Personal Representative

17. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☐ Filed in connection with a Manufactured-Home Transaction – effective 30 years

STANDARD FORM - FORM UCC-1 ADDENDUM (REV.05/2013) Filing Office Copy Approved by the Secretary of State, State of Florida

STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

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9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 10735 E Hwy 40, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

12. This FINANCING STATEMENT covers ☐ as-extracted collateral, or is filed as a ☐ timber to be cut or fixture filing.

13. Description of real estate:

14. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

15. Additional collateral description:

16. Check only if applicable and check only one box.

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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	**FIRST PERSONAL NAME**	**ADDITIONAL NAME(S)/INITIAL(S)**	**SUFFIX**

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9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 1944 Beach Blvd., LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

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13. Description of real estate:

14. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

15. Additional collateral description:

16. Check only if applicable and check only one box.

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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

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10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 2780 SR16, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

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13. Description of real estate:

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15. Additional collateral description:

16. Check only if applicable and check only one box.

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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

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9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 4825 Blanding Boulevard, LLC					
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME		ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.				
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250		COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

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9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 5890 Scarborough Drive, LLC					
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME		ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd.. Ste. 203	This space not available.				
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250		COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
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MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

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15. Additional collateral description:

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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

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10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 831 North Central Parkway, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME 2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 8333 W. 21st Street N, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

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11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
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15. Additional collateral description:

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17. Check only if applicable and check only one box.

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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME 2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME 8350 Lyra Drive, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd.. Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

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11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM – ADDENDUM

8. NAME OF FIRST DEBTOR (1aOR 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
2590 Water Park Drive, LLC			
8b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

9. MISCELLANEOUS:

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY ONE DEBTOR NAME (10a OR 10b) – Do Not Abbreviate or Combine Names

10.a ORGANIZATION'S NAME Adventure Holdings, LLC				
10.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
10.c MAILING ADDRESS Line One 2315 Beach Blvd., Ste. 203	This space not available.			
MAILING ADDRESS Line Two	CITY Jacksonville	STATE FL	POSTAL CODE 32250	COUNTRY USA

11. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEED of ASSIGNOR S/P) – INSERT ONLY ONE SECURED PARTY (11a OR 11b)

11.a ORGANIZATION'S NAME				
11.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
11.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

12. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☐ fixture filing.

13. Description of real estate:

14. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

15. Additional collateral description:

16. Check only if applicable and check only one box.

Collateral is ☐ Held in Trust

☐ Being administered by Decedent's Personal Representative

17. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☐ Filed in connection with a Manufactured-Home Transaction – effective 30 years

STANDARD FORM - FORM UCC-1 ADDENDUM (REV.05/2013) Filing Office Copy Approved by the Secretary of State, State of Florida

EXHIBIT "A"

1. The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

   a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.

   b) Secured Party or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Debtor or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Debtor, or defeat any claim of SBA with respect to this Loan.

   Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

   The Debtor shall pay all of the Secured Party's reasonable court costs incurred in any proceeding in any Bankruptcy proceeding filed by or against the Secured Party, which shall include, but shall not be limited to filing a proof of claim, actions to obtain relief of stay or secure adequate protection, and any adversary action in Bankruptcy.

2. Debtor hereby grants a security interest in all of the following property of the Debtor, whether now owned or hereafter acquired or arising, wherever located, including without limitation, on the real property located at 1010 N Webb Road, Wichita, KS, 672036; 10735 E Hwy 40, Independence, MO 64055; 1600 S Stratford Road, Winston-Salem, NC 27103; 17717 Coit Drive, Dallas, TX 75252; 1944 Beach Blvd, Jacksonville Beach, FL 32250; 2400 Sheridan Ave. Tonawanda, NY 14150; 2590 Waterpark Drive, Mason, OH 45040; 2600 East Franklin Blvd. Gastonia, NC; 2780 State Road 16, St. Augustine, FL; 3311 Capital Blvd. Raleigh, NC 27604; 3340 West Ridge Road, Rochester, NY 14626; 3939 Niagara Falls Blvd, Wheatfield, NY 14120; 4825 Blanding Blvd, Jacksonville, FL 32210; 5890 Scarborough Blvd, Columbus, OH 43232; 831 N Central Expressway, Plano, TX 75074; 8333 W 21st St N, Wichita, KS 67205 and 8350 Lyra Drive, Columbus, OH:

   a. All rights of the Debtor to payment for goods sold or leased, or to be sold or to be leased, or for services rendered, howsoever evidenced or incurred, including, without limitation, all accounts, instruments, chattel paper and general intangibles, all returned or repossessed goods and all books, records, including, but not limited to, Debtor's client records, computer tapes, programs, and ledger books arising therefrom or relating thereto, whether now owned or hereafter acquired or arising.

b. All inventory of Debtor, whether now owned or hereafter acquired, wherever located, including, without limitation, all goods of Debtor held for sale or lease or furnished or to be furnished under contracts of service, all goods held for display or demonstration, goods on lease or consignment, returned and repossessed goods, all raw materials, work-in-progress, finished goods and supplies used or consumed in Debtor's business, together with all returns, repossessions, substitutions, replacements, parts, additions, accessions and all documents, documents of title, dock warrants, dock receipts, warehouse receipts, bills of lading or orders, for the delivery of all, or any portion, of the foregoing.

c. All equipment of the Debtor, including, without limitation, all machinery, furniture, furnishings, leasehold improvements, fixtures, forklifts, dies and tools and personal property of any kind of Debtor, together with all accessories and attachments thereto, all replacements and substitutes used or useful in the Debtor's business, whether now owned or hereafter acquired or arising. Some of the foregoing are or may become fixtures affixed to the real property described herein.

d. All of Debtor's present and future right, title and interest in and to all contracts, agreements, plans, governmental authorizations, consents, licenses, approvals, permits and other documents that concern or relate to the Land or the business of the Debtor and/or the construction of improvements on the Land.

e. All property of Debtor left with Secured Party or in its possession now or hereafter and any balance or deposit account of Debtor and all drafts, checks and other items deposited in or with Secured Party by Debtor for collection or safekeeping, with full authority given Secured Party, upon the occurrence of any Event of Default as set forth in the various loan documents between Debtor and Secured Party, to charge any or all such indebtedness of Debtor without notice or demand against any obligation secured hereby.

f. All general intangibles now owned or hereafter acquired by the Debtor.

g. All products and proceeds (including insurance proceeds, pre-petition and post-petition bankruptcy proceeds) arising from or in any way relating to any or all of the collateral described above.

3. Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

4. Debtor represents and warrants the following:

a) The following Debtor is organized/existing in the state of Texas:

i) 17717 Coit Road, LLC; and

b) The following Debtors are organized/existing in the state of New York:

i) 2400 Sheridan Drive, LLC;
ii) 3340 West Ridge Road, LLC;
iii) 3939 Niagara Falls Boulevard, LLC; and

c) The following Debtors are organized/existing in the state of North Carolina:

i) 1600 Stratford, LLC;
ii) 3660 East Franklin, LLC;
iii) 3311 Capital Boulevard, LLC;

d) The following Debtors are organized/existing in the state of Florida:

i) 2590 Water Park Drive, LLC;
ii) NRP Lease Holdings, LLC;
iii) 1010 N Webb Road, LLC;
iv) 10735 E Hwy 40, LLC;
v) 1944 Beach Blvd., LLC;
vi) 2780 SR16, LLC;
vii) 4825 Blanding Boulevard, LLC;
viii) 5890 Scarborough Drive, LLC;
ix) 831 North Central Parkway, LLC;
x) 8333 W. 21st Street N, LLC;
xii) 8350 Lyra Drive, LLC; and
xiii) Adventure Holdings, LLC.

b) "2590 Water Park Drive, LLC, NRP Lease Holdings, LLC, 1010 N Webb Road, LLC, 10735 E Hwy 40, LLC, 1600 Stratford, LLC, 17717 Coit Road, LLC, 1944 Beach Blvd., LLC, 2400 Sheridan Drive, LLC, 2780 SR16, LLC, 3311 Capital Boulevard, LLC, 3340 West Ridge Road, LLC, 3660 East Franklin, LLC, 3939 Niagara Falls Boulevard, LLC, 4825 Blanding Boulevard, LLC, 5890 Scarborough Drive, LLC, 831 North Central Parkway, LLC, 8333 W. 21st Street N, LLC, 8350 Lyra Drive, LLC, Adventure Holdings, LLC" are the correct legal names of the Debtor indicated on the public record of the Debtor's jurisdiction of organization that shows the Debtor to be organized.

5. Debtor covenants the following so long as any of the Obligations shall remain outstanding and unless Secured Party shall otherwise consent in writing:

a) The Debtor shall not merge or consolidate into, or transfer of any of the Collateral to any other Person.

b) The Debtor shall not change its name unless it has given the Secured Party thirty (30) days' prior written notice thereof and executed or authorized, at the request of the Secured Party, such additional financing statements to be filed in such jurisdictions as the Secured Party may deem necessary or desirable in its sole discretion.

c) The Debtor shall, at any time and from time to time, whether or not the Official Text of Revised Article 9, 2000 Revision, of the Uniform Commercial Code promulgated by the American Law Institute and the National Conference of Commissioners on Uniform State Laws or a version thereof ("Uniform Revised Article 9") has been adopted in any particular jurisdiction, take such steps as the Secured Party may reasonably request for the Secured Party (i) to obtain an acknowledgment, in form and substance reasonably satisfactory to the Secured Party, of any bailee having possession of any of the Collateral, stating that the bailee holds possession of such Collateral on behalf of the Secured Party, (ii) to obtain "control" of any investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper (as such terms are defined by Revised Article 9 with corresponding provisions thereof defining what constitutes "control" for such items of Collateral), with any agreements establishing control to be in form and substance reasonably satisfactory to the Secured Party, and (iii) otherwise to insure the continued perfection and priority of the Secured Party's security interest in any of the Collateral and of the preservation of its rights therein, whether in anticipation of or following the effectiveness of Revised Article 9 in any jurisdiction. If the Debtor shall at any time, whether or not Uniform Revised Article 9 has been adopted in any particular jurisdiction, acquire a "commercial tort claim" (as such term is defined in Revised Article 9) [with a claim for damages in excess of $1,000,000], the Debtor, as the case may be, shall promptly notify the Secured Party thereof in writing, providing a reasonable description and summary thereof, and shall execute a supplement to this Security Agreement granting a security interest in such commercial tort claim to the Secured Party.

6. The Debtor hereby authorizes Secured Party, its counsel or its representative, at any time and from time to time, to file without the signature of the Debtor, as permitted by law, financing statements and amendments that describe the collateral covered by such financing statements as "all assets of the Debtor", "all personal property of the Debtor" or words of similar effect, in such jurisdictions as the Agent may deem necessary or desirable in order to perfect the security interests granted by the Debtor under this Security Agreement.

7. It is a default of the Loan if any one or more of the following events occur (an "Event of Default") under this Agreement: (a) failure of the Debtor to pay any of the Debtor's liabilities as and when due and payable, after giving effect to any applicable grace period; (b) failure of the Debtor to perform, observe, or comply with any of the provisions of this Agreement or of any of the other Loan Documents, after giving effect to any applicable grace period; (c) the occurrence of an Event of Default (as defined therein) under any of the other Loan Documents; (d) any information contained in any financial statement, application, schedule, report, or any other document given by the Debtor or by any other person in connection with the Debtor's liabilities, with the Collateral, or in any of the Loan Documents, is not in all material respects true and accurate or the Debtor or such other person omitted to state any material fact or any fact necessary to make such information not misleading; (e) the Debtor is generally not paying debts as such debts become due; (f) the filing of any petition for relief under any provision of the Federal Bankruptcy Code or any similar state law is brought by or against the Debtor; (g) an application for the appointment of a receiver for, the making of a general assignment for the benefit of creditors by or the insolvency of, the Debtor, which is not discharged within thirty (30) days; (h) the dissolution, merger, consolidation, or

reorganization of the Debtor; (i) suspension of the operation of the Debtor's present business; (j) the determination in good faith by the Secured Party that a material adverse change has occurred in the financial condition of the Debtor from the condition set forth in the most recent financial statement of the Debtor heretofore furnished to the Secured Party, or from the financial condition of the Debtor as heretofore most recently disclosed to the Secured Party in any other manner; or (k) any amendment to or termination of a financing statement naming the Debtor as debtor and the Secured Party as secured party, or any correction statement with respect thereto, is filed in any jurisdiction by any party other than the Secured Party or its counsel without the prior written consent of the Secured Party.

Exhibit "C"

FLORIDA SECURED TRANSACTION REGISTRY

Search Results

Today's Date: 08/10/2020
UCC Filings Completed Through: 08/05/2020

Result for **Filed Compact Debtor Name List** Search on **1944 Beach Boulevard, LLC**
Use the Previous and Next buttons to display additional search results

«PREVIOUS NEXT»

Name	UCC Number	Address	City	State	Zip Code	Status
1944 BEACH BOULEVARD, LLC	201505920319	1944 BEACH BLVD	JACKSONVILLE BEACH	FL	32250	FILED
1944 BEACH BOULEVARD, LLC	201609631674	1944 BEACH BLVD	JACKSONVILLE BEACH	FL	32250	FILED
1944 BEACH BOULEVARD, LLC	201703071415	1944 BEACH BLVD	JACKSONVILLE BEACH	FL	32250	FILED
1944 BEACH BOULEVARD LLC DBA ADVENTURE LANDING	20160640846X	1944 BEACH BOULEVARD	JACKSONVILLE BEACH	FL	32837	FILED
1944 BLANDING BOULEVARD, LLC	201805377858	2315 BEACH BLVD SUITE 203	JACKSONVILLE BEACH	FL	32250	FILED
1944 BLANDING BOULEVARD, LLC.	201807187177	2315 BEACH BLVD #203	JACKSONVILLE BEACH	FL	32250	FILED
1947 DREW ST TRUST, A LAND TRUST, MANHATTAN LAWYERS SERVICES LLC, AS TRUSTE	201804935881	1430 W BUSCH BLVD, SUITE 9	TAMPA	FL	33612	FILED
1948 BLDG LLC, A FLORIDA LIMITED LIABILITY COMPANY	201506105996	1545 NW 8 AVENUE	MIAMI	FL	33136	FILED
1948 HILLSBOROUGH AVENUE LIQUORS, INC.	201702175756	1948 E. HILLSBOROUGH AVENUE	TAMPA	FL	33610	FILED
1948 HILLSBOROUGH AVENUE LIQUORS, INC.	201702230331	1948 E HILLSBOROUGH AVENUE	TAMPA	FL	33610	FILED
1949 SW DAVIS STREET, LLC, A FLORIDA LIMITED LIABILITY COMPANY	201805596851	1272 SE LADNER STREET	PORT ST. LUCIE	FL	34983	FILED
194 NW 187 LLC	20190051607X	194 NW 187 STREET	MIAMI	FL	33131	FILED
194 NW 187 LLC	201900516185	194 NW 187 STREET	MIAMI	FL	33131	FILED
194 TRINIDAD STREET LLC, A FLORIDA LIMITED LIABILITY COMPANY	202001505998	194 TRINIDAD STREET	NAPLES	FL	34113	FILED
1950	201907850250	502 NE 43RD STREET	OAKLAND PARK	FL	33334	FILED
19501 BISCAYNE LLC	202003273296	19565 BISCAYNE BLVD #1944	AVENTURA	FL	33180	FILED
1950 LAKE WORTH, LLC	201608567255	1601 S. FEDERAL HIGHWAY	BOYNTON BEACH	FL	33435	FILED
1950 SW 7 PL, LLC	201703648518	3225 MCLEAD DRIVE , SUITE 100	LAS VEGAS	NV	82001	FILED
1951-1997 SOUTH MILITARY TRAIL, L.L.C.	201909742277	1941 S. MILITARY TRAIL	WEST PALM BEACH	FL	33415	FILED
1951-1997 SOUTH MILITARY TRAIL, L.L.C.	201909742358	1941 S. MILITARY TRAIL	WEST PALM BEACH	FL	33415	FILED

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re	)	Case Nos.: 3:19-bk-4607-CJJ through 3:19-bk-4622-CJJ
NRP LEASE HOLDINGS, LLC, et al.,	)	Chapter 11
Debtors.	)	Jointly Administered Under Case No.: 3:19-bk-4607-CJJ
1944 BEACH BOULEVARD, LLC,	)	
Plaintiff,	)	Adversary No.: 3:20-ap-71-CJJ
v.	)	
LIVE OAK BANKING COMPANY,	)	
Defendant.	)	

AFFIDAVIT OF SHELLEY A. JENKINS IN SUPPORT PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

STATE OF FLORIDA)

COUNTY OF DUVAL)

I, Shelley A. Jenkins state under oath:

1. I am a paralegal at Thames Markey & Heekin, P.A., and have personal knowledge of the facts and statements contained herein.

2. At the direction of Richard R. Thames, I was asked to conduct a UCC-1 lien search to identify potential liens against Plaintiff's assets.

3. Pursuant to that directive, I conducted a search of the Florida Secured Transaction Registry (the "Registry"), https://www.floridaucc.com/uccweb/ucc.aspx to identify any financing statements claiming a security interest in the assets held Plaintiff. I searched the Registry utilizing Plaintiff's legal name as listed on the public organic record most recently filed with the State of Florida, "1944 Beach Boulevard, LLC." The search results utilizing that criteria returned several financing statements filed against the assets of Plaintiff, but did not include the financing statements filed by Live Oak Banking Company ("Live Oak"). A copy of the results obtained from a search Florida Secured Transaction Registry's website, utilizing Plaintiff's correct legal name, is attached hereto as **Exhibit A**.

FURTHER AFFIANT SAYETH NOT.

Dated: August 6, 2020.

Shelley A. Jenkins

ACKNOWLEDGMENT

STATE OF FLORIDA)

COUNTY OF DUVAL)

The foregoing instrument was sworn to and acknowledged before me this 10th day of August, 2020, by Shelley A. Jenkins, who is [X] personally known to me or [ ] who has produced _____ as identification.

Brenda Chobanian
Notary Public, State of Florida
Name: Brenda Chobanian
My Commission Expires: _____
My Commission Number is: _____

1027

BRENDA CHOBANIAN
MY COMMISSION # GG 308214
EXPIRES: September 23, 2020
Bonded Thru Notary Public Underwriters

Exhibit "A"

FLORIDA SECURED TRANSACTION REGISTRY

Search Results

Today's Date: 08/10/2020
UCC Filings Completed Through: 08/05/2020

Result for **Filed Compact Debtor Name List** Search on **1944 Beach Boulevard, LLC**
Use the Previous and Next buttons to display additional search results

«PREVIOUS NEXT »

Name	UCC Number	Address	City	State	Zip Code	Status
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1950 SW 7 PL, LLC	201703648518	3225 MCLEAD DRIVE , SUITE 100	LAS VEGAS	NV	82001	FILED
1951-1997 SOUTH MILITARY TRAIL, L.L.C.	201909742277	1941 S. MILITARY TRAIL	WEST PALM BEACH	FL	33415	FILED
1951-1997 SOUTH MILITARY TRAIL, L.L.C.	201909742358	1941 S. MILITARY TRAIL	WEST PALM BEACH	FL	33415	FILED

Dated: November 20, 2020

ORDERED.

Jerry A. Funk
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

NRP LEASE HOLDINGS, LLC et al.,

Case No.: 3:19-bk-04607-JAF through 3:19-bk-4622-JAF

Chapter 11
Jointly Administered under
Case No.: 3:-19-bk-04607-JAF

Debtors.
_____/

1944 BEACH BOULEVARD, LLC

Plaintiff,

Adversary Pro: 3:20-ap-71-JAF

v.

LIVE OAK BANKING COMPANY,

Defendant
_____/

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND GRANTING DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT

This Proceeding is before the Court on the Motion for Summary Judgment (the "Motion") filed by the Plaintiff, 1944 Beach Boulevard, LLC (Doc. 10), and the Cross Motion for Summary

Judgment (the "Cross Motion") filed by the Defendant, Live Oak Banking Company (Doc. 15). For the reasons stated herein, the Court will deny the Plaintiff's Motion and grant the Defendant's Cross Motion.

Background

On December 5, 2019, the Plaintiff and its affiliated businesses filed petitions for relief under Chapter 11 of the United States Bankruptcy Code.[1] The Plaintiff is a limited liability company organized under the laws of the State of Florida. (Doc. 10, p. 2). The Plaintiff's legal name, as listed on the public record with the State of Florida, is 1944 Beach Boulevard, LLC.[2] Id. The Plaintiff operates a family entertainment center in Jacksonville, Florida under the trade name "Adventure Landing." Id. The attractions at Adventure Landing include miniature golf, laser tag, arcade games, batting cages, go-carts, miniature roller coasters, and waterslides. Id.

As of the petition date, the Plaintiff and its affiliates were jointly and severally liable to the Defendant on two loans guaranteed by the U.S. Small Business Administration for approximately $3,000,000.00. Id. at 3. As described in the UCC-1 Financing Statements filed by the Defendant with the Florida Secured Transaction Registry (the "Registry") in January of 2016, the two loans purport to be secured by a blanket lien on all of the Plaintiff's assets.[3] (Doc. 11).

The Plaintiff alleges that the Financing Statements are defective because they improperly identify the Debtor as "1944 Beach Blvd., LLC" instead of "1944 Beach Boulevard, LLC" as listed in the Articles of Organization filed with the Florida Secretary of State. Affidavits in support of the Motion were filed by Harry P. Woodburn III, the manager of the Plaintiff, and Shelley A.

[1] NRP Lease Holdings, LLC is a regional family entertainment business, which manages 14 entertainment facilities in Florida, North Carolina, New York, Kansas, Ohio, Texas, and Missouri.

[2] The Plaintiff's legal name has not changed since its formation in 2004.

[3] The loans are identified as SBA Loan Nos. 81146450-00 and 81145550-08. (Def.'s Composite Ex. A).

Jenkins, a paralegal at Thames Markey & Heekin, P.A. (Docs. 11, 12). The affidavits state that when the Registry was searched utilizing the Plaintiff's correct name, "1944 Beach Boulevard, LLC," the Financing Statements filed by the Defendant were not contained in the results. Id.

The Defendant maintains that the UCC Financing Statements are not defective as a matter of law and are effective to perfect its security interest in the collateral. Attached to the Defendant's Cross Motion are three declarations which attest that, when conducting a search of the Registry under the debtor name "1944 Beach Boulevard, LLC," the following search results appear:

> On the 1st page of the search results, there is a "[<<PREVIOUS]" command tab and a "[NEXT>>]" command tab, and above the command tabs there is a statement that advises the searcher to "[u]se the Previous and Next buttons to display additional results."
>
> Upon clicking the blue "<<PREVIOUS" command tab on the search results screen just one (1) time, I found two (2) UCC Financing Statements that identify "1944 Beach Blvd., LLC" as the debtor. In fact, they are the very first two entries that appear immediately before three (3) other financing statements for "1944 Beach Boulevard, LLC," due to the fact that the search results are displayed in alphabetical order.[4]

The declaration of Mr. Scrivanich also states that in attempting to compare the Registry search to other state UCC filing searches, the other search system options are "much different than in Florida."[5] (Doc. 15-3).

Summary Judgment Standard

"[S]ummary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as

[4] The declarations were filed by Annalise DeLuca, an attorney at McMichael Taylor & Gray, LLC; Ezra Scrivanich, an attorney at McMichael Taylor & Gray, LLC, and Michele Grant, a paralegal at McMichael Taylor & Gray, LLC. (Docs. 15-1-15-3).

[5] Mr. Scrivanich's declaration states that he attempted to conduct UCC filing searches in Georgia, Utah, and Texas. (Doc. 15-3).

to any material fact and that the moving party is entitled to a judgment as a matter of law."[6] Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986) (internal quotations omitted). The court's role is not to try issues of fact, but to determine whether fact issues exist to be tried. Balderman v. U.S. Veterans Admin., 870 F.2d 57, 60 (2d Cir. 1989). "The moving party bears the initial burden to show ... by reference to materials on file, that there are no genuine issues of material fact that should be decided at trial." Clark v. Coats & Clark, Inc., 929 F.2d 604, 608 (11th Cir. 1991). "Only when that burden has been met does the burden shift to the non-moving party to demonstrate that there is indeed a material issue of fact that precludes summary judgment." Id. A moving party discharges its burden on a motion for summary judgment by "'showing' that is, pointing out ... that there is an absence of evidence to support the nonmoving party's case." Celotex Corp., 477 U.S. at 325. In determining whether the movant has met this initial burden, "the court must view the movant's evidence and all factual inferences arising from it in the light most favorable to the nonmoving party." Allen v. Tyson Foods, Inc., 121 F.3d 642, 646 (11th Cir. 1997). "If reasonable minds could differ on the inferences arising from undisputed facts, then a court should deny summary judgment." Miranda v. B & B Cash Grocery Store, Inc., 975 F.2d 1518, 1534 (11th Cir. 1992).

Analysis

The issue before the Court is whether the Financing Statements filed by the Defendant are effective to perfect its security interest in the collateral of the Plaintiff. Under 11 U.S.C. § 544(a), the Trustee is provided with the rights of a hypothetical creditor and has the authority to seek the

[6] Federal Rule of Civil Procedure 56 is applicable to bankruptcy proceedings pursuant to Federal Rule of Bankruptcy Procedure 7056. Granting summary judgment is appropriate if, based upon the materials in the record, "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(a).

avoidance of unperfected security interests.[7] In re Summit Staffing Polk Cty., Inc., 305 B.R. 347, 350 (Bankr. M.D. Fla. 2003). The perfection of a security interest in Florida occurs only when a financing statement is filed in the appropriate place.[8] Fla. Stat. § 679.5011. In Florida, all financing statements must be filed with the Registry. Fla. Stat. § 679.5011(1)(b). To be considered sufficient for perfection, the financing statement must provide the following information: (1) the name of the debtor; (2) the name of the secured party; and (3) the collateral covered. Fla. Stat. § 679.5021(1). Importantly, financing statements are indexed by debtor name because the name is essential to locate the financing statement. Fla. Stat. § 679.5031 cmt. 2.

Section 679.5031 of the Florida Statutes sets forth the procedure to properly list a debtor's name. The statute provides that the requirement for a debtor which is a registered organization[9] is met "only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized." Fla. Stat. §679.5031(1)(a). However, Florida law also contains a safe harbor provision which provides:

> A financing statement substantially complying with the requirements [of Section 679.5031] is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

Fla. Stat. § 679.5061(1) (the "Safe Harbor provision"). A financing statement is effective to perfect a creditor's security interest, "[i]f a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose" the creditor's financing statement. Fla. Stat. § 679.5061(2). "Conversely, an erroneous debtor name

[7] In Chapter 11 cases where no trustee is appointed, § 1107(a) of the Bankruptcy Code provides that the debtor-in-possession enjoys the powers that would otherwise vest in the bankruptcy trustee. See 11 U.S.C. § 1107(a); In re G-I Holdings, Inc., 313 B.R. 612, 627 (Bankr. D.N.J. 2004).

[8] There are certain exceptions that may apply, but none of those exceptions are applicable in this proceeding.

[9] The term "registered organization" includes corporations, limited partnerships, and limited liability companies. Fla. Stat. § 679.5031 cmt. 2.

makes a financing statement 'seriously misleading' and precludes perfection if a search under the debtor's correct name would not disclose the financing statement." In re John's Bean Farm of Homestead, Inc., 378 B.R. 385, 388 (Bankr. S.D. Fla. 2007).

Accordingly, if a search of the Registry's records under the name "1944 Beach Boulevard, LLC," using the Registry's standard search language, would disclose the Financing Statements showing "1944 Beach Blvd., LLC" as the debtor, the Financing Statements are not seriously misleading.

Plaintiff's affidavits attest that the Financing Statements are not displayed in the results when a search of the Registry's website, utilizing the Plaintiff's correct name "1944 Beach Boulevard, LLC," is conducted. According to Defendant's declarations, in order to locate the Financing Statements (which identify "1944 Beach Blvd., LCC" as the Debtor), a searcher who types in "1944 Beach Boulevard, LLC" must then click the "<<PREVIOUS" command tab on the search results one time. As the search results are displayed in alphabetical order, the results for "1944 Beach Blvd., LLC" are the first two entries that appear immediately before three other financing statements for "1944 Beach Boulevard, LLC." The Defendant asserts that, because the Financing Statements can be found within one page, they are not seriously misleading.

As a starting point, it is important to explain how the online database in the Registry works. When a debtor's name is entered into the search engine, an alphabetical list with twenty names is displayed. If the debtor's actual name is found, it will appear at the top of the list. If the search does not produce the debtor's name, the nearest match is at the top of the alphabetical list. There is a "Previous" command arrow at the top of the list, with the statement "Use the Previous and Next buttons to *display additional search results*." (Emphasis added). To locate the immediately preceding names on the alphabetical list, a searcher must click the "Previous" command arrow.

In support of its position, the Defendant cites to In re Summit Staffing Polk Cty., Inc., 305 B.R. 347 (Bankr. M.D. Fla. 2003). There the court found that a searcher should "certainly" utilize the previous and next buttons to display additional search results. However, the court also qualified this finding by stating:

> Although it is *clear* that a searcher should check the *immediately preceding names* as well as the *immediately succeeding names* on an alphabetical list if there is not an exact match of the debtor's correct name, the issue of "reasonableness" develops at some point because the listing is an alphabetical listing.

Id. at 354 (emphasis added). In reaching this determination, the court in Summit recognized that revised Article 9 requires greater accuracy in filing and removes some of the burden placed on searchers under the former law. The court noted that revised Article 9 "rejects the duty of a searcher to search using any names other than the name of the debtor indicated on the public record of the debtor's jurisdiction of organization."[10] Id. at 355. The court in Summit concluded by stating,

> Although Revised Article 9 *does not require* that a searcher exercise reasonable diligence in the *selection of the names to be searched* or the *number of searches to conduct*, the revisions to Article 9 *do not entirely remove the duty imposed on a searcher to be reasonably diligent*. One who searches the filings of a state must examine the results of a proper search with *reasonable diligence*. A searcher is *not* required to conduct *multiple searches*; however, a searcher must *reasonably examine the results of the proper search using the debtor's correct name* to determine if any financing statements relating to the debtor are disclosed by that search.
>
> In Florida, where the results of a search produce an alphabetical listing of debtors, a searcher is still required to use reasonable diligence in examining the results of the search. If a reasonably diligent searcher would find the erroneous financing statement among the results of a proper search, then notice of the financing statement has been provided. Such a

[10] Section 679.402 of the Florida Statutes, which was repealed in 2002, imposed a duty on searchers to be reasonably diligent. This led to disagreement among courts as to what constituted a reasonably diligent search.

> financing statement meets the requirements of section 679.5061(3) and is not seriously misleading.

Id. (emphasis added). Based on the reasoning in Summit, the Defendant maintains that its UCC Financing Statements are not "seriously misleading" since both of the statements that identify "1944 Beach Blvd., LLC" as the debtor can be located by clicking the "<<PREVIOUS" command tab only one time.

The Plaintiff argues that the requirements of § 679.5031 are to be strictly construed because the Registry's online database is an electronic search system indexed by the debtor's name, and if the debtor's name is listed improperly, the financing statement may not be found because the system will not adjust for misspellings or provide intelligently augmented search results.

In the primary case the Plaintiff relies upon, the financing statement was found by striking the "previous" command *sixty* (60) times. In re John's Bean Farm of Homestead, Inc., 378 B.R. 385 (Bankr. S.D. Fla. 2007). The court in John's Bean found that Fla. Stat. Section 679.5061 is unambiguous, and "there is no implicit or explicit obligation of a searcher" to go beyond the search result of "a single page on which names appear." Id. At 395. Further, in ruling that the Safe Harbor provision did not apply, the court stated that the creditor's argument that his financing statement was not seriously misleading, "notwithstanding that it was listed 60 pages prior to the displayed search result," was in essence asking the court to "apply a meaning to the Safe Harbor provision that is 'clearly absurd.'" Id. The court concluded by stating,

> Such an interpretation would eviscerate the purpose of the statute—that is, to create a framework for the perfection of security interests that is less arbitrary, that includes statutory guidance for simplifying the search, while allowing for "minor" errors.
>
> Accordingly, if I am incorrect, and in fact, the Florida search result includes more than the initial page displayed, then, in order to interpret section 679.5061 so as to avoid an absurd result, I would be compelled alternatively to hold, as did Chief Judge Glenn, that there is a reasonable

> limit to the search, which I find is no more than one page "previous" or "next" from the initial result screen. Since Klein's financing statement appears 60 pages from the initial display, not one page, it is seriously misleading.

John's Bean, 378 B.R. at 395–96.

Although the courts in Summit and John's Bean reached different conclusions as to what is required under Revised Article 9, both courts issued well thought out opinions that are instructive on the issue. Upon considering the reasoning set forth in both decisions, the Court must first determine whether Florida's standard search logic leads to the result of only a single page on which twenty names appear or includes more than the initial page displayed.[11] Upon review, the Court finds the search logic includes more than the initial page displayed. Specifically, on the UCC Search page for the Registry's website, there is a link directly under the blue "SEARCH" button which states: "Click here to see the details of the search logic used on this website."[12] When the user clicks on the "SEARCH" button, the user is directed to a page titled: UCC Debtor Name Compaction and Search Rules Prepared by the Florida Department of State.[13] Under the heading "Search Rules" is the following explanation of the search program:

> The name list search program will compact the name entered according to the rules stated above. The program will then provide a list of names (with additional information) beginning with the name whose compact key is equal to or greater than the compacted version of the search name entered. A list of names (currently 20) is displayed for the user to select to see the detail record.

[11] The Plaintiff cites other cases in support of its position that even minimal errors can lead to financing statements being deemed ineffective. However, those cases are from different states, and the Court's focus is the search system in Florida's Secured Transaction Registry. For example, the declaration filed by Mr. Scrivanich states that Georgia's search system is very different from Florida's as one can conduct a "Stem Search" under a name rather than using the exact debtor name. There is also an option for the searcher to display up to 100 results per page. (Doc. 15-3).

[12] This information can be located at https://www.floridaucc.com/uccweb/search.aspx.

[13] The Court may take judicial notice of the Registry website. Fed. R. Evid. 201. A court ruling on summary judgment may rely on judicially noticed facts. See Accord Brown v. Brock, 169 F. App'x 579 (11th Cir. 2006).

> The *user may select to move forward or backward* in the name list in compact name order. If this option is chosen, the screen will display the next or prior list of names in compact order. (emphasis added).[14]

Based on the above explanation, the Court finds that the Florida search result appears to include more than the initial page displayed. Importantly, the explanation references the option that a user may select to move forward or backward in the list. The explanation also states that *currently* there is a list of 20 names displayed.[15]

The Court finds that the Financing Statements filed by the Defendant fall within the Safe Harbor provision of Fla. Stat. Section 679.5061(1) because the Registry's standard search logic discloses the Financing Statements on the page immediately preceding the initial page on the Registry's website. In making this determination, the Court notes that the search rules provided by the Florida Department of State specify that a user may move forward or backward in the name list, and a searcher only has to hit the "<<PREVIOUS" command tab once to find the Defendant's Financing Statements. However, the Court cautions that, as the list is in alphabetical order, the likelihood that an error is minor and falls within the Safe Harbor provision decreases the further removed a search is from the initial search page. As indicated by the court in Summit, there is a reasonable limit to the search.

Conclusion

For the reasons discussed above, the Court finds the Defendant's Financing Statements are not seriously misleading and are effective to perfect the Defendant's security interest in all of the

[14] The Court does not know if this information was provided on the Registry's website when John's Bean was decided over a decade ago. See John's Bean, 378 B.R. at 395 (stating that "[n]othing in the Registry's information page mentions the use of the 'previous' or 'next' page key in connection with conducting a search using the search criteria").

[15] The use of the word "currently" implies that the number of names displayed on the first page is not permanently set to 20 names being displayed.

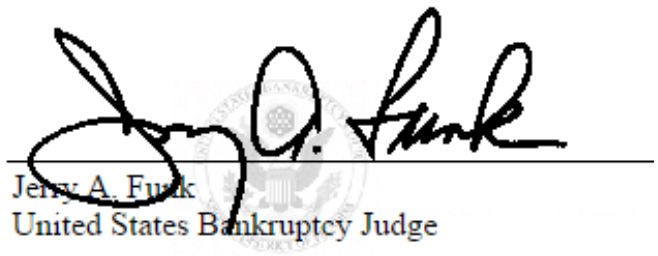
Plaintiff's assets. Accordingly, the Court will deny the Plaintiff's Motion for Summary Judgment and grant the Defendant's Cross Motion for Summary Judgment. It is

ORDERED:

1. The Plaintiff's Motion for Summary Judgment is denied.
2. The Defendant's Cross Motion for Summary Judgment is granted. The Court will enter a separate judgment consistent with this Order.

Dated: November 23, 2020

ORDERED.



Jerry A. Funk
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

NRP LEASE HOLDINGS, LLC et al.,

Case No.: 3:19-bk-04607-JAF through 3:19-bk-4622-JAF

Chapter 11
Jointly Administered under
Case No.: 3:-19-bk-04607-JAF

Debtors.
_____/

1944 BEACH BOULEVARD, LLC

Plaintiff,

Adversary Pro: 3:20-ap-71-JAF

v.

LIVE OAK BANKING COMPANY,

Defendant
_____/

JUDGMENT

This Proceeding is before the Court on the Complaint to Determine Validity, Priority and Extent of Lien and to Avoid the Same Pursuant to 11 U.S.C. § 544, filed by 1944 Beach Boulevard,

LLC. Upon the Court's Order Denying Plaintiff's Motion for Summary Judgment and Granting Defendant's Cross-Motion for Summary Judgment separately entered in this proceeding, it is

ORDERED AND ADJUDGED:

1. The Court enters Judgment on the Complaint in favor of the Defendant, Live Oak Banking Company, and against the Plaintiff, 1944 Beach Boulevard, LLC.
2. The Defendant's Financing Statements are effective to perfect the Defendant's security interest in all of the Plaintiff's assets.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re: NRP Lease Holdings, LLC, et al.,

Debtors.

Bankruptcy Case No. 3:19-bk-4607-JAF through 3:19-bk-4622-JAF
Adversary No. 3:20-ap-71-JAF

1944 BEACH BOULEVARD, LLC,

Appellant,

v.

Case No. 3:20-cv-1344-TJC

LIVE OAK BANKING COMPANY,

Appellee.

ORDER

This bankruptcy appeal is before the Court following the timely appeal by appellant 1944 Beach Boulevard, LLC, of the United States Bankruptcy Court's Order and Judgment in an adversary proceeding denying appellant's motion for summary judgment and granting appellee's cross-motion for summary judgment. The parties filed briefs in support of their respective positions. Docs. 7 & 11.

The Court is sitting in an appellate capacity. It therefore reviews the bankruptcy court's legal conclusions de novo and its factual findings for clear error. See, e.g., In re Yerian, 927 F.3d 1223, 1227 (11th Cir. 2019) (citation

and quotation omitted). The bankruptcy court's interpretation of a statute is reviewed de novo. Kehoe v. Fidelity Fed. Bank & Trust, 421 F.3d 1209, 1211 (11th Cir. 2005).

Applying these standards, and upon careful consideration of the briefs and record on appeal, for the reasons stated in the bankruptcy court's opinion, the Court concludes the bankruptcy court committed no errors of law and made no clearly erroneous factual findings. Accordingly, it is hereby

ORDERED:

The United States Bankruptcy Court's November 20, 2020 Order Denying Plaintiff's Motion for Summary Judgment and Granting Defendant's Cross-Motion for Summary Judgment and November 23, 2020 Judgment in favor of appellee, Live Oak Banking Company, and against appellant 1944 Beach Boulevard, LLC, are **AFFIRMED**. The Clerk shall close the file.

DONE AND ORDERED in Jacksonville, Florida this 19th day of May, 2021.

Timothy J. Corrigan

TIMOTHY J. CORRIGAN
United States District Judge

s.
Copies:

Honorable Jerry A. Funk
United States Bankruptcy Judge

Counsel of record

[PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 21-11742

Non-Argument Calendar

In Re: NRP LEASE HOLDINGS, LLC, et al.,

Debtors.

1944 BEACH BOULEVARD, LLC,

Plaintiff-Appellant,

versus

LIVE OAK BANKING COMPANY,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

D.C. Docket No. 3:20-cv-01344-TJC

Before NEWSOM, LAGOA, and ANDERSON, Circuit Judges.

LAGOA, Circuit Judge:

1944 Beach Boulevard, LLC, a debtor in possession, filed a complaint to avoid Live Oak Banking Company's blanket lien on all of its assets. The bankruptcy court denied Beach Boulevard's motion for summary judgment and granted Live Oak's cross-motion for summary judgment, concluding that Live Oak had perfected its security interest, notwithstanding defects in its financing statements. The district court affirmed the bankruptcy court.

The issues in this appeal are based solely on Florida statutory law relating to the perfection of security interests. In Florida, a creditor's financing statement that does not list the debtor's correct name is, as a matter of statutory prescription, "seriously misleading" and therefore ineffective to perfect the creditor's security interest. Fla. Stat. § 679.5061(2). There is no dispute that Live Oak's financing statements did not list Beach Boulevard's correct name. Florida Statute § 679.5061(3), however, establishes a safe harbor for defective financing statements, and whether Live Oak perfected its

security interest depends upon whether its financing statements fall within that statutory safe harbor.

This is a question of significant importance affecting creditors and debtors located or doing business in Florida, and at least two lower courts, applying Florida law, have reached different conclusions regarding the application of the statutory safe harbor. Principles of comity and federalism instruct us that "[b]ecause the only authoritative voice on [Florida] law is the [Florida] Supreme Court, it is axiomatic that that court is the best one to decide issues of [Florida] law." *Blue Cross & Blue Shield of Ala., Inc. v. Nielsen*, 116 F.3d 1406, 1413 (11th Cir. 1997). We therefore respectfully certify this issue of Florida law discussed below to the highest court of that state.

I. FACTUAL AND PROCEDURAL BACKGROUND

This case comes to us from a bankruptcy proceeding under Chapter 11 of the United States Bankruptcy Code. In a bankruptcy proceeding, trustees are sometimes appointed to manage and administer the debtor's estate. Title 11 U.S.C. § 544(a) grants a bankruptcy trustee the status of a hypothetical lien creditor "who has completed the legal process for perfection of its lien upon all property available for the satisfaction of its claim against the debtor," thereby taking priority over all unperfected security interests. *In re Summit Staffing Polk Cnty., Inc.*, 305 B.R. 347, 350 (Bankr. M.D. Fla. 2003). Where a trustee is not appointed, a debtor—referred to as a debtor in possession—continues to manage and administer its estate during the proceedings. By virtue of 11 U.S.C. § 1107, a

debtor in possession, such as Beach Boulevard, generally has the rights and powers of a bankruptcy trustee. *In re Int'l Yacht & Tennis, Inc.*, 922 F.2d 659, 661 (11th Cir. 1991).

Beach Boulevard is a limited liability company organized under the laws of Florida and operates a family entertainment center in Jacksonville, Florida, known as "Adventure Landing." On December 5, 2019, Beach Boulevard and its affiliated businesses filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code.

As of the petition date, Beach Boulevard and its affiliates were jointly and severally liable to Live Oak on two loans guaranteed by the U.S. Small Business Administration, totaling approximately $3,000,000.00. The two loans purport to be secured by a blanket lien on all of Beach Boulevard's assets. Attempting to perfect its security interests in these assets, Live Oak filed two UCC-1 Financing Statements with the Florida Secured Transaction Registry (the "Registry"). These filing statements identify the debtor as "1944 Beach Blvd., LLC," instead of its legal name, "1944 Beach Boulevard, LLC," as listed in the articles of organization filed with the Florida Secretary of State.

In its complaint, Beach Boulevard asserted that Live Oak's UCC-1 financing statements were "seriously misleading" and therefore unperfected, and that Beach Boulevard could use its power as a hypothetical lien creditor to avoid Live Oak's lien on its assets. The sole basis for Beach Boulevard's claim is that the financing statements failed to sufficiently "provide the name of the

debtor," as required by Florida law, because they abbreviated "Boulevard" to "Blvd." Beach Boulevard claimed that, because of this mistake, a search of the Registry under its correct legal name, "1944 Beach Boulevard, LLC," did not reveal the existence of Live Oak's asserted liens. In addition to the allegations in its complaint, Beach Boulevard submitted affidavits to this effect in support of its motion for summary judgment.

Live Oak answered the complaint and asserted its affirmative defenses. In pertinent part, Live Oak asserted that its financing statements substantially complied with Florida law and that abbreviating "Boulevard" to "Blvd." was a minor error or omission that does not render the financing statements defective or seriously misleading. Live Oak pointed out that, while its liens do not appear on the first page of results for a search in the Registry under "1944 Beach Boulevard, LLC," the search results are displayed in alphabetical order and "merely clicking the blue '<<PREVIOUS' tab one time" will reveal the existence of its liens. Thus, Live Oak claimed that the filing statements were not "seriously misleading" because they can be found within one page of the initial search results.

After Beach Boulevard filed its motion for summary judgment, Live Oak filed its cross-motion and attached three declarations attesting that a search of the Registry under the debtor name "1944 Beach Boulevard, LLC," produces the following:

> On the 1st page of the search results, there is a "Previous" command tab and a "Next" command tab, and

> above the command tabs there is a statement that advises the searcher to "[u]se the Previous and Next buttons to display additional results." . . .
>
> Upon clicking the blue "<<PREVIOUS" command tab on the search results screen just one (1) time, I found two (2) UCC Financing Statements that identify "1944 Beach Blvd., LLC" as the debtor. In fact, they are the very first two entries that appear immediately before three (3) other financing statements for "1944 Beach Boulevard, LLC," due to the fact that the search results are displayed in alphabetical order. . . .

Live Oak also attached a declaration that attested to the uniqueness of Florida's Registry compared to other states' filing search systems.

The bankruptcy court denied Beach Boulevard's motion for summary judgment and granted Live Oak's cross-motion for summary judgment. Relying on two bankruptcy court decisions, *In re Summit Staffing Polk County, Inc.*, 305 B.R. 347 (Bankr. M.D. Fla. 2003), and *In re John's Bean Farm of Homestead, Inc.*, 378 B.R. 385 (Bankr. S.D. Fla. 2007), the bankruptcy court determined that Live Oak's financing statements fell "within the Safe Harbor provision of Fla. Stat. Section 679.5061(1) because the Registry's standard search logic discloses the Financing Statements on the page immediately preceding the initial page on the Registry's website." The bankruptcy court therefore concluded that the financing statements "are not seriously misleading and are effective to perfect [Live Oak's] security interest in all of [Beach Boulevard's] assets."

The bankruptcy court then entered judgment in favor of Live Oak on the complaint.

Sitting in an appellate capacity, the district court affirmed the bankruptcy court's order without discussion of the issues in the case, stating that the bankruptcy court "committed no errors of law and made no clearly erroneous factual findings." This appeal ensued.

II. ANALYSIS

On appeal, Beach Boulevard argues that the district court erred in affirming the bankruptcy court's order granting summary judgment to Live Oak. It contends that Live Oak's financing statements were seriously misleading as a matter of law because a search of the Registry under its legal name would not produce the defective financing statements on the first page of results, but rather would require a searcher to click to the preceding page.

A. Perfection of Security Interests Under Florida Law

Under 11 U.S.C. § 544(a), the trustee in a bankruptcy case is granted the status of a hypothetical lien creditor and may avoid any lien that is not properly perfected under state law as of the petition date. And, under 11 U.S.C. § 1107, a debtor in possession, such as Beach Boulevard, generally has the rights, powers, and duties of a bankruptcy trustee. *In re Int'l Yacht & Tennis*, 922 F.2d at 661.

As directed by § 544(a), we look to state law—here, Florida—to determine whether Live Oak perfected its security interest in Beach Boulevard's assets. *In re Summit Staffing*, 305 B.R. at 350.

Florida has adopted Article 9 of the Uniform Commercial Code, which governs secured transactions, including perfection of security interests. *See* Fla. Stat. ch. 679; *In re Summit Staffing*, 305 B.R. at 350. In Florida, a lien creditor takes priority over the rights of a holder of any unperfected security interest. Fla. Stat. § 679.3171(1)(b)(1) ("A security interest . . . is subordinate to the rights of: . . . a person who becomes a lien creditor before the . . . security interest . . . is perfected"). To perfect a security interest, a creditor must file a "financing statement" with the Registry. *Id.* § 679.5011. A financing statement must provide three pieces of information to be considered sufficient for perfection: (1) the name of the debtor; (2) the name of the secured party; and (3) a description of the collateral covered by the financing statement. *Id.* § 679.5021(1).

A financing statement that substantially complies with the statutory requirements "is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading." *Id.* § 679.5061(1). As it relates to the debtor name requirement, Florida law expressly provides that "a financing statement that fails sufficiently to provide the name of the debtor in accordance with [Florida law] is seriously misleading" and therefore ineffective to perfect a security interest. *Id.* § 679.5061(2).

In the case of Beach Boulevard, an LLC organized under Florida law, the debtor's name listed on a financing statement is sufficient "*only* if the financing statement provides the name that

is stated to be the registered organization's name on the public organic record most recently filed with [the Florida Department of State]." *Id.* § 679.5031(1)(a) (emphasis added). The Florida Department of State's Division of Corporations maintains an online index of the legal names of all entities authorized to transact business in Florida. *See* Sunbiz.org, https://dos.myflorida.com/sunbiz/ (last visited Nov. 18, 2021). Using this index, a creditor need only confirm the correct name on the Sunbiz.org website and copy it into the financing statement.

Florida law also provides a narrow safe-harbor provision relating to the debtor's name requirement:

> If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with [the statute], the name provided does not make the financing statement seriously misleading.

Id. § 679.5061(3). Florida's statutory regime, then, is that any deviation from a debtor's legal name in a financing statement renders the statement "seriously misleading" as a matter of law (and thus ineffective to perfect the security interest), unless performing a search of the Registry using the debtor's correct legal name and the Registry's standard search logic would disclose the defective statement.

B. Perfection, Then and Now

Under the previous iteration of Article 9, as adopted by Florida and repealed in 2002, *see In re Summit Staffing*, 305 B.R. at 350 & n.1, a financing statement that substantially complied with the requirements of the statute would be effective, notwithstanding minor errors that were not seriously misleading, *see* Fla. Stat. § 679.402(6)–(7) (2001) (repealed). But the old statute provided no definition of "seriously misleading." *In re John's Bean Farm*, 378 B.R. at 389. Absent a statutory definition, courts eventually adopted a "reasonably diligent searcher" standard to determine whether an error in the debtor's name was seriously misleading. *Id.* This standard "required the reviewing court to determine, on a case-by-case basis, whether a hypothetical reasonable searcher would have been able to discover the non-conforming financing statement despite the error in a debtor's name." *Id.* The standard thus asked courts to "second-guess what searchers should or should not have been able to discover had they tried hard enough." *Id.* (quoting Margit Livingston, *"A Rose by Any Other Name Would Smell as Sweet" (or Would It?); Filing and Searching in Article 9's Public Records*, 2007 B.Y.U. L. Rev. 111, 124 (2007)). Unsurprisingly, this flexible, fact-intensive standard "created extensive litigation and fragmented or contradictory decisions." *Id.*

When Florida adopted revised § 9-506 of the UCC, as Florida Statute § 679.5061, the Florida Legislature abrogated the judicially-created "reasonably diligent searcher" standard. Looking at the plain language of section 679.5061, the rule is clear: a financing statement with the debtor's incorrect legal name is effective only if

a search of the Registry using the debtor's correct name and the Registry's standard search logic produces that financing statement. If the financing statement with the debtor's incorrect name is not produced after this search, then the financing statement is ineffective as a matter of law. *Id.* § 679.5061(2)–(3).

As noted by two bankruptcy courts, Florida's adoption of this revision to Article 9 of the UCC puts the burden on the filing creditor to include the debtor's correct legal name in its financing statement and removes the burden from searchers to conduct multiple searches. *See In re John's Bean Farm*, 378 B.R. at 390 ("Post-revision case law is fairly well settled that the burden is squarely on the creditor to correctly identify the name of the debtor."); *In re Summit Staffing,* 305 B.R. at 354–55 ("The revisions to Article 9 remove some of the burden placed on searchers under the former law, and do not require multiple searches using variations on the debtor's name. . . . Revised Article 9 rejects the duty of a searcher to search using any names other than the name of the debtor indicated on the public record of the debtor's jurisdiction of organization."). As discussed below, however, these courts disagree about what a "search" means for purposes of the statutory safe harbor.

C. The Live Oak Financing Statements

It is undisputed that Live Oak's financing statements do not appear on the initial page of twenty names generated by a Registry search using Beach Boulevard's correct legal name, but that they do appear on an immediately preceding page. The user can view that preceding page by clicking the "PREVIOUS" command tab on

the screen displaying the page listing the twenty names, and above the tab is the statement, "[u]se the Previous and Next buttons to display additional results." Beach Boulevard contends that the initial page of twenty names is both the beginning and the end of the "seriously misleading" inquiry, while Live Oak contends that it is just the beginning and that its financing statement appearing on the preceding page falls into the statutory safe harbor.

A more detailed description of the Registry is helpful, as the statutory safe harbor is expressly based on the Registry's structure and search logic. The Registry is Florida's "centralized Uniform Commercial Code (UCC) filing and retrieval system containing initial financing statements, amendments, assignments, and other UCC filings as authorized by Florida Statutes Chapter 679." *See* Florida Secured Transaction Registry, https://www.floridaucc.com/uccweb/ (last visited Nov. 18, 2021). In its order below, the bankruptcy court described the mechanics of a Registry search:

> When a debtor's name is entered into the search engine, an alphabetical list with twenty names is displayed. If the debtor's actual name is found, it will appear at the top of the list. If the search does not produce the debtor's name, the nearest match is at the top of the alphabetical list. There is a "Previous" command arrow at the top of the list, with the statement "Use the Previous and Next buttons to *display additional search results*." To locate the immediately

> preceding names on the alphabetical list, a searcher must click the "Previous" command arrow.

(emphasis in original). Turning to the search rules, the bankruptcy court explained that the Registry provides the following explanation of its search program:

> The name list search program will compact the name entered according to the rules stated above. The program will then provide a list of names (with additional information) beginning with the name whose compact key is equal to or greater than the compacted version of the search name entered. A list of names (currently 20) is displayed for the user to select to see the detail record.
>
> The *user may select to move forward or backward* in the name list in compact name order. If this option is chosen, the screen will display the next or prior list of names in compact order.

(emphasis in original). Thus, the Registry's search logic takes a user to the point in the alphabetical list of all debtor names contained in the Registry that most closely matches the name input for the search. The search generates a page listing the twenty closest matches to the name in alphabetical order; the pages preceding and following this list of twenty names contain the entire remainder of the Registry, with the debtors' names listed in ascending and descending alphabetical order from the initial page of twenty names. Each search therefore allows a user to review using the "Previous" and "Next" command tabs, although each search may take the user

to a different "starting point" within the Registry depending on the debtor name input for the search.

In determining that Live Oak's financing statements were not seriously misleading even though they did not appear on the first page listing the twenty names generated by inputting Beach Boulevard's correct name, the bankruptcy court held that the search results "appear[] to include more than the initial page displayed." The court reached this conclusion because the explanation of the Registry's search program "references the option that a user *may* select to move forward or backward in the list" and "[t]he explanation also states that *currently* there is a list of 20 names displayed." (first emphasis added).

In a case with almost identical facts, another bankruptcy court sitting in the Middle District of Florida held that a defective filing statement is not seriously misleading if a search of the Registry under the debtor's correct name would produce the defective statement on the page preceding the initial search results; that is, searchers have a duty to "check the immediately preceding names as well as the immediately succeeding names on an alphabetical list if there is not an exact match of the debtor's correct name." *In re Summit Staffing*, 305 B.R. at 354–55. In *In re Summit Staffing*, the creditor failed to update its financing statements when the debtor incorporated. *Id.* at 349. The financing statements listed "Randy A. Vincent" as the debtor and "Summit Staffing" as an additional

debtor, though the legal name of the debtor was changed to "Summit Staffing of Polk County, Inc."[1] *Id.* While the defective filing statements did not appear on the first page produced by entering the debtor's name into the Registry, the court determined that

> [s]ince the name immediately following Summit Staffing of Polk County, Inc. is produced at the top of the alphabetical list, and since the filing office's directions state that the searcher should use the "Previous" command to display additional search results, clearly a searcher should check the preceding names on the alphabetical list.

Id. at 354.

The bankruptcy court in *In re Summit Staffing* further stated that it was "clear" that "a searcher should check the immediately preceding names as well as the immediately succeeding names on an alphabetical list if there is not an exact match of the debtor's correct name" because, "[a]lthough Revised Article 9 does not require that a searcher exercise reasonable diligence in the selection of the names to be searched or the number of searches to conduct,

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[1] Florida Statute § 679.508 governs the effectiveness of a financing statement where, as in *In re Summit Staffing*, a new debtor becomes bound by a security agreement entered into before its incorporation. Under this statute, a financing statement naming an original debtor will be effective unless the differences between the name of the original debtor and the name of the new debtor causes the financing statements to be seriously misleading. *Id.* § 679.508(2). The statute provides that "seriously misleading" means the same standard set forth in Florida Statute § 679.5061, the statute at issue here.

the revisions to Article 9 do not entirely remove the duty imposed on a searcher to be reasonably diligent." *Id.* at 354–55. Acknowledging that "it is conceivable that one could use the 'Previous' command to go back to the beginning of the alphabetical list," the court concluded that the "issue of 'reasonableness' develops at some point because the listing is an alphabetical listing," *Id.* at 354. Thus, while "[a] searcher is not required to conduct multiple searches," he "must reasonably examine the results of the proper search using the debtor's correct name to determine if any financing statements relating to the debtor are disclosed by that search." *Id.* at 355.

Subsequently, in *In re John's Bean Farm*, a bankruptcy court in the Southern District of Florida concluded that the *In re Summit Staffing* court simply changed the timing of the "reasonably diligent searcher" inquiry that was supposed to have been abrogated by the UCC revisions. *In re John's Bean Farm* involved financing statements filed under "John Bean Farms, Inc.," instead of the debtor's legal name, "John's Bean Farm of Homestead, Inc." 378 B.R. at 386. The financing statements at issue could only be found by clicking "previous" sixty times from the initial page produced using the Registry's search logic. *Id.* at 393. Notwithstanding the factual differences between the search results in its case and those in *In re Summit Staffing*—i.e., sixty pages away from the correct name versus one page away—the court in *In re John's Bean Farm* determined that the only page that matters for purposes of the statutory safe harbor is the initial page of results displaying twenty

names. *Id.* at 395. The court found that the statute is unambiguous, has no "reasonableness" qualifier, and establishes a bright-line rule. *Id.* As the court explained, "the very purpose of this statute was to eliminate the need for, indeed, the ability of, a judge to inject himself or herself in the determination of what is seriously misleading." *Id.* Because "Florida's standard search logic is set by statute[,] . . . [t]he search logic clearly leads to one result—a single page on which names appear." *Id.* As it was undisputed that the financing statement at issue did not appear on that page, "the financing statement [was] seriously misleading and summary judgment in the Trustee's favor [was] appropriate." *Id.*

This appeal therefore depends upon the meaning of "search" as used in the statutory phrase "a search of the records . . . using the filing office's standard search logic." The *In re John's Bean Farm* court concluded that the statutorily-established "standard search logic" generates "a single page on which [twenty] names appear" and that page constitutes the entirety of the "search" for purposes of the safe harbor. *Id.* Under that court's logic, if a financing statement with the debtor's incorrect name does not appear on that page, it is ineffective. In contrast, the *In re Summit Staffing* court concluded that the initial page of twenty names does not constitute the entirety of the "search"; instead, the "search" consists of the entirety of the Registry, which can be scrolled to from the initial page of twenty names. *See* 305 B.R. at 354–55. And that court determined the searcher "must reasonably examine the results of the search" to determine whether it discloses a financing statement

with the debtor's incorrect legal name. *Id.* at 355. Thus, we are confronted with a fairly well-defined split over whether section 679.5061(3) establishes a bright-line rule or a more flexible, reasonableness-based regime.

The statutory reference to "standard search logic" means that the relevant "search" is limited to the results generated by use of that search logic. On the one hand, it is undisputed that the Registry's standard search logic involves a comparison of the name input by the user with the names listed in the database and the subsequent display of a single page listing the twenty names most closely matching the search name. The court in *In re John's Bean Farm* concluded that the "search" as used in section 679.5061(3) is limited to those twenty names—and only those twenty names—for purposes of the safe harbor.

On the other hand, it is also undisputed that a search using the Registry's search logic merely takes the user to a given point in the Registry database based on the debtor name input for the search. The page listing the twenty names identified based on the user's input is preceded and followed by pages listing all debtor names in the Registry database in ascending and descending alphabetical order. The initial page of twenty names states, "Use the Previous and Next buttons to display additional search results," and a user can scroll backwards and forward from the initial page and can review any financing statement in the Registry database without running any additional searches. The court in *In re Summit Staffing* therefore concluded that the "search" described in section

679.0581(3) is not limited to the initial page listing twenty names—the Registry search logic simply takes the user to the most relevant starting point to review the contents of the search.

Under this latter interpretation, every financing statement in the Registry database is part of a "search," even if the user has to scroll backwards or forwards to find it. Taken to its natural conclusion, no financing statement with the incorrect debtor's name would ever be ineffective, because each search "would disclose" every financing statement. Recognizing that "it is conceivable that one could use the 'Previous' command to go back to the beginning of the alphabetical list," the court in *In re Summit Staffing* concluded that there is a "reasonableness" component, which "develops at some point," to the user's obligation to review the search conducted under section 679.5061(3). 305 B.R. at 354. As the court in *In re John's Bean Farm* noted, this reasonableness qualifier to a search conducted pursuant to section 679.0581(3) is not found in the statutory text. 378 B.R. at 395.

All of this is to say that the existing case law contains two competing interpretations of what "search" means for purposes of the section 679.5061(3) safe harbor. Under one interpretation, the Florida Legislature adopted a bright line rule—if a financing statement with the debtor's incorrect name does not appear on the initial page of twenty names, it has not been disclosed in the search and is therefore ineffective. Under the other interpretation, which the court in this case followed, the Florida Legislature created a flexible standard under which a financing statement with the

debtor's incorrect name is effective as long as it is within a reasonable number of pages from the initial page of twenty names.

D. Certification to the Florida Supreme Court Is Appropriate

Although the facts of this case involve a single creditor and debtor, the legal principles involved may have broad effects on the citizens of Florida and those who do business with them. The rules governing secured transactions form an integral part of our modern commercial system, and uniformity in their application promotes predictability and stability in economic relationships. Allowing the development of diametrically opposed rules within the same state promotes the opposite. Moreover, the answer to how Florida's statutory safe harbor operates is exclusively one of Florida law.[2]

When faced with substantial doubt on a dispositive state law issue, our "better option is to certify the question to the state supreme court." *In re Mooney*, 812 F.3d 1276, 1283 (11th Cir. 2016)

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[2] The bankruptcy court below erred when it took into consideration other states' systems, including the fact that the search logics used by those states produce more results and were therefore more creditor friendly. For example, according to one of the declarations filed in the case, Georgia allows users to conduct a "stem search" instead of requiring the exact debtor name and allows a searcher to display up to 100 results per page. The UCC, however, contemplates that states will use different search logics, and the Florida Legislature specifically directed that the "seriously misleading" inquiry should be based on the Florida Registry's own search logic. That decision lies wholly within the Florida Legislature's prerogative.

(quoting *In re Cassell*, 688 F.3d 1291, 1300 (11th Cir. 2012)). Thus, as a matter of federalism and comity, dispositive issues of Florida law should be first presented to the Florida Supreme Court to decide. *See Blue Cross & Blue Shield of Ala.*, 116 F.3d at 1413. Indeed, "[c]ertification of state law issues to state supreme courts is a valuable tool for promoting the interests of cooperative federalism." *Id.*

We therefore certify to the Florida Supreme Court the following questions under article V, section 3(b)(6) of the Florida constitution and Florida Rule of Appellate Procedure 9.150[3]:

(1) Is the "search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic," as provided for by Florida Statute § 679.5061(3), limited to or otherwise satisfied by the initial page of twenty names displayed to the user of the Registry's search function?

(2) If not, does that search consist of all names in the filing office's database, which the user can browse

[3] Article V, section 3(b)(6) of the Florida constitution provides that the Florida Supreme Court "[m]ay review a question of law certified by the Supreme Court of the United States or a United States Court of Appeals which is determinative of the cause and for which there is no controlling precedent of the supreme court of Florida." Florida Rule of Appellate Procedure 9.150 establishes the procedure governing those discretionary proceedings to review such certified questions.

to using the command tabs displayed on the initial page?

(3) If the search consists of all names in the filing office's database, are there any limitations on a user's obligation to review the names and, if so, what factors should courts consider when determining whether a user has satisfied those obligations?

Our phrasing of these questions "is intended only as a guide." *United States v. Clarke*, 780 F.3d 1131, 1133 (11th Cir. 2015). We do not mean to restrict the Florida Supreme Court's consideration of the issues or its scope of inquiry. *See Blue Cross & Blue Shield of Ala.*, 116 F.3d at 1414. The Florida Supreme Court may, as it perceives them, restate the issues and modify the manner in which the answers are given. *Id.* Finally, should the Florida Supreme Court exercise its discretion to answer these questions, its response will be "conclusive on the issue[s] certified." *Edwards v. Kia Motors of Am., Inc.*, 554 F.3d 943, 945 (11th Cir. 2009).

III. CONCLUSION

For the foregoing reasons, we defer our decision in this case until the Florida Supreme Court has had the opportunity to consider our certified questions and determine whether to exercise its discretion in answering them. The entire record of this case, including the parties' briefs, is transmitted to the Florida Supreme Court.

QUESTIONS CERTIFIED.

The Florida Senate

2018 Florida Statutes

Title XXXIX COMMERCIAL RELATIONS	Chapter 679 UNIFORM COMMERCIAL CODE: SECURED TRANSACTIONS Entire Chapter	**SECTION 5031** **Name of debtor and secured party.**

679.5031 Name of debtor and secured party.—

(1) A financing statement sufficiently provides the name of the debtor:

(a) Except as otherwise provided in paragraph (c), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name that is stated to be the registered organization's name on the public organic record most recently filed with or issued or enacted by the registered organization's jurisdiction of organization that purports to state, amend, or restate the registered organization's name;

(b) Subject to subsection (6), if the collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the collateral is being administered by a personal representative;

(c) If the collateral is held in a trust that is not a registered organization, only if the financing statement:

1. Provides, as the name of the debtor:

a. If the organic record of the trust specifies a name for the trust, the name so specified; or

b. If the organic record of the trust does not specify a name for the trust, the name of the settlor or testator; and

2. In a separate part of the financing statement:

a. If the name is provided in accordance with sub-subparagraph 1.a., indicates that the collateral is held in a trust; or

b. If the name is provided in accordance with sub-subparagraph 1.b., provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;

(d) Subject to subsection (7), if the debtor is an individual to whom this state has issued a driver license that has not expired or to whom the agency of this state that issues driver licenses has issued, in lieu of a driver license, a personal identification card that has not expired, only if the financing statement provides the name of the individual that is indicated on the driver license or personal identification card;

(e) If the debtor is an individual to whom paragraph (d) does not apply, only if the financing statement provides the individual name of the debtor or the surname and first personal name of the debtor; and

(f) In other cases:

1. If the debtor has a name, only if it provides the organizational name of the debtor; and

2. If the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

(2) A financing statement that provides the name of the debtor in accordance with subsection (1) is not rendered ineffective by the absence of:

(a) A trade name or other name of the debtor; or

(b) Unless required under subparagraph (1)(f)2., names of partners, members, associates, or other persons comprising the debtor.

(3) A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(4) Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(5) A financing statement may provide the name of more than one debtor and the name of more than one secured party.

(6) The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the name of the decedent under paragraph (1)(b).

(7) If this state has issued to an individual more than one driver license or, if none, more than one identification card, of a kind described in paragraph (1)(d), the driver license or identification card, as applicable, that was issued most recently is the one to which paragraph (1)(d) refers.

(8) As used in this section, the term "name of the settlor or testator" means:

(a) If the settlor is a registered organization, the name of the registered organization indicated on the public organic record filed with or issued or enacted by the registered organization's jurisdiction of organization; or

(b) In other cases, the name of the settlor or testator indicated in the trust's organic record.

History.—s. 6, ch. 2001-198; s. 11, ch. 2012-59.

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The Florida Senate

2018 Florida Statutes

Title XXXIX COMMERCIAL RELATIONS	Chapter 679 UNIFORM COMMERCIAL CODE: SECURED TRANSACTIONS Entire Chapter	**SECTION 5061** **Effect of errors or omissions.**

679.5061 Effect of errors or omissions.—

(1) A financing statement substantially complying with the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(2) Except as otherwise provided in subsection (3), a financing statement that fails sufficiently to provide the name of the debtor in accordance with s. 679.5031(1) is seriously misleading.

(3) If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with s. 679.5031(1), the name provided does not make the financing statement seriously misleading.

(4) For purposes of s. 679.508(2), the term "debtor's correct name" as used in subsection (3) means the correct name of the new debtor.

History.—s. 6, ch. 2001-198.

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378 B.R. 385
United States Bankruptcy Court,
S.D. Florida,
Miami Division.

In re JOHN'S BEAN FARM OF HOMESTEAD, INC., Debtor.

No. 07–11868–BKC–LMI.
|
Nov. 1, 2007.

Synopsis

Background: In Chapter 7 proceeding, trustee filed objection to claim. Parties filed cross-motions for summary judgment.

[Holding:] The Bankruptcy Court, Laurel M. Isicoff, J., held that financing statement filed by creditor was seriously misleading.

Trustee's motion granted, and claimant's motion granted in part and denied in part.

Procedural Posture(s): Motion for Summary Judgment.

West Headnotes (4)

[1] Secured Transactions Financing Statement

Under Florida law, financing statement is effective if computer search run under debtor's correct name produces financing statement with incorrect name; if it does not, then financing statement is ineffective as matter of law. West's F.S.A. §§ 679.5031, 679.5061(1).

10 Cases that cite this headnote

[2] Evidence Official Proceedings and Acts

Court would take judicial notice of Florida Secured Transaction Registry website. Fed.Rules Evid.Rule 201, 28 U.S.C.A.

[3] Secured Transactions Financing Statement

Under Florida law, financing statement filed pursuant to Article 9 of Uniform Commercial Code (UCC) is seriously misleading, and thus ineffective, if financing statement does not appear on initial page displayed when internet search of debtor's correct name is run on Florida Secured Transaction Registry website applying Florida's standard search logic. West's F.S.A. §§ 679.5031, 679.5061(1).

10 Cases that cite this headnote

[4] Secured Transactions Financing Statement

Under Florida law, financing statement filed by creditor identifying debtor as "John Bean Farms, Inc.," instead of debtor's actual name of incorporation, "John's Bean Farm of Homestead, Inc.," was seriously misleading, and thus ineffective, where financing statement did not appear on initial page displayed after performing standard search on Florida Secured Transaction Registry website, but rather appeared 60 pages from initial display. West's F.S.A. §§ 679.5031, 679.5061(1).

9 Cases that cite this headnote

Attorneys and Law Firms

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ORDER GRANTING TRUSTEE'S MOTION FOR SUMMARY JUDGMENT AND GRANTING IN PART AND DENYING IN PART WILLIAM KLEIN'S CROSS–MOTION FOR SUMMARY JUDGMENT

LAUREL M. ISICOFF, Bankruptcy Judge.

INTRODUCTION

This matter came before the Court on the Trustee's Motion for Partial Summary Judgment on Trustee's Objection to Claim No. 1 Filed by Bill Klein (CP # 36), and William Klein's Response and Cross–Motion for Summary Judgment (CP # 55). The matter under consideration is one of first impression in this district and concerns the degree of error necessary to render a financing statement "seriously misleading" under revised Uniform Commercial Code section 9–506, as adopted in Florida. For the reasons set forth below, ***386** the Court finds that William Klein's financing statement is seriously misleading and, therefore, ineffective to perfect Klein's asserted security interest. Summary judgment is accordingly granted in favor of the Trustee on his motion for summary judgment. Summary judgment is granted to Klein on his cross-motion with respect to his holding an allowed unsecured claim; the balance of the cross-motion is denied.

JURISDICTION

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(1).

BACKGROUND

On March 20, 2007, John's Bean Farm of Homestead, Inc. (the "Debtor") filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code. William Klein (the "Creditor" or "Klein") filed a proof of claim on April 6, 2007, asserting a total claim in the amount of $152,000, claiming $120,000 was secured and $32,000 was an unsecured priority claim (Tr. Mot.Summ. J. Ex. B). On May 9, 2007, Barry E. Mukamal, in his capacity as Chapter 7 Trustee (the "Trustee"), filed an objection to the proof of claim and moved for summary judgment in his favor. Klein filed a cross-motion for summary judgment. From the affidavits, exhibits, and pleadings filed in connection with the motion and cross-motion, the material undisputed facts are as follows:

The Debtor, a Florida corporation, owned and operated a commercial bean farm in Homestead, Florida. (Tr.'s Mot. Summ. J. ¶ 3.) On or about October 2005, Klein made a loan to the Debtor in the amount of $197,255.33, which the Debtor used to purchase a John Deere Spray Machine Model No. 4720 (the "Equipment"). (Tr.'s Mot. Summ. J. ¶ 4; Klein Resp. ¶¶ 1–3.) The loan was never memorialized in writing. (Tr.'s Mot. Summ. J. ¶ 4.) When the Debtor defaulted and was unable to make full payment by the repayment date, Klein purported to take a security interest in the Equipment, evidenced by a Security Agreement and Secured Promissory Note dated July 28, 2006. (Tr.'s Mot. Summ. J. ¶ 4; Klein Resp. ¶¶ 4–8.) In an attempt to perfect his security interest, Klein filed a UCC–1 Financing Statement with the Florida Secured Transaction Registry [1] on August 9, 2006, which identified the Debtor as "John Bean Farms, Inc." instead of the Debtor's actual name of incorporation, "John's Bean Farm of Homestead, Inc." (Tr.'s Mot. Summ. J. Ex. A; Klein Resp. ¶ 10.) In fact, all of the documents evidencing the transaction used the name "John Bean Farms, Inc." Subsequently, the Debtor filed a Chapter 7 petition and, shortly thereafter, Klein filed his proof of claim. (Tr.'s Mot. Summ. J. Ex. B; Klein Resp. ¶¶ 13, 15.)

The Trustee filed an objection to the claim (CP # 24) contending that Klein's financing statement, which misidentified the Debtor, fails to comply with the general rule governing the sufficiency of debtor names on financing statements [2] and the concomitant safe harbor provision [3] for minor errors, and that therefore Klein's claim, if any, is unsecured. The Trustee also objected to the Klein's priority claim of $32,000. Finally, the Trustee objected to the entire claim subject to Klein providing ***387** sufficient proof that the loan was actually funded. Trustee seeks summary judgment on the first two grounds of his objection—that is, that Klein's claim, if any, is neither secured nor entitled to priority status.

Klein filed a response to Trustee's motion arguing that while his financing statement failed to comply with the requirements for filing under the Debtor's actual name, the filing was, in fact, not seriously misleading and therefore, the financing statement was adequate to perfect his security interest in the Equipment. [4] Klein seeks, in his cross-motion for summary judgment, a determination that he did, in fact, fund the loan to the Debtor.

It is undisputed that the Debtor's correct name was not provided on the financing statement filed. (Klein Resp. ¶ 10.) Thus, the primary issue this Court must determine is whether the financing statement filed by Klein conforms with Florida's safe harbor provision or is seriously misleading. If

the former, then Klein's lien is perfected;[5] if the latter, then Klein's lien is unperfected. A second issue is whether Klein's lien if perfected can be avoided, and the third, whether Klein has a claim at all.

STANDARD OF REVIEW

Summary judgment is governed by Fed.R.Civ.P. 56, made applicable to bankruptcy cases pursuant to Fed. R. Bankr.P. 7056. Summary judgment is appropriate where the "pleadings, depositions, answers to interrogatories, and admissions on file, taken together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary judgment as a matter of law." Fed.R.Civ.P. 56(c); *Celotex Corp. v. Catrett,* 477 U.S. 317, 323–24, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). In determining whether a genuine issue of material fact remains for trial, the court must construe the facts and draw all reasonable inferences therefrom in the light most favorable to the party opposing summary judgment. *Cuesta v. Sch. Bd. of Miami–Dade County, Fla.,* 285 F.3d 962, 966 (11th Cir.2002); *Loren v. Sasser,* 309 F.3d 1296, 1301–1302 (11th Cir.2002); *In re Pony Exp. Delivery Serv., Inc.,* 440 F.3d 1296, 1300 (11th Cir.2006). However, the mere existence of a "scintilla of evidence" in support of the nonmovant's position will be insufficient to forestall summary judgment; "there must be enough of a showing that the jury could reasonably find for that party." *Loren v. Sasser,* 309 F.3d at 1302 (quoting *Walker v. Darby,* 911 F.2d 1573, 1577 (11th Cir.1990)); *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 252, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Summary judgment relief under Bankruptcy Rule 7056 applies in contested matters. Fed. R. Bankr.P. 9014.

PERFECTION OF SECURITY INTERESTS IN FLORIDA

With certain exceptions not applicable here, perfection of a security interest in Florida occurs only when a financing statement is filed in the appropriate place. Fla. Stat. § 679.5011. All financing statements must be filed with Florida's official filing office, the Florida Secured Transaction Registry (the "Registry"). *See* Fla. Stat. § 679.5011(1)(b). The financing statement ***388** must provide three pieces of information to be considered sufficient for perfection: (1) the name of the debtor, (2) the name of the secured party, and (3) the collateral covered. Fla. Stat. § 679.5021(1). Financing statements are indexed by debtor name; the debtor's name is the essential element to locating the financing statement. Fla. Stat. § 679.5031 cmt. 2 ("The requirement that a financing statement provide the debtor's name is particularly important. Financing statements are indexed under the name of the debtor and those who wish to find financing statements search for them under the debtor's name."). The Registry offers an online database that searchers can use to explore financing statements by the debtor name. A search under a debtor's name displays an alphabetical name list with twenty (20) entries and the exact or nearest match at the top of the Search Results screen. The commands "Previous" and "Next" appear on the results screen and direct a searcher to utilize the buttons to view "additional search results."

Section 679.5031 of the Florida Statutes sets forth the specific rules on how to sufficiently provide a debtor's name. For a debtor corporation this requirement is satisfied "only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized." Fla. Stat. § 679.5031(1)(a).

Although the Florida statute requires that the debtor's name be precise, Florida law contains a safe harbor provision:

> A financing statement substantially complying with the requirements [of Section 679.5031] is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

Fla. Stat. § 679.5061(1) (the "Safe Harbor provision"). An error is minor, and the financing statement effective to perfect a creditor's security interest, "[i]f a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose" the creditor's financing statement. Fla. Stat. § 679.5061(2). Conversely, an erroneous debtor name makes a financing statement "seriously misleading" and precludes perfection if a search under the debtor's correct name would not disclose the financing statement.[6]

"Perfect" Financing Statements before Article 9 was Revised

Under the prior statute, former Fla. Stat. § 679.402, [7] a financing statement, in order to be effective, was sufficient if it included "the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor, and contains a statement indicating the types, or describing the items, of collateral...." Fla. Stat. § 679.402(1) (repealed). The "seriously misleading" standard applied in determining if a mistake in the name of a debtor made a financing statement unenforceable but the statute provided no formal definition of what constituted seriously misleading. ***389** [8] So long as a financing statement substantially conformed to the requirements of the statute, minor errors were not presumed to be seriously misleading. [9]

Absent a statutory definition, Florida courts, as well as many other courts around the country, implemented the 'reasonably diligent searcher' standard, a standard that required the reviewing court to determine, on a case-by-case basis, whether a hypothetical reasonable searcher would have been able to discover the non-conforming financing statement despite the error in a debtor's name. This "allowed judges to second-guess what searchers should or should not have been able to discover had they tried hard enough." Margit Livingston, "A *rose by any other name would smell as sweet" (or would it?); Filing and searching in Article 9's Public Records,* 2007 B.Y.U.L.Rev. 111, 124 (2007). This standard created extensive litigation and fragmented or contradictory decisions. *See, e.g., Brushwood v. Citizens Bank of Perry (In re Glasco, Inc.),* 642 F.2d 793 (5th Cir.1981) (holding that a financing statement that listed the debtor by the trade name in which it did business rather than its corporate name was not seriously misleading.).

Perfect Financing Statements Under Revised Article 9

A primary purpose of revised section 9–506 of the UCC, adopted in Florida as Fla. Stat. § 679.5061, [10] was to replace the former reasonableness standard with a clearer standard based on the computerized search logic of the filing office. This represents a significant shift from the prior law. Enacted to clarify the sufficiency of debtors' names in financing statements, the revision was "designed to discourage the fanatical and impossibly refined reading of statutory requirements in which courts occasionally have indulged themselves." Fla. Stat. § 679.5061 cmt. 2. *See In re Kinderknecht,* 308 B.R. 71, 75 (10th Cir. BAP 2004) ("The intent to clarify when a debtor's name is sufficient shows a desire to foreclose fact-intensive tests, such as those that existed under former Article 9 of the UCC.")

Courts in other states that have adopted revised Article 9 have recognized and emphasized the purpose and importance of this change in the search standard. The Supreme Court of Kansas analyzed its own state's adoption of revised UCC sections 9–503 and 9–506 (which adoption is virtually identical to the Florida language) and noted the importance of the accuracy of the name and the reasons behind the shift in focus of the revised Article 9:

> [T]he express provisions of the revised amendments read *in para materia,* and the Official UCC Comments are all in accord that the primary purpose of the revision of the name requirement is to lessen the amount of fact-intensive, case-by-case determinations that plagued earlier versions of the UCC, ***390** and to simplify the filing system as a whole. The object of the revisions was to shift the responsibility to the filer by requiring the not too heavy burden of using the legal name of the debtor, thereby relieving the searcher from conducting numerous searches using every conceivable name variation of the debtor.

Pankratz Implement Co. v. Citizens Nat'l Bank, 281 Kan. 209, 227, 130 P.3d 57, 68 (Kan.2006). *Accord In re F.V. Steel and Wire Co.,* 310 B.R. 390, 393–94 (Bankr.E.D.Wis.2004) ("A rule that would burden a searcher with guessing at misspellings and various configurations of a legal name would not provide creditors with the certainty that is essential in commercial transactions.")

[1] Under revised Article 9 what debtor misnomer is "seriously misleading" is statutorily defined as that which would not be discovered using the state's standard search logic. Thus, under the Safe Harbor provision, the discoverability of a financing statement expressly delimits permissible error. A financing statement is effective if a computer search run under the debtor's correct name produces the financing statement with the incorrect name. If it does not, then the financing statement is ineffective as a matter of law. This new standard is intended to

> reflect[ ] a balance between the need for some flexibility to allow for human error on the part of filers ... and the avoidance of a rule that would cast an altogether inappropriate burden on searchers to have to try to divine potential errors and make searches under not only the correct name but also "foreseeable" or "likely" errors that a filer might have made[.]

Harry C. Sigman, [11] *Twenty Questions About Filing Under Revised Article 9: The Rules of the Game Under New Part 5,* 74 CHI.KENT L.REV. 861, 862–63 (1999). *See also* Steven O. Weise, [12] *An Overview of Revised Article 9, in the New Article 9 Uniform Commercial Code* 7 (Corinne Cooper, ed., 2d ed.2000).

> Revised Article 9 contains a statutory rule to determine when a mistake [sic] the debtor's name is so incorrect as to make the financing statement ineffective. The financing statement is effective if a computer search run under the debtor's correct name turns up the financing statement with the incorrect name. If it does not, then the financing statement is ineffective as a matter of law. The court has no discretion to determine that the incorrect name is 'close enough'.
>
> *Id.* (as quoted in *In re F.V. Steel and Wire Co.,* 310 B.R. at 393–94).

Post-revision case law is fairly well settled that the burden is squarely on the creditor to correctly identify the name of the debtor. [13]

***391** Revised Article 9 requires more accuracy in filings, and places less burden on the searcher to seek out erroneous filings. The revisions to Article 9 remove some of the burden placed on searchers under the former law, and do not require multiple searches using variations on the debtor's name. Revised Article 9 rejects the duty of a searcher to search using any names other than the name of the debtor indicated on the public record of the debtor's jurisdiction of organization.

In re Summit Staffing Polk County, Inc., 305 B.R. 347, 354–55 (Bankr.M.D.Fla.2003). *See Receivables Purchasing Co. v. R & R Directional Drilling, LLC,* 263 Ga.App. 649, 652, 588 S.E.2d 831, 833 (2003) ("[A] party filing a financing statement now acts at his peril if he files the statement under an incorrect name.")

The majority of cases decided under revised Article 9 are unforgiving of even minimal errors. [14] In *In re Tyringham Holdings, Inc.,* 354 B.R. 363 (Bankr.E.D.Va.2006), the creditor filed a financing statement covering 65 pieces of jewelry totaling $310,925 worth of consigned inventory. However, the creditor listed the name of the debtor as "Tyringham Holdings" rather than the debtor's legal corporate name, "Tyringham Holdings, Inc." Although the name error merely omitted the corporate suffix "Inc.", an official search under the debtor's actual name did not reveal the creditor's financing statement and the court held that, therefore, the financing statement was ineffective to perfect the security interest. The *Tyringham* court reasoned:

> [w]hile application of the filing office's standard search logic may lead to situations where it appears a relatively minor error in a financing statement leads to a security interest becoming unperfected, it is not that difficult to ensure that a financing statement is filed with the correct name of the debtor. Little more is asked of a creditor than to accurately record the debtor's name, and according to the statute, failure to perform this action clearly dooms the perfected status of a security interest.

354 B.R. at 368. Similarly, in *Pankratz Implement Co. v. Citizens Nat'l Bank,* 281 Kan. 209, 130 P.3d 57, the debtor purchased a tractor from the creditor, signed a security agreement, and the creditor misspelled the debtor's name on the financing statement by omitting a "d"—listing the debtor as "Roger House" instead of his legal name "Rodger House." The Supreme Court of Kansas upheld summary judgment invalidating the prior interest

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represented by the faulty financing statement. In *Host America Corp. v. Coastline Financial, Inc.,* 2006 WL 1579614 (D.Utah 2006) the court held that a financing statement was seriously misleading where the debtor, whose name was "K.W.M. Electronics Corporation" was identified in the financing statement as "K W M Electronics Corporation." [15]

***392** This canvas of history, commentary and application sets the background against which the adequacy of Klein's financing statement must be judged.

THE KLEIN FINANCING STATEMENT IS SERIOUSLY MISLEADING

Both the Trustee and Klein rely on *In re Summit Staffing Polk County, Inc.,* 305 B.R. 347. In that case Chief Judge Glenn determined that a financing statement that identified the debtor as "Summit Staffing, Inc." rather than by the debtor's correct name of "Summit Staffing of Polk County, Inc." was not seriously misleading because, although using the standard search logic for Florida did not produce a page on which the financing statement appeared, the searcher only had to push the "previous" button one time and the financing statement was listed. Chief Judge Glenn held that the 'reasonably diligent searcher' standard survives in some part. "Although Revised Article 9 does not require that a searcher exercise reasonable diligence in the selection of the names to be searched or the number of searches to conduct, the revisions to Article 9 do not entirely remove the duty imposed on a searcher to be reasonably diligent." *Id.* at 355. In Chief Judge Glenn's view, some burden is placed on the searcher to employ "reasonable diligence in examining the results of the search." *Id.*

In the *Summit Staffing* case, a creditor, Associated Receivables, filed a financing statement listing the debtor as Randy A. Vincent and "Summit Staffing," a sole proprietorship, as an additional debtor. Summit Staffing was subsequently incorporated as "Summit Staffing of Polk County, Inc." The corporation later filed for relief under Chapter 7 of the Bankruptcy Code. The Chapter 7 Trustee conducted a UCC search through the Florida Secured Transaction Registry website using the actual corporate name of the debtor, Summit Staffing of Polk County, Inc., and found no financing statement relating to the debtor's assets. The name "Summit Staffing" appeared at the top of the page displayed when a search under the debtor's correct name was made. By selecting the "previous" command to display the results page with alphabetical listings immediately prior to the page displayed, the Associated Receivables financing statement appeared. In determining the financing statement was not seriously misleading, and that Florida's standard search logic revealed the faulty financing statement, Chief Judge Glenn wrote:

> When a search is conducted in the Florida Secured Transaction Registry, a listing of debtors' names is produced. The listing is an alphabetical listing, and 20 names are displayed. If the debtor's actual name is produced, it is at the top of the list. If the debtor's name is not found, the next succeeding name on the alphabetical list is at the top of the list. To see the next preceding name on the alphabetical list, the searcher must use the "Previous" command on the screen. In fact, at the top of the list is the statement: "Use the Previous and Next buttons *to display additional search results.*" (Emphasis supplied.) This statement directs the searcher to use the "Previous" command to see the immediately preceding names on the alphabetical list.
>
> Certainly the searcher should do this. Since the name immediately following Summit Staffing of Polk County, Inc. is ***393** produced at the top of the alphabetical list, and since the filing office's directions state that the searcher should use the "Previous" command to display additional search results, clearly a searcher should check the preceding names on the alphabetical list.

305 B.R. at 353–354. However, Chief Judge Glenn noted that the obligation to push the "previous" button is not limitless.

> Although it is clear that a searcher should check the immediately preceding names as well as the immediately succeeding names on an alphabetical list if there is not an exact match of the debtor's correct name, the issue of "reasonableness" develops at some point because the listing is an alphabetical listing. Although only three names begin with "Summit Staffing," there are several screens of debtors' names, with 20 names

> per screen, that begin with "Summit." Moreover, since the listing is an alphabetical listing, it is conceivable that one could use the "Previous" command to go to back to the beginning of the alphabetical list.

Id. at 354.

Here, the Trustee conducted a search of the Registry's online database.[16] Using the Debtor's correct name, the Trustee's search yielded no matches. (Tr.'s Mot. Summ. J. Ex. C ¶ 3.) It is undisputed that when the Debtor's correct name was inputted as the search term, the listing of 20 names on the initial search result screen did not disclose the Klein financing statement. (Tr.'s Mot. Summ. J. ¶ 21; Klein Resp. n. 25.) Klein's financing statement was only found by striking the "previous" command 60 times. (Tr. Mot. Summ. J. ¶ 22; Dubon Aff. ¶¶ 4–5; Klein Resp. n. 25.)

The Trustee relies on *Summit Staffing* arguing the case demonstrates that only the initial search result screen generated when the Debtor's correct name is input counts as the search result and, since Klein's financing statement did not appear on the initial page displayed, the financing statement is seriously misleading. Moreover, the Trustee argues, even if the search result goes beyond the initial result screen, then, as Chief Judge Glenn stated in *Summit Staffing,* the obligation to expand the search beyond the initial page displayed must be reasonable.

Klein also relies on *Summit Staffing.* Klein correctly points out that in *Summit Staffing,* the disputed financing statement did not appear on the initial page displayed, but rather the page displayed when the searcher pushed the "previous" command once. Thus, Klein argues, the results of "standard search logic" in Florida means something other than the initial result screen. However, Klein goes on to argue that Chief Judge Glenn improperly imposed a "reasonableness" requirement on the searcher's duty, that the statute is unambiguous, and has no "reasonableness" limitation. Since, by pushing the "previous" command (60 times) the Klein financing statement did eventually appear, Klein argues the financing statement is not seriously misleading.

The Trustee argues "[t]o require a secured creditor to search through numerous pages of names would defeat the salutary purpose of revised Article 9 and set dangerous ***394** precedent." (Tr. Mot.Summ. J. ¶ 23.) Klein counters that since the plain language of the statute has no reasonableness requirement the court cannot impose a requirement that the statute doesn't provide. "Adding a reasonableness requirement would inevitably result in a situation where courts would have to delve into a host of case by case factual issues that were never contemplated by the legislative, and indeed, would require the courts to effectively rewrite the Safe Harbor Provision [Fla. Stat. § 679.5061] in a manner that conflicts with the plain language." (Klein Resp. 11.) Thus, according to Klein's interpretation of the statute, *any* financing statement filed, no matter how far it may appear from the proper listing, would be sufficient so long as the statement could be found at some point in the pages preceding or following the initial displayed page. Under this interpretation, absent any reasonableness as to the distance between a proper and improper listing, a searcher would have to look through every page of the online database to determine whether or not a financing statement exists.

The crux of the dispute between the Trustee and Klein is what constitutes the search result using Florida's standard search logic. If my answer to this question is something other than the initial displayed page, then I must determine whether there is a limit on how much a searcher must search past the original display page. The debate between the Trustee and Klein centers on the meaning of "a search of the records of the filing office under the Debtor's correct name, using the filing office's standard search logic...." As noted, the Trustee argues this refers to the initial page result; Klein argues there is a difference between a "search result" and a "display".

[2] The only "search logic" in Florida is statutorily defined as a search by the debtor's name or document number.[17] In order to determine what is the result of inputting that search logic, it is necessary and appropriate to understand what the Registry explains is a "result". The Registry, at its website, www.floridaucc.com, has a list of frequently asked questions.[18] One of the questions listed is "How do I do my own search on the Internet". The answer to that question is:

> You can access the UCC filed records for the Florida Secured Transaction Registry on the Internet at: *www.floridaucc.com*. Click on the "Search" option. Choose one item in the "Select Search Type" box, then enter the

appropriate data in the "Name/Document Number" box, and click on "search". *The exact name or number or the nearest alphabetical or numeric entry will be displayed.* Click on the number of the entry(ies) you are interested in Florida Secured Transaction Registry, UCC Frequently Asked Questions, http:// www.floridaucc.com/faq.html (emphasis added). The same website has a Help menu that explains "UCC Filing Inquiry ***395** by Debtor Name". That section states in pertinent part:

> These transactions provide a list of UCC filings on the Florida Secured Transaction Registry beginning with the name that is closest to the key entered. This list also includes the document number and the type of each record. There are several inquiry functions available using the Debtor's Name, all of these inquiry functions will provide the user with an alphabetic listing beginning with the name closest to the key entered.

Id. at http://www.floridaucc.com/help.html# name.

[3] I agree with Klein that the statute is unambiguous. Moreover, I agree with Klein that the statute does not include a reasonableness requirement. Indeed, as explained in great detail above, the very purpose of this statute was to eliminate the need for, indeed, the ability of, a judge to inject himself or herself in the determination of what is seriously misleading. However, I disagree with Klein's assertion that the initial page displayed is *not* the result of applying Florida's standard search logic. Florida's standard search logic is set by statute. The search logic clearly leads to one result—a single page on which names appear. For those, including Klein, that argue the search result is something more, the Registry website makes clear they are wrong. The Registry's own website unambiguously describes the page displayed when the search data is input as the result of the search. Nothing in the Registry's information page mentions the use of the "previous" or "next" page key in connection with conducting a search using the search criteria. Since it is undisputed that Klein's financing statement did not appear in the search result when the Debtor's correct name was input, the financing statement is seriously misleading and summary judgment in the Trustee's favor is appropriate.

Although I have found that Fla. Stat. § 679.5061 is unambiguous, and that there is no implicit or explicit obligation of a searcher to go beyond the search result, I feel compelled to address what I view as Klein's incredible argument that the Florida statute unambiguously requires a searcher to scroll through the pages of the UCC search until the nonconforming financing statement is located. If Klein is correct, that the "search result" means something other than the page displayed when the required data is input, it does not follow that the statute requires a limitless search through the UCC database.

Klein argues that the case law is clear—when a statute is unambiguous on its face, it must be applied as written. However, Klein cavalierly casts aside as inapplicable the equally long and well established case law on statutory construction that reminds us—

> When applying the plain and ordinary meaning of statutory language "produces a result that is not just unwise but is clearly absurd, another principle comes into the picture. That principle is the venerable one that statutory language should not be applied literally if doing so would produce an absurd result."

Miedema v. Maytag Corp., 450 F.3d 1322, 1326 (11th Cir.2006) (quoting *Merritt v. Dillard Paper Co.*, 120 F.3d 1181, 1188 (11th Cir.1997)).

[4] Klein's argument that Florida's Safe Harbor provision clearly recognizes his financing statement was not seriously misleading, notwithstanding that it was listed 60 pages prior to the displayed search result (that is 1,200 entries), asks this Court to apply a meaning to the Safe Harbor provision that is "clearly absurd". Such an interpretation would eviscerate ***396** the purpose of the statute—that is, to create a framework for the perfection of security interests that is less arbitrary, that includes statutory guidance for simplifying the search, while allowing for "minor" errors.

Accordingly, if I am incorrect, and in fact, the Florida search result includes more than the initial page displayed, then, in order to interpret section 679.5061 so as to avoid an absurd result, I would be compelled alternatively to hold, as did Chief Judge Glenn, that there is a reasonable limit to the search, which I find is no more than one page "previous" or "next" from the initial result screen. Since Klein's financing statement appears 60 pages from the initial display, not one page, it is seriously misleading.

KLEIN'S CROSS MOTION FOR SUMMARY JUDGMENT

Klein seeks a determination that he is entitled to a claim in the amount of $152,000. In support of his cross-motion, Klein submitted the affidavits of John Sizemore, the manager of the Debtor, and his own affidavit. Both affidavits attest that Klein lent the Debtor $197,255.33, by endorsing and transferring to Debtor three checks made payable to William Klein by DiMare Homestead, Inc. (Klein Aff. ¶¶ 2, 4–5; Sizemore Aff. ¶ 3.)[19] The affidavits further state that, in July 2006, the Debtor executed a promissory note in the amount of $152,000 representing the unpaid balance of the loan. (Klein Aff. ¶ 11; Sizemore Aff. ¶ 8.) Both affidavits state that the Debtor never made any payments on the Note. (Klein Aff. ¶ 15; Sizemore Aff. ¶ 11.)

In response, the Trustee argues that because the checks (copies of which were attached to the Klein Affidavit) appear to have been deposited by Klein, rather than endorsed to Debtor, that "Klein has not made a sufficient showing ... that he actually provided any funds to the Debtor and a genuine issue of material fact exists with respect to whether the DiMare checks were actually transferred by Klein to the Debtor." (Tr.'s Reply and Resp. 8.) The Trustee does not provide any other information or affidavits regarding this issue.

Fed.R.Civ.P. 56(e), made applicable to this contested matter by virtue of Fed. R. Bankr.P. 7056, requires that when a party seeking summary judgment has provided affidavits in support of such relief as required by Rule 56 "an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party."

Klein has demonstrated that summary judgment in his favor is appropriate. The Trustee has failed to meet his burden under Rule 56(e). Accordingly, Klein is entitled to summary judgment on the issue of his entitlement to an unsecured claim in the amount of $152,000.

CONCLUSION

Based on the foregoing, it is ORDERED and ADJUDGED as follows:

a. The Trustee's motion for summary judgment is granted. Klein does not hold a secured or priority claim. Because I have found that, as a matter of law, Klein does not hold a secured claim, I do not need to reach the third issue on the Trustee's motion for summary judgment regarding ***397** the avoidability of Klein's asserted lien on the Equipment.

b. Klein's cross motion for summary judgment is denied in part and granted in part. Although Klein does not hold a secured claim, he is entitled to summary judgment that he holds an unsecured claim in the amount of $152,000.00.

All Citations

378 B.R. 385, 49 Bankr.Ct.Dec. 44, 64 UCC Rep.Serv.2d 454, 21 Fla. L. Weekly Fed. B 117

Footnotes

1 On October 1, 2001, Florida privatized its UCC filing office and designated the Florida Secured Transaction Registry as the office in which to file a financing statement to perfect a security interest. Fla. Stat. § 679.5011.

2 Fla. Stat. § 679.5031

3 Fla. Stat. § 679.5061

4 Klein conceded in his response that he is not entitled to a priority claim and therefore that issue is resolved in the Trustee's favor. (Klein Resp. n. 2).

5 This assumes the loan was funded since a creditor can only perfect a lien when the security interest attaches, and a security interest cannot attach until the loan is funded. Fla. Stat. § 679.2031(2)(a).

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6 In fact, even if a financing statement using the debtor's incorrect name, is "disclosed by (i) using a search logic other than that of the filing office to search the official records, or (ii) using the filing office's standard search logic to search a data base other than that of the filing office," the financial statement would nonetheless be seriously misleading, and therefore, ineffective. U.C.C.Code § 9–506 cmt. 2 (2002).

7 (repealed Jan. 1, 2002), a codification of former U.C.C. § 402.

8 Fla. Stat. § 679.402(7) (repealed).

9 "(6) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership, or corporate name of the debtor, whether or not it adds other trade names or names of partners.... (7) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading." Fla. Stat. § 679.402(6)-(7)(repealed).

10 Article 9 of the Uniform Commercial Code (the "UCC") was substantially revised in the 1990's. The changes to Article 9 took years to develop, but within two years after the Uniform Rule was adopted by the National Conference of Commissioners on Uniform State Laws in 1998, virtually all states adopted these changes, albeit with some modifications, as states are wont to do when adopting a uniform rule.

11 Mr. Sigman was a member of the Revised Article 9 Drafting Committee.

12 Mr. Weise was the ABA advisor to the Article 9 Drafting Committee.

13 The change in law has also altered the burdens in litigation. Under the former statute, a financing statement that contained errors of any kind, but was otherwise substantially compliant, was presumed enforceable unless those errors were found to be seriously misleading. The revised statute provides a financing statement that contains errors in the debtor's name is presumed unenforceable unless those errors are found not to be seriously misleading. The reversal of the presumption also switches the burden of persuasion. The former statute required the party contesting the enforceability of the financing statement to prove that the errors were seriously misleading. However, under the revised statute, once the contesting party meets his or her burden of production by showing the financing statement does not conform to the statute, the party advocating the efficacy of the financing statement must prove that those errors do not make the statement seriously misleading.

14 The "single search" standard has been criticized as being hypertechnical and too unforgiving of minor errors. *See, generally,* 2007 B.Y.U.L.Rev. 111; Meghan M. Sercombe, Note, *Good Technology and Bad Law: How Computerization Threatens Notice Filing Under Revised Article 9,* 84 TEX. L.REV. 1065 (2006).

15 Klein argues that cases from other states are inapposite because the search logic of those states is different than the Florida search logic. While the manner in which the searches are conducted may be different, the underlying purpose of the statutory change in each state, and the recognition that the bright line test may result in excluding what might have previously been considered "minor" errors, are both illustrative of, and authoritative on, the issues presented in this case.

16 The online database is not the official "records of the filing office." *http://www.floridaucc.com/search disclaimer,* however, a search of the database certainly is a search of the Registry's records. Both the Trustee and Klein have relied on the online database search as the basis and support for the relief they seek, and accordingly, for the purposes of this case, are deemed to have stipulated that the search of the online database is the "search of the records of the filing office."

17 Although proposed Model Administrative Rules for secured transactions have been promulgated by the International Association of Commercial Administrators, Florida has not adopted any type of rule or Administrative Code section to expand the statutory search logic.

18 The Court may take judicial notice of the Registry website, Fed.R.Evid. 201. A court ruling on summary judgment may rely on judicially noticed facts. *See Fed. Election Comm'n. v. Hall–Tyner Election Campaign Comm.,* 524 F.Supp. 955 (S.D.N.Y.1981). *Accord Brown v. Brock,* 169 Fed.Appx. 579 (11th Cir.2006); *Bankers Ins. Co. v. Fla. Residential Prop. & Cas. Joint Underwriting Ass'n,* 137 F.3d 1293 (11th Cir.1998).

19 The Klein affidavit states one check was lost and replaced. (Klein Aff. at ¶ 4.)

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*61 THE FILING SYSTEM UNDER REVISED ARTICLE 9

The filing system is the heart of Article 9. [1] Revised Article 9 makes many changes to that system primarily aimed at simplifying it for both users and filing offices, and making administration of the filing offices far more uniform and transparent in practice than it is currently. The filing provisions are found in part 5 of Revised Article 9 and consist of 27 sections. These provisions articulate many premises that are implicit and undeveloped in current law. Also, the revisions expand the impact of the filing provisions in two ways. First, changes to the scope of Article 9 bring more types of transactions or types of collateral within the ambit of the filing provisions. For example, agricultural liens, [2] consignments, [3] security interests in commercial tort claims [4] and transfers of interests or assignments of a claim under a policy of insurance [5] fall within the scope of Revised Article 9. Second, security interests in certain types of collateral, which under current law may not be perfected by filing, may be so perfected under Revised Article 9. [6] In many ways, the changes to the filing system, statutory and "on the ground," will likely be the most important impact of the revisions. This article focuses on the aspects of the revisions that are of particular interest to the bankruptcy ***62** bench and bar. Part I discusses the new rules governing where to file. Part II details the important changes concerning form, content, transmission technique, duration of effectiveness and other key matters affecting the filing of initial financing statements and amendments.

I. WHERE TO FILE

Rev. § 9-317 provides that an unperfected security interest is "subordinate to the rights of … a person that [sic] becomes a lien creditor [7] before the … security interest … is perfected or a financing statement covering the collateral is filed." [8] Thus, failure to file a sufficient financing statement in the proper filing office will continue to be an issue litigated in insolvency proceedings. Determination of the proper place to file has interstate and intrastate aspects. [9] Revised Article 9 has made changes in both. [10]

A. INTRASTATE FILING RULES

Rev. § 9-501 simplifies the rules at the intrastate level by providing that virtually all financing statements are to be filed at a single statewide central filing office. [11] The only exceptions are for financing statements filed with respect to "as-extracted collateral," [12] timber to be cut, [13] and financing statements filed as fixture filings with respect to goods that are or are to become fixtures. [14] These types of filings are to be made in the office designated for the filing or recording of mortgages on the real property to which such collateral relates. [15] A fourth exception might arise for filings against collateral of a transmitting utility, which are provided for separately in Rev. § 9-501(b). [16] ***63** However, because in most states the office currently designated for such filings is the statewide central filing office, it may not qualify as an exception.

In addition, under current law, financing statements covering crops, farm equipment and/or consumer goods are filed locally in many states. [17] However, under the revisions these types of collateral are no longer excepted from the general rule of central filing. Thus, under the revised version there will be fewer local filings, and the dual filing option available under current law [18] (presently in effect in ten states) is not sanctioned under Revised Article 9. It is hoped that this requirement of a redundant filing,

an unjustifiable trap for the unwary, will disappear.[19] The effect of these changes is to reduce the number of potential "wrong filing office" situations and should reduce litigation of this issue.[20]

B. INTERSTATE FILING RULES

On the interstate level, the revisions should result in fewer filings overall, fewer wrong place errors, fewer failure to refile errors, and consequently, less litigation; the rules, however, are not simply stated. The rules for determining the law governing perfection and thus, the place to file a financing statement with respect to most collateral, are found in Rev. § 9-301 and are illuminated by Rev. § 9-307.[21]

C. LOCATION OF THE DEBTOR

As set forth in Rev. § 9-301(1), the basic rule, subject to five exceptions, is that "while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral."[22] This is the familiar debtorlocation rule applicable under current law with respect to accounts, general intangibles and certain mobile goods.[23] The important change to be noted is that the scope of the debtor-location rule which determines where to file (and, of course, where to search for) the financing statement has been expanded to virtually all types of collateral, and in particular, to the broad category of goods which encompasses most tangibles.[24]

***64** The effect of the revised rule is that in the financing of ordinary goods, when perfection is accomplished by filing a financing statement, the situs-of-the-goods rule[25] has been replaced by the debtor-location rule. This change will result in a significant reduction in the overall number of filings, as well as in the number of failures to file in all the right places. For example, when the collateral consists of equipment or inventory located in many states, under Revised Article 9 only a single filing in the state of the debtor's location will be required to perfect the security interest in all the collateral, rather than a filing in each state where collateral is located as required by current law.[26] Also, this new rule should reduce the number of instances requiring a refiling due to postfiling movement of collateral.[27] Under Revised Article 9 only a change in the *debtor's location* across a state boundary will require a refiling, while under current law, every *movement of the goods* across a state boundary might result in the need to refile.[28] Debtors move less frequently than do goods, and "movements" in the context of debtors that are "registered organizations" will be more objectively determinable under Revised Article 9 with the fact and time of such a change being definite.[29]

In fact, there are three subsections in Rev. § 9-301 that modify the debtor-location rule.[30] The three realty-related types of collateral are naturally governed by a situs-of-the-collateral rule.[31] Not relevant to our topic of filing is subsection (2) which provides that while collateral is located in a jurisdiction, the local law of that jurisdiction governs the perfection, as well as the effect of perfection or nonperfection, and the priority of a *possessory* security interest.[32] Finally, as to five specified types of collateral--goods, tangible chattel paper, instruments, negotiable documents and money--types which have a physical situs, the rule is bifurcated in that the law of the situs governs *the effect of perfection or nonperfection and the priority* of a nonpossessory security interest, while the law of the debtor's location governs *perfection*--i.e., where to file.[33] Thus, returning to the ordinary goods collateral scenario, the place to file will be the place of the debtor's location, but the law governing priority, for example, in a contest between a secured party and ***65** a levying creditor, will be the law of the situs of the goods (this latter rule being unchanged from present law).[34] In summary, the location of the debtor will in most cases be the proper place to file a financing statement.

1. *Determining the Location of the Debtor*

Rev. § 9-307 elaborates on the meaning of the debtor's location and thus alters and clarifies the concept.[35] First, an individual debtor is located at the individual's principal residence.[36] This rule applies even when the debtor is a sole proprietorship obtaining commercial credit on the strength of business collateral.[37] Second, any other debtor, i.e., not an individual, that has

only one place of business is considered to be located at that place of business. [38] Third, any debtor that has more than one place of business is considered to be located at its chief executive office (a term unchanged from current law). [39] Fourth, a registered organization that is organized under the law of a state is located in that state. [40] "Registered organization" is a new concept. [41] While it will generally include most corporations, limited partnerships, LLPs, and LLCs, it would not normally include general partnerships. This concept was adopted because it facilitates the use of a clear objectively verifiable test. Considering where a corporation is registered is always a matter of public record, but the location of the chief executive office is sometimes difficult to determine. In addition, the location of a chief executive office can change gradually and imperceptibly leading to litigation and potential for unanticipated loss. [42]

2. *Change of Governing Law*

Because the debtor-location rule tells the secured party to file in a particular jurisdiction while the debtor is located in that jurisdiction and because debtors do move, what occurs when the debtor changes location becomes important. Current law requires refiling in the debtor's new location within ***66** four months of the change, on pain of loss of perfection "as against a person who became a purchaser after the change." [43] Rev. § 9-316(a) likewise provides a four-month refiling rule in the case of a change in the debtor's location, but this rule comes into play only where the debtor is an individual or an organization that is not a registered organization. [44]

A registered organization cannot by definition "change" its location; it can be organized only under the law of a single jurisdiction and that cannot change. [45] Registered organizations do, however, by "re-incorporation" or otherwise transfer collateral to transferees (who thereby become debtors) located in other jurisdictions. [46] In such cases, a one-year refiling period is prescribed on pain of the security interest becoming unperfected and being "deemed never to have been perfected as against a purchaser of the collateral for value." [47] It is likely that commercial service providers will offer some sort of annual verification of corporate status of registered organization debtors. In any event, a merger or similar corporate event involving the debtor and the creation of a new organization under the law of another state will be objectively determinable and must occur at a precise point in time.

3. *Additional Debtor-Location Rules*

The basic rules of Rev. § 9-307(b) for determining the debtor's location are subject to further refinements. They apply only when the debtor is located in a state or in a different jurisdiction, e.g., a foreign country, whose law "requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral." [48] Otherwise, the debtor is considered to be located in the District of Columbia. [49] The ***67** United States is, for this purpose, located in the District of Columbia. [50]

A statutory rule is also provided for the circumstance where a debtor ceases to exist or ceases to have a place of business; the debtor continues to be located in the jurisdiction specified in Rev. §§ 9-307(b)-(i). [51] Similarly, a registered organization continues to be located in the state where it was organized notwithstanding suspension, lapse of status, or dissolution. [52]

Finally, Rev. §§ 9-303 to 9-306 provide special rules for determining the law governing perfection and priority when the collateral is goods covered by a certificate of title, deposit accounts, investment property and letter-of-credit rights. [53] Of these rules, only Rev. § 9-305(c)(1) pertains to filing; it provides that the local law of the jurisdiction in which the debtor is located governs the perfection by filing of a security interest in investment property, i.e., the basic debtor-location rule. [54]

II. FORM, CONTENT, AND TRANSMISSION OF FILINGS

A. NEUTRALITY AS TO MEDIUM

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With respect to form, Revised Article 9 is facilitative. Its language is medium-neutral; it neither requires nor assumes paper. A "financing statement" is defined in Rev. § 9-102(39) as one or more records, and "record" is defined in Rev. § 9-102(69) as "information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form." [55] Thus, the law recognizes that the true nature of a financing statement is simply a collection of information, not a particular form, which need not be delivered in a particular format or by a particular mode of communication. This should hasten the changeover from paper-based filing to electronic filing, which will ultimately result in greater efficiency for both filers and the filing offices, fewer errors, greater speed and less cost due to decreased human intervention.

***68 B. NATIONAL PAPER FORMS**

In an effort to promote nationwide uniformity and the use of a single well-designed form, Revised Article 9 requires filing offices that accept paper forms ("written records") to accept a national set of forms included within the statute; it does not require filers to use them, but it does preclude filing offices from rejecting them on the basis of form. [56]

C. NO NEED FOR SIGNATURES

Revised Article 9 deletes the requirement that filings be signed. [57] This should do away with the nonuniform, often idiosyncratic, requirements encountered by filers in certain filing offices around the country. The Uniform Commercial Code (hereinafter UCC) has long defined "signed" in a broad and flexible way by providing that signing "includes any symbol executed or adopted by a party with present intent to authenticate a writing." [58] The Permanent Editorial Board has made clear that even under Current Article 9 a financing statement need not bear a manually applied signature and may be filed electronically. [59] Nevertheless, the signature requirement appears to present problems for filing offices even in the paper context, and some lawyers are reluctant to use electronic filing out of concern that an electronically transmitted financing statement might be held not to constitute a signed writing. [60] All of these issues disappear under Revised Article 9. [61] There is no reason why evidence of authority to file, something not normally contested by a debtor who has in fact received credit and who has authenticated a security agreement or has otherwise authorized the filing in an authenticated record, should be on the public record. Revised Article 9, of course, continues to require authority to file as a condition of effectiveness of a ***69** filing. [62]

The absence of a signature requirement should also prevent the temptation to make the new digital signature laws applicable to Article 9 filings that are transmitted electronically. Since no signature is required in either the paper or electronic filing context, statutory provisions validating or regulating electronic signatures simply are inapplicable. Moreover, since digital signature laws are typically designed to produce a level of security not needed for Article 9 filings, they often entail procedures such as public/private key arrangements. Thus, their application would most likely increase financing costs, unduly complicate the filing process, and diminish if not preclude uniformity with no corresponding benefit.

D. CORRECTION STATEMENT

In a new provision, a person identified as a debtor on a filing is entitled to file a "correction statement" if the person believes the record "is inaccurate or was wrongfully filed." [63] While the correction statement does not affect the effectiveness of the record on file, [64] it does give an offended person an opportunity to quickly and inexpensively make a public record of its position. [65] Ultimately, only a court is qualified to conduct the factual inquiry appropriate before a filed record may be removed from the files, something filing offices are neither qualified nor have the resources to do. Giving filing offices the responsibility and power to remove records from the files would cause insecurity for secured parties that advanced credit in reliance on having a filing in place. Furthermore, it would result in the degradation of the entire filing system flowing from the reallocation of resources in an attempt to police the intake process. Of course, criminal laws, such as those concerning forgery and filing false public records, should continue to be available and have been used successfully to prosecute wrongdoers. Rev. § 9-625(e) also provides a statutory penalty of $500 for filing without authorization, in addition to any damages for actual loss caused. [66]

***70 E. FILING GENERALLY**

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Rev. § 9-516(a) continues, in medium-neutral language, the general rule of Cur. § 9-403(1) providing that "communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing." [67] This rule is subject, however, to the rejection of a record by the filing office based on one of the grounds specified in Rev. § 9-517(b)--which are the only grounds on which a filing office may refuse to accept a record. [68] A rightfully rejected record is, of course, not filed. On the other hand, a wrongfully rejected record, i.e., a record that the filing office refused to accept for any reason other than a ground specified in Rev. § 9-516(b), is effective as a filed record (except as against a purchaser of the collateral which gives value in reasonable reliance on the absence of the record from the files). [69] Also a record that should have been rejected by the filing office on one of the specified grounds but was not rejected, is effective and will serve to perfect unless it is insufficient. [70] Finally, the effectiveness of a filed record is not affected by the failure of the filing office to index it correctly. [71]

F. ENTITLEMENT TO FILE--AUTHORIZATION

A person is entitled to file an initial financing statement or an amendment that adds a debtor or collateral only if "the debtor authorizes the filing in an authenticated record." [72] Authentication of a security agreement constitutes such authorization. [73] Some secured parties may develop a special authorization form, some may add express authorization language to the security agreement (although nothing in the statutory text requires this) and others may have the debtor "sign" somewhere on a financing statement form that is on paper (a technique that presumably would not necessitate the production of special "authorization" language). The foregoing list is not intended to be exhaustive. Any authenticated record is legally sufficient. As ordinary legal principles apply, authorization that comes after the fact will be equally effective. Essentially, there is no change in the substantive concept, but the deletion of the signature requirement does eliminate inquiry as to whether a ***71** debtor has "signed the financing statement." As to other types of amendments, the same changes have been made; no signature is required but a person is entitled to file such a record only if the filing is authorized by the secured party--although the secured party's authorization need not be in an authenticated record. [74]

G. EFFECTIVENESS OF A FILING

Revised Article 9 makes explicit another concept that is implicit under current law--the fact that a filing is on the public record doesn't guarantee that it is effective. For example, a financing statement that bears a forged debtor signature or a termination statement that bears a forged secured party signature is not effective simply because it gets onto the public record. Revised Article 9 states that a filed record is "effective" only to the extent that its filing is authorized. [75] A record that satisfies the requirements for filing set forth in Revised Article 9 but is wrongfully rejected by the filing office is effective as a filed record subject to a special priority rule to protect specified reliance parties. [76] A record that should be rejected by the filing office because it fails to provide one or more of the items required for filing under Rev. § 9-516, but that is nevertheless accepted by the filing office, is effective. [77] Of course, it remains for a court to decide whether the record is nevertheless "sufficient."

H. SUFFICIENCY OF A FILING

1. *Required Information*

Rev. § 9-502 requires for sufficiency only three items of information: debtor name; name of the secured party or a representative of the secured party; and an "indication" of the collateral covered. [78] If the financing statement ***72** does not provide these three items, it is insufficient, i.e., it cannot serve to perfect the security interest.

The question of the sufficiency of a filing is a matter to be determined judicially. The grounds upon which a filing office may/should reject a tendered filing is a different issue. The filing office has no role to play in the determination of legal sufficiency. The required items of information which the filing office must require are not elements of sufficiency; the "required" nature of these items is spelled out in terms of grounds for rejection [79] and their absence or incorrectness may affect prior lienholders rights vis-à-vis certain reliance purchasers for value. [80] These required items are useful to searchers, but they are not conditions to effectiveness of an accepted filing or to perfection.

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The following example illustrates the interplay of the concepts of sufficiency and effectiveness. A financing statement, the filing of which is authorized by the debtor, fails to provide an address for the secured party. It is sufficient under Rev. § 9-502 as it provides the specified three items of information. It is effective, if filed, because its filing is authorized. It should not be filed by the filing office because it lacks an item required under Rev. § 9-516(b)(4). If it is properly refused by the filing office, it is not effective. If it is, however, accepted by the filing office, it is effective, and, being sufficient, it perfects the security interest. Of course, a financing statement that fails to provide all three specified items of information, being insufficient, will not serve to perfect the security interest, even if it is accepted by the filing office.

a. Name of Debtor

An entirely new provision, Rev. § 9-503, is devoted to the issue of names. In the case of a registered organization, the debtor's name is the name as shown on the public records of the jurisdiction that shows the debtor to have been organized there. The provision enables filers and searchers to rely with certainty on the debtor's exact name obtained from an objective and publicly available source (doubtless many filers already use this source as part of their due diligence). It also dovetails with the new rule for proper place to file discussed above. Specific name rules are provided also for debtors that are trusts or decedents' estates. [81] In other cases, the residual general rule is unchanged. The individual or organizational name of the debtor should be used. ***73** Revised Article 9 makes clear that absence of a trade name does not render a financing statement insufficient. It also makes clear that presence of the trade name only is insufficient. [82] With respect to errors, the familiar standard of substantial compliance unless "minor errors make the financing statement seriously misleading" is continued. [83] Rev. § 9-506(b) declares failure to sufficiently provide the name of a debtor to be seriously misleading. [84] However, subsection (c) of the same section provides that a name error does not make the financing statement seriously misleading if a search of the official records under the debtor's correct name, using the filing office's standard search logic, would disclose the financing statement. Thus, Revised Article 9 carefully balances the interests of searchers and filers. The statutes recognize that filers will make errors despite exercise of care and despite the assistance derived from well-designed new forms, [85] so the statute does not provide an absolute requirement of perfection. At the same time, it does not burden searchers with the obligation to dream up every potential error and name variation and perform searches under all possibilities. [86] Revised Article 9 allows a searcher to rely on a single search conducted under the correct name of the debtor and penalizes filers only for errors that result in the nondisclosure of the financing statement in a search under the correct name.

Although Rev. § 9-506(a) refers to errors generally, subsections (b) and ***74** (c) deal with debtor name errors specifically. It is unlikely that any other error will make a financing statement seriously misleading, since the index is maintained by debtor name, and no other error is likely to prevent discovery of the financing statement. Any other error should at worst give rise to an estoppel in favor of a particular searcher who can make a case that, acting reasonably, he was misled by an error on which he justifiably relied--an extremely hard case to make. A financing statement is intended merely as a notice that a potential competing claimant may exist. Specific information is obtained not from the public record, but from the debtor and other third party sources such as credit information services. [87] The filed financing statement usually serves merely as corroborating evidence, i.e. of the date disclosed by the debtor in its credit application, and/or learned by the potential creditor from other sources.

b. Name of Secured Party or Representative

Rev. § 9-502(a)(2) provides that a financing statement is not sufficient if it fails to provide the "name of the secured party or a representative of the secured party." However, since the secured party's name is not the key to the index, it carries far less weight. [88] Decades ago, *In re* Cushman Bakery [89] held that the identity of the actual secured party need not be disclosed on the financing statement. [90] This policy is continued and extended under Revised Article 9 by express authorization of the identification on a financing statement of a "representative of the secured party," with the revised statute also answering questions that concern some lawyers under current law in connection with common transactions such as joint loans and participations.

Revised Article 9 defines "secured party" to mean, inter alia, "(E) a trustee, agent, collateral agent, or other representative in whose favor a security interest … is created or provided for." [91] This definition indicates that if the grantee of a security interest functions as a representative for the party that actually extends the credit, the grantee of the security interest falls ***75** within the definition and may be shown on the financing statement as the secured party. Thus, even a secured party may in fact be

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acting as a representative of the actual creditor. Rev. § 9-503(d) provides: "Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement." [92] The law of agency would govern the rights and duties between the person designated as secured party on the financing statement (whether or not identified as a representative) and the "actual secured party." No special provisions elaborate on how to indicate a secured party name correctly. [93]

The revised filing provisions introduce a new formal concept, the secured party of record, [94] recognizing that a person may be a secured party but might not be a secured party of record. This term means a person "whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement," or a person who is an assignee under Rev. § 9-514(a), or a person who is added by assignment under Rev. § 9-514(b), or by other amendment adding to the record. A secured party of record ceases to have that status only when an amendment is filed deleting that person. [95] As discussed above, the authorization of a secured party of record [96] is necessary in order to entitle anyone to file an amendment (which ***76** includes a continuation or termination). [97] The entitlement is a condition to effectiveness.

With respect to the designation of the parties on the financing statement, Rev. § 9-505 continues, albeit more precisely articulated, current law to the effect that a filing may use terms such as lessee/lessor or consignee/consignor instead of debtor/secured party, where appropriate. [98]

c. Indication of Collateral

The third requirement for effectiveness of a financing statement is that it "indicates the collateral covered." [99] This language contrasts with the current requirement that the financing statement provide a "description" of the collateral, [100] and with the "description" requirement with respect to security agreements in both Current and Revised Article 9. [101] Two changes have been made by Revised Article 9. Rev. § 9-108(a) adopts the "reasonable identification" standard and continues in effect the language of Cur. § 9-110 (1995) in regard to sufficiency of description. [102] The "reasonable identification" standard, however, is elaborated on in Rev. § 9-108(b) which expressly permits description by using "types" of collateral defined in the UCC. [103]

Although the Drafting Committee was not unanimous on this policy decision, Rev. § 9-108 adopts the rule that language such as "all the debtor's assets" or "all of the debtor's personal property" is insufficient as a *collateral description* by providing that such language does not "reasonably identify" the collateral. Some members of the Drafting Committee argued that such language best informs the debtor (as well as third parties) that absolutely everything is subject to the security interest. [104] It was ultimately decided, however, that this "made it too easy" and that a security agreement should have to take the somewhat longer route of at least reciting all of the UCC- ***77** defined "types" of collateral. On the other hand, recognizing that the function of the financing statement is different, serving only as a warning to searchers to seek, from sources other than the financing statement itself, such specific information as they deem necessary for their purposes, Rev. § 9-504 makes sufficient in the financing statement either a description of the collateral satisfying Rev. § 9-108 or "an indication that the financing statement covers all assets or all personal property." [105] It follows, of course, that in the financing statement an indication such as "all assets other than automobiles" will be sufficient. Thus, there should be less litigation about the sufficiency of the collateral indication in the financing statement than has been reported in the past. Courts should recognize the policy adopted in Revised Article 9 which moves away from flyspecking the collateral description in the financing statement.

2. *Other "Required" Information*

As noted above, Rev. § 9-516 requires that the financing statement provide certain additional information. This information is required only in the sense that its absence is a ground for rejection by the filing office; its absence does not render a financing statement insufficient and does not prevent effectiveness of the filing if it is nevertheless accepted by the filing office.

III. SUBSEQUENT FILINGS

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A. AMENDMENTS

All filings presented under Revised Article 9 after the initial financing statement is filed (other than correction statements) are amendments, as provided in Rev. § 9-512, with special additional provisions relating to termination statements, assignments and continuation statements in succeeding sections. All subsequent filings must identify the initial financing statement to which they relate by its file number. Amendments may add or delete collateral. [106] They may also add or delete debtors or secured parties of record, although an amendment may not delete all debtors or all secured parties of record without providing the name of a debtor to be covered by the financing statement or a new secured party of record. [107] As under current law, amendments (other than continuation statements) [108] do not extend the period of effectiveness of a financing statement, and amendments that add collateral ***78** or add a debtor are effective as to the added collateral or added debtor only from the date of the filing of the amendment. [109]

This article does not discuss the provisions of Revised Article 9, found in Subpart 2 of Part 5, relating to the duties and operations of the filing office, as they do not present issues likely to arise in bankruptcy proceedings. Nevertheless, it is important to an understanding of the filing system to be aware of the effect of Rev. §§ 9-522 and 9-523. They require the filing office to retain, and report in response to requests for information, all filings, for a period ending no sooner than one year after the lapse date for the initial financing statement (not shortened by receipt of termination statements but extended by receipt of continuation statements). The result of these revised sections will be to give the searcher more information than available under the present regime, and to make clear the filing office's lack of authority and responsibility to make determinations concerning the effect of filings.

B. TERMINATIONS

Rev. § 9-513(d) continues the present rule that the effective filing of a termination statement terminates the effectiveness of the identified financing statement. [110] Debtors are given added protection under Rev. § 9-509(c)(2), which has no counterpart under current law. Under this provision, a debtor is given the right and authority to file a termination statement without authorization from the secured party of record when the secured party of record has failed to file or send a termination statement as required by Rev. § 9-513(a) or (c).

C. ASSIGNMENTS

Rev. § 9-405 permits but does not require that a secured party "may assign of record all or part of his rights under a financing statement." Consistent with the conceptual framework of Revised Article 9's filing system, the revised text states more clearly that a secured party "may assign of record all or part of its power to authorize an amendment to a financing statement." [111] ***79** The national standard paper forms set forth in Rev. § 9-521 accommodate both prefiling [112] full assignments and postfiling full or partial assignments (of either all of the assignor's interest in some of the collateral or some of the assignor's interest in all of the collateral) in a clear fashion.

D. DURATION OF EFFECTIVENESS

Revised Article 9 continues the current rule that a financing statement's effectiveness lapses after five years [113] unless continued by a timely [114] filed continuation statement; the current six-month window for filing is likewise carried forward. [115] In a change from current law, the effect of lapse is limited to protection of purchasers for value. [116] Under current law, lien creditors are also given this protection. [117]

IV. OTHER ISSUES

A. MULTIPLE DEBTORS AND MULTIPLE SECURED PARTIES

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Although current law is silent on the subject, virtually all states accept financing statements identifying more than one debtor and more than one secured party. Revised Article 9 deals with this circumstance explicitly. Cur. § 1-102(5) (1995) continues to provide that "words in the singular number include the plural, and in the plural include the singular." Both current Part 4 and revised Part 5 state rules generally in the singular and rely on the foregoing rule of construction.

In addition, Revised Article 9 includes three provisions that deal expressly with multiple party issues. Rev. § 9-520(d) provides that "If a record communicated to a filing office provides information that relates to more than ***80** one debtor [Part 5] applies as to each debtor separately." Rev. § 9-510(b) provides that "A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record." These provisions make clear that each secured party may file without the authorization of any other secured party and no secured party is affected by anything filed or not filed by another secured party. Thus, any secured party of record, without the joinder of the others, may file a termination statement or other amendment, and such a filing will have no effect on any of the others. Likewise, if a record identifying two debtors is presented to a filing office but it lacks required data as to the second debtor, the financing statement is effective (and must be accepted by the filing office) with respect to the first debtor and must be rejected with respect to the second debtor. [118]

B. POSTFILING EVENTS--TRANSFER OF COLLATERAL

As under current law, if a security interest in collateral continues despite a transfer of the collateral, [119] the filing that perfected the security interest continues to be effective, even if the secured party knows of or consents to the transfer. [120]

C. POSTFILING EVENTS--CHANGE OF INFORMATION

Rev. § 9-507(b) makes explicit the general rule, subject to two exceptions, that a financing statement is not rendered ineffective if, after it has been filed, the information provided therein becomes seriously misleading. Thus, there is clearly no general duty to refile based on changes in any information other than the debtor name, because that is the only item of information that can render a financing statement undiscoverable and, thus, seriously misleading. The two special rules are the debtor-name-change rule provided in Rev. § 9-507(c) and the "new debtor" rule provided in Rev. § 9-508.

D. CHANGE OF DEBTOR'S NAME

The name-change rule is essentially unchanged from current law; [121] to-wit, if the name change is such that the financing statement becomes seriously misleading, the financing statement continues to be effective with respect to collateral acquired by the debtor before or within four months after the name change, but is not effective with respect to collateral acquired more than four months after the name change unless an amendment [122] is filed ***81** within four months after the change.

E. "NEW DEBTOR"

There are frequently situations where a person, by contract or by operation of law, becomes generally obligated for the obligations of another person and acquires or succeeds to all or substantially all of the assets of the other person. Revised Article 9 introduces a new concept to deal with two questions this situation raises: (i) whether and to what extent a person ("new debtor") that has not entered into a security agreement nevertheless becomes bound by a security agreement entered into by another person ("original debtor"), [123] and (ii) if so, to what extent the financing statement filed against the original debtor is effective to perfect with respect to then owned and subsequently acquired property of the new debtor other than collateral transferred from the original debtor.

Rev. §§ 9-203(d) and (e) deal with the first of these issues and Rev. § 9-508 (read together with Rev. § 9-506(d)) deals with the second issue. Assuming that the new debtor becomes bound by the security agreement entered into by the original debtor, Rev. § 9-508 provides that, as a general proposition, the filed financing statement naming the original debtor is effective to perfect a security interest in collateral in which the new debtor has rights at the time it becomes bound or in which the new debtor thereafter acquires rights, [124] to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral, e.g., the collateral falls within the indication of collateral provided in the financing statement.

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This rule is qualified by Rev. § 9-508(b) in the case where the difference between the name of the original debtor and that of the new debtor is such that the financing statement would be seriously misleading. In this case, the financing statement is not effective to perfect with respect to collateral acquired by the new debtor more than four months after the new debtor becomes bound unless an initial financing statement providing the name of the new debtor is filed during that four-month period.

CONCLUSION

It is likely that the Revisions will produce significantly less litigation, particularly in bankruptcy courts, as they provide easier-to-follow filing rules and clarify and narrow the consequences of some failures.

It is anticipated that the Official Text of Revised Article 9, together with ***82** Official Comments, will be available later in 1998. Revised Article 9 Part 7 provides elaborate, albeit complex, transition rules. It is contemplated that the revised article will be introduced in the various legislatures starting in late 1998, but with a targeted uniform effective date of July 1, 2001, giving ample time for many states to act and for lawyers and judges to familiarize themselves with the new law. Simultaneous effectiveness should significantly lessen the conflict of laws problems normally presented by a protracted uncoordinated adoption period.

Footnotes

a1 J.D., Harvard University (1963); B.A., UCLA (1960). Mr. Sigman practices in Los Angeles and has taught commercial law at USC and UCLA Law Schools as well as in the Netherlands and Belgium. He was a member of the NCCUSL Article 9 Drafting Committee (American Law Institute representative). The views expressed in this article are his own.

1 References in this article to Revised Article 9 refer to the version adopted at the 1998 National Conference of Commissioners on Uniform State Laws (NCCUSL) Annual Meeting and distributed November 16, 1998. References in this article to Cur. § 9-xxx are to the current version (1995 Official Text). As the section numbering is now entirely different, a reference to "Rev. § 9-501" means the section bearing that number in Revised Article 9; it does not mean a revised version of the section bearing that number in the current statute. Like all uniform laws, Revised Article 9 is drafted on the premise that it will be adopted uniformly by all the states.

2 Rev. § 9-109(a)(2). The term is defined in Rev. § 9-102(a)(5).

3 *Id.* § 9-109(a)(4). The term is defined in Rev. § 9-102(a)(20). Many consignments, of course, currently fall within Cur. § 2-326 (1995), which effectively requires filing for protection against the consignee's creditors.

4 Rev. § 9-109(a)(12). The term is defined in Rev. § 9-102(a)(13).

5 *Id.* § 9-109(d)(8). The term is defined in Rev. § 9-102(a)(46).

6 *Id.* § 9-312(a).

7 Thus, an unperfected security interest is avoidable under Bankruptcy Code § 546 by the trustee/debtor who occupies the position of a lien creditor by virtue of both state and federal law. 11 U.S.C. § 546 (1994). *Cf.* Cur. § 9-301(1)(b) (1995).

8 Rev. § 9-317(a)(2).

9 Cur. §§ 9-302(3) and (4) (1995) have counterparts in Rev. § 9-311, but the latter, in far clearer language, displaces the Revised Article 9 filing provisions only in favor of a federal statute, regulation or treaty "whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the [collateral] preempt [the Revised Article 9 general rule requiring filing to perfect]." Rev. § 9-311(a)(1).

10 Rev. § 9-501.

11 *Id.*

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12 *Id.* § 9-501(a)(1)(A). This newly coined term defined in Rev. § 9-102(a)(6) covers minerals and related accounts.

13 *Id.* § 9-501(a)(1)(A). Once the timber is cut, it is ordinary goods. *See id.* § 9-102(a)(44). Thus the filing is not made in the realty records and instead is made in the central filing office of the place where the debtor is located. *See id.* § 9-501(a)(2).

14 Rev. § 9-502(a)(1)(B). A fixture filing obtains benefits of the special priority rules set forth in Rev. § 9-334; an ordinary goods filing will, of course, suffice for perfection. *See id.* § 9-501.

15 *Id.* § 9-501(a)(1).

16 *Id.* § 9-501(b).

17 *See* Cur. § 9-401 (1995).

18 *Id.*

19 *See* Harry Sigman, *The Article 9 Dual-Filing Requirement Should Be Abolished,* UCC Bulletin 1 (September 1996).

20 This change also results in the elimination of Cur. § 9-401(2), and its resulting fact-intensive litigation, which disregards the objective approach of the filing system by making effective a "wrong place" filing against a person who has knowledge of the contents of the financing statement. Cur. § 9-401(2) (1995).

21 Rev. §§ 9-301, 9-307.

22 *Id.* § 9-301(1).

23 Cur. § 9-103(3) (1995).

24 *See* Rev. § 9-301. Note also that the "last event test" introduced into current law by the 1972 revisions (Rev. § 9-103(1)(b)) has been eliminated, replaced by the more simple "while the debtor is located in a jurisdiction" rule.

25 Cur. § 9-103(1)(b) (1995).

26 Cur. § 9-103(1)(b) (1995).

27 *Id.* § 9-103(1)(d).

28 *Id.*

29 *See infra* at 65-67.

30 Rev. § 9-301(2).

31 *Id.* § 9-301(3). The revised article also designates the location of the fixture (for fixture filings), the timber to be cut and the wellhead or minehead, respectively, as determinative. *See* Rev. §§ 9-301(3)(A)-(C); *id.* § 9-301(4).

32 *Id.* § 9-301(2).

33 *Id.* § 9-303(3).

34 *Id.*

35 Note that Rev. § 9-307 applies only for purposes of the choice-of-law rules found in subpart 1 of Rev. Part 3. Rev. § 9-307(k).

36 *Id.* § 9-307(b)(1). The term "residence" continues to be undefined in the UCC which does not seem to have caused a problem to date. Most importantly, the substance of the rule has been changed. *Cf.* Rev. § 9-103(3)(d): "A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence." Cur. § 9-103(3)(d) (1995).

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37 *See* Rev. § 9-307(b).

38 *Id.* § 9-307(b)(2).

39 *Id.* § 9-307(b)(3).

40 *Id.* § 9-307(e).

41 It is defined in Rev. § 9-102(a)(70) as "an organization organized solely under the law of one state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized." *Id.* § 9-102(a)(70).

42 *See generally,* Lynn M. LoPucki, *Why the Debtor's State of Incorporation Should be the Proper Place for Article 9 Filing: A Systems Analysis,* 79 MINN. L. REV. 577, 595-97 (1995) (discussing Mellon Bank, NA v. Metro Communications, Inc., 945 F.2d 635 (3d Cir. 1991)).

43 Cur. § 9-103(3)(d) (1995); Cur. § 9-103(1)(d) has a parallel rule for change in location of goods under the current situs-of-the-collateral rule.

44 *See* Rev. § 9-316(a).

45 "Re-incorporation," a misnomer for a transaction involving a merger or other corporate act that effectively produces it, does not constitute a "change" in the state of organization of the same entity.

46 Some transactions give rise to "new debtor" situations, a new concept introduced by the revision. This concept and the filing rules relating thereto are discussed *infra* p. 81.

47 Rev. § 9-316(b). Compare the consequence set forth in Rev. § 9-316(b) of failure to refile within the prescribed four-month or one-year refiling period with that set forth in Cur. §§ 9-103(1)(d)(i) and 9-103(3)(e) (1995) of failure to refile within the currently prescribed four-month period. It should also be noted that the language of Rev. § 9-316(b) is identical to that found in Rev. §9-515(c) (concerning loss of perfection due to lapse of effectiveness of a financing statement because of failure to timely file a continuation statement). *Cf.* Cur. § 9-403(2) (1995) ("If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse"). Cur. § 9-403(2) (1995).

48 Rev. § 9-307(c).

49 *Id.* § 9-307(f)(3). These rules replace the not very useful foreign debtor provision in Cur. § 9-103(3)(c) (1995), which points to the "major executive office in the United States" and which refers to "perfection" by filing or recording abroad, terminology not likely to have meaning in most foreign legal systems. In effect, these rules would require filing ("registering") under the law of Ontario (a Personal Property Security Act based on and very similar to Article 9) to cover collateral owned by an Ontario corporate debtor having its chief executive office in Toronto, but to file in the District of Columbia to perfect in collateral owned by an Albanian corporation having its chief executive office in Tirana, as Albania does not yet have a public filing system qualifying under the standard set forth in Revised Article 9. A further refinement is provided in Rev. § 9-307(f) for a registered organization that is organized under federal law and for a branch or an agency of a bank that is not organized under federal law or the law of a state. Rev. § 9-307(f).

50 Rev. § 9-307(h).

51 *Id.* § 9-307(d).

52 *Id.* § 9-307(g).

53 *Id.* §§ 9-303 - 9-306.

54 Rev. § 9-305(c)(1).

55 *Id.* § 9-102(39); *id.* § 9-102(69).

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56 *Id.* § 9-520. The forms for paper financing statements, amendments and their respective addenda, are provided in Rev. § 9-521.

57 *Id.* § 9-502(a).

58 Cur. § 1-201(39) (1995).

59 *See* PEB Commentary No. 15, Electronic Filing under Article 9.

60 There is no policy reason to support such a concern, and the PEB Commentary and the revision indicate so by using legal reasoning applicable under current law and by policy analysis supported by the Code's sponsors. Moreover, electronic filing has already been in use in Iowa for seven years, in Kansas for three years and in Texas (albeit only in low volume to date) for over a year. A denial of effectiveness to all of these filings by a court would disrupt legitimate expectations such as reliance on the conduct of filing offices in creating and promoting electronic filing acceptability.

61 While an off-the-cuff reaction to the deletion of the signature requirement might be that this would result in the degradation of the public record, it should be borne in mind that (i) no filing office has the capability to determine that a signature is not a forgery or otherwise unauthorized, and (ii) the incidence of bogus filings under current law makes clear that the signature requirement does not prevent abuse of the filing system. Elimination of the requirement that the debtor sign the financing statement also permits elimination of the provision permitting the secured party to sign in lieu of the debtor in the four specified situations. *See* Cur. § 9-402(2) (1995).

62 *See* Rev. §§ 9-509, 9-510. Thus, although the court in United States v. Greenstreet, 912 F. Supp. 224 (N.D. Tex. 1996), a case involving a "bogus" filing, correctly held that a financing statement filed without the debtor's authorization was ineffective, it placed undue emphasis on the absence of the debtor's signature. As the existence of the filing lacking the debtor's signature made clear, a signature is not, as the court concluded, the "indispensable concession to authenticity and a deterrent to inaccurate or malicious filings." Greenstreet, 912 F. Supp. at 227.

63 Rev. § 9-518. This provision was added in response to the so-called "bogus filings" that began several years ago which were filed by certain nonconformist groups and others, frequently against government officials.

64 *Id.* § 9-518(c).

65 This nonjudicial remedy is based on an analogous device found in the Fair Credit Reporting Act, 15 U.S.C. § 1681 (1994).

66 Rev. § 9-625(b)(e).

67 *Id.* § 9-516(a).

68 *Id.* § 9-520(a).

69 *Id.* § 9-516(d).

70 *Id.* § 9-520(c). Although the filed record is effective to perfect, the security interest may nevertheless be vulnerable under Rev. § 9-338 to certain purchasers of specified types of collateral under the circumstances specified in that section.

71 Rev. § 9-517.

72 *Id.* § 9-509(a)(1). Revised Article 9 makes clear that the key issue is authority to file; the identity of the person who actually tenders the filing is not significant.

73 *Id.* § 9-509(b). This ipso facto authorization also covers filing against identifiable proceeds, whether or not the security agreement expressly covers proceeds.

74 *Id.* § 9-509(c)(1). As Rev. § 9-512 makes clear, all subsequent filings affecting the initial financing statement, including continuation statements and termination statements, are "amendments." With respect to termination statements, if the secured party is obligated under Rev. § 9-513 to file or send a termination statement and fails to do so, the debtor may

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authorize the filing of a termination statement, Rev. § 9-509(c)(2); such a filing will be effective only if the termination statement indicates that the debtor authorized it to be filed. *Id.* § 9-510(a).

75 *Id.* § 9-510(a). The "to the extent" language makes clear that a financing statement providing a collateral description broader than that authorized is ineffective only as to the unauthorized excess.

76 Rev. § 9-516(d).

77 An exception is the case of a filing of a continuation outside the statutory six-month window prescribed by Rev. § 9-515(d). Although the filing office should reject that tender, Rev. § 9-516(b)(7), acceptance will not make it effective. Rev. § 9-510(c). A searcher can determine effectiveness based on the date of filing, even if the filing office accepts a prematurely or tardily filed continuation statement. The six-month window is not applicable to certain filings under the special transition rules found in Revised Article 9 Part 7 or to filings relating to specially designated long-term transactions under Rev. §§ 9-515(b) and (d).

78 There are additional required items when the collateral covered is timber to be cut or as extracted collateral or when the financing statement is filed as a fixture filing, Rev. § 9-502(b), or when a real property mortgage is filed as a fixture filing, Rev. § 9-502(c).

79 Rev. § 9-516(b) specifies the only permitted grounds for rejection, and Rev § 9-520(a) makes these grounds mandatory.

80 Rev. §§ 9-520(c), 9-338.

81 Id. §§ 9-503(a)(2), (3). The current statute is silent on this matter. It should be borne in mind that these rules are solely to provide guidance on debtor identification for purposes of the filing system. They have no effect on underlying law concerning other matters, i.e., who can act for a trust or an estate, or whether such entities have separate legal existence for purposes of holding title or conveying interests, or who is a proper party for litigation purposes.

82 Rev. §§ 9-503(b)(1), (c). *Compare* Cur. § 9-402(7) (1995), which is intended to produce the same result but is apparently insufficiently clear. The revised text clearly negates erroneous decisions such as *In re* Glasco, Inc., 642 F.2d 793 (5th Cir. 1981); *In re* McBee, 714 F.2d 1316 (5th Cir. 1983); Peoples Nat'l Bank v. Uhlenhake, 712 P.2d 75 (Okla. Ct. App. 1985). Obviously, if the trade name is so close to the correct name of the debtor that it passes muster as the debtor's name, it is not disqualified simply because it is a trade name. "So close," however, means that it would be discovered in a search under the correct name. Rev. § 9-506(c). Under current law, *see, e.g.,* First National Bank of Lacon v. Strong, 663 N.E. 2d 432 (Ill. App. Ct. 1996) (trade name "Strong Oil Co." is "seriously misleading" when debtor's name is "E. Strong Oil Company").

83 *Compare* Rev. § 9-506(a) *with* Cur. § 9-402(8) (1995).

84 Rev. § 9-506(b).

85 The national "standard" forms for use under Revised Article 9 are provided in Rev. § 9-521. *See supra* n.56 and accompanying text. *See* Sigman, *Putting Uniformity into--and Improving the Operation of--the Uniform Commercial Code: The New National Financing Statement Form,* 51 Bus. Law 721 (1996) (discussing the national standard form developed for and in use under current law during the transition period preceding effectiveness of Revised Article 9).

86 Current law provides no policy support for, and the revised text clearly negates, misguided decisions such as *In re* Mines Tire Co., 194 B.R. 23 (Bankr. W.D.N.Y. 1996), and Corporate Financers, Inc. v. Voyageur Trading Co., 519 N.W.2d 238 (Minn. Ct. App. 1994). In *Mines,* the court said: "It will not suffice to perform a word search for the precise corporate name. Rather, the interested party should expand its investigation to include all related entries through which a manual searcher might have stumbled. In the present instance, a reasonable computer search would have included at least all entries beginning with the word "Mines." *Mines,* 184 B.R. at 26. The unworkability of this approach is obvious. Similarly, the *Voyageur* case would require searchers to conduct searches under all names that sound like the debtor's name.

87 Details concerning the financing are a private matter. In any event, the precise amount of current indebtedness and the precise identification of collateral at any point in time are items that may vary as frequently as daily. Rev. § 9-210, like § 9-208 albeit in more precise language, requires a secured party to respond to requests authenticated by the debtor.

88 *See* Scot Lad Foods v. First Bank & Trust Co., 546 N.E.2d 1168 (Ill. App. 1989), and *In re* Bumper Sales, Inc., 907 F.2d 1430 (4th Cir. 1990).

89 526 F.2d 23 (1st Cir. 1975), *cert. denied* 425 U.S. 937 (1976) (approving use of nominee); *see also In re* Industrial Packaging Prod. Co. v. Fort Pitt Packaging Int'l, Inc., 161 A.2d 19 (Pa. 1960) (agent), and *In re* Fried Furniture Corp., 293 F. Supp. 92 (E.D.N.Y. 1968) (agent).

90 Putting onto the public record the name of an assignee has never been mandatory and is not an element of continued perfection. Cur. §§ 9-302(2), 9-405 (1995). These rules are continued under Rev. §§ 9-310(c) and 9-514. *See also In re* Wilco Forest Mach., Inc., 491 F.2d 1041 (5th Cir. 1974) (secured party's existence as separate corporation had ceased; it had become a division of another corporation).

91 Rev. § 9-102(a)(72).

92 Thus, Revised Article 9 negates the holding of the bankruptcy court in Chemical Bank v. Security Pacific National Bank, 20 F.3d 375 (9th Cir. 1994), that a filing naming a bank as secured party but not identifying its representative capacity did not serve to perfect the security interests of two banks not named as secured parties for whom the named bank was acting. To illustrate the effect of Revised Article 9's rules: a security agreement might provide for a security interest in favor of six lending banks; the financing statement might name X, who was selected by the banks to function as their collateral agent; X may but need not be one of the six lenders, and the financing statement need not disclose that X is acting as an agent for the six lenders.

93 Although Rev. § 9-506(a), the "seriously misleading" test for errors, is not by its terms limited to errors in the debtor name, it is hard to imagine a circumstance where a secured party name error would be "seriously misleading" since the financing statement, being indexed under the debtor's name, is not rendered undiscoverable by the error. *See, e.g.,* Roberts v. International Harvester Credit Corp., 237 S.E.2d 697 (Ga. App. Ct. 1977) (identified incorrectly as International Harvester Corp.). There might occur a particular case in which a searcher might reasonably rely on the error and be misled to its detriment; if necessary in order to produce a just result in that case, the error should be dealt with by estoppel in favor of that person, not insufficiency of the financing statement generally. Even this technique will rarely be needed. For example, suppose a secured party's address is set forth incorrectly in a financing statement. A person who sent a predisposition notification under Rev. § 9-611 or a purchase-money superpriority notification under Rev. § 9-324 would be protected even were the notification not actually to reach the secured party. Rev. § 9-102(a)(74) provides that "send" means to "transmit … addressed to any address reasonable under the circumstances; …" and Cur. § 1-201(26) (1995) provides that a person "receives" a notification "when it is duly delivered at [a] place held out by him as the place for receipt of such communications."

94 Rev. § 9-511.

95 *Id.* § 9-511(c).

96 General principles of other law continue to apply. Thus, a secured party of record may choose to act through an agent. Likewise, if, as a consequence of a merger of a corporate secured party of record into another corporation, the latter entity is the survivor and as a matter of other law succeeds to all of the rights and powers of the no longer existing entity, the surviving entity has the power to take action that the no longer existing entity could have taken.

97 Authorization of the secured party of record is not required with respect to a termination statement filed pursuant to authorization of the debtor under the circumstances specified in Rev. § 9-509(c)(2), to-wit, when the secured party of record has failed to file or send a termination statement despite being obligated to do so under Rev. § 9-513(a) or (c).

98 *Compare* Cur. § 9-408 (1995).

99 Rev. § 9-502(a)(3).

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100 *Compare* Cur. § 9-402 (1995).

101 Cur. § 9-203 (1995) and Rev. § 9-203.

102 Cur. § 9-110 (1995) provides that "any description of personal property or real property is sufficient whether or not it is specific if it reasonably identifies what is described."

103 Rev. § 9-108(e), however, renders insufficient a description by type in the cases of (i) a commercial tort claim or (ii) in a consumer transaction (a term defined in Rev. § 9-102(a)(26)), consumer goods, a security entitlement, a securities account, or a commodity account.

104 As Judge William Hillman succinctly put it, albeit with reference to a security agreement description: "One of the basic words in English is 'all.' It is actually easier to understand 'all' than a compilation of all the UCC generics. Why must a security document state 1+1+1 when 3 is easily understood?" *In re* Legal Data Systems, Inc., 135 B.R. 199 (Bankr. D. Mass. 1991).

105 This rule overturns the result in cases such as *In re* Fuqua, 461 F.2d 1186 (10th Cir. 1972) (holding "all personal property" in financing statement insufficient).

106 Unlike current law (*see* Cur. § 9-406 (1995)), Revised Article 9 does not specially identify "release" of collateral, as this is simply a form of deletion; under current law, releases are often erroneously filed when a termination is what was intended.

107 Rev. §§ 9-512(a), (e).

108 Continuation statements are discussed *infra* at p. 79.

109 *Compare* Rev. §§ 9-512(b)-(d) *with* Cur. § 9-402(4) (1995).

110 In a significant change from current practice, however, the filing of a termination statement will not cause the immediate deletion from the public record of the identified financing statement. See Rev. § 9-522. Under Revised Article 9, the filing office will file the termination statement and retain it. When a search request is made, the filing office will produce the document so that it will be the searcher who will make determinations about effectiveness. A searcher will have more information than under current law. For example, if an erroneous or forged or otherwise unauthorized termination statement were filed today, the filing office, being unable to detect forgeries, would simply wipe the slate clean. However, it is clear that this would not in any way affect the perfection of the "terminated" financing statement. Thus, searchers are at risk under current law.

111 Rev. § 9-514(c). Both Current and Revised Article 9 permit a prefiling assignment of the entire security interest to be reflected on the initial financing statement. *See* Cur. § 9-405(1) (1995) and Rev. § 9-514(a).

112 A prefiling assignment is one that occurs prior to the filing of the initial financing statement.

113 Rev. § 9-515(a). Rev. § 9-515(b) provides a special 30-year rule for a financing statement filed in connection with public-finance and manufactured-home financings, newly defined terms. Rev. §§ 9-102(a)(67), (53). Rev. § 9-515(f) provides that a financing statement filed against transmitting utilities is effective until a termination statement is filed and Rev. § 9-515(g) provides that a real property mortgage that is effective as a fixture filing remains effective as such until its effectiveness terminates as to the real property.

114 The tolling provision in Cur. § 9-403(2) (1995) based on the debtor being the subject of an insolvency proceeding was eliminated in light of the recent amendment to 11 U.S.C. § 362(b)(3) (1994) expressly permitting a secured party to continue or maintain the perfected status of its security interest without first obtaining relief from the automatic stay. 11 U.S.C. § 362(b)(3) (1994). Of course, Article 9's provisions with respect to the effect of a lapse that occurs during the pendency of a bankruptcy proceeding would be superseded by any contrary federal bankruptcy rule.

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115 Revised Article 9 makes clear that a continuation statement tendered outside the statutory six-month window is to be rejected by the filing office (Rev. § 9-516(b)(7)) and is ineffective, whether accepted or rejected (Rev. § 9-510(c)). The six-month window does not apply to filings made pursuant to the transition provision of Rev. Part 7.

116 *Compare* Rev. § 9-515(c) *with* Cur. § 9-403(2) (1995), which makes lapse also effective vis-à-vis lien creditors.

117 Cur. § 9-403(2) (1995).

118 See Rev. § 9-520(d).

119 This will usually be the case. See Rev. § 9-315(a).

120 *See* Cur. § 9-402(7) (1995), Rev. § 9-507(a).

121 *See* Cur. § 9-402(7) (1995), Rev. § 9-507(c). However, the revised section is applicable only to a change of name and omits the language found in current law making the rule applicable also in the case of a change of "identity or corporate structure" of an organization.

122 Cur. § 9-402(7) (1995) calls for a "new appropriate financing statement."

123 The terms "new debtor" and "original debtor" are defined in Rev. §§ 9-102(a)(56) and (60), respectively.

124 Rev. § 9-508 applies only to collateral other than collateral transferred to the new debtor by the original debtor as to which the financing statement filed against the original debtor remains effective against the new debtor under Rev. § 9-507(a). Rev. § 9-508(c).

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*111 A ROSE BY ANY OTHER NAME WOULD SMELL AS SWEET (OR WOULD IT?) [a1]: FILING AND SEARCHING IN ARTICLE 9'S PUBLIC RECORDS

I. Introduction

The fourteenth century concept of parsimony known as Occam's Razor states, "Entities should not be multiplied unnecessarily." [1] This idea of simplicity--of stripping away the nonessential--has informed Article 9 of the Uniform Commercial Code from its inception. Among the great beauties of Article 9 is its simplification of the requirements for giving notice to third parties of security interests in personal property or fixtures. [2] Before Article 9, personal property secured transactions were governed by a myriad of state laws. [3] Many ***112** of these laws required secured parties to give notice of their interests through extensive and detailed public filings that the courts subjected to hypercritical scrutiny. [4] Minor errors on the public documents caused judicial nullification of the filing and resulted in loss of perfection, subordination, and bankruptcy destruction of the security interest.

The original Article 9 Reporters sought to simplify the notice requirements and developed the concept of notice filing. Rather than demanding that lenders file complicated documents filled out with exacting precision, Article 9 only required certain basic pieces of information in the publicly recorded financing statement. The goal of filing was merely to put third parties on notice that security interests might exist as opposed to providing detailed information about the nature and extent of the secured party's financing arrangement with the debtor. It was then up to interested third parties to seek out further information from the debtor, the secured party, or another source.

Along with the adoption of notice filing came the doctrine of substantial compliance. If a financing statement substantially complied with Article 9, it was valid "even though it contain[ed] minor errors which are not seriously misleading." [5] The drafters adopted the position that absolute precision on a financing statement ***113** was not necessary. As long as third parties were receiving sufficient information to engage in further inquiry, the public filing system was fulfilling its function. [6]

In the 1990s, the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Law Institute (ALI) decided to overhaul Article 9 in an attempt to further modernize and simplify the law governing secured transactions. [7] The end product of their efforts was Revised Article 9, which was adopted by all fifty states (with an effective date of July 1, 2001, in most states). [8] Revised Article 9 retained, with a small modification in wording, the substantial compliance standard regarding the sufficiency of financing statements. [9] The new law, however, carved out an exception to the substantial compliance doctrine for the debtor's name on the financing statement. [10] While new Article 9 as a ***114** whole has not generated much cutting-edge litigation in the five years since its adoption, the issue of the debtor's name on the financing statement has produced significant and sometimes conflicting case law.

This Article will examine the debtor-name issue as it developed under prior law and is developing under the new version of Article 9. [11] This Article explores the issue from the perspective of allocating burdens appropriately between filing parties and

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searching parties and concludes that while the case lawinterpreting former Article 9 put too much of the burden of debtor-name errors on the searching party, courts applying Revised Article 9 have gone too far the other way in invalidating financing statements that contain extremely small errors. Granted, in most cases, the filing party can reduce the overall costs of the filing system by assuring the accuracy of the debtor's name ex ante at the time of the initial filing. However, assuring accuracy in the debtor's name is sometimes more easily said than done, particularly where a debtor has more than one name and even more than one "legal" name. Hence, this Article suggests that Article 9 should be amended to clarify that, as most courts have assumed, the debtor's legal name is required on the financing statement, regardless of the debtor's status as an individual, registered organization, unregistered organization, or other type of entity. Article 9, however, should provide a safe harbor to filers attempting to ascertain the debtor's legal name. Furthermore, this Article argues that the computer search logic employed by the secretary of state offices for their Article 9 records should be refined to assist searchers in finding financing statements that contain minor errors in the debtor's name.

Part II of this Article reviews the law regarding the debtor-name issue under prior versions of Article 9. Part III examines the changes wrought by Revised Article 9. Part IV summarizes recent developments in the case lawin this area, and Part V advances a proposal for further modification of the statute to clarify which of multiple debtor names should be used on financing statements and ***115** to mandate refinement of computerized searching techniques to assure greater accuracy of the filing system and to reduce future litigation.

II. The Nature of the Problem and Some History

A. Historical Treatment of Security Interests

In the early nineteenth century when creditors first began to use widely nonpossessory security devices involving debtors' personal property, the courts reacted with suspicion and hostility. [12] Whereas real estate liens required some sort of public notice to be effective, [13] there was initially no similar mechanism for giving notice of nonpossessory security interests in personal property. Courts had an instinctive abhorrence for these so-called secret liens--privately created security interests in favor of a particular lender that were hidden from view because the debtor retained possession of the encumbered property. [14] The only antecedent for personal property security devices--the ancient practice of pawning or pledging one's goods--did not present the same problem of secrecy. Because the debtor had to surrender physical possession of the goods to the pawnbroker, that action by itself put third parties on alert that the debtor had already given an interest in its property to someone else. [15]

***116** Legislatures reacted to judicial nullification of security interests by passing a number of statutes that required secured lenders to file a document in the public records or otherwise to give effective notice to the world of their interests. [16] These statutes took a variety of forms and were tailored to specific types of secured transactions, such as accounts factoring, conditional sales, chattel mortgages, and trust receipt arrangements. [17] But despite ongoing developments, the law always remained a step or two behind commercial lending practices. [18] As creditors developed different security devices to compensate for the legal vacuum, legislatures responded by validating such devices but imposing certain restrictions on them designed to protect other creditors and third parties. One of the difficulties that lenders faced under these new statutory regimes was that each type of security device had its own legal requirements, and even the legal requirements for each particular type of transaction could vary from state to state. [19] In the late nineteenth and early twentieth centuries there were selective efforts to modernize and standardize the law, but it remained largely a tangled mess. [20]

B. The Uniform Commercial Code

The idea of a unified commercial code now seems commonplace, but it was revolutionary for its time. [21] Article 9 replaced the myriad of inconsistent state laws governing different security devices with a single statute that applied to any consensual secured transaction involving personal property or fixtures, "regardless of its form." [22] Along with its comprehensive scope, Article 9 championed a ***117** particular form of giving public notice of security interests. For most transactions, the creditor would have the option to file a simple document, the financing statement, in the public files--either at the state or county level. [23]

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Financing statements, in contrast to earlier filed documents required by most states, [24] were simple affairs requiring only minimal pieces of information, such as the parties' names, addresses, signatures, and a description or indication of the collateral. The financing statement embodied the notion of "notice filing." [25] It was designed merely to signal that certain assets of a particular debtor might be encumbered in favor of a particular creditor. [26] Third parties searching in the public filing system could only expect enough information to set them on a "trail of inquiry" [27] to find all the facts necessary to make an informed decision about their own course of action. [28]

***118 C. The Debtor's Name**

The linchpin of the Article 9 filing system has been and remains the debtor's name. The debtor's name has always been mandated on a financing statement, even as successive versions of Article 9 have winnowed away the amount of information required for the public record. [29] In addition, the filing officer is required to index financing statements according to the debtor's name. [30] Thus, searching parties inevitably search for financing statements under the name of the person with whom they are contemplating a transaction to determine whether prior secured creditors claim an interest in any or all of that person's assets.

1. Pre-revision Article 9 requirements

Given the prime importance of the debtor's name as the gateway to the filing system, many pre-revision Article 9 disputes centered on the sufficiency of the debtor's name on the financing statement. Whereas the 1962 version of Article 9 did not require any particular name of the debtor, the 1972 version offered a simple, if only marginally helpful, statement as to which name of a debtor should be used on a financing statement: "A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or the names of partners." [31] The Official Comment to that section emphasized that secured parties should not use debtor trade names alone on financing statements: "Trade names are deemed to be too uncertain and too likely not to be known to the secured party ***119** or person searching the record, to form the basis for a filing system." [32]

In addition to the meager identification of the debtor name and the warning about trade names, the 1972 Code carried forward from the 1962 Code the "substantial compliance" standard for filed financing statements: "A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading." [33] The Official Comment to that provision made it clear that courts should not hold filing creditors to an inhuman standard of precision, noting that Article 9 "is designed to discourage the fanatical and impossibly refined reading of [filing] requirements in which courts have occasionally indulged themselves." [34]

In applying these provisions to debtor name disputes, courts confronted basically two types of errors committed by secured parties in putting the debtor's name on a financing statement. The first error involved selecting an "incorrect" name of the debtor to put on the public documents. Secured creditors committing the first error might use a trade name of a debtor by itself--e.g., the creditor uses the debtor's trade name, "Hilton Inn," rather than its official partnership name, "Beacon Realty Investment Company." [35] The second error consisted of selecting the "correct" name but spelling it incorrectly on the financing statement. [36]

***120** 2. Early pre-revision cases

For many years, courts were divided on the first issue regarding the use of trade names, nicknames, prior names, and so forth on a financing statement. Some courts were sympathetic to the filing creditor and upheld financing statements containing trade names or nicknames, particularly where the debtor was primarily known by these "non-legal" names. [37] In addition, courts could be somewhat forgiving where the name used was similar to the debtor's legal name--e.g., Platt Fur Co. for Henry Platt. [38] Many courts, however, took to heart the Official Comment discouraging the use of trade names and held that the debtor's trade name used alone rendered a filed financing statement seriously misleading. [39] Furthermore, some judicial decisions invalidated financing statements using a debtor's nickname instead of his or her legal name. [40] In both instances, the antipathy to trade

names and nicknames seemed to be based on the ***121** concern that future searching parties would not know those names or think to search under them. [41]

The second principal type of error found on financing statements consisted of misspelling, or setting forth incorrectly, the "correct" debtor name. In other words, the secured party attempted to use what it believed was the proper legal name of the debtor but ended up omitting or adding words or misspelling the name. For example, one secured creditor listed the debtor as "Raymond F. Sargent Co., Inc." when the debtor's correct legal name was "Raymond F. Sargent, Inc." [42] Another secured lender set forth the debtor's last name as "Brown" whereas it was actually spelled "Brawn." [43] Courts deciding these cases did not appear to be any more tolerant of the second kind of error than the first, focusing on the magnitude of the error rather than the type of error. [44]

Two different approaches to applying the substantial compliance standard to debtor-name errors emerged in the pre-revision cases. Under the first approach, courts determined whether the error was minor or significant, based primarily on the extent to which the name on the financing statement differed from the debtor's actual name. [45] In applying this approach, judges focused almost ***122** mechanically on whether the financing statement name differed by one or several letters from the debtor's real name, whether the error occurred at the beginning of the name or the end, and so forth. [46]

In some cases, the court went further and analyzed the deviation in light of the filing system involved--i.e., computerized versus manual, [47] searcher access versus call slip method, [48] large versus small database. [49] For example, spelling the debtor's name "Kaplam" rather than "Kaplan" would probably not thwart future searchers in a small, rural county using a manual filing system where the searcher could physically access the records. In that scenario, the searcher looking for "Kaplan" would be "riffling" [50] through a set of financing statements or index cards, would presumably see "Kaplam" before it reached "Kaplan," and would not be confronted with many names spelled similarly or identically. On the other hand, the same error might be highly significant in a central computerized filing system in a populous state. A searcher entering the name "Kaplan" in a computerized database would probably not be led to the filing under "Kaplam"; in addition, the searcher would have any number of ***123** filings under "Kaplan" to go through before finding the appropriate party without having to worry about "Kaplam" or other misspellings.

3. Evolution of pre-revision standards

The mechanistic comparison of the debtor's correct name and the one used on the financing statement gradually yielded to a more holistic standard based on the "reasonably diligent searcher." [51] Under the latter standard, courts examined whether or not a reasonably diligent searcher employing accepted search techniques would likely find the financing statement with the incorrect debtor name. [52] The application of the standard was heavily dependent on all the facts and circumstances of a particular case. [53]

Whether the evolution away from the mechanical comparison of names toward the seemingly more flexible "reasonably diligent searcher" standard actually affected the resolution of individual cases is debatable. It is apparent that many courts simply applied the old standard under the guise of a new name. In fact, some courts applying the "reasonably diligent searcher" standard still made a superficial comparison between the debtor's actual name and the name on the financing statement to determine whether the two names were "close enough." [54] Criticism of both approaches, however, began to emerge as courts [55] and commentators [56] found ***124** fault with the subjectivity inherent in them. Both the "reasonably diligent searcher" standard and the "close enough" standard allowed judges to second-guess what searchers should or should not have been able to discover had they tried hard enough. This subjectivity cut against the core UCC principle of promoting certainty and efficiency in commercial transactions. [57] This uneasiness about the existing law regarding debtor names on financing statements drove the revisers of Article 9 toward a more objective standard--one that courts could apply, it was hoped, with consistency and precision. [58]

III. The Debtor's Name Under Revised Article 9

Revised Article 9 adheres to the substantial compliance standard for measuring financing statement adequacy that existed in the old law. Under this standard, financing statements "substantially satisfying" Article 9 requirements are still effective even if they contain "minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading." [59]

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The revised statute, therefore, still permits small mistakes by the secured party, provided that the financing statement gives adequate notice to third parties.

Regarding the specific issue of the debtor's name, however, new Article 9 takes a stronger stand. In an apparent attempt to resolve any ambiguities in the old law, the revision states that "a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 9-503(a) [the Code provision defining the debtor's name] is seriously misleading." [60] The phrase "fails ***125** sufficiently to provide the name of the debtor" implies that errors in the debtor's name are fatal to the financing statement's effectiveness, whether the error is minor or not. All debtor name mistakes presumptively render the financing statement seriously misleading. [61] This change in the law singles out the debtor's name as the most important piece of information on the financing statement. [62]

A. The Single Search Standard

But, despite this new emphasis on complete accuracy, the revisers recognized that secured parties may be excused from some mistakes in setting forth the debtor's name if those errors do not affect a searcher's ability to find the financing statement in the official public database. Hence, the new statute provides a safe harbor that saves financing statements with errors in the debtor's name. If "a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor . . ., the name provided does not make the financing statement seriously misleading." [63] This provision might be denominated the "single search standard" in contrast to the pre-revision "reasonably diligent searcher standard." Thus, under Revised Article 9, a third party must only search once for financing statements for any particular debtor.

This "single search" should consist of entering the debtor's "correct" name into the filing office's database and observing ***126** whether that search produces any recorded financing statements. If it does, then a searcher presumably must take the additional step of determining whether the financing statements found pertain to the person or entity with which they are dealing. [64] If the search does not produce any matches, then, under the "single search" standard, the searcher has finished searching and may assume that there are no filed financing statements recorded against that particular person or entity. Hence, the new law impliedly defines reasonable diligence by searchers as the undertaking of a single search under the debtor's correct name. [65]

B. The Debtor's Name Defined

Revised Article 9 also elaborates on the question of what constitutes the debtor's "name" for filing and searching purposes. As discussed previously, the 1962 Code was silent on which debtor name should be used on the financing statement, most likely because the statute did not require the debtor's name as such on the financing statement, only the debtor's signature. [66] The 1972 version of Article 9 added the simple statement that "[a] financing statement sufficiently shows the name of the debtor if it gives the individual, partnership, or corporate name of the debtor, whether or not it adds other trade names or names of partners." [67] One could infer from this statement that filers should use the individual's name for an individual debtor, the partnership name for a partnership, and the corporate name for a corporation. Left unanswered was the appropriate name to use for unincorporated associations, trusts, estates, and other entities.

***127** Revised Article 9 tackles this issue in somewhat more detail. For registered organizations, [68] for example, a financing statement sufficiently sets forth the debtor's name "only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized." [69] The revised statute also sets forth the appropriate name to use for estates and trusts. [70] Finally, in the catchall provision for "all other cases," the new law requires that the secured party set forth the individual or organizational name of the debtor, if the debtor in fact has a name. [71] If the debtor does not have a name, then the secured party should list the names of the "partners, members, associates, or other persons comprising the debtor." [72]

Taken as a whole, Revised Article 9's provisions regarding the debtor's name appear to shift most of the burden of dealing with errors squarely onto the filing secured creditor's shoulders. Filing creditors must set forth the debtor's name accurately on the financing statement or risk lack of perfection. Searching parties need ***128** only perform a "single search" to identify prior

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secured parties. They are not expected to search in a database other than the filing office's official database, to search using any method other than that office's "standard search logic," [73] or to use anything other than the debtor's "correct" name in their search requests. [74] For registered organizations, such as corporations and limited liability companies, the debtor's correct name is clearly, and solely, its official registered name. [75] For other types of organizations and for individuals, the correct name of the debtor is not defined, and that issue, as will be seen, quickly generated litigation. [76]

C. The Policy Behind Revised Article 9

The apparent rationale for Revised Article 9's rules regarding debtor names can be found in a number of pre-revision cases and reflects the attitude that filing creditors should bear the burden of accuracy rather than searching parties bearing the burden of inaccuracy. [77] Article 9 itself is fairly silent as to its policy perspective, but pre-revision courts often took the view that because so little is required of the secured party using the filing system, it is appropriate to demand precision in setting forth the debtor's name. [78] Additionally, the secured party has the means by which to find out the debtor's correct name before filing whereas searchers can only guess at various possible misspellings or variations of the debtor's name that might exist in filed financing statements. [79] In other words, ***129** it is more efficient and equitable to require accuracy by the filing creditor than to demand "reasonable diligence," however defined, from searching creditors. [80]

IV. Post-Revision Case Law

Since Revised Article 9 went into effect over five years ago, courts have had several opportunities to apply the new rules regarding the accuracy of debtor names on financing statements. Though a few courts are still holding tight to the "reasonably diligent searcher" standard, [81] most have seemingly read new Article 9 as it is written and have dropped the hammer on the filing creditor who has made an error in the debtor's name that prevents subsequent searchers from finding the financing statement using a single search under the debtor's correct legal name. Though a few pockets of resistance to the new regime remain, the days of latitude for the filing party are largely over. The following review of the case lawreveals that various courts have treated the debtor name issue more or less consistently, regardless of whether the debtor is an individual or a registered organization.

A. Cases Involving Individual Debtors

In three post-revision cases involving the Kansas filing system, the courts confronted the question of what errors are acceptable ***130** where the debtor is an individual. The first court to address the issue applied the pre-revision "reasonably diligent searcher" standard, [82] but in the next case, the Tenth Circuit Bankruptcy Appellate Panel used the strict standard suggested by Revised Article 9. [83] The Kansas Supreme Court soon followed with another decision applying that strict standard. [84]

In the first case, Nazar v. Bucklin National Bank (In re Erwin), [85] the debtor's legal name was "Michael A. Erwin," and the secured party had filed a financing statement setting forth the debtor's name as "Mike Erwin." [86] In the debtor's bankruptcy, the trustee tried to avoid the bank's security interest as unperfected because the debtor's name was listed incorrectly. [87] The bankruptcy court held that the secured party's financing statement was valid, even though an electronic search of the filing records under the name "Michael A. Erwin" did not reveal the financing statement. [88]

The court stated that the traditional "reasonably diligent searcher" test survived the enactment of Revised Article 9, at least with respect to debtors who are individuals. [89] Article 9, the court noted, does not define "correct name" or even "name" for individual debtors, [90] and there is no reason to think that the drafters necessarily meant "legal name" when they required filing parties to ***131** place the debtor's name on a financing statement. [91] In this case, the debtor frequently used the name "Mike Erwin," [92] and the court held that his nickname was in fact one of his "names" or a "correct name" for him. [93] As such, it was sufficient for use on a financing statement. According to the court, searchers could fairly be required to use "reasonable diligence" in seeking out financing statements naming the debtor, and such diligence demanded searches under alternative names such as "Erwin" or "M. Erwin," both of which would have revealed the Bank's financing statement. [94] Thus, the first

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post-revision court to tackle the debtor name question seemed wedded to the pre-revision standard, at least with respect to the names of individuals.

In the second Kansas case, Clark v. Deere & Co. (In re Kinderknecht), [95] the debtor's legal name was "Terrance Joseph Kinderknecht," but the secured party filed a financing statement against him under his nickname, "Terry J. Kinderknecht." [96] Following the reasoning of the Erwin case, the bankruptcy court held that the filing was sufficient under Article 9. [97] The court stressed that Article 9 did not define "correct name" for individuals nor did it expressly require the use of legal names for individual debtors. [98] In this case, the court found that "Terry J. Kinderknecht" was undoubtedly a name that the debtor used--in fact, he signed his bankruptcy petition as such. [99]

Additionally, the court compared in some detail the two computerized Article 9 databases available in Kansas--one official ***132** and one unofficial. [100] The unofficial database's flexible search parameters made it more likely that a searcher would find a financing statement against any particular individual. After noting the availability of the more flexible unofficial search mechanism, the court held that a financing statement filed under a debtor's nickname could never be seriously misleading if a reasonable searcher could find it in the unofficial database, if not the official database. [101]

The bankruptcy court decision in Kinderknecht was short-lived, however. Six months after it was rendered, the Bankruptcy Appellate Panel for the Tenth Circuit reversed it, relying on several policy considerations and a close reading of the Article 9 name provisions. [102] The panel concluded that the Article 9 requirement of the debtor's name on a financing statement, in fact, means that the debtor's "legal name" must be used. [103] Noting that Article 9 makes the use of business entities' trade names by themselves on financing statements legally insufficient, the panel decided that a "different standard should not apply to individual debtors." [104] In addition, the suggested statutory forms for a financing statement have a space entitled "DEBTOR's EXACT FULL LEGAL NAME." [105] The ***133** suggested forms, though not mandated by the statute, clearly indicated to the panel that the drafters disapproved of nicknames. [106]

In addition to relying on statutory interpretation, the panel advanced four policy considerations to justify its holding. First, requiring the debtor's legal name simplifies filing; and second, it simplifies searching. [107] Strict enforcement of the rule means that secured parties know that they need to use the debtor's legal name on the financing statement, and third parties know that they need to search the public records only under the debtor's legal name. [108] Third, mandating the use of the debtor's legal name will reduce future litigation about the sufficiency of a particular non-legal name (such as a nickname) on a financing statement and about the ability of a "reasonably diligent searcher" to locate the financing statement with that name. [109] Finally, the panel observed that requiring the filing creditor to use the debtor's legal name is not unduly difficult or burdensome. [110] In fact, because filing creditors conduct their own searches before entering into a secured transaction with the debtor, they should already be aware of the debtor's legal name. [111]

The third Kansas case involving an error in an individual debtor's name cemented the position developed by the Tenth Circuit Bankruptcy Appellate Panel in Kinderknecht that the secured party must set forth the debtor's legal name on a filed financing statement with complete accuracy. In Pankratz Implement Co. v. Citizens National Bank, the Kansas Supreme Court held that a one-letter omission in the debtor's name rendered a financing statement seriously misleading. [112] In Pankratz, the first secured party had filed a financing statement listing the debtor as "Roger House," a misspelling of his actual legal name, "Rodger House." [113] The second secured party, which had spelled the debtor's name correctly, challenged the sufficiency of the filing. [114] The lower court granted ***134** summary judgment in favor of the first secured party based on its earlier filing. [115]

On appeal, the Kansas Court of Appeals first noted that the omission of a single letter from the debtor's first name would seem to be a "minor error or omission" under the substantial compliance standard of UCC § 9-506(a). [116] The real question, the court stated, is not the magnitude of the error but "whether a reasonably diligent searcher would find the prior security interest." [117] Under the strict requirements of Revised Article 9, the "reasonably diligent searcher" need make only a single search under the debtor's correct legal name in the official public database. [118] The court rejected any notion that a third party was expected to search under various possible names of the debtor or under variant spellings of the debtor's legal name. [119] Additionally,

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a reasonable searcher is required only to seek financing statements in the official UCC database, normally maintained by the Secretary of State, as opposed to any unofficial electronic databases that may exist. [120]

Applying a de novo standard of review, the Kansas Supreme Court affirmed the appellate court's decision against the first secured creditor, [121] though the supreme court's reasoning differed slightly. The supreme court rejected the "reasonably diligent searcher" standard altogether and noted that Revised Article 9 sought to impose a "bright line" rule regarding the sufficiency of the debtor's name on a financing statement. [122] By requiring that filing creditors ***135** set forth the debtor's name correctly, the new law has "the effect of shifting the responsibility of getting the name on the financing statement right to the filing party, thereby enabling the searching party to rely upon that name and eliminating the need for multiple searches using variations of the debtor's name." [123] The ultimate result of the bright line standard, the court noted, will be to promote certainty in commercial transactions and to reduce litigation regarding financing statement adequacy. [124]

The Kansas Supreme Court also agreed with the appellate court that searches in unofficial databases do not qualify as searches under Article 9's safe harbor provision. The court held that it is legally irrelevant that a searcher could find the erroneous financing statement in a database other than the official one maintained by the filing office. [125] In addition, the court hewed to the Tenth Circuit Bankruptcy Appellate Panel's Kinderknecht decision in holding that even where individual debtors are involved, the debtor's full legal name must appear on the financing statement. [126] Taken together, the Kansas Supreme Court's pronouncements tighten the compliance standard for the filing secured party: in all cases the secured party must use the debtor's legal name on the financing statement and set forth that name in such a way that it can be found in the official filing office database by a searcher employing the debtor's exact legal name. [127] No exceptions will be permitted.

A Georgia appellate court recently adopted the same unforgiving attitude toward debtor name errors in a case involving an individual debtor. In All Business Corp. v. Choi, the secured party indicated the debtor's name on the financing statement as "Gu, SangWoo" and the debtor's trade name as "CCO Check Cashing-Buford." [128] The debtor's name was in fact "Sang Woo Gu," and the trade name was ***136** "CCO Check Cashing." [129] A third party searched for financing statements under the debtor's correct legal name and trade name, and the filing office's standard search logic did not reveal the secured party's financing statement. [130] The secured party argued that a "simple stem search" [131] under the terms "CCO" and "Gu" did disclose the financing statement. [132]

Notwithstanding the success of the "stem" search, the court ruled that the creditor's security interest was unperfected, relying on a strict reading of Article 9 and Georgia case law. [133] Again, the errors in question were extremely slight. The mistake in the trade name was, in fact, irrelevant since a trade name filing by itself is insufficient. [134] The error in the debtor's legal name was merely the omission of a space in the debtor's first name: "SangWoo" rather than the correct "Sang Woo." [135]

B. Cases Involving Registered Organization Debtors

Predictably, the first few post-revision cases involving the debtor's name on a financing statement involved individual debtors. Because new Article 9 does not specify what constitutes the "correct" name for individual debtors, courts have leeway to interpret the requirement in various ways. On the other hand, with the new law's insistence on use of the publicly registered name of registered organizations, one would not expect much litigation involving corporate debtors. Presumably, the secured party knows which name to use where the debtor is a registered organization-- ***137** the name on the public registry--and can ensure that the name is spelled correctly by merely copying the public registry name onto the financing statement. As one might expect, two post-revision cases involving registered organization debtors indicate that Article 9 is to be taken literally when it requires absolute precision with respect to the names of those debtors.

In Receivables Purchasing Co. v. R & R Directional Drilling, LLC, the secured party had set forth the debtor's name on its financing statement as "Net work Solutions, Inc." when the debtor's legal name was "Network Solutions, Inc." [136] The Georgia appellate court held that under Revised Article 9, the financing statement was seriously misleading. [137] The parties did not dispute that a search in the filing office using the debtor's correct name did not disclose the secured party's financing

statement. [138] Despite the seemingly small error, the court found that Revised Article 9's insistence on precision causes a secured creditor to "act[] at his peril if he files the statement under an incorrect name." [139]

In a more recent case, a court once again demanded that the secured party get a corporate debtor's name absolutely correct, down to the inclusion of periods in the proper places. In Host America Corp. v. Coastline Financial, Inc., the secured party's assignor had filed a financing statement listing the debtor as "K W M Electronics Corporation" with no periods between the initials even though the debtor's legal name contained periods between the initials. [140] The ***138** debtor's lessor asserted a lessor's lien on certain property belonging to the debtor. [141] The secured party claimed that its assignor's earlier perfected security interest in the same property had priority over the later asserted lessor's lien. [142] The court, however, held that the assignor's financing statement was seriously misleading based on two grounds. First, the secured party conceded that the financing statement did not contain, as required by Article 9, the debtor's exact legal name because of the omission of the periods. [143] Second, the secured party could not save the financing statement through the "single search" exception of UCC § 9-506(c). [144] Evidence procured from the Utah Secretary of State's office clearly showed that a search under the debtor's correct name using the office's standard search logic would not have revealed the filed financing statement. [145]

The federal district court in Host America observed the miniscule nature of the secured party's error as well as the extreme limitations of Utah's standard search logic. [146] But Revised Article 9, the court stated, is clearly designed to place the burden of accuracy on the filing creditor and to eliminate the need for fact-intensive inquiries as to whether a reasonably diligent searcher could uncover a financing statement with an error in the debtor name. [147] The court also noted that the "escape hatch" of section 9-506(c) is at present tied to the filing office's electronic sophistication: "By necessity, the breadth of the safe haven . . . will either expand or contract as the capabilities of the state's standard search logic change over time." [148]

C. Federal Tax Lien Filings

The decisions in Receivables Purchasing and Host America should come as no surprise, despite their seemingly draconian results. They represent a straightforward application of sections 9-503 and 9-506 ***139** of Revised Article 9. But not all courts have followed that straight and narrow path. The Sixth Circuit Court of Appeals recently set searchers' teeth on edge with a decision concerning the recording of federal tax liens by applying the "reasonably diligent searcher" standard from the pre-revision law. [149] Although the decision concerned only federal tax lien filings, it arguably has broader implications for Article 9 searchers.

In Crestmark Bank v. United States (In re Spearing Tool & Manufacturing Co.), the secured party, Crestmark, attempted to contest the validity of a previously filed federal tax lien. [150] Before advancing additional funds to the debtor under their security agreement, the creditor had submitted a lien search to the State of Michigan, using the debtor's registered name, "Spearing Tool and Manufacturing Co." [151] The search results indicated no liens, and Crestmark lent the debtor additional monies. [152] Previously, the Internal Revenue Service had filed two notices of federal tax liens with the Michigan Secretary of State, using the name "Spearing Tool & MFG Company, Inc." [153]

After the debtor filed for chapter 11 bankruptcy protection, Crestmark filed a complaint to determine priority to certain pre-petition accounts receivable collections. Crestmark argued that Revised Article 9 essentially allows searching parties to use only the debtor's precise legal name in their searches, and if such a search does not reveal a filing, the filing is invalid. [154]

Apparently relying on preemption doctrine, the bankruptcy court held that federal, not state, law dictated the form of the notice that must be filed by the IRS asserting a tax lien against a particular ***140** taxpayer. [155] Treasury regulations under the federal tax lien statute required only that the lien notice "identify the taxpayer." [156] The court found that the name used by the IRS sufficiently identified the taxpayer since it was close to the debtor's legal name, it contained a commonly used abbreviation for "Manufacturing," and a reasonable search of the records would have uncovered the IRS's filing. [157]

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On appeal, the federal district court reversed the bankruptcy court's decision and held the IRS filing insufficient to give notice to subsequent parties. [158] The court acknowledged that federal law governed the adequacy of the federal tax lien notice. [159] Under federal law, according to the court, the applicable test is one of "reasonableness"--i.e., "whether a reasonable search of the index would have disclosed the error-laden federal tax lien." [160] Reasonableness, however, must be analyzed in light of the recording and searching systems in place in a particular jurisdiction. [161] Although Article 9 as state law does not control in this instance, it can provide guidance as to "what is reasonable behavior for searchers in today's environment." [162] Given the rigidity of the computerized search logic, under which only exact matches are retrieved, a searcher trying to find tax lien notices with possible errors in the taxpayer's name would have to search under variant spellings of that name. [163] Imposing such a burden on searchers would be unreasonable, the court concluded, and thus the IRS filing was insufficient. [164]

The Sixth Circuit Court of Appeals reversed the district court's decision and affirmed the bankruptcy court's grant of summary judgment in favor of the government. [165] Like the two lower courts, ***141** the Court of Appeals held that federal law controlled the content of the IRS tax lien notice, [166] and that under federal law, the test for notice sufficiency was the reasonable search standard. [167] The court then stated that the searching creditor in this case did not conduct a "reasonable and diligent electronic search." [168] A reasonable, diligent party would have searched for "Spearing Tool & Mfg.," the name used in the IRS filing, as well as "Spearing Tool and Manufacturing," the company's legal name, because the ampersand and "Mfg." are common, standard abbreviations for their respective words, "so common that, for example, we use them as a rule in our case citations." [169]

This decision, though not surprising, has ramifications for secured or would-be secured creditors attempting to ascertain the existence of prior interests in the debtor's property. Undoubtedly, Revised Article 9 has simplified the search process for inquiring parties, but those parties will still need to think creatively about the debtor's name in conducting searches for federal tax liens. Anticipating common variant spellings (e.g., "MFG" for "Manufacturing") and using truncated portions of the debtor's name (e.g., "Spearing Tool") will continue to be useful searching techniques. If searchers are using various permutations of the debtor's name in their searches for federal tax liens, the argument becomes that it is not much, if any, additional burden for them to use such variations in their searches for Article 9 security interests. Creditors contemplating a loan to a potential debtor will need to search for both federal tax liens and Article 9 security interests to assure themselves that the proffered collateral is unencumbered. Arguably then, the search technique that a creditor will use to find federal tax liens could be readily employed in the Article 9 records as well. Courts accepting that logic may be drawn irresistibly back to ***142** the "reasonably diligent searcher" standard even though the new statute rejects it.

D. Cases Resisting the Strict Standard

Two additional post-revision cases illustrate some courts' inherent sympathy for the filing creditor in its attempt to get the debtor's name right on the financing statement. They reflect a judicial desire to allow secured parties some degree of fallibility in filling out the financing statement, even where an error occurs with respect to the debtor's name. They may also represent a sub rosa resistance to the strict interpretation of Revised Article 9's standard for accuracy in debtors' names on financing statements.

1. Fraud claims

In Miller v. Van Dorn Demag Corp. (In re Asheboro Precision Plastics, Inc.), the bankruptcy court correctly applied the "single search" standard of Revised Article 9 to invalidate a financing statement that listed the debtor under its trade name, "Wade Technical Molding, Inc.," as opposed to its legal name, "Asheboro Precision Plastics, Inc." [170] While acknowledging that a "prudent searcher" would have discovered the financing statement in question because of certain cross-references on other financing statements, [171] the court held that Revised Article 9 mandated a different result. [172] Because a search under the debtor's legal name would not have revealed the financing statement in question, it was invalid. [173]

But the court then seemingly carved out an exception to the general rule. The secured creditor argued that because the debtor had misrepresented its legal name to the creditor, the debtor had committed fraud. [174] The fraud, in turn, caused the creditor to use the incorrect debtor name on the financing statement, resulting in a ***143** lack of perfection and avoidance by the bankruptcy trustee. [175] The fraud, the creditor asserted, entitled it to a constructive trust on the collateral. [176] A constructive trust would

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give the secured party an equitable interest in the collateral and allow it to recover the proceeds from the sale of the collateral. [177] The court held that the trustee was not entitled to summary judgment on this issue and that the secured creditor should have the opportunity to prove its fraud claim at trial. [178]

By recognizing the creditor's potential claim for fraud and constructive trust, the court essentially opened the door to reviving the creditor's interests that had previously foundered under Article 9 perfection requirements. Bankruptcy courts have been known in the past to seek to avoid harsh results for secured parties by utilizing equitable concepts, such as a constructive trust, to remove the collateral from the bankruptcy trustee's reach. [179] Whether the secured party will succeed ultimately in establishing its fraudulent misrepresentation claim remains to be seen. Any secured creditor asserting such a claim may have difficulty establishing that it reasonably relied on the debtor's false statements concerning its legal name. But even the court's willingness to entertain fraud/ constructive trust claims reveals perhaps its resistance to the stricter name standard under new Article 9.

2. Reasonable diligence revisited

In another post-revision case, the court adhered to the "single search" standard of Revised Article 9 but imposed some duty on ***144** searchers to use reasonable diligence within the confines of that standard. [180] In the case of In re Summit Staffing Polk County, Inc., the secured party had filed a financing statement correctly listing the debtor as "Randy A. Vincent" and adding the debtor's trade name, "Summit Staffing." [181] Thereafter, the debtor incorporated his business under the name "Summit Staffing of Polk County, Inc." [182] The secured party did not file an amended financing statement to reflect the name change. [183] In the debtor's ensuing bankruptcy, the trustee argued that the creditor's security interest was unperfected and therefore avoidable under the Bankruptcy Code's "strong arm" clause because the original financing statement had become seriously misleading following the debtor's name change. [184]

In applying Florida's version of UCC § 9-506(c), the court first examined whether a search under the debtor's actual name in the official Florida database using the filing office's standard search logic brought up the secured party's financing statement. [185] The answer to that question was not as straightforward as the revisers perhaps hoped it would be. A search under the name "Summit Staffing of Polk County, Inc.," the debtor's current legal name, produced an alphabetical list of debtor names with twenty names displayed on each computer screen. [186] Although the test search did not disclose any exact matches to the debtor's current legal name, it did reveal a number of financing statements with similar names, including the ***145** one filed by the secured party. [187] The court held that the "reasonably diligent searcher" standard survived the enactment of Revised Article 9, not with respect to the initial search, but with respect to the actions taken by the searcher in evaluating the search results. [188]

The court stated that a searcher must use reasonable diligence in moving forward and back through the list of names produced by the computer, using the "Previous" and "Next" keys to scan the list. [189] Had the searcher employed such reasonable diligence, the searcher inevitably would have seen the secured party's filing against "Summit Staffing" with the same address as the successor corporate debtor. [190] Thus, the court held that the secured party's financing statement was not seriously misleading. [191]

A review of the post-revision case lawaddressing the issue of the debtor's name on financing statements reveals that many, but not all, courts are embracing the "single search" standard's simplicity and elegance and applying that standard, more or less, as set forth in the statute. A few courts, however, are seemingly grieving the loss of the equitable contours of the old standard and are finding ways to save secured parties whom they perceive to have made relatively small mistakes in the debtor's name. For these courts, the "reasonably diligent searcher" standard is not completely dead.

V. Defining the Debtor's Name and Refining the Standard Search Logic

This Article has identified at least two troublesome debtor name issues that survive the enactment of Revised Article 9. First, it is unclear, with the exception of registered organizations, what name should be used on a financing statement where a debtor has multiple names. An individual debtor and even an unregistered organization, such as a general partnership, may have multiple names and, in some ***146** cases, even multiple "legal" names. Second, the safe harbor provision of UCC § 9-506(c)--the "single search" standard for saving faulty financing statements--is dependent on the breadth and flexibility of the computerized search

logic employed by individual filing offices. As a result of the uncertainty surrounding multiple-named debtors and varying filing office search logic, Article 9 loses some of its heralded uniformity and predictability. In addition, the strictness of the "single search" standard runs counter to the general pro-secured party stance of Article 9 and thus is inconsistent with one of its overarching policies--to protect the senior secured party from demotion.

In the following sections, this Article will explore Article 9's pro-secured party flavor in more depth, offer a solution to the problem of debtors with multiple names, discuss the transition into computerized filing, and propose the adoption of a more flexible search logic by public filing offices as a means of enhancing the notice-giving function of the filing system. Any proposed changes in the law should be evaluated in terms of whether they advance the time-honored policies behind the Article 9 scheme and, more generally, whether they promote fairness and efficiency.

A. Article 9's Preference for Secured Parties

Article 9 has always, at its core, attempted to make the world good and true and beautiful for the perfected Article 9 secured party--especially the senior perfected secured party. [192] Under the statutory scheme, filing is fairly straightforward for secured parties, and indexing errors within the filing office fall on the shoulders of later searching parties. [193] Post-filing changes in information on the financing statement require refiling only if significant changes in the debtor's name occur, [194] and then only with respect to a segment of ***147** after-acquired collateral. [195] The senior perfected secured creditor prevails against most of its competitors--unsecured creditors, [196] lien creditors, [197] non-ordinary-course buyers, [198] unperfected secured parties, [199] and later perfected secured parties. [200] Even the foreclosure process is designed to be flexible and efficient for secured parties. Self-help repossession is perfectly permissible so long as one does not breach the peace, [201] and a foreclosure sale only requires reasonable notice to certain parties [202] and a commercially reasonable disposition. [203]

Revised Article 9 undoubtedly continues this theme of pampering the senior perfected secured party and carries it even further. The information required on a filed financing statement has been stripped down to the bare minimum, [204] and filing in multi-state ***148** transactions has been greatly simplified. [205] A financing statement unjustifiably refused by the filing office is still effective, except as against certain reliance parties. [206] New Article 9 creates "partial strict foreclosure" as a further post-default option for the secured party trying to avoid possible litigation over what constitutes a commercially reasonable disposition. [207] All in all, the world continues to be a fine place for perfected Article 9 secured parties. [208]

Many of these pro-secured creditor rules are designed to help security interests stand up against the debtor's trustee in bankruptcy. Under the "strong arm clause" of the Federal Bankruptcy Code, the trustee has the power to avoid unperfected security interests. [209] Thus, the easier it is for a secured lender to achieve and maintain perfection of its security interest, the more likely that the creditor will still be able to enforce the security interest in the event of the debtor's bankruptcy. With a valid security interest, a creditor will often be able to satisfy fully the debt owed to it by seizing and selling the ***149** collateral. [210] Without a security interest, the creditor is like all the other general unsecured creditors, which take their pro rata share of nonexempt assets [211] and often recover very little in bankruptcy. [212]

This pro-secured party stance is often justified on the basis that the secured party has bargained for the privilege of its priority position. [213] For example, the secured party will usually have offered a lower interest rate to the debtor in exchange for the security interest. [214] Thus, the secured party should enjoy the benefits of the security interest unless that enjoyment would unfairly harm other parties. Avoiding the secured party's security interest results in redistribution of the collateral to the unsecured general creditors. The unsecured creditors normally have already compensated themselves for their increased risk through higher interest rates and, in addition, usually do not search the public records before engaging in a transaction with the debtor. [215] Because these creditors have not bargained for security and do not rely on the public notice system before lending, it makes no sense to penalize the secured party for mistakes in perfection. [216]

Revised Article 9's new provision regarding debtor names on financing statements, as discussed, apparently abandons the "reason-ably diligent searcher" test and imposes the stricter "single search" standard, which demands an extremely high degree

of exactitude in setting forth the debtor's name, especially where the debtor is a ***150** registered organization. This new provision, then, is somewhat at odds with Article 9's overall pro-secured party tenor.[217] No longer can the filing creditor commit small errors in the debtor's name and still achieve perfection through the substantial compliance standard.

The Article 9 revisers clearly made a policy choice that despite the statute's generally pro-secured party slant, precision with respect to the debtor's name was essential to maintaining a viable filing system, even if such precision adds burdens to the filing creditor and sometimes invalidates financing statements with relatively small errors. Behind that policy choice was, no doubt, an assessment that any additional burdens placed on filing creditors were outweighed by the benefits to the filing system as a whole and, more particularly, to searching parties. In other words, it is much easier for the filing creditor to get the debtor's name right than for searching parties to find a financing statement with an error in the debtor's name. The latter task necessitates either trying variant names or variant spellings of names in the search query (e.g., Erickson, Ericson, Ericksen, Ericsen) or tendering a broad search inquiry (e.g., Smith Auto! for Smith Auto Supplies & Service) and then wading through a multitude of responses (Smith Auto Body, Smith Automobile Supply, etc.) to determine whether there is a true match.

Certainly, this implicit cost-benefit analysis is borne out where the debtor is a registered organization. By consulting the appropriate Secretary of State registry, a filing party can easily determine the debtor's official registered name on the public records of the debtor's "home" jurisdiction-- i.e., the jurisdiction under the law of which the debtor is organized. The filing creditor then simply needs to spell that name correctly on the filed financing statement.[218] A few states even have "point and shoot" computerized systems where a ***151** creditor can transfer the official registered name directly onto a financing statement or plug the official name into the filing office database to undertake a search.[219]

The burden on the filing creditor increases, however, when the debtor is an unregistered organization (such as a general partnership) or an individual. Determining the debtor's "legal" name may be problematic if the debtor uses a variety of names in different contexts. In addition, a debtor theoretically could have more than one "legal" or "correct" name. For example, a partnership may use different names on its business cards, in its telephone listing, in advertising, on tax returns, or in registration under an assumed name statute. All of those names may be different, to a greater or lesser degree, from the name adopted in the partnership agreement shown to the filing secured party. Furthermore, the name in that partnership agreement may have been modified by an amendment not shown to the secured party. Similarly, an individual debtor may have one name on his or her birth certificate, another on tax returns, a third on a Social Security card, and a fourth on a driver's license.[220] Finally, there may be some uncertainty as to who owns particular property that is offered as collateral--an individual debtor or some "alter ego" business entity.[221] As a result of these factors, the filing ***152** party may not be certain which name should be placed on the financing statement. Presumably, a searching party will have the same dilemma of ascertaining which name should be used in a search request.[222]

Even where the secured party has ascertained what it believes is the debtor's correct legal name, it may still be uncertain as to how to set forth that name--that is, what is the appropriate spacing, punctuation, and capitalization of letters. In an example intimately familiar to the author, "DePaul University" can be found as "Depaul," "De Paul," and "DEPAUL," depending on where one looks.[223] Likewise, a name such as "Ter Molen" might also be set forth as "TerMolen" or "Termolen." The problem becomes exacerbated where non-Anglo names are involved, and the secured party may be confused as to what constitute the debtor's first, last, and middle names.[224]

***153** Although absolute accuracy in setting forth the debtor's name on a financing statement is desirable, placing the burden of ensuring precise accuracy solely on the filing secured party is arguably neither fair nor consistent with the overall policy thrust of Article 9. Mistakes inevitably creep in even where the secured party is attempting to get the debtor's name completely correct. The "reasonably diligent searcher" standard represented a judicial effort to account for the inevitability of such errors and places at least some of the burden of their existence in the system on the searching party. Human beings and human systems are fallible, and those searching such a system should reasonably expect to have to search as if they were actually trying to find complete information.

The problems with the "reasonably diligent searcher" standard were evident, however. Searchers could never be sure that they had searched "diligently enough." Parties ended up litigating the application of this standard over and over again because of the fact-dependent nature of the inquiry. Both equitable and economic efficiency considerations suggested that it was more appropriate and more efficient for the filing creditor to get the debtor's name right in the first place rather than force the searching

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party to try an indeterminate number of variations of the debtor's name in an attempt to track down the filing party's financing statement containing one or more errors. [225]

On the other hand, Revised Article 9's adoption of the "single search" standard does not eliminate all problems, as discussed above. Filing parties may have difficulty determining the appropriate name to put on the financing statement where the debtor uses multiple names. The secured party may reasonably rely on inaccurate ***154** information supplied by the debtor itself in filling out the financing statement. Miscommunication between the secured party and the debtor or simple clerical errors may cause mistakes. In a system that attempts to allocate the burdens of using the filing system fairly and efficiently between the system's users, some of these errors may be forgivable, and some may not be.

Further, because searchers seeking information about non-UCC liens, such as federal tax liens, are still subject to the reasonably diligent search standard, [226] they will go beyond a single search in the debtor's legal name in attempting to find these other liens. One could argue that there is little (if any) additional effort in transferring whatever kind of search that they are doing for non-UCC liens into the Article 9 system.

Thus, the question remains whether Article 9 can be further refined to account for some of these issues. This Article posits two specific refinements to improve the efficiency and fairness of the filing system: first, a specific definition as to what constitutes a debtor's name for filing purposes, including a safe harbor for filers; and second, a requirement that state filing offices adopt a uniform, flexible search logic as part of their electronic filing systems.

B. Defining More Precisely the Debtor's Name

As discussed above, debtors that are individuals or unregistered organizations may be using more than one name at the same time. Theoretically, debtors could even have more than one legal name at any given time. For example, under common law, a natural person may adopt any name that he or she wishes, provided that there is no fraudulent or improper purpose involved. [227] Although states now provide statutory procedures to change one's legal name for purposes of the public record, [228] most still recognize the common ***155** law right to change one's legal name "through consistent and continuous use," again, absent any deceptive motive. [229]

To assist both filers and searchers, Article 9 should provide a safe harbor for selecting a debtor name, just as it creates a safe harbor for setting forth that name on the financing statement by means of the "single search" standard. In other words, the statute should specify that the debtor's legal name should be used on the financing statement whether or not the debtor is an individual, a trust, or a registered or unregistered organization. But, in addition, Article 9 should state that a secured party who uses the debtor's name as set forth on a particular verifiable source should be held to have selected the correct name for use on a financing statement. The statute already adopts that position for registered organizations by requiring the debtor's name as "indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized." [230]

The revised statute should list the verifiable sources that will satisfy the safe harbor. For individual debtors, a filing creditor who uses the debtor's name as it appears on the debtor's most recent federal income tax return, Social Security card, [231] or state-issued identification could be deemed to comply with the statute even if that name turned out not to be the debtor's actual legal name at the time of the filing. [232] For unregistered organizations, the statute could ***156** specify that a legally sufficient debtor name may be drawn from the debtor's most recent federal income tax return, [233] its most recent organizational agreement, [234] or its most recent filing under an assumed name statute. [235]

Under such a system, searchers would consult the same sources to determine the debtor's name for searching purposes. If the potential debtor has one name on a Social Security card, another on her most recent tax return, and yet a third on her driver's license, the searcher would need to search under all three names to ensure a complete search. Although searchers would not have a single name under which to search, as they do for registered organizations, this proposed scheme would reduce the number of names to be searched to a tolerable minimum.

Defining the debtor's name more precisely in Article 9 would serve the policies behind Article 9 as a whole and, more particularly, the policies that inform the filing system. Article 9, at its core, protects secured creditors. In addition, the filing

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system is designed to allow earlier parties to communicate with later parties about the possible existence of security interests. That system, as mentioned above, should be constructed to allocate the burdens of its use equitably and efficiently. By defining what constitutes a legally sufficient debtor name for filing purposes, the system would reduce the number of choices--ex ante and ex post--that parties using the system must make with reference to the debtor's name. That reduction of choices saves labor on the part of both filers and searchers, and in an uncertain world, evenly allocates the burden of figuring out the debtor's name. Finally, this proposal protects secured parties by creating a safe harbor that allows them to enjoy some assurance that they have selected, in fact, the debtor's correct legal name.

*157 C. The Transition to Computerized Filing

Defining more specifically the debtor's name for use on a financing statement will certainly increase the filing system's certainty and efficiency. But that step alone does not completely solve the problem of errors in public records. As will be discussed, the fundamental change in how filing records are created and maintained during the modern era has affected the ability of searchers to retrieve information. Following an overview of the historical development of the filing system, this Article will explore a potential solution to the problem of data access that involves creation and adoption of a search logic more flexible than those currently in use.

The “reasonably diligent searcher” standard espoused by the pre-revision case law developed under a largely non-computerized filing system. Filing creditors submitted paper copies of their financing statements to filing office clerks for indexing in the public records. Searching parties would go through the public index manually or would submit a request on a call slip to the clerk, who would then conduct the search on the searching party's behalf.

As states began to computerize their UCC files,[236] the filer's situation remained largely the same. In addition to using paper forms, filing creditors gained the option of filling out their forms on a computer and submitting them for filing electronically. Whether the filer typed the debtor's name onto a paper form or an electronic one, the burden of getting the debtor's name correct was more or less the same. Computers neither helped nor hindered this process.[237]

For searchers, however, the world changed and continues to change. Rather than riffling through index cards or submitting a search request to a clerk on a slip of paper, the searching party now has the ability to enter a search term on the Secretary of State's ***158** official website and receive a computerized response within seconds. The filing office's “search logic,” rather than a human being, runs the search.[238] Accordingly, the searcher is no longer dependent on the judgment, skill, and work ethic of a particular agent or clerk in determining whether or not filings against a specific debtor exist in the public record. The filing office's computer, in conducting a search, presumably does not exhibit the variations in day-to-day performance that humans do and, consequently, does not make the same mistakes in searching.

Thus, in some sense, the advent of the computer would seem to render the searching process more reliable and less subject to human error. However, courts quickly recognized the limitations of electronic searching.[239] Depending on the parameters and, particularly, the flexibility of the database's search logic, a search request might reveal financing statements that contained certain types of errors in the debtor's name but might not reveal financing statements with other types of errors. For example, in the mid-1990s, a search request in the Texas Secretary of State's office under the name “Kaldor-Hicks Construction Co.” would reveal a financing statement listing the debtor as “Kaldor Hicks Construction Co.” but would not reveal a financing statement listing the debtor as “Kaldorhicks Construction Co.”[240]

Some courts have reacted to the strictures of the computerized system with a “that's life” attitude.[241] Limitations in the search logic simply increase the burden on the filing creditor to get the debtor's name right in the first place. Although this rule might produce harsh ***159** results for the filing secured creditor in some cases, it honors the notice-giving purpose of the filing system.[242]

Other courts have regarded the advent of computerized searching with less equanimity. One bankruptcy judge held that searchers using electronic methods are still charged with finding all financing statements that a manual searcher would find under the old system.[243] Otherwise, people would become “servants” to their machines: “If computers frustrate rather than fulfill

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this essential purpose [of enhancing productivity and efficiency], humans inevitably must either discard them or limit their function." [244]

D. Potential Solutions that Computers Offer

Presumably, there is not much that computers can do to help the filing creditor with the first issue discussed--that of deciding which name to use on the financing statement where a debtor seemingly has multiple names. Computers and their corresponding data management techniques can assist, however, in resolving the second issue--how to assist secured parties in setting forth the debtor's name. Revised Article 9 requires the appropriate state agency to adopt filing office rules "consistent with this article." [245] Most states have adopted the model standard search logic promulgated by the International Association of Commercial Administrators (IACA). [246] Under the model standard search logic, the computer records the data present on filed documents in a particular way, processes data ***160** on search requests according to the same rules, and then retrieves exact matches. For example, it ignores spaces [247] and records all characters as a single case (either upper or lower, depending on how the computer is programmed). [248] The phrase "Net work Solutions" on a filed financing statement would be recorded in the database, if upper case is the standard case, as "NETWORKSOLUTIONS." A search under the name "Network Solutions" would reveal the financing statement described above. The computer would convert the search request to the string of characters "NETWORKSOLUTIONS," again removing all spaces and reading all characters as upper case. In this example, therefore, the electronic search mechanism would reveal a financing statement for this debtor, despite any errors in spacing, capitalization, or punctuation. [249] A searcher would see this financing statement and then presumably be able to conclude, based on the debtor address recorded, that the debtor listed on the financing statement was indeed the correct party.

Unquestionably, the extent of the search results produced by a single search under the debtor's legal name is tied to the flexibility of the filing office's standard search logic, and a restrictive search logic will generate fewer results than a more flexible one. Arguably, the non-standardized search methodologies maintained by many states during the transition period between old and new Article 9 can provide a model by which the filing office could fashion a more responsive standardized search methodology. During the transition period, several states have offered searchers two options for Article 9 searches--one for standardized searches and one for non-standardized searches. [250] The standardized search is one conducted according to the filing office's standard search logic in the official state UCC database. The non-standardized search is usually one ***161** conducted under a more flexible search methodology in the official state UCC database. [251] States have been affording searchers the option of performing a non-standardized search during the transition period so that they can locate financing statements filed in accordance with pre-revision Article 9. [252] These financing statements, by and large, remained effective during the transition period, [253] which ended in most states on June 30, 2006. [254]

Test searches under the non-standardized methodology tended to reveal more financing statements than those performed according to the standard search logic. For example, assume a partnership with an official name of "Walker and Hunt Log" granted a security interest in its inventory and accounts to a bank. Also assume that the bank filed the financing statement against the debtor under the incorrect name "Walker and Hunt Log and Lumber," based on some partnership documents presented by the debtor that were subsequently amended. Subsequently, if a prospective lender does a standardized search in the official state database under the debtor's current name, "Walker and Hunt Log," the standard search logic will not reveal the earlier financing statement. A non-standardized search under that name, however, will produce a match with the earlier financing statement because of the additional flexibility of the computerized search parameters. [255]

***162** Similarly, the design of the search page on the Secretary of State's website could assist searchers in discovering existing financing statements that may contain errors in the debtor's name. For example, one state UCC website prompts the searcher to begin a search with the first word of an organizational name. [256] The searcher then has the option to put in additional words from the name on separate lines in the search request. This approach, of course, encourages searchers to pull up all financing statements that have debtor names containing that initial word. For instance, a search under "Bates" will reveal financing statements against Bates Auto Supply, Bates Soil & Water Testing Service, Bates Holdings, and so forth. [257] Depending on the size of the jurisdiction involved and the commonness of the name, the searcher could have a relatively manageable number of "hits" to sort through. In addition, the use of root words in searches could aid in recovering financing statements with certain errors in the debtor's name. The search mechanism could be programmed to pull up all words containing the root word-- e.g., a search under "Auto" would reveal "Auto," "Automobile," "Automotive," "Automatic," and so forth.

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In the end, one might posit that the computer, which has improved the efficiency of so many of the tasks of modern life, could assist in solving the debtor name problem. A properly engineered electronic filing system conceivably could blend the "reasonably diligent searcher" and "single search" standards. As under Revised Article 9, a searcher could assure itself of having adequately searched by performing a single search. The input and output of that single search, however, could reveal financing statements that contain certain errors in the debtor's name--in other words, financing statements that would have been discovered by a reasonably diligent searcher operating under the pre-revision approach. Once having seen those financing statements, the searcher could determine relatively quickly whether or not any of those statements pertain to the individual or entity that is the subject of the search.

***163** Such an electronic searchable database might include several specific features, some of which have already been described: a flexible search logic, a suitable list of noise words, and a search page that directs searchers to conduct their searches using initial words, root words, and/or wildcard characters. Developing this kind of system may not even necessitate creating an entirely new scheme; there are features of existing systems that could be employed or modified to create an even more sophisticated database. Upfront investment to refine the electronic filing system could be more than offset, one might hope, by efficiencies enjoyed by filers and searchers alike.

Article 9, following in the steps of its statutory predecessors, mandates that secured creditors file in a publicly created recordkeeping system. If filers and searchers could talk directly to one another, they would not need the intermediary of the legislatively spawned filing system. [258] In keeping with its role of serving the public interest, the filing office should be required to develop a filing and searching system that reduces costs for parties forced to use that system. Such a system could go a long way toward fulfilling the goals of an ideal notice-giving mechanism: accommodating (to some extent) the inevitable failures of filers, allowing searchers to retrieve efficiently and accurately the information that they need, and reducing the amount of litigation surrounding financing statement adequacy. [259]

VI. Conclusion

For as long as public recording systems have existed, efficiency concerns have surrounded them--how to ensure that those using these systems are able to record and extract the appropriate ***164** information in the most cost-effective way. [260] The Article 9 filing scheme, as a public recording system, has not escaped those concerns. Because the gateway to the Article 9 filing records has always been and continues to be the debtor's name, the analysis of the system's efficiency has focused on that particular element of a financing statement. Under former Article 9, the burdens of using the system were borne more heavily by searchers. Filers were required to get fairly close to the debtor's actual name on the financing statement, but searchers had a duty to execute a reasonably diligent search to retrieve the financing statement. The revisers of Article 9 consciously shifted more of the burden of system use to filers with adoption of the "single search" standard of UCC § 9-506(c). Under this standard, secured creditors must get the debtor's name almost perfect on the financing statement to achieve perfection and to avoid complete loss of their security interests in bankruptcy.

The "reasonably diligent searcher" standard was rightly criticized: it unduly burdened searchers and it created problematic litigation in which each case had to be addressed freshly based on its idiosyncratic facts. But the "single search" standard of Revised Article 9 has seemingly created its own set of problems: it may be viewed as unfairly harsh toward filing creditors, it appears to have generated a fair of amount of litigation, and it cuts against the general pro-secured party thrust of Article 9. Moreover, because the new rule is tied to the standard search logic of individual states, the uniformity that Article 9 has long sought to promote is diminished.

Accordingly, this Article has suggested that the "single search" rule may have swung the pendulum too far in the other direction. In some cases, courts have resisted it by finding an escape hatch for the filing secured party through application of constructive trust principles or resurrection of the "reasonably diligent searcher" standard for at least a portion of the search. In other cases, the courts have invalidated financing statements with minute errors in spacing or punctuation. Additionally, the full impact of the new standard has yet to be felt as the transition period between old and new Article 9 has just recently ended.

***165** In an effort to assist both filers and searchers attempting to use the Article 9 recording scheme, this Article has argued for two additional modifications of Article 9. First, the statute should be amended to clarify that secured parties must use the debtor's legal name on the financing statement and to create a safe harbor for secured parties in attempting to ascertain the debtor's

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legal name. Second, Article 9 should require further refinement of the electronic filing systems maintained by filing officers in the various states. Implementation of a standard flexible search logic coupled with instructions on how most effectively to search the database, it is hoped, will serve both equity and efficiency goals. The proposed changes will afford filers the peace of mind of knowing that some degree of fallibility will be tolerated and will offer searchers the simplicity of conducting a "single search" while retrieving the information of a "reasonably diligent" one.

Footnotes

a1 In her famous balcony scene, Juliet pines for her lover, Romeo, whose relatives are enemies of her own: "What's in a name? That which we call a rose / By any other word would smell as sweet." William Shakespeare, Romeo and Juliet act 2, sc. 2.

aa1 Professor of Law, DePaul University College of Law. The author gratefully acknowledges the most capable research efforts of DePaul law students Brian Hanlon, Timothy J. Mullens, and Cherie Travis, whose dedicated work was vitally important in the creation of this article.

1 Philosopher William of Occam developed this principle, the Latin version of which is Pluralitas non est ponenda sine necessitate. Phil Gibbs & Sugihara Hiroshi, What is Occam's Razor?, http:// math.ucr.edu/home/baez/physics/General/occam.html (last visited Feb. 8, 2007).

2 One commentator described this simplification of the older personal property security law:
Article 9 ... is considered by many to be the signal achievement of the Code. Taking the confused state of prior law relating to chattel mortgages and conditional sales, the Reporters reduced to black letter principles a Code which permitted easy and effective financing secured by accounts receivable and chattels, including inventories.
Charles A. Bane, From Holt and Mansfield to Story to Llewellyn and Mentschikoff: The Progressive Development of Commercial Law, 37 U. Miami L. Rev. 351, 374 (1983).

3 Grant Gilmore, one of the principal drafters of Article 9, recounted the drafting committee's high expectations regarding the unifying and simplifying effect of Article 9 on secured transactions law:
Pre-Code personal property security law may be described as closely resembling that obscure wood in which Dante discovered the gates of hell. We thought that, with a little pruning and clearing, we could turn the obscure wood into a people's park where widows and orphans and country bankers could enjoy their innocent pleasures, safe from the attack of ravening wild beasts and trustees in bankruptcy. The sad truth is that personal property security law is well on the way to becoming quite as fragmented and quite as complex as it ever was in the bad old days before the Code.
Grant Gilmore, The Good Faith Purchase Idea and the Uniform Commercial Code: Confessions of a Repentant Draftsman, 15 Ga. L. Rev. 605, 620 (1981).

4 Professor Karl Llewellyn, in an early article on the codification of security law, noted the considerable disadvantages created by the helter-skelter collection of pre-Code statutes and case law governing security devices: "What is not minor is the price in complexity, inconvenience, and often in unfairness which must be paid when legal patterns of happenstance origin are taken in all their history-ridden detail as the basis for the doing of remodeling jobs which are themselves piece-work." Karl N. Llewellyn, Problems of Codifying Security Law, 13 Law & Contemp. Probs. 687, 688 (1948).

5 U.C.C. § 9-402(8) (1995). Unless otherwise indicated, all citations to Article 9 will be to Revised Article 9, which was promulgated by the National Conference of Commissioners on Uniform State Laws in 1999 and has been adopted by all fifty states, the Virgin Islands, and the District of Columbia. Revised Article 9 has an effective date of July 1, 2001, in almost all states. References to prior versions of Article 9 will indicate the year of that particular version in parentheses. The phrase "pre-revision Article 9" refers to the 1972 version of Article 9, as amended, which was in effect in all states until Revised Article 9 became effective in 2001.

6 Filing a financing statement was and remains the chief method by which secured parties achieve perfection of their security interests. As will be discussed in more detail later, perfection leads to essential benefits for secured parties--namely, priority over other claimants to the same property of the debtor and survival of the security interest in the event of the debtor's bankruptcy. Although Revised Article 9 provides for other methods of perfections for certain types of collateral, such as possession or control of the collateral by the secured party, filing of a financing statement is still

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the primary method of perfection. See U.C.C. § 9-310(a) (2001) ("Except as otherwise provided in subsection (b) and Section 9-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.").

7 Article 9 is the joint product of the ALI and NCCUSL. See generally Steven O. Weise, An Overview of Revised UCC Article 9, in The New Article 9 Uniform Commercial Code 1 (Corinne Cooper ed., 2d ed. 2000) [hereinafter The New Article 9]. The ALI and NCCUSL appointed a study committee in 1990 to assess Article 9 and recommend possible revisions. See generally Edwin E. Smith, An Introduction to Revised UCC Article 9 (1999), in The New Article 9, supra, at 17. In its final 1992 report, the Study Group recommended changes to Article 9 that would increase its scope, simplify perfection, and clarify enforcement rules. Permanent Editorial Bd. for the UCC, PEB Study Group: Report on Uniform Commercial Code Article 9, at 10-11 (1992) [hereinafter UCC Report].

8 Only four states adopted a non-uniform effective date: Connecticut, Alabama, Florida, and Mississippi. Ala. Code § 7-9A-701 (2005) (adopting Revised Article 9 on January 1, 2002); Conn. Gen. Stat. § 42a-9-702 (2006) (adopting Revised Article 9 on October 1, 2001); Fla. Stat. § 679.701 (2006) (adopting Revised Article 9 on January 1, 2002); Miss. Code Ann. § 75-9-701 (2006) (same).

9 Revised U.C.C. § 9-506(a) provides that "[a] financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading." Thus, Revised Article 9 seemingly emphasizes that the grievousness of the errors is to be judged by whether they render the financing statement as a whole seriously misleading as opposed to whether the errors themselves in isolation might be regarded as misleading.

10 See U.C.C. § 9-506(b)-(c) (setting forth a strict rule regarding the accuracy of the debtor's name); see also infra text accompanying notes 59-65.

11 A number of scholars have tackled the problem of the debtor's name on a financing statement over the years. See, e.g., Todd D. Penney, Article 9 Financing Statement Searches: Is a Rose by Any Other Name Still a Rose?, 51 Ohio St. L.J. 1415 (1990); Paul J. Ricotta & Adrienne K. Walker, What's in a Name? (Apparently, a Lot), 24 Am. Bankr. Inst. J., May 2005, at 26; Julianna Zekan, The Name Game--Playing To Win Under § 9-402 of the Uniform Commercial Code, 19 Hofstra L. Rev. 265 (1990).

12 This hostility is evident as far back as the early seventeenth century in England. In 1601, the Star Chamber convicted a debtor of making a fraudulent conveyance where he retained possession of goods after purporting to make a "general deed of gift" to a creditor. Twyne's Case, (1601) 76 Eng. Rep. 809 (Star Chamber).

13 See, e.g., Conn. Stat. tit. 56, ch. 1, § 9 (1821) (requiring recordation in town where land lies); Dana v. Newhall, 13 Mass. (1 Tyng) 498, 501 (1816) (referring to the legal necessity of recording transfers of land in the public records).

14 See Douglas G. Baird & Thomas H. Jackson, Possession and Ownership: An Examination of the Scope of Article 9, 35 Stan. L. Rev. 175, 180 (1983) ("Separation of ownership and possession has been viewed as a source of mischief toward third parties and, for that reason, as fraudulent.").

15 See id. at 181 & n.24. One scholar, however, has disputed the widely accepted notion that before the advent of the chattel mortgage acts in the nineteenth century, nonpossessory security interests in personal property were unenforceable as fraudulent conveyances. See George Lee Flint, Jr., Secured Transactions History: The Fraudulent Myth, 29 N.M. L. Rev. 363, 366 (1999) (stating that pre-nineteenth century "opinions reveal many courts enforcing the nonpossessory secured transaction against third parties prior to the passage of the respective chattel mortgage act").

16 1 Grant Gilmore, Security Interests in Personal Property § 2.1 (1965).

17 See Homer Kripke, Some Reflections After a Quarter-Century of the Uniform Commercial Code and on the Inception of a New Bankruptcy Code, 87 Com. L.J. 124, 125-26 (1982).

18 Article 9 drafter Grant Gilmore noted that the industrial revolution created the "demand that all types of personal property be made available as security even though, because of the nature of property or because of its intended use, it was not possible or feasible for the lender to take it in pledge." 1 Gilmore, supra note 16, § 9.1.

19 Id. § 2.2.

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20 See Karl N. Llewellyn, Why We Need the Uniform Commercial Code, 10 U. Fla. L. Rev. 367, 379 (1957) (arguing for the overhaul of the chattel security laws).

21 See John L. Gedid, U.C.C. Methodology: Taking a Realistic Look at the Code, 29 Wm. & Mary L. Rev. 341, 386 (1988) (discussing the history of the UCC and noting its uniqueness as the first "realist" statute).

22 U.C.C. § 9-102(1)(a) (1962).

23 Pre-revision Article 9 offered the states three alternative versions of the basic filing office provision. U.C.C. § 9-401(1) (1995). The three versions contained progressively greater amounts of local, as opposed to central, filing. The First Alternative Subsection of UCC § 9-401(1), for example, provided that all non-real-estate related financing statements were to be filed with the central filing office, normally, the secretary of state. In contrast, the Third Alternative Subsection of UCC § 9-401(1) required county-level filing for all transactions involving farm equipment, farm products, farm-related accounts, and consumer goods as well as those where the debtor had a place of business in only one county in the state.

24 See, e.g., Crane v. Chandler, 5 Colo. 21, 21-22 (1879) (describing the complicated recording process for chattel mortgages, including filing of the chattel mortgage itself in the public record).

25 See U.C.C. § 9-502 cmt. 2 (2001) (commenting on the Code's explicit adoption of the "notice filing" concept).

26 I say "might" be encumbered because there was no guarantee that the parties listed on the financing statement had in fact executed a security agreement or, even if they had, that the description of collateral on the financing statement matched that on the security agreement. In most cases, a written security agreement is a necessary element for attachment and enforceability of a security interest. U.C.C. § 9-203(a), (b)(3)(A). See Merrill Lynch Bus. Fin. Servs. v. Swersky (In re Swersky), No. 3:98-CV-0587-G, 1999 U.S. Dist. LEXIS 2860, at *15 (N.D. Tex. Mar. 4, 1999) (holding that the parties had failed to execute a proper security agreement).

27 See Magna First Nat'l Bank & Trust Co. v. Bank of Ill., 553 N.E.2d 64, 66 (Ill. App. Ct. 1990) ("The purpose of the financing statement is to put third parties on notice."); Ray D. Henson, Handbook on Secured Transactions Under the Uniform Commercial Code 64 (2d ed. 1979) ("The purpose of a financing statement is simply to give notice to the world that designated parties have entered into a secured transaction covering described collateral. The details must be learned from the parties.").

28 The Code provides a mechanism by which the debtor (and thereby the debtor's other creditors and purchasers) may obtain information from the secured party. See U.C.C. § 9-210 (requiring the secured party to respond to a debtor request for accounting of the unpaid secured obligation and/or for a list of collateral). Secured parties who fail to respond in a timely manner to debtor requests for information may be liable for actual and statutory damages and may also be limited to the collateral or the amount of debt listed in the debtor's request. Id. § 9-625(f), (g).

29 Compare U.C.C. § 9-502(a) (2001), with U.C.C. § 9-402(1) (1972). Interestingly, the 1962 version of Article 9 did not expressly require the debtor's name on a financing statement, only the debtor's signature. U.C.C. § 9-402(1) (1962). Even so, courts frequently required the debtor's name as well. McMillin v. First Nat'l Bank & Trust Co. (In re Fowler), 407 F. Supp. 799, 802 (W.D. Okla. 1975); In re Firth, 363 F. Supp. 369, 371-72 (M.D. Ga. 1973); In re Levins, 7 U.C.C. Rep. Serv. (Callaghan) 1076, 1078 (Bankr. E.D.N.Y. 1970).

30 See U.C.C. § 9-519(c) (2001); U.C.C. § 9-403(4) (1972); U.C.C. § 9-403(4) (1962).

31 U.C.C. § 9-402(7) (1972).

32 Id. § 9-402 cmt. 7.

33 Id. § 9-402(8).

34 Id. § 9-402 cmt. 9.

35 Pearson v. Salina Coffee House, Inc., 831 F.2d 1531, 1536-37 (10th Cir. 1987) (holding a financing statement using debtor's trade name to be fatally defective); see also Brown v. Belarus Mach., Inc. (In re Serv. Lawn & Power, Inc.),

83 B.R. 515, 520 (Bankr. E.D. Tenn. 1988) (holding that a financing statement listing the debtor's president as the debtor rather than the legal name of the corporate debtor was legally insufficient).

36 For example, the secured party might set forth the debtor's name as "Silvermine Company" when its legal name was "Silverline Company." See District of Columbia v. Thomas Funding Corp., 593 A.2d 1030, 1036 (D.C. Ct. App. 1991) (holding that such an error rendered a financing statement legally insufficient); see also In re Brawn, 6 U.C.C. Rep. Serv. 1031, 1037-39 (Bankr. D. Me. 1969) (containing a financing statement that misspelled Brawn as Brown); Bank of N. Am. v. Bank of Nutley, 227 A.2d 535, 538-39 (N.J. Super. Ct. Law Div. 1967) (containing a financing statement that misspelled Kaplan as Kaplas); Nat'l Cash Register Co. v. Valley Nat'l Bank, 5 U.C.C. Rep. Serv. 396, 396-97 (N.Y. Sup. Ct. 1968) (containing a financing statement that misspelled Borgwald as Boywald).

37 Brushwood v. Citizens Bank of Perry (In re Glasco, Inc.), 642 F.2d 793, 796 (5th Cir. 1981) (observing that the debtor was universally known by the community as "Elite Boats, Division of Glasco, Inc." even though its legal name was "Glasco, Inc."). A couple of pre-UCC cases also adopted this point of view. See Seder v. Zakaras, 35 F.2d 729, 730 (1st Cir. 1929) (stating that a chattel mortgage would be more effective filed in the debtor's trade name than in his individual name); Refrigerator Disc. Corp. v. Tatelbaum (In re Nickulas), 117 F. Supp. 590, 594 (D. Md. 1954) (noting that creditors were more likely to know the debtor by his trade name rather than his individual legal name).

38 In re Platt, 257 F. Supp. 478 (E.D. Pa. 1966); see also Star Auto. Warehouse, Inc. v. Spears (In re Thriftway Auto Supply, Inc.), 156 B.R. 300, 302 (Bankr. W.D. Okla. 1993) (holding that the use of the debtor's trade name, Thriftway Auto Stores, was adequate where the debtor's legal name was Thriftway Auto Supply, Inc.); In re Clairmont Pharmacy, Inc., 8 B.R. 695, 696 (Bankr. N.D. Ga. 1981) (stating that the use of the debtor's trade name, Clairmont Skyland Pharmacy, was sufficient where the debtor's legal name was Clairmont Pharmacy, Inc.).

39 See Van Dusen Acceptance Corp. v. Gough (In re Thomas), 466 F.2d 51 (9th Cir. 1972) (holding that use of trade name and omission of debtor's real name was a fatal defect); In re Firth, 363 F. Supp. 369 (M.D. Ga. 1973) (holding that a financing statement that shows the name of the debtor only in his unregistered trade name is legally insufficient to create a security interest); Bank of Miss., Tupelo v. Pongetti (In re Hill), 363 F. Supp. 1205 (N.D. Miss. 1973) (holding that a financing statement giving only debtor's trade name without cross-filing under debtor's individual name constituted a fatal defect).

40 See Burnett v. J. I. Case Credit Corp. (In re Arnold), 21 U.C.C. Rep. Serv. (Callaghan) 1479 (W.D. Mich. 1977) (deciding that the use of the debtor's nickname, Jack Arnold, invalidated the financing statement where the debtor's legal name was Herschel J. Arnold); Cent. Nat'l Bank & Trust Co. of Enid v. Cmty. Bank & Trust Co. of Enid, 528 P.2d 710, 713 (Okla. 1974) (holding that the use of the debtor's nickname, Lee Anderson, was insufficient where the debtor's legal name was James L. Anderson).

41 Citizens Bank v. Ansley, 467 F. Supp. 51, 55 (M.D. Ga. 1979), aff'd, 604 F.2d 669 (5th Cir. 1979).

42 In re Raymond F. Sargent, Inc., 8 U.C.C. Rep. Serv. (Callaghan) 583, 593 (D. Me. 1970) (holding such a mistake fatal to the financing statement's effectiveness).

43 In re Brawn, 6 U.C.C. Rep. Serv. (Callaghan) 1031, 1033 (D. Me. 1969). In cases involving "pure" misspellings, it is often difficult to determine whether the mistake occurred because of a typographical error or because of a misunderstanding as to the proper spelling. For example, setting forth "Kaplas" rather than "Kaplan" is perhaps more likely to be a typographical error--i.e., accidentally striking the wrong key on the keyboard--whereas setting forth "Tri-State Moulded Plastics" as "Tri-State Molded Plastics" is perhaps more likely the result of a misunderstanding of the proper spelling of the debtor's name. It is not apparent that the cause of the error, typographical or otherwise, should have an effect on the outcome of the case.

44 Some courts adhered to the almost curiously quaint doctrine of idem sonans, under which a misspelled name was adequate if it was pronounced more or less the same as the properly spelled name. See, e.g., Corporate Financers, Inc. v. Voyageur Trading Co., 519 N.W.2d 238, 242-43 (Minn. Ct. App. 1994) (holding that "Voyager" was adequate on a financing statement where the debtor's name was spelled "Voyageur"); Starbuck v. Esparza (In re Esparza), 821 P.2d

1216, 1220-22 (Wash. 1992) (holding that "Esparsa" was adequate on a financing statement where the debtor's name was spelled "Esparza").

45 One court stressed that the search methodology employed by the filing office could not determine whether or not a financing statement was defective and suggested that there should be an absolute standard of legal sufficiency divorced from a particular state's filing and searching procedures: "A financing statement cannot be misleading to some but not to others. If a defective financing statement is not misleading, it imparts notice to the world." Pongetti v. Deposit Guar. Nat'l Bank (In re Strickland), 94 B.R. 898, 903 (Bankr. N.D. Miss. 1988).

46 See, e.g., In re Clairmont Pharmacy, Inc., 8 B.R. 695, 696 (Bankr. N.D. Ga. 1981) (finding, without any particular analysis, that the debtor's name on the financing statement was sufficient because it deviated from the debtor's true name merely by the addition of the word "Skyland" after the first word of the debtor's name).

47 See, e.g., Star Auto. Warehouse, Inc. v. Spears (In re Thriftway Auto Supply, Inc.), 156 B.R. 300, 302 (Bankr. W.D. Okla. 1993) ("It is fatuous, especially in the commercial context, for one to argue that searching for one narrow entry in an electronic database is a reasonable search.").

48 See, e.g., In re Reeco Elec. Co., Inc., 415 F. Supp. 238, 241 (D. Me. 1976) (describing the call slip method of access to the public files); Cain v. L.B. Smith, Inc. (In re Stebow Constr. Co.), 73 B.R. 459, 461 (Bankr. D.N.J. 1987) (same). Under the call slip method, searchers do not have direct access to the UCC filings. Instead, they must fill out a call slip with the name that they want searched and then submit that slip to the clerk in the secretary of state's office. The clerk will normally search only for financing statements on which the debtor's name exactly matches the name on the call slip. Reeco Elec., 415 F. Supp. at 241. Obviously, clerks in their individual discretion could call the searchers' attention to a financing statement with a debtor name that is similar to but not exactly the same as that on the call slip.

49 See, e.g., In re A.C. Ballard, 100 B.R. 526, 531 (Bankr. D. Nev. 1989) (citing Kay Auto. Warehouse, Inc. v. McGovern Auto Specialty, Inc. (In re McGovern Auto Specialty, Inc.), 51 B.R. 511, 514 (E.D. Pa. 1985)) (noting the impact of the size of the filing database on the ease of searching); In re Wishart, 10 U.C.C Rep. Serv. (Callaghan) 1296, 1298 (Bankr. W.D. Mich. 1972) (distinguishing filings in small county office from "numerous financing statements ... filed statewide in one office as in Michigan").

50 See Kay Auto., 51 B.R. at 514 (describing the card "riffling" technique).

51 E.g., Unsecured Creditors Comm. v. Marepcon Fin. Corp. (In re Bumper Sales, Inc.), 907 F.2d 1430, 1434-35 (4th Cir. 1990).

52 TMMB Funding Corp. v. Associated Food Stores, Inc., 523 N.Y.S.2d 161, 163 (App. Div. 1988) (citing James J. White & Robert S. Summers, Uniform Commercial Code § 23-16, at 957-58 (2d ed. 1980)).

53 One court chided judges in other cases who had mistakenly decided that the debtor name question was an issue of law and had "ignore[d] the essentially factual nature of the inquiry." Kay Auto., 51 B.R. at 513-14; accord Huntington Nat'l Bank v. Tri-State Molded Plastics, Inc. (In re Tyler), 23 B.R. 806, 809 (Bankr. S.D. Fla. 1982) ("The determination of whether or not an error is seriously misleading is essentially a factual one.").

54 See, e.g., Scott Truck & Tractor Co. v. Alma Tractor & Equip., Inc., 35 S.W.3d 815, 818 (Ark. Ct. App. 2000) (stating that a reasonably diligent searcher would find a financing statement with a debtor name error because "[b]oth names begin with the same letter and both names contain 'M.P.G. Enterprises'").

55 See, e.g., Transamerica Commercial Fin. Corp. v. Gen. Elec. Capital Corp. (In re Wardcorp, Inc.), 133 B.R. 210, 217 (Bankr. S.D. Ind. 1990) (criticizing the reasonably diligent searcher standard as fostering "post hoc balancing of equities"); First Nat'l Bank v. Strong, 663 N.E.2d 432, 435 (Ill. App. Ct. 1996) (faulting any rule that "would burden a searcher with guessing at misspellings and various configurations of a legal name").

56 See, e.g., Steven L. Harris & Charles W. Mooney, Jr., Choosing the Law Governing Perfection: The Data and Politics of Article 9 Filing, 79 Minn. L. Rev. 663, 666 (1995) (noting that the reduction of costs associated with the filing system is

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"an overriding issue in the [Article 9] revision process"); Penney, supra note 11, at1422 ("Requiring absolute precision in the debtor's name on financing statements would provide a workable standard in both individual, as well as corporate debtor situations.").

57 See Margit Livingston, Certainty, Efficiency, and Realism: Rights in Collateral Under Article 9 of the Uniform Commercial Code, 73 N.C. L. Rev. 115, 178-84 (1994) (discussing the effect of Karl Llewellyn's jurisprudence on the formulation of the U.C.C.).

58 In its final report, the Article 9 Study Group, appointed in 1990 by the NCCUSL and the ALI, recommended changes to Article 9 and specifically recommended that state filing systems increase the utility of those systems. See UCC Report, supra note 7, at 88-90 (1992).

59 U.C.C. § 9-506(a) (2001).

60 Id. § 9-506(b). Section 9-503(a) specifies which name of the debtor is required on a financing statement. See infra notes 69-72 and accompanying text. For example, "a financing statement sufficiently provides the name of the debtor ... if the debtor is a registered organization, only if the financing statement provides the name of the debtor as indicated on the public record of the debtor's jurisdiction which shows the debtor to have been organized." U.C.C. § 9-503(a)(1).

61 See 4 James J. White & Robert S. Summers, Uniform Commercial Code § 31-12, at 174-75 (5th ed. 2002) ("[I]f the standard search logic ... fails to find a financing statement because the name is incorrect, that renders the financing statement not only non-compliant with 9-502 and 9-503, but also means that it fails 'substantially' to satisfy the 'requirements of this Part' under 9-506 and so is 'seriously misleading.'").

62 From time to time, some commentators have suggested that taxpayer identification numbers ("TINs") be required on financing statements as a means of ensuring absolute identifiability of particular debtors and thus improving the accuracy of the search process. Others have noted the problems associated with mandating TINs on financing statements, including, in particular, privacy concerns with respect to Social Security Numbers. Edward S. Adams et al., A Revised Filing System: Recommendations and Innovations, 79 Minn. L. Rev. 877, 899-900 (1995). Although Revised Article 9 does provide a space for a TIN on the model form, it does not go so far as to require inclusion of the debtor's TIN on the financing statement. U.C.C. § 9-521(a).

63 U.C.C. § 9-506(c).

64 For example, if a search under the name "Mary P. Anderson" produced three financing statements, the searcher would have to determine whether they pertained to the "Mary P. Anderson" in whom the searcher was interested. This determination would most likely be made by checking the debtor's address on the financing statement or making further inquiry of the debtor or the listed secured party.

65 Even before the revision of Article 9, some courts were already defining a "reasonably diligent search" as one in which the searcher made a single search under the debtor's legal name. See, e.g., Transamerica Commercial Fin. Corp. v. Gen. Elec. Capital Corp. (In re Wardcorp, Inc.), 133 B.R. 210, 216-17 (Bankr. S.D. Ind. 1990); First Nat'l Bank v. Strong, 663 N.E.2d 432, 435 (Ill. App. Ct. 1996).

66 U.C.C. § 9-402(1) (1962).

67 U.C.C. § 9-402(7) (1972).

68 A registered organization is defined as "an organization organized solely under the law of a single State or the United States and as to which the State or the United States must maintain a public record showing the organization to have been organized." U.C.C. § 9-102(a)(70) (2001). The Official Comments suggest that this term will ordinarily include corporations, limited partnerships, and limited liability companies. Id. § 9-503 cmt. 2; see, e.g., Cal. Corp. Code § 15621(a) (West 2006) (requiring registration with the Secretary of State for limited partnerships); Fla. Stat. § 608.407(1) (2005) (requiring registration for limited liability companies); 805 Ill. Comp. Stat. 5/2-10(2006) (requiring registration for corporations); N.Y. P'ship Law § 121-1500(a) (McKinney 2005) (requiring registration for

limited liability partnerships). This definition presumably would not include general partnerships and unincorporated associations.

69 U.C.C. § 9-503(a)(1). "Jurisdiction of organization" is defined as "the jurisdiction under whose law the organization is organized." Id. § 9-102(a)(50). See Harry C. Sigman, The Filing System Under Revised Article 9, 73 Am. Bankr. L.J. 61, 72 (1999) (commenting that the new rule regarding registered organization names "enables filers and searchers to rely with certainty on the debtor's exact name obtained from an objective and publicly available source").

70 For estates, the financing statement should provide the decedent's name and also indicate that the debtor is an estate. U.C.C. § 9-503(a)(2). For trusts and trustees, the financing statement should provide "the name specified for the trust in its organic documents or, if no name is specified ... the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors." Id. § 9-503(a)(3)(A). In addition, the financing statement should indicate the debtor's status as a trust or trustee. Id. § 9-503(a)(3)(B).

71 Id. § 9-503(a)(4)(A).

72 Id. § 9-503(a)(4)(B).

73 The Official Comments to section 9-506 emphasize the singularity of the searcher's anticipated search: "A financing statement that is seriously misleading under this section is ineffective even if it is disclosed by (i) using a search logic other than that of the filing office to search the official records or (ii) using the filing office's standard search logic to search a data base other than that of the filing office." Id. § 9-506 cmt. 2.

74 Id. § 9-506(c)-(d).

75 Id. § 9-503 cmt. 2.

76 See infra notes 89-106 and accompanying text.

77 See, e.g., Transamerica Commercial Fin. Corp. v. Gen. Elec. Capital Corp. (In re Wardcorp, Inc.), 133 B.R. 210, 215 (Bankr. S.D. Ind. 1990) (expressing this view).

78 See, e.g., Huntington Nat'l Bank v. Tri-State Molded Plastics, Inc. (In re Tyler), 23 B.R. 806, 809 (Bankr. S.D. Fla. 1982) ("[E]rrors should be judged strictly against the secured party, exactly because so little is required of the creditor.").

79 For example, should a searcher who knows the potential debtor as "William Johnson" be required to search under "Johnsen," "Jonson," and "Jonsen" as well as various versions of the first name, such as "Will," "Bill," and "Billy" ? See First Nat'l Bank v. Strong, 663 N.E.2d 432, 435 (Ill. App. Ct. 1996) ("[A] rule that would burden a searcher with guessing at misspellings and various configurations of a legal name would not provide creditors with the certainty that is essential in commercial transactions.").

80 One of the drafters of Revised Article 9 recently summarized on a UCC listserv the assumed cost effectiveness of requiring the secured party to be accurate in setting forth the debtor's name on a financing statement:
[T]he Drafting Committee for revised Article 9 made a judgment call that the overall secured lending system would be better off by imposing a one-time cost on a secured party filing a financing statement to get the debtor's name right, thereby improving transparency and relieving the system of the cost of a searching secured party making multiple searches and having to retain the residual risk that there might be one more search under a "close enough" name that it could have done.
Posting of Steven Weise to ucclaw-l-bounces@lists.washlaw.edu (Oct. 25, 2006) (on file with author); see also G. Ray Warner, Using the Strong-Arm Power To Attack Name Errors Under Revised Article 9, 20 Am. Bankr. Inst. J., Oct. 2001, at 22 (stating that new Article 9 "replaces [the] reasonableness standard with a precise standard based on the computerized search logic used by the relevant filing office") (emphasis added).

81 See, e.g., In re Summit Staffing Polk County, Inc., 305 B.R. 347, 355 (Bankr. M.D. Fla. 2003); Nazar v. Bucklin Nat'l Bank (In re Erwin), No. 02-10227, 02-5176, 2003 WL 21513158, at *7-8 (Bankr. D. Kan. June 27, 2003).

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82 In re Erwin, 2003 WL 21513158, at *8.

83 Clark v. Deere & Co. (In re Kinderknecht), 308 B.R. 71, 75 (B.A.P. 10th Cir. 2004).

84 Pankratz Implement Co. v. Citizens Nat'l Bank, 130 P.3d 57, 59 (Kan. 2006).

85 In re Erwin, 2003 WL 21513158, at *1.

86 Id. at *2.

87 Id. at *3.

88 Id. at *12.

89 Id. at *8. Interestingly, the court applied Revised Article 9 in judging the sufficiency of the Bank's financing statement even though it was filed in 1999. Referring to one of the new law's transition rules, the court stated that "if the pre-enactment security interest did not satisfy the perfection requirements of revised Article Nine, the creditor had one year from enactment, or until July 1, 2002, to satisfy the perfection requirements of revised Article Nine." Id. at *1 (citing Kan. Stat. Ann. § 84-9-703(b)(3) (2002 Supp.), which is basically Kansas's version of U.C.C. § 9-703(b)(3) (2001)). The court ignored, however, the transition rule that allows pre-enactment financing statements to remain effective for the normal five-year period without re-filing by the creditor. U.C.C. § 9-705(c). Arguably, the Bank's financing statement should have been evaluated by old Article 9 standards. Given that the court employed the "reasonably diligent searcher" standard, its reliance on Revised Article 9 did not determine the case's outcome.

90 Id. at *6.

91 Id. at *10.

92 The debtor's name on all of the Bank's loan documents was "Mike Erwin," including the W-9 tax form request for the debtor's taxpayer identification number and certification. Id. at *2.

93 Id. at *11. The court emphasized that nothing in Article 9 mandates the use of an individual debtor's full legal name on a financing statement. Id. at *10. In fact, the Kansas administrative regulations implementing new Article 9 suggest that "human judgment still plays a role in searches for individual debtor names 'that are not automated.'" Id. at *7.

94 Id. at *2.

95 Clark v. Deere & Co. (In re Kinderknecht), 300 B.R. 47 (Bankr. D. Kan. 2003), rev'd, 308 B.R. 71 (B.A.P. 10th Cir. 2004).

96 Id. at 48.

97 Id. at 55-56.

98 Id. at 49.

99 Id. at 48.

100 Id. at 51-56. The official database, maintained by the Kansas Secretary of State's office, generates state-certified search results, as described in U.C.C. § 9-506(c) (2001). Kinderknecht, 300 B.R. at 51. An "unofficial" search or database refers to any other electronic information retrieval system, whether maintained by the Secretary of State or a private entity. Id. at 51-56.

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101 The court stated:
[A] searcher must use reason and select alternative names as search criteria to ensure a realistic possibility of finding a financing statement. When a bankruptcy petition in the legal name of the debtor is signed with a nickname representing the debtor's first name, ... the searcher must use that nickname as a search criterion to be considered as having acted reasonably.
Id. at 56. Of course, even a reasonably diligent third party searching the files before the debtor's bankruptcy would have no way of seeing a bankruptcy petition signed by the debtor. The court, however, seems to be suggesting that if the debtor signed official documents such as his bankruptcy petition with his nickname, then he would be likely to use that name in some capacity in his dealings with the third party searcher.

102 Clark v. Deere & Co. (In re Kinderknecht), 308 B.R. 71, 72 (B.A.P. 10th Cir. 2004).

103 Id. at 75.

104 Id.

105 Id. at 76 (quoting Kan. Stat. Ann. § 84-9-521 (Supp. 2005) (showing UCC Financing Statement)).

106 Id.

107 Id. at 75.

108 Id.

109 Id. at 75-76.

110 Id. at 76.

111 Id.

112 Pankratz Implement Co. v. Citizens Nat'l Bank, 130 P.3d 57, 59 (Kan. 2006).

113 Id.

114 Id. at 59-60.

115 Id. at 59. The general rule for priority among two or more secured parties with security interests in the same collateral is that the first to file a financing statement against the debtor or the first to perfect the security interest, whichever occurs earlier, has the first priority. U.C.C. § 9-322(a)(1) (2001). Of course, the first filer must have recorded a valid financing statement to gain this priority position.

116 Pankratz Implement Co. v. Citizens Nat'l Bank, 102 P.3d 1165, 1167 (Kan. Ct. App. 2004) (emphasis omitted), aff'd, 130 P.3d 57, 59 (Kan. 2006).

117 Id.

118 Id. at 1168.

119 Id.

120 Id. In addition to the official Secretary of State database, Kansas maintained an unofficial database on a temporary internet site, found at http://www.accesskansas.org, during the Article 9 transition period. Id. at 1167-68. This site provided a more flexible search logic that disclosed the financing statement with the debtor's name spelled as “Roger” rather than the actual spelling “Rodger.” Id. at 1168.

121 Pankratz Implement Co. v. Citizens Nat'l Bank, 130 P.3d 57, 59 (Kan. 2006).

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122 Id. at 62-63 (observing that the amendments to Article 9 "eliminat[ed] the need to conduct diligent searches").

123 Id. at 63.

124 Id.

125 Id. (noting that the official filing office search is the "only search that determines whether a name is seriously misleading" under Article 9).

126 Id. at 66-67 (quoting Clark v. Deere & Co. (In re Kinderknecht), 308 B.R. 71, 75 (B.A.P. 10th Cir. 2004)).

127 For a recent case adopting the Tenth Circuit Bankruptcy Appellate Panel's holding and reasoning in Kinderknecht, see Genoa National Bank v. Southwest Implement, Inc. (In re Borden), No. BK05-41272, 2006 Bankr. LEXIS 2911, at *13-15 (Bankr. D. Neb. Nov. 2, 2006) (holding that a filing under "Mike Borden" was insufficient where the debtor's legal name was "Michael Borden").

128 All Bus. Corp v. Choi, 634 S.E.2d 400, 401 (Ga. Ct. App. 2006).

129 Id.

130 Id. at *15.

131 A stem search involves searching under only part of a name. For example, for "Bates Auto Sales, Inc.," one might conduct a stem search using only "Bates." In searching for "Terrance Joseph Kinderknecht," one might enter a search for "Kinderknecht" alone or even "Kinder!" . Stem searches, of course, increase the number of financing statements retrieved and also augment the possibility of finding a financing statement with an error in the debtor's name.

132 All Bus. Corp., 634 S.E.2d at 405.

133 Id. (citing Receivables Purchasing Co. v. R & R Directional Drilling, LLC, 588 S.E.2d 831 (Ga. Ct. App. 2003).

134 U.C.C. § 9-503(c) (2001); see also In re Cruz, No. 04-43119-13, 2005 Bankr. LEXIS 866, at *6-7 (Bankr. D. Kan. May 12, 2005).

135 This case illustrates the occasional difficulty of ascertaining the proper way to set forth a non-Anglo name. See infra note 224. It also illustrates the need for the filing office's search mechanism to accommodate these types of errors. See infra Part V.

136 Receivables Purchasing Co. v. R & R Directional Drilling, LLC, 588 S.E.2d 831, 832 (Ga. Ct. App. 2003).

137 Id. at 833. Although the financing statement in question was filed on April 2, 2001, before the effective date of new Article 9, the court measured its legal sufficiency under the revised statute. Id. The secured party filed its financing statement in Bartow County, presumably to comply with old Article 9. Id. at 832. Under new Article 9, almost all filings are made with a central filing office, and county filings, with a few exceptions, have been eliminated. See U.C.C. § 9-501(a) (mandating central filings for all transactions except fixture filings and those involving as-extracted collateral or timber to be cut). Given the move away from county filings, one might question the level of sophistication of the county's computerized UCC database at the time the test searches were made in this case.

138 Receivables Purchasing, 588 S.E.2d at 833.

139 Id.

140 Host Am. Corp. v. Coastline Fin., Inc., No. 2:06-CV-5, 2006 U.S. Dist. LEXIS 35727, at *3 (D. Utah May 30, 2006). There was some question as to whether there were spaces after the periods in the debtor's names--in other words,

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"K.W.M." or "K. W. M."--but the court stated that it did not need to address that issue because the secured party's financing statement contained no periods whatsoever. Id. at *12.

141 Utah Code Ann. § 38-3-1 (1953) provides lessors with a lien for unpaid rent on nonexempt property of the lessee located on the leased premises.

142 Host Am., 2006 U.S. Dist. LEXIS 35727, at *7.

143 Id. at *12.

144 Id. at *14-15.

145 The parties apparently submitted affidavits from the director of the Utah Division of Corporations and Commercial Codes. Id. at *13.

146 Id. ("[T]he filing office's standard search logic was not capable of compensating for even minor errors in a debtor's name.").

147 Id. at *15.

148 Id. at *14.

149 United States v. Crestmark Bank (In re Spearing Tool & Mfg. Co.), 412 F.3d 653, 655-56 (6th Cir. 2005).

150 Crestmark Bank v. United States (In re Spearing Tool & Mfg Co.), 292 B.R. 579 (Bankr. E.D. Mich. 2003), rev'd, 302 B.R. 351 (E.D. Mich. 2003), rev'd, 412 F.3d 653 (6th Cir. 2005).

151 Id. at 580.

152 Id.

153 Id.

154 Crestmark argued that under Revised Article 9, a financing statement must use the debtor's official legal name. Id. at 582 (citing Mich. Comp. Laws Ann. § 440.9503(1)(a) (West 2002), which is essentially Michigan's version of U.C.C. § 9-503(1)(a) (2001)). If the financing statement sets forth the debtor's name incorrectly, then it is invalid unless "a search of the records of the filing office ... using the filing office's standard search logic, if any, would disclose [the] financing statement ...." Id. (citing Mich. Comp. Laws Ann. § 440.9506 (West 2002), which is essentially Michigan's version of U.C.C. § 9-506(b)-(c)).

155 Id. at 582-83.

156 Id. at 582. (citing Treas. Reg. § 301.6323(f)-1(d)(2)).

157 Id. at 583.

158 Crestmark Bank v. United States (In re Spearing Tool & Mfg. Co.), 302 B.R. 351, 357 (E.D. Mich. 2003), rev'd, 412 F.3d 653 (6th Cir. 2005).

159 Id. at 355.

160 Id.

161 Id. at 355-56.

162 Id. at 356.

163 Id. at 357.

164 See id. ("Fairness to third parties dictates that in cases like this, where a reasonable searcher would not have notice of the federal tax lien, the IRS's liens should not have priority over other lenders.").

165 United States v. Crestmark Bank (In re Spearing Tool & Mfg. Co.), 412 F.3d 653, 657 (6th Cir. 2005).

166 Id. at 655-56.

167 Id. at 656. In contrast to the typical pre-revision Article 9 cases, which adopted the reasonably diligent searcher standard, this court, citing federal precedent, applied the "reasonable and diligent" search test. The difference between these two tests is not readily apparent. The state law test seems to apply one factor--whether a searcher who is "reasonably diligent" could find the filing in question. Arguably, the federal test uses two factors--whether a searcher who is both "reasonable" and "diligent" could locate the disputed record.

168 Id.

169 Id.

170 Miller v. Van Dorn Demag Corp. (In re Asheboro Precision Plastics, Inc.), No. 03-11319C-7G, 2005 Bankr. LEXIS 1091, at *19-25 (Bankr. M.D.N.C. Mar. 1, 2005).

171 Three of the seventeen financing statements filed under the debtor's legal name also cross-referenced the trade name, "Wade Technical Molding." A prudent searcher, the court suggested, would have looked for financing statements under that name as well. Id. at *24-25.

172 Id. at *25.

173 Id.

174 According to the secured party, the debtor falsely represented its legal name to be "Wade Technical Molding, Inc." when no such entity existed. Id. at *25-26.

175 Id. at *27-28.

176 Id. at *26. Equity courts use constructive trusts "to prevent unjust enrichment to a title holder of property when the title holder acquired that title through fraud ... that makes it inequitable for the title holder to assert a claim to that property against the beneficiary of the constructive trust." Id. at *29.

177 The secured party's "equitable" title to the collateral would trump the trustee's legal title. Id. at *34.

178 Id.

179 See, e.g., Sanyo Elec., Inc. v. Howard's Appliance Corp. (In re Howard's Appliance Corp.), 874 F.2d 88, 94 (2d Cir. 1989) (imposing a constructive trust on the collateral in favor of the secured creditor where the debtor, by secretly relocating the collateral to another state, had caused the creditor's security interest to lose its perfection). For a review of the case lawrelating to constructive trusts in bankruptcy, see generally Robert J. Keach, The Continued Unsettled State of Constructive Trusts in Bankruptcy: Of Butner, Federal Interests and the Need for Uniformity, 103 Com. L.J. 411 (1998).

180 In re Summit Staffing Polk County, Inc., 305 B.R. 347, 355 (Bankr. M.D. Fla. 2003).

181 Id. at 349.

182 Id.

183 Id. at 349, 351-52 (citing Fla. Stat. § 679.508, which essentially is Florida's version of U.C.C. § 9-508 (2001)). Normally, failure to file an amended financing statement reflecting a seriously misleading debtor name change causes the secured

party to lose perfection in collateral acquired more than four months after the name change. U.C.C. §§ 9-507(c)(2), 9-508(b)(2). Of course, here the secured party had included a version of the debtor's new name on its original financing statement, and thus, arguably, the name change did not render the filed financing statement seriously misleading.

184 In re Summit Staffing, 305 B.R. at 350, 352-53 (citing 11 U.S.C. § 544(a) (2000) and Fla. Stat. § 679.506 (2002), which is Florida's version of U.C.C. § 9-506).

185 Id. at 352.

186 Any exact matches to the search request appeared at the top of the list; if there was no exact match, then the next closest name alphabetically was displayed at the top of the list. Computer commands appeared on the screen directing the searcher who wished to see additional names to use the "Previous" or "Next" buttons to move backward or forward alphabetically through the list. Id. at 353-54.

187 Id. at 353.

188 Id. at 355.

189 See id. at 354-55 ("Certainly the searcher should do this.").

190 Id. at 355. In this case, there were only three names listed that began with "Summit Staffing," and included among them was the secured party's filing. The court observed, however, that there were several screens-- with twenty names on each screen--with debtors' names beginning with "Summit." The court suggested that the issue of "reasonableness" in the search process becomes much more difficult where there are dozens of entries to peruse. Id. at 354.

191 Id. at 355.

192 Scholars have commented that a first-in-time priority scheme, such as that adopted by Article 9, solves the risk alteration problem experienced by early lenders and encourages creditors to lend to debtors at an earlier point in time when debtors are more likely to invest in projects with higher expected returns. See, e.g., Hideki Kanda & Saul Levmore, The Politics of Article 9: Explaining Creditor Priorities, 80 Va. L. Rev. 2103, 2113-14 (1994).

193 See U.C.C. § 9-517 (2001) ("The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.").

194 See id. § 9-507(b) (stating that, apart from certain exceptions, "a financing statement is not rendered ineffective if, after the financing statement is filed, the information on the financing statement becomes seriously misleading").

195 If a debtor name-change renders a financing statement seriously misleading, then the secured party must re-file in the debtor's new name to avoid loss of perfection in collateral acquired more than four months after the name-change. The original financing statement continues to perfect the secured party's security interest in collateral acquired by the debtor before the name change or within four months thereafter. Id. § 9-507(c); see also id. § 9-508 (adopting a similar rule for transfers of collateral to a new debtor).

196 Id. § 9-201(a) (granting the secured party priority over "creditors").

197 Id. § 9-317(a)(2).

198 Id. § 9-317(b). A non-ordinary-course buyer would include, for example, someone who bought a piece of equipment from a widget-manufacturer who did not ordinarily sell equipment. See id. § 1-201(9) (defining buyer in ordinary course of business). A buyer in ordinary course of business has priority over even perfected security interests created by their seller. Id. § 9-320(a).

199 Id. § 9-322(a)(2).

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200 Id. § 9-322(a)(1).

201 Id. § 9-609(a)-(b). Of course, the scope of what constitutes a breach of peace varies widely across jurisdictions, and the issue is heavily fact-dependent. See, e.g., Giles v. First Va. Credit Servs., 560 S.E.2d 557, 563-66 (N.C. Ct. App. 2002) (discussing various case lawstandards and adopting a five-factor balancing test to determine whether repossession without confrontation constitutes breach of the peace).

202 See U.C.C. § 9-611 (requiring that "reasonable authenticated notification of disposition" be sent to the debtor, any secondary obligor, other perfected secured parties, etc.). Revised Article 9 has further simplified the notification process by providing a ten-day safe harbor period for notice and supplying legally sufficient notification forms. Id. §§ 9-612 to -614.

203 See id. § 9-610(b) (authorizing dispositions "by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms").

204 See id. § 9-502(a) (mandating only the debtor's name, the secured party's name (or the name of its representative) and an indication of the collateral on a financing statement). New Article 9, however, does require additional information on the financing statement, such as the party's addresses and the debtor's organizational information, and filing officers are required to refuse financing statements without this additional information. Id. §§ 9-516(b)(4)-(5), 9-520(a). If, for some reason, the filing officer accepts and files a financing statement without the additional information, the filing is effective as long as it contains the three basic elements required by section 9-502(a). Id. § 9-520(c). Even if the additional debtor information is incorrect at the time of filing, the financing statement is still effective except against certain subsequent parties who reasonably relied on the incorrect information. Id. § 9-338. Thus, for example, an incorrect debtor address would not invalidate the financing statement unless a subsequent secured party or buyer was misled by it.

205 Compare U.C.C. § 9-301(1) (2001) (providing that, generally, the law of the debtor's location governs perfection and priority issues), with U.C.C. § 9-103 (1995) (describing complex choice-of-law rules).

206 See U.C.C. § 9-516(d) (2001) (providing that an improperly rejected financing statement "is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the records from the files").

207 See id. § 9-620(a) ("[A] secured party may accept collateral in full or partial satisfaction of the obligation ...."); see also Donald J. Rapson, Default and Enforcement of Security Interests Under Revised Article 9, 74 Chi.-Kent L. Rev. 893, 923 (1999) (commenting that strict foreclosure "provides a method of enforcement that is nonadversarial, requires lower transaction costs, and is not likely to result in litigation").

208 Congress has seemingly jumped on the secured party's bandwagon in its recent amendments to the Federal Bankruptcy Code. The grace periods for perfection have been extended from ten to thirty days in one instance and from twenty to thirty days in another. See 11 U.S.C. § 547(e)(2)(C)(ii) (2000 & Supp. 2006) (allowing secured parties thirty days from the time of attachment to perfect their security interests without qualifying as a preference); id. § 547(c)(3)(B) (providing purchase money secured parties a thirty-day perfection window after the debtor's possession of the collateral to qualify for a preference safe harbor). Secured parties now have more time after signing the security agreement to get to the filing office without fear of having their security interests avoided as preferences.

209 11 U.S.C. § 544(a) (2000).

210 See Raymond T. Nimmer et al., Commercial Transactions: Secured Financing 251-52 (3d ed. 2003) (describing the secured party's ability to enforce its security interest in bankruptcy).

211 Douglas G. Baird, Elements of Bankruptcy 99 (3d ed. 2001).

212 See Nimmer, supra note 210, at 256 ("[In over] 95% of all consumer bankruptcies ... [t]he debtor has no unencumbered, nonexempt assets.").

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213 John C. McCoid II, Bankruptcy, the Avoiding Powers, and Unperfected Security Interests, 59 Am. Bankr. L.J. 175, 190 (1985).

214 Alan Schwartz, The Continuing Puzzle of Secured Debt, 37 Vand. L. Rev. 1051, 1054 (1984).

215 See Thomas H. Jackson & Anthony T. Kronman, Secured Financing and Priority Among Creditors, 88 Yale L.J. 1143, 1147-48 (1979) (discussing the ways in which unsecured creditors adjust for their risk).

216 See Nimmer, supra note 210, at 287-88 (advocating the priority of unperfected secured parties over lien creditors, including the trustee in bankruptcy); James J. White, Revising Article 9 To Reduce Wasteful Litigation, 26 Loy. L.A. L. Rev. 823, 827 (1993) ("Neither the plumber, carpenter, accountant, Commonwealth Edison nor any other thousands of general creditors check the files to determine who has a financing statement on file.").

217 One, perhaps partially unintended, byproduct of Revised Article 9 is the increased number of secured transactions that escape filing requirements. See Jonathan C. Lipson, Secrets and Liens: The End of Notice in Commercial Finance Law, 21 Bankr. Dev. J. 421, 455-67 (2005) (discussing the secret liens potentially created in transactions involving data, intellectual property, investment property, deposit accounts, electronic chattel paper, and letter-of-credit rights).

218 Even though the statute is explicit on what is required for registered organization debtors, secured parties apparently are having trouble getting the debtor's name right. An analysis of filings in Vermont revealed that over half of the financing statements listing registered organization debtors used names that did not correspond to the officially registered names for those entities. Telephone Interview with Carl R. Ernst, CEO, Ernst Publishing Co., LLC, in Scottsdale, Ariz. (July 17, 2006).

219 See Lynn M. LoPucki, The Spearing Tool Filing System Disaster 12-13 (UCLA School of Law, Law-Econ Research, Working Paper No. 06-10, 2006), available at http://ssrn.com/abstract=890312 (describing "point and shoot" systems).

220 At common law, an individual's legal name is "[t]he designation of a person recognized by the law as correct and sufficient and constituting ... one given name followed by the family name and in modern times requiring or permitting one or more middle given names or initials in abbreviation thereof ...." In re Dengler, 246 N.W.2d 758, 761 (N.D. 1976) (quoting Webster's Third New International Dictionary, Unabridged 1290 (1993)). Even the "legal" definition of legal name theoretically may permit an individual to have more than one legal name. See 625 Ill. Comp. Stat. 5/1-137.5 (2005) (defining legal name as the "full given name and surname of an individual as recorded at birth, recorded at marriage, or deemed as the correct legal name for use in reporting income by the Social Security Administration"). In addition, it is not entirely clear in some states whether a married woman is considered to have legally assumed her husband's name or whether a divorced woman may resume her birth name without court proceedings. See Jorgensen v. Larsen, No. 90-4048, 1991 U.S. App. LEXIS 10627, at *11-19 (10th Cir. Apr. 12, 1991) (McKay, J., dissenting) (reviewing various state laws on this issue); see also Carl R. Ernst, How To Adjudicate a Debtor Name Dispute Under Revised Article 9, NABTalk, Summer 2005, at 32, 34-35 (discussing the problem of debtors with more than one correct name).

221 See, e.g., Bryan Bros. Cattle Co. v. Glenbrook Cattle Co., No. 2:4CV139SAA, 2006 U.S. Dist. LEXIS 29926, at *16-26 (N.D. Miss. May 1, 2006) (observing that it was somewhat unclear as to whether the individual debtor or his limited liability company owned particular head of cattle used as collateral).

222 In an interesting case involving a corporate debtor, the third party searcher argued that he knew the debtor only by its trade name and not its legal name. In fact, the debtor had used a trade name on a contract for the purchase of some land from the third party. Panel Town of Dayton, Inc. v. Corrigan (In re Panel Town of Dayton, Inc.), 338 B.R. 764, 782-83 (Bankr. S.D. Ohio 2006). The bankruptcy court held that a financing statement filed in the debtor's legal name was legally sufficient, notwithstanding the debtor's frequent use of one or more trade names in its business dealings with others. Id.; see also In re Nittolo Land Dev. Ass'n, Inc., 333 B.R. 237, 239, 242 (Bankr. S.D.N.Y. 2005) (noting that the record was insufficient to determine whether the debtor's legal name was "Nittolo Land Development Associates, Inc.," as it appeared on the secured party's financing statement, or "Nittolo Land Development Association, Inc.," as it appeared on the debtor's bankruptcy petition).

223 The officially adopted name of that particular institution is "DePaul University" or "DE PAUL UNIVERSITY," if all uppercase letters are used. DePaul University, Brand Standards, Writing Guidelines, http:// www.depaul.edu/ brandmanual/html/writing.html (last visited Feb. 8, 2007).

224 A recent California appellate case illustrates the difficulty of determining the last name of a debtor with a Latino name. Corona Fruits & Veggies, Inc. v. Frozsun Foods, Inc., 48 Cal. Rptr. 3d 868 (Ct. App. 2006). In that case, the debtor's "full true name" was "Armando Munoz Juarez." Id. at 869. The first secured party filed a financing statement listing his name as "Armando Munoz," apparently recognizing that Spanish surnames are formed by listing the father's surname, then the mother's surname. Id. at 869, 871. The second secured party filed a financing statement setting forth the debtor's name as "Armando Juarez." Id. at 869. The court held that the first secured party's security interest was unperfected because the debtor's name was incorrect on the financing statement and that the financing statement could not be found in the public records searching under the name "Armando Juarez." Id. at 870-71. The debtor's name, stated the court, was "Armando Juarez" or "Armando Munoz Juarez" for the purposes of the UCC filing. Id. at 871. In support of this statement, the court observed somewhat cryptically that the "[d]ebtor's last name did not change when he crossed the border into the United States." Id.
Some Asian names can present similar problems. In Chinese names, for example, the first name (reading left to right) is considered to be the surname or family name. The surname of a person named "Chen Lu" would be "Chen." See The Bluebook: A Uniform System of Citation R. 10.2.1(g), at 84 (Columbia Law Review Ass'n et al. eds., 18th ed. 2005) (commenting that the surname is given first in Chinese, Korean, and Vietnamese); Harvey Stockwin, Vajpayee To Meet Key Players in China, Econ. Times, June 14, 2003 ("[T]he Chinese surname always comes first."). Additionally, Arabic names can be transliterated into the Roman alphabet in a number of different ways. For example, "Said al-Ghamdi" can be properly spelled "Saeed Al Ghamdi" or "Sayeed Alghamdi," depending on the method of transliteration employed. AllExperts, Arabic Name: Encyclopedia, http://experts.about.com/e/a/ar/Arabic_name.htm (last visited Feb. 8, 2007).

225 The cost of conducting a reasonably diligent search increased enormously over the years, and by 1995, it was estimated to be more than $25,000 for loans ranging from $20 million to $74 million. See Peter A. Alces, Abolish the Article 9 Filing System, 79 Minn. L. Rev. 679, 690-91 (1995) (referencing a report submitted to an ABA Task Force on 100 billings by a particular law firm).

226 United States v. Crestmark Bank (In re Spearing Tool & Mfg. Co.), 412 F.3d 653, 656 (6th Cir. 2005).

227 See, e.g., Malone v. Sullivan, 605 P.2d 447, 448 (Ariz. 1980); Piotrowski v. Piotrowski, 247 N.W.2d 354, 355 (Mich. Ct. App. 1976); In re Miller, 243 S.E.2d 464, 467 (Va. 1978).

228 See, e.g., Ark. Code Ann. § 9-2-101 (2006); Colo. Rev. Stat. § 13-15-101 (2006); Conn. Gen. Stat. § 52-11 (2006); Fla. Stat. § 68.07 (2006); 735 Ill. Comp. Stat. 5/21-101 (2006); Minn. Stat. § 259.10 (2005); Va. Code Ann. § 8.01-217 (2006).

229 See, e.g., State v. Hansford, 580 N.W.2d 171, 178-80 (Wis. 1998) (noting that there are three methods by which one can legally change one's name: marriage or divorce; court order; and "consistent and continuous use").

230 U.C.C. § 9-503(a)(1) (2001).

231 One commentator writing on a UCC listserv has suggested a filing system organized by debtor Social Security numbers ("SSNs"). Posting of Lynn LoPucki to ucclaw-l-bounces@lists.washlaw.edu (Sept. 30, 2006, 12:03 p.m.) (on file with author). Unlike names, SSNs are presumably unique for each person and therefore completely reliable as identifiers. See id. To surmount privacy objections, he has urged redaction of the SSNs so that they would not be visible in the system but could be used internally as part of a search. See id. In response to the listserv post, others objected that sometimes individuals have more than one SSN, the IRS will not verify an SSN, and privacy concerns remain if an individual's SSN is required on a publicly filed document even if it is redacted in search requests. See, e.g., Posting of George A. Hisert to ucclaw-l-bounces@lists.washlaw.edu (Oct. 3, 2006) (on file with author).

232 For example, suppose the debtor filed her 2006 federal income tax return on April 15, 2007, under the name Mary P. Anderson. In August 2007, the debtor marries, assumes her husband's surname, and becomes known as Mary A. Jones. In late August, the debtor applies for a secured loan under the name Mary P. Anderson. The debtor fails to inform the creditor of her marital status or her new name. If the creditor uses the name on her 2006 tax return, the creditor, under this proposal, would have made a legally effective filing.

233 All partnerships, whether or not they have tax liability, must file a federal income tax return for every taxable year. 26 U.S.C. § 6031 (2001).

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234 See, e.g., In re Waters, 90 B.R. 946, 955 (Bankr. N.D. Iowa 1988) ("[T]he legal name of a partnership is the name designated by a general partnership agreement, where one exists.").

235 See, e.g., 805 Ill. Comp. Stat. 405/1 (2006) (requiring filing in the county in order to conduct business under an assumed name); N.C. Gen. Stat. § 66-68 (2006) (requiring the same).

236 As of April 1995, thirty-seven states were employing some sort of computerized filing system and four more were in the process of adopting such a system. See Edward S. Adams et al., A Revised Filing System: Recommendations and Innovations, 79 Minn. L. Rev. 877, 889-90 (1995).

237 Even a computer program with a "spell check" feature will be of marginal use to a creditor in setting forth the name of a debtor, whether it is an individual or organization. Most "spell check" programs focus on English language words and some common names, such as "Jones," "Smith," "Gomez," etc. Certainly, a "spell check" feature might be helpful in alerting a creditor that it had misspelled "Smith" as "Smitt." But, it would not flag variant spellings of names--e.g., Woodard vs. Woodward, Braun vs. Brown, Livingston vs. Livingstone. Additionally, it would tag as misspelled certain foreign or unusual names not in the program's database--e.g., Verreos, Yamaguchi, Krimitsou.

238 It may be inferred, however, that in systems where the searcher does not have direct access to the official database, a clerk may enter the search request into the system on the searcher's behalf. See Kathy Berg, Revised UCC Article 9: Utah "Filing Office" Update, 15 Utah B.J., Apr. 2002, at 14, 16 ("We only search what we are given.").

239 See, e.g., In re Waters, 90 B.R. 946, 960 (Bankr. N.D. Iowa 1988) ("Admittedly, a computer search [as opposed to a file box search] may require more precision in requesting a name search. The entry of a single name into the computer system may retrieve only a listing of financing statements on which the name is identical to the name entered.").

240 See ITT Commercial Fin. Corp. v. Bank of the West, 166 F.3d 295, 301 (5th Cir. 1999) (explaining the computer search logic in the Texas Secretary of State's office).

241 See Genoa Nat'l Bank v. Sw. Implement, Inc. (In re Borden), 353 B.R. 886, 891 (Bankr. D. Neb. 2006) (observing that a restricted search logic does not relieve the filing creditor of the burden of getting the debtor's correct name on the financing statement nor does it impose on searchers the duty to search under possible variations of the debtor's name).

242 ITT Commercial, 166 F.3d at 304.

243 See In re Mines Tire Co., 194 B.R. 23, 26 (Bankr. W.D.N.Y. 1996) ("To the extent that a human searcher would inevitably examine all corporate names having certain basic components, a computer searcher should act similarly. It will not suffice to perform a word search for the precise corporate name. Rather, the interested party should expand its investigation to include all related entries through which a manual searcher might have stumbled.").

244 Id. at 25.

245 U.C.C. § 9-526(a)(1) (2001).

246 In fact, under new Article 9, the designated state rulemaking agency must "consult the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators" in creating filing office rules. Id. § 9-526(b)(2). IACA is "a professional organization of government administrators of business organization and secured transaction record systems at the state, provincial, territorial, and national level in any jurisdiction which has or anticipates development of such systems." Int'l Ass'n of Commercial Adm'rs, About IACA, http://www.iaca.org/node/12 (last visited Feb. 8, 2007). IACA promulgates an Article 9 standard search logic and model forms, which many, but not all, states have adopted.

247 See, e.g., Cal. Code. Regs. tit. 2, § 22601.4(f) (2006) (following the IACA Model Rules).

248 Id. § 22601.4(b).

249 In the actual case upon which this hypothetical is based, the filing office's standard search logic did not retrieve a financing statement with the debtor's name listed as "Net work Solutions, Inc." when the search term "Network Solutions,

Inc." was entered. Receivables Purchasing Co. v. R & R Directional Drilling, LLC, 588 S.E.2d 831, 832 (Ga. Ct. App. 2003).

250 Clark v. Deere & Co. (In re Kinderknecht), 300 B.R. 47, 51-52 (Bankr. D. Kan. 2003), rev'd, 308 B.R. 71 (B.A.P. 10th Cir. 2004) (describing the unofficial and official search methods available in Kansas).

251 See Berg, supra note 238, at 16 (noting that an official certified search is more restricted and less rapid than the unofficial flexible online search mechanism).

252 See, e.g., Kentucky Secretary of State, Business Services, Revised Article 9 UCC Non-Standard Search, http://apps.sos.ky.gov/business/ucc/ (l1n4z045zfwimdiecsltlt55)/searchnstd.aspx (last visited Feb. 8, 2007) (referring searchers to the non-standard search page for filings made before June 29, 2001); Maine Department of the Secretary of State, Debtor Name Index Search, http://www.maine.gov/sos/cec/corp/debtor_index.shtml (last visited Feb. 8, 2007) (allowing searchers to use a wildcard character to retrieve debtor name variations in an "unofficial" search).

253 See U.C.C. § 9-705(c) (2001) (providing that financing statements satisfying the applicable requirements for perfection under former Article 9 remain effective until the earlier of "the time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or ... June 30, 2006").

254 In three states, Alabama, Florida, and Mississippi, the transition period ends December 31, 2006. See Ala. Code § 7-9A-705 (2005); Fla. Stat. § 679.705 (2006); Miss. Code Ann. § 75-9-705 (2006). In Arizona, the transition period ends June 30, 2007. Ariz. Rev. Stat. Ann. § 47-9705 (2006).

255 This hypothetical is based on test searches conducted on July 21, 2006, in the Kentucky Secretary of State online databases for UCC filings, which are located at http://apps.sos.ky.gov/business/ucc (on file with author).

256 See Wisconsin Department of Financial Institutions, UCC Filing Search, Search for Organization Name, http://www.wdfi.org/ucc/search/default.asp?searchType=organization (last visited Feb. 8, 2007).

257 This hypothetical is based on test searches conducted on July 23, 2006, in the Wisconsin Secretary of State online database for UCC filings, which is located at http://www.wdfi.org/ucc/search/default.asp? searchType=organization (on file with author).

258 In the best of all possible worlds, the information-seeking party would simply ask the debtor whether there were any prior security interests in particular collateral, and the debtor would respond truthfully and accurately that there were or were not. If there were prior interests, the debtor would then supply the name and contact information of the earlier creditor, whom the later party could contact directly for more information about the security interest.

259 The Article 9 Study Group, which began the revision process with its 1992 report, specifically noted the prevalence of "inadequate computer systems (both hardware and software) and insufficient staffing" in state filing offices. See UCC Report, supra note 7, at 88. It urged adoption of "minimum performance standards ... to determine whether a system is functioning satisfactorily" and observed that the systemic problems of filing offices "cannot be solved through refinements to the text of Article 9." Id. at 88-89.

260 See George L. Haskins, The Beginnings of the Recording System in Massachusetts, 21 B.U. L. Rev. 281, 284-88 (1941) (describing land recording systems in the early- to mid-1600s in Massachusetts and other colonies).

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The search function for this website utilizes a standard search logic that was provided by the Florida Department of State. The search feature called a "Compact Name" has been designated by the Florida Department of State as the standard search logic for searching the records in the Registry. The rules pertaining to that search logic can be found on the search screen. Those rules govern a user's ability to locate filed records, so please refer to those rules when conducting a search of the records on this website. The search feature noted as an "Actual Name" search is a supplemental way to determine if an initial financing statement, amendment or termination statement has been filed for a particular person or entity. In addition, neither FLORIDAUCC nor the Florida Department of State represents or warrants that the search logic currently used for the Registry is the same as the search logic employed by other states or that its use will result in a one hundred percent (100%) error-free result.

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NEXT >>

FLORIDA SECURED TRANSACTION REGISTRY

UCC Search

Use the drop down menu to search by Document Number or type of Debtor name search. Then enter the Document Number or Debtor name in the second field and click the SEARCH button.

Select Search Type: Filed Compact Debtor Name List

Name/Document Number:

Today's Date: 01/10/2022

UCC Filings Completed Through: 01/05/2022

SEARCH

Click here to see the details of the search logic used on this website.

Performing Searches

The "Search" option allows the user to access UCC filing information using either the document number or the debtor name.

UCC Filings

Uniform Commercial Code filings are filings which register the secured party's interest in a loan secured by non-titled property.

UCC Filing Inquiry Functions Explanations/Examples

There are several search options available. Below is a listing of those options as well as a description of their usage:

Contents:

- UCC Filing Detail By Document Number
- UCC Filing Inquiry By Debtor Name
- How/When To Use Actual Or Compact Inquiry
- Viewing Images of UCC Filings

top

UCC Filing Detail By Document Number

This transaction provides detailed information on the actual filing of the UCC filing requested by document number. If the requested document is not found, an error message will be displayed.

Example:

To inquire by UCC document number, type the 12-digit document number in the Name/Document Number field, then press the "Search" button. The screen that appears will contain detailed information about the filing, including document number, secured party and debtor name and address, file date, expiration date, process through date, etc. (You can also reach this screen by choosing one of the names listed on the UCC name list).

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UCC Filing Inquiry By Debtor Name

These transactions provide a list of UCC filings on the Florida Secured Transaction Registry beginning with the debtor name that is closest to the key entered. This list also includes the document number and type of each record. There are several inquiry functions available using the Debtor's Name, all of these inquiry functions will provide the user with an alphabetic listing beginning with the name closest to the key entered. On the name list the user will see the debtor

name, address, date of birth or corporate federal employee identification number (optional), and the status (filed or lapsed). To obtain more detailed information about the filing, click on the name you wish to view. The UCC detail screen will be displayed. If additional filing history is available, the message 'View Filing History' will appear on the detail screen. The information is as described in **UCC Filing Detail by Document Number.**

All inquires actual, compact, active, inactive, or active/inactive, UCC will display a name list. However, using the different inquiry options will determine how and what type of filings appear on that list.

Example:

If you are looking for one (1) particular filing and you know the debtor's actual name and the filing is active you would only need to inquire under actual function-list ordered by 'active' debtor name. For more detailed information about the difference between using actual and compact see **How/When To Use Actual Or Compact Inquiry**.

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How/When To Use Actual Or Compact Inquiry

Actual Name

Actual name is used to group entries in the same manner as the telephone directory. All individuals with the same last name would be grouped together in order by their first name, then middle initial. Corporate names beginning with the same word will follow the individual names.

To access the alphabetic name listing using actual name, the name must be keyed with exact spelling of the debtor name as entered on the original UCC1 filing. Actual name inquiries for individuals are made by typing the last name followed by the first name with nothing between the names. Actual corporate inquiries are made by typing the company name exactly as it appears on the filing.

Example:

For inquiries on individual debtor 'ARTHUR BEACH', type 'BEACHARTHUR' in the Name field, then press the "Search" button. A Resulting Name List Might Be:

Beach Arthur
Beach Tom
Beache Fred

For inquiries on corporate debtor 'ABC Fence Company', type 'ABC Fence Company' in the Name field, then press the "Search" button.

Compact Name

This inquiry function allows users to access the same type of name list as with the actual name functions. This option is sometimes helpful if you are unsure of the exact spelling. Names stored by the compact name are displayed so that all variations of names that are alike are grouped together. When searching by compact name, you can enter the name in and the compaction routine will eliminate spaces, common words (a, and, the) and punctuation, etc.

Example:

For inquiries on corporate debtor 'HIS AND HER INFORMATION',type 'HIS AND HER INFORMATION' in the Name field, then press the "Search" button.

A Resulting Name List Might Be:

His And Her Information
His & Her Information
His&Her Information
His/Her Information
His & Her Information Inc.
His & Her Information Incorporated
His & Her Information Co.
His & Her Information Company
His & Her Information Limited

All of the above names would be read as 'HISHERINFORMATION' by the compact program. Using compact names, individuals with the same last name are not necessarily grouped together. They are intermixed with individuals whose last name is similar and with corporate names beginning with similar words.

Example:

For inquiries on individual debtor 'ARTHUR BEACH' using Compact Name, type BEACH ARTHUR in the Name field,

then press the "Search" button.

A Resulting Name List Might Be:

Beach Arthur
Beach Ball Toys
Beachboard Games
Beache Fred
Beach Tom

The entries on the name list screen for actual and compact names will look identical, they may just be in a different order. The title at the top of this screen will indicate if you are on the actual name list screen or the compact name list screen.

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Viewing Images Of UCC Filings:

From the UCC filing detail screen, you may display, images of UCC filings filed since January 1997. To display an image, click on the 12 digit document number displayed in the Document Images section of the detail screen.

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STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM

A. NAME & DAYTIME PHONE NUMBER OF CONTACT PERSON

B. Email Address

C. SEND ACKNOWLEDGEMENT TO:
Name

Address

Address

City/State/Zip

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY **ONE** DEBTOR NAME (**1a OR 1b**) – Do Not Abbreviate or Combine Names

1.a ORGANIZATION'S NAME				
1.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
1.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – INSERT ONLY **ONE** DEBTOR NAME (2**a OR 2b**) – Do Not Abbreviate or Combine Names

2.a ORGANIZATION'S NAME				
2.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
2.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) – INSERT ONLY **ONE** SECURED PARTY (**3a OR 3b**)

3.a ORGANIZATION'S NAME				
3.b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
3.c MAILING ADDRESS Line One	This space not available.			
MAILING ADDRESS Line Two	CITY	STATE	POSTAL CODE	COUNTRY

4. This **FINANCING STATEMENT** covers the following collateral:

5. ALTERNATE DESIGNATION (if applicable) ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ AG LIEN ☐ NON-UCC FILING ☐ SELLER/BUYER

6. Florida DOCUMENTARY STAMP TAX – YOU ARE REQUIRED TO CHECK **EXACTLY ONE** BOX

☐ All documentary stamps due and payable or to become due and payable pursuant to s. 201.22 F.S., have been paid.

☐ Florida Documentary Stamp Tax is not required.

7. OPTIONAL FILER REFERENCE DATA

Instructions for State of Florida UCC Financing Statement Form (Form UCC-1)

- Please type or laser-print this form. Be sure it is completely legible. Read all instructions on form. Forms must be completed according to Florida state law.
- Fill in form very carefully. If you have questions, consult your attorney. Filing office cannot give legal advice.
- Processing fees are set by the Florida Legislature, are non-refundable, and are subject to change. To verify processing fees, contact FLORIDAUCC, LLC. at (850) 222-8526 or email help@floridaucc.com.
- Make checks payable to FLORIDAUCC, LLC. or the Florida Department of State.
- Send ONE copy of each filing request, with the appropriate non-refundable processing fee to:

1st Class Mail	Overnight Courier Service
FLORIDAUCC, LLC.	FLORIDAUCC, LLC.
PO Box 5588	2002 Old St. Augustine Rd. Bldg. D
Tallahassee, FL 32314	Tallahassee, FL 32301

- The acknowledgement copy will be returned to the address indicated in block B.
- Do not insert anything in the open space in the upper right hand portion of this form; it is reserved for filing office use.
- If you need to use attachments, you are encouraged to use the State of Florida Uniform Commercial Code Financing Statement Form – Addendum and/or the State of Florida Uniform Commercial Code Financing Statement Form - Additional Party and/or the State of Florida Uniform Commercial Code Financing Statement Form – Additional Information.