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FORM PTO-1618A
Expires 06/30/99
OMB 0651-0027

07-02-2004

U.S. Department of Commerce
Patent and Trademark Office
TRADEMARK



102782692

**REGISTRATION FORM COVER SHEET
TRADEMARKS ONLY**

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

New

Resubmission (Non-Recordation)
Document ID #

Correction of PTO Error
Reel # Frame #

Corrective Document
Reel # Frame #

Conveyance Type

Assignment License

Security Agreement Nunc Pro Tunc Assignment
Effective Date
Month Day Year

Merger

Change of Name

Other

Conveying Party

Mark if additional names of conveying parties attached

Name Execution Date
Month Day Year

Formerly

Individual General Partnership Limited Partnership Corporation Association

Other

Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

Individual General Partnership Limited Partnership If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

Corporation Association

Other

Citizenship/State of Incorporation/Organization

07/01/2004 LMUELLER 00000084 071750 76443863

FOR OFFICE USE ONLY

01 FC:8521 40.00 DA
02 FC:8522 25.00 DA

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

TRADEMARK
REEL: 003001 FRAME: 0773

Domestic Representative Name and Address Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages Enter the total number of pages of the attached conveyance document including any attachments. #

Trademark Application Number(s) or Registration Number(s) Mark if additional numbers attached
 Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

| Trademark Application Number(s) | | | Registration Number(s) | | |
|---|---|----------------------|------------------------|----------------------|----------------------|
| <input type="text" value="76/443,863"/> | <input type="text" value="76/328,737"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |

Number of Properties Enter the total number of properties involved. #

Fee Amount Fee Amount for Properties Listed (37 CFR 3.41): \$

Method of Payment: Enclosed Deposit Account

Deposit Account
(Enter for payment by deposit account or if additional fees can be charged to the account.)
Deposit Account Number: #

Authorization to charge additional fees: Yes No

Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Robert Graham  28 June 2004

Name of Person Signing Signature Date Signed

INTELLECTUAL PROPERTY SECURITY AGREEMENT

Intellectual Property Security Agreement dated as of March 16, 2004 (the "IP Agreement") made by and between CANADIAN IMPERIAL BANK OF COMMERCE (the "Bank") and WEST 49 INC. (the "Debtor") pursuant to a credit agreement dated as of the date hereof between the Debtor and the Bank (as amended, restated, supplemented or replaced from time to time, the "Credit Agreement").

CONTEXT OF THIS AGREEMENT

A. Bank has agreed to make certain credit facilities available to Debtor upon the terms and subject to the conditions set forth in the Credit Agreement. All references to the Credit Agreement contained herein shall include all supplements, amendments, restatements and modifications thereto entered into from time to time.

B. Debtor has agreed to execute and deliver security to Bank, including without limitation, this IP Agreement as security for the payment and performance of all obligations and liabilities, present and future, direct or indirect, absolute or contingent, matured or unmatured, of Debtor to Bank, including without limitation under the Credit Agreement and all other loan, security, guarantee and other documents to which Debtor is a party (collectively, the "Loan Documents").

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged and intending to be legally bound, as collateral security for the prompt and complete payment when due of Debtor's Indebtedness (as defined below), Debtor hereby represents, warrants, covenants and agrees as follows:

1. **Grant of Security Interest.** As collateral security for the prompt and complete payment and performance of all of Debtor's indebtedness, obligations and liabilities, present and future, direct or indirect, absolute or contingent, matured or unmatured, to Bank (hereinafter, the "Indebtedness"), including, without limitation, under the Credit Agreement and the other Loan Documents, Debtor hereby grants a first priority security interest in all of Debtor's registered and unregistered intellectual property (all of which shall collectively be called the "Intellectual Property"), including, without limitation, the following:

(a) Any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, now or hereafter acquired or held including, without limitation, those set forth on EXHIBIT "A" attached hereto (collectively, the "Copyrights");

(b) Any and all trade secrets, and any and all property rights in computer software and computer software products, including source code and object code, now or hereafter acquired or held. Software means all computer programs and databases and portions of each of the foregoing owned by Debtor in whatever form and on whatever medium those programs or databases are expressed, fixed, embodied or stored from time to time, and the copyright therein including, without limitation, those set forth on EXHIBIT "A". Software includes both the object code and the source code versions of each such program and portions thereof and all corrections, updates, enhancements, translations, modifications, adaptations and new versions thereof together with both the media upon or in which such programs, databases and portions thereof are expressed, fixed, embodied or stored (such as disks, diskettes, tapes and semiconductor chips) and all flow charts, manuals, instructions, documentation and other material relating thereto;

IP Security Agreement - West 49 Inc.

(c) All patents, patent applications, like protections and inventions now or hereafter acquired or held including, without limitation, improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same including, without limitation, the patents and patent applications set forth on **EXHIBIT "B"** attached hereto (collectively, the "**Patents**");

(d) Any trademark and service mark rights, slogans, trade dress, and tradenames, internet domain names, registered or not, applications to register and registrations of the same and like protections (excluding any intent to use filings) now or hereafter acquired or held, and the entire goodwill of the business of Debtor associated therewith including, without limitation, those set forth on **EXHIBIT "C"** attached hereto (collectively the "**Trademarks**");

(e) Any and all industrial design rights which may be available to Debtor now or hereafter acquired or held including, without limitation, those set forth on **EXHIBIT "D"** attached hereto (collectively, the "**Designs**");

(f) All licenses or other rights to use any of the Copyrights, Patents, software, Designs, Trademarks, trade secrets and all license fees and royalties due and/or payable to Debtor arising from such use to the extent permitted by such license or rights including, without limitation, those set forth on **EXHIBIT "E"** attached hereto;

(g) Any and all claims for damages or compensation for past, present and future infringements of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above;

(h) All amendments, extensions, renewals and extensions of any of the Copyrights, Trademarks, Patents or Designs; and

(i) All proceeds and products of the foregoing including, without limitation, all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing.

2. **Exception Regarding Last Day.** The last day of the term of each license granted to Debtor pursuant to any license agreement shall be excepted from this IP Agreement and shall not form part of the Intellectual Property. Debtor shall stand possessed of that day in trust to assign and dispose of it as Bank directs.

3. **Authorization and Request.** Debtor authorizes and requests that the Register of Copyrights and the Commissioner of Patents and Trademarks record this IP Agreement.

4. **Covenants and Warranties.** Debtor represents, warrants, covenants and agrees as follows:

(a) Except for Permitted Liens (as defined in the Credit Agreement), Debtor is now the sole owner of the entire right, title and interest in the Intellectual Property, except for: (i) non-exclusive licenses granted by Debtor to its customers in the ordinary course of business, and (ii) those rights licensed from third parties.

(b) Performance of this IP Agreement does not conflict with or result in a breach of any agreement to which Debtor is bound, except to the extent that certain intellectual property agreements

prohibit the assignment of the rights thereunder to a third party without the licensor's or other party's consent, and this IP Agreement constitutes a security interest.

(c) Except for Permitted Liens, during the term of this IP Agreement, Debtor will not transfer or otherwise encumber any interest in the Intellectual Property, except for non-exclusive licenses granted by Debtor in the ordinary course of business or as set forth in this IP Agreement;

(d) To its knowledge, each item of the Intellectual Property is valid and enforceable, and no part of the Intellectual Property has been judged invalid or unenforceable, in whole or in part, and no claim has been made that any part of the Intellectual Property violates the rights of any third party,

(e) Debtor shall promptly advise Bank of any material adverse change in the composition of the Intellectual Property;

(f) Debtor shall promptly advise Bank of any right, title or interest the Debtor acquires in or to any Trademark, Patent, Copyright or Design after the date hereof;

(g) Debtor shall (i) protect, defend and maintain the validity and enforceability of the Trademarks, Patents, Copyrights, Designs and each item of the Intellectual Property, (ii) use its best efforts to detect infringements of the Trademarks, Patents, Copyrights or Designs thereof and promptly advise Bank in writing of infringements detected and (iii) not allow any item of the Intellectual Property to become abandoned, forfeited or dedicated to the public, or cease to use (whereby "use" is defined by the relevant trademark legislation and common law) any of the trademarks without the prior written consent of Bank, which consent shall not be unreasonably withheld, except where abandonment, forfeiture, dedication to the public or cessation of use shall have no material adverse effect on the business, properties, prospects or condition of the Debtor.

(h) If requested by Bank, Debtor shall promptly register the most recent version of any of Debtor's Copyrights if not so already registered, and shall, from time to time, execute and file such other instruments, and take such further actions as Bank may reasonably request from time to time to perfect or continue the perfection of Bank's interest in the Intellectual Property;

(i) This IP Agreement creates and, in the case of any of the Intellectual Property created, acquired or held by the Debtor after the date of this IP Agreement ("After-Acquired Intellectual Property"), this IP Agreement will create, at the time Debtor first has rights in such After-Acquired Intellectual Property, in favor of Bank, except for Permitted Liens, a valid first priority security interest in the Intellectual Property in the United States and Canada securing the payment and performance of the obligations evidenced by the Credit Agreement and, within 30 days of the date of this agreement or the date upon which Debtor creates, acquires or holds the Intellectual Property or the After-Acquired Intellectual Property, as the case may be, Debtor shall file, or cause to be filed, any and all instruments necessary to perfect Debtor's right, title and interest in the Intellectual Property and to execute and file, or cause to be executed and filed, any and all instruments necessary to perfect Bank's security interest therein;

(j) To its knowledge, except for, and upon, the filing with the Canadian Intellectual Property Office and the United States Patent and Trademark Office with respect to the Patents, Trademarks and Designs and the Register of Copyrights with respect to the Copyrights necessary to perfect the security interest created hereunder, and except as has been already made or obtained, no

authorization, approval or other action by, and no notice to or filing with, any U.S. or Canadian governmental authority or U.S. or Canadian regulatory body is required: (i) for the grant by Debtor of the security interest granted hereby, or for the execution, delivery or performance of this IP Agreement by Debtor in Canada and the United States; or (ii) for the perfection in the U.S. and Canada or the exercise by Bank of its rights and remedies thereunder;

(k) All information heretofore, herein or hereafter supplied to Bank by or on behalf of Debtor with respect to the Intellectual Property is accurate and complete in all material respects;

(i) Debtor shall not enter into any agreement that would materially impair or conflict with Debtor's obligations hereunder without Bank's prior written consent, which consent shall not be unreasonably withheld. Debtor shall not permit the inclusion in any material contract to which it becomes a party of any provisions that could or might in any way prevent the creation of a security interest in favour of the Bank in Debtor's rights and interest in any property included within the definition of the Intellectual Property acquired under such contracts; and

(m) Upon any executive officer of Debtor obtaining actual knowledge thereof, Debtor will promptly notify Bank in writing of any event that materially adversely affects the value of any material Intellectual Property, the ability of Debtor to dispose of any material Intellectual Property of the rights and remedies of Bank in relation thereto, including the levy of any legal process against any of the Intellectual Property.

5. **Bank's Rights.** Bank shall have the right, but not the obligation, to take, at Debtor's sole expense, any actions that Debtor is required under this IP Agreement to take but which Debtor fails to take, after five (5) Business Days' notice by Bank to Debtor. Debtor shall reimburse and indemnify Bank for all reasonable costs and reasonable expenses incurred in the reasonable exercise of its rights under this section 5.

6. **License Agreements.** The security interest or assignment granted hereunder shall not extend or apply to any right, title or interest of Debtor under any present or future license agreements pursuant to which the Debtor is a licensee, to the extent such license agreements prohibit such a security interest or assignment from being granted without the consent or approval of another person as specified in such agreement and the security interest or assignment granted hereunder shall only apply upon such consent or approval being obtained, but the Debtor shall hold its interest therein in trust for the benefit of the Bank and shall grant a security interest to the Bank forthwith upon obtaining the consent of the other party thereto.

7. **Further Assurances; Attorney in Fact.**

(a) On a continuing basis, but subject to Section 16, Debtor will, subject to any prior licenses, liens and restrictions and prospective licenses, make, execute, acknowledge and deliver, and file and record in the proper filing and recording places in the United States and Canada, all such instruments, including appropriate financing and continuation statements and collateral agreements and filings with the Canadian Intellectual Property Office and the United States Patent and Trademarks Office and the Register of Copyrights and take all such action as may reasonably be deemed necessary or advisable, or as requested by Bank, to perfect Bank's security interest in all Copyrights, Patents, Trademarks and Designs, and otherwise to carry out the intent and purposes of this IP Agreement, or for assuring and confirming to Bank the grant or perfection of a security interest in all Intellectual Property.

(b) Debtor hereby irrevocably appoints Bank, after the occurrence of a Default (as defined below), as Debtor's attorney-in-fact, with full authority in the place and stead of Debtor and in the name of Debtor, Bank or otherwise, from time to time in Bank's discretion, upon Debtor's failure or inability to do so, to take any action and to execute any instrument which Bank may deem necessary or advisable to accomplish the purposes of this IP Agreement, including:

(i) To modify, in its sole discretion and without first obtaining Debtor's approval of or signature to such modification, Exhibit "A", Exhibit "B", Exhibit "C", Exhibit "D" and Exhibit "E" hereof, as appropriate, to include reference to any right, title or interest in any Copyrights, Patents or Trademarks acquired by Debtor after the execution hereof or to delete any reference to any right, title or interest in any Copyrights, Patents or Trademarks in which Debtor no longer has or claims any right, title or interest; and

(ii) To file, in its sole discretion, one or more financing, financing change or continuation statements and amendments thereto, relative to any of the Intellectual Property without the signature of Debtor where permitted by law.

8. **Default.** The making by the Bank of any demand for repayment of the Indebtedness or the occurrence of a Default (as defined in the Credit Agreement) shall constitute a "Default" under this IP Agreement

9. **Remedies.** Upon a Default, Bank shall have the right to exercise all the remedies of a secured party under the *Personal Property Security Act* (Ontario) (the "PPSA") including, without limitation, acceleration of the indebtedness, the right to require Debtor to assemble the Intellectual Property and any tangible property in which Bank has a security interest and to make it available to Bank at a place designated by Bank. Bank shall have a nonexclusive, royalty free license to use the Copyrights, Patents and Trademarks to the extent reasonably necessary to permit Bank to exercise its rights and remedies upon the occurrence of a Default. Debtor will pay any expenses (including reasonable legal and attorney's fees) incurred by Bank in connection with the exercise of any of Bank's rights hereunder, including without limitation any expense incurred in disposing of the Intellectual Property. All of Bank's rights and remedies with respect to the Intellectual Property shall be cumulative.

10. **Appointment of Receiver.** Upon a Default, Bank may appoint or reappoint by instrument in writing, any person or persons, whether an officer or officers or an employee or employees of Bank or not, to be a receiver or receivers (hereinafter called a "Receiver", which term when used herein shall include a receiver and manager) of Intellectual Property (including any proceeds) and may remove any Receiver so appointed and appoint another in its stead. Any such Receiver shall, so far as concerns responsibility for its acts, be deemed the agent of Debtor and not of Bank, and Bank shall not be in any way responsible for any misconduct, negligence, or non-feasance on the part of any such Receiver, its servants, agents or employees. Subject to the provisions of the instrument appointing it, any such Receiver shall have power to take possession of Intellectual Property, to preserve Intellectual Property or its value and to sell, license or otherwise dispose of or concur in selling, licensing or other disposing of Intellectual Property. To facilitate the foregoing powers, any such Receiver may, to the exclusion of all others including Debtor, enter upon, use and occupy all premises owned or occupied by Debtor wherein Intellectual Property may be situated, maintain Intellectual Property upon such premises, borrow money on a secured or unsecured basis and use Intellectual Property as security for loans or advances, as such Receiver shall, in its discretion, determine. Except as may be otherwise directed by Bank, all money received from time to time by such Receiver in carrying out its appointment shall be received in trust for

and paid over to Bank. Every such Receiver may, in the discretion of the Bank, be vested with all and any of the rights and powers of Bank.

11. **Exercise of Rights by Bank.** Upon a Default, Bank may, either directly or through its nominees, exercise any or all of the powers and rights given to a Receiver by virtue of Section 10.

12. **Taking Possession of Intellectual Property.** Upon a Default, Bank may take possession of, collect, demand, sue on, enforce, recover and receive Intellectual Property and give valid and binding receipts and discharges therefor and in respect thereof, and, Bank may sell, license or otherwise dispose of Intellectual Property in such manner at such time or times and place or places, for such consideration and upon such terms and conditions as the Bank may deem reasonable.

13. **Rights and Remedies of Bank under the PPSA.** In addition to those rights granted herein and in any other agreement now or hereafter in effect between Debtor and Bank and in addition to any other rights Bank may have at law or in equity, Bank shall have, after a Default, all rights and remedies of a secured party under the PPSA provided always, that Bank shall not be liable or accountable for any failure to exercise its remedies, take possession of, collect, enforce, realize, sell, license or otherwise dispose of the Intellectual Property or to institute any proceedings for such purposes. Furthermore, Bank shall have no obligation to take any steps to preserve rights against prior parties to any Instrument (as defined in the PPSA) or Chattel Paper (as defined in the PPSA) whether the Intellectual Property or proceeds and whether or not in Bank's possession and shall not be liable or accountable for failure to do so.

14. **Cooperation of Debtor with respect to Taking Possession.** Debtor acknowledges that, upon a Default, Bank or any Receiver appointed by it may take possession of Intellectual Property wherever it may be located and by any method permitted by law and Debtor agrees upon request from Bank or any such Receiver to assemble and deliver possession of Intellectual Property at such place or places as directed.

15. **Costs.** Debtor agrees to pay all cost, charges and expenses reasonably incurred by Bank or any Receiver appointed by it, whether directly or for services rendered (including reasonable legal counsels' and auditors' costs and other legal expenses and Receiver remuneration), in operating Debtor's accounts, in preparing or enforcing this IP Agreement, taking and maintaining custody of, preserving, registering, licensing, preparing for disposition and disposing of Intellectual Property and in enforcing or collecting the Indebtedness and all such costs, charges and expenses, together with any amounts owing as a result of any borrowing by Bank or any Receiver appointed by it, as permitted hereby, shall be a first charge on the proceeds of realization, collection or disposition of Intellectual Property and shall be secured hereby.

16. **Notice of Sale.** Bank will give Debtor such notice, if any, of the date, time and place of any public sale or of the date after which any private disposition of Intellectual Property is to be made, as may be required by the PPSA.

17. **Reassignment.** At such time as Debtor shall completely satisfy all of the obligations secured hereunder or Section 26 shall apply, Bank shall execute and deliver to Debtor all deeds, assignments, and other instruments as may be necessary or proper to reinvest in Debtor full title to the property assigned hereunder, subject to any disposition thereof which may have been made by Bank pursuant hereto.

18. **Course of Dealing.** No course of dealing, nor any failure to exercise, nor any delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

19. **Amendments.** This IP Agreement may be amended only by a written instrument signed by both parties hereto.

20. **Survival and Reliance.** All representations and warranties of Debtor made in this IP Agreement or in any certificate or other document delivered by or on behalf of Debtor for the benefit of Bank are material and shall continue without time limit. Bank shall be deemed to have relied upon each such representation and warranty despite any investigation Bank may have made.

21. **License/Assignment of Intellectual Property.** For the purpose of enabling Bank or any Receiver to exercise the rights and remedies under Sections 9, 10 and 13 (including without limiting the terms of Sections 9, 10 and 13, in order to take possession of, hold, preserve, process, assemble, prepare for sale, market for sale, sell or otherwise dispose of the Intellectual Property) at and for such time as Bank shall be lawfully entitled to exercise such rights and remedies, Debtor shall grant to Bank, for the benefit of Bank, an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to Debtor) to use, license or sublicense any of the Intellectual Property now owned or hereafter acquired by Debtor, and wherever the same may be located, and included in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof. In addition, upon receiving written demand from Bank after a Default has occurred, Debtor shall assign the Intellectual Property to whomever Bank directs, including to Bank.

22. **Debtor Remains Liable.** Notwithstanding any other provision in this IP Agreement, Debtor shall remain liable under all license agreements under which the Debtor is licensor. Debtor shall perform all of its duties and obligations thereunder just as if this IP Agreement had not been executed. Debtor shall not be released from any of its duties or obligations under such license agreements by the exercise of any rights by Bank. Bank shall not have any obligations or liability under such license agreements by reason of this IP Agreement, nor shall Bank be obliged to perform any of the obligations or duties of Debtor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder. The rights and powers conferred on Bank hereunder are solely to protect its interest in the Intellectual Property and shall not impose any duty upon it to exercise any such powers.

23. **Counterparts.** This IP Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument.

24. **Law and Jurisdiction.** This IP Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

25. **Confidentiality.** All information (other than periodic reports filed by Debtor with any securities commission or regulatory authority) disclosed by Debtor to Bank in writing or through inspection pursuant to this IP Agreement that is marked confidential shall be considered confidential. Bank agrees to use the same degree of care to safeguard and prevent disclosure of such confidential information as Bank uses with its own confidential information, but in any event no less than a reasonable degree of care. Bank shall not disclose such information to any third party (other than Bank's attorneys, counsel, governmental regulators, and auditors, or to Bank's subsidiaries and affiliates for the purposes of evaluating Bank's rights under this IP Agreement, subject to the same confidentiality obligation set forth

herein) and shall use such information only for purposes of evaluation of its investment in Debtor and the exercise of Bank's rights and the enforcement of its remedies under this IP Agreement and the other Loan Documents. The obligations of confidentiality shall not apply to any information that (a) was known to the public prior to disclosure by Debtor under this IP Agreement, (b) becomes known to the public through no fault of Bank, (c) is disclosed to Bank by a third party having a legal right to make such disclosure, or (d) is independently developed by Bank. Notwithstanding the foregoing, Bank's agreement of confidentiality shall not apply if Bank has acquired indefeasible title to any item of the Intellectual Property or in connection with any enforcement or exercise of Bank's rights and remedies under this IP Agreement following a Default, including the enforcement of Bank's security interest in the Intellectual Property.

26. **Termination of this IP Agreement.** Upon termination of all rights of Debtor to receive any additional credit from Bank and fulfillment and repayment by Debtor of its obligations, indebtedness and liabilities to the Bank (including, without limitation, all obligations, indebtedness and liabilities under the Credit Agreement and the Loan Documents) this IP Agreement shall become fully ended and terminated and all right, title and interest in and in respect of the Intellectual Property secured by Debtor hereunder shall be released and all covenants and agreements of Debtor hereunder shall be at an end and Bank shall, upon written request of Debtor and at the expense of Debtor, execute such instruments and other documents and give such notifications or assurances as may be necessary to fully release, cancel and discharge this IP Agreement in the circumstances

27. **Amalgamation.** Debtor acknowledges and agrees that, in the event it amalgamates with any other company or companies, it is the intention of the parties hereto that the security interests created hereby (a) shall extend to the Intellectual Property owned by each of the amalgamating companies and the amalgamated company at the time of amalgamation and to any Intellectual Property thereafter owned or acquired by the amalgamated company, such that the term "Debtor" when used herein would apply to each of the amalgamating companies and the amalgamated company and (b) shall secure the Indebtedness of each of the amalgamating companies and the amalgamated company to Bank at the time of amalgamation and any Indebtedness of the amalgamated company to Bank thereafter arising. The security interest shall attach to the additional Intellectual Property at the time of amalgamation and to any Intellectual Property owned or acquired by the amalgamated company when such becomes owned or is acquired.

28. **Attachment.** The Security Interest created hereby is intended to attach when this IP Agreement is signed by Debtor and delivered to Bank.

29. **Acknowledgment.** Debtor hereby acknowledges receipt of a copy of this IP Agreement.

30. **Registration of IP Agreement.** Debtor hereby acknowledges that Bank may register a copy of this IP Agreement or notice thereof. Debtor shall cooperate with and assist Bank, as requested by Bank, with respect to any registrations or notice registrations of or relating to this IP Agreement which Bank deems appropriate.

31. **Severability of Provisions.** Each provision of this IP Agreement shall be several from every other provision of this IP Agreement for the purpose of determining the legal enforceability of any specific provision.

32. **Successors and Assigns.** This IP Agreement shall bind and enure to the benefit of the respective successors and permitted assigns of each of the parties.

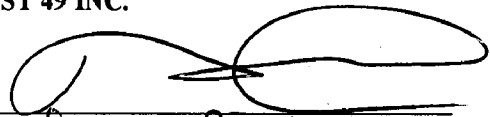
33. **Conflict.** In the event that there is any conflict or inconsistency between the provisions contained in this IP Agreement and the provisions contained in the Credit Agreement, the provisions of the Credit Agreement shall prevail over and shall override the provisions contained in this IP Agreement to the extent of such conflict or inconsistency; provided however, that the fact that one agreement addresses a subject matter that is not addressed in the other agreement shall not be deemed to be a conflict or inconsistency.

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IN WITNESS WHEREOF the parties have executed this IP Agreement as of the day and year first written above.

WEST 49 INC.

Per:

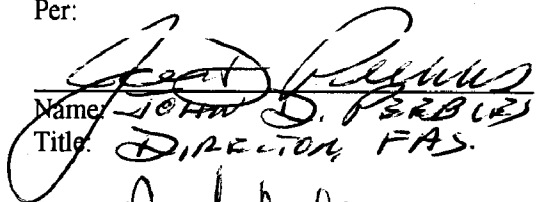

Name: Gordon Smith
Title: Secretary & Treasurer

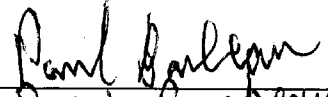
Name:
Title:

I/We have the authority to bind the Corporation

CANADIAN IMPERIAL BANK OF COMMERCE

Per:


Name: JOHN D. PERBLE
Title: DIRECTOR FAS.


Name: Paul Sarban
Title: Manager

I/We have the authority to bind the Bank

EXHIBIT "A"

COPYRIGHTS

Nil.

IP Security Agreement – West 49 Inc.

TRADEMARK
REEL: 003001 FRAME: 0785

TRADEMARKS

Canadian Trademarks

1. RED STAR BOARD CO.
Application S/N 1, 152, 223
Applicant: West 49 Inc., 4335 Mainway Drive, Burlington, ON L7L 5N9
Filed: September 11, 2002
Status: searched; first examination report issued February 3, 2004

2. WEST 49
TMA 601,088
Applicant: West 49 Inc., 4335 Mainway Drive, Burlington, ON L7L 5N9
Filed: May 28, 2001
Status: registered February 2, 2004

United States of America Trademarks

1. WEST 49
Application S/N 76/443,863
Applicant: West 49 Inc., 4335 Mainway Drive, Burlington, ON L7L 5N9
Filed: August 26, 2002
Wares/Services: retail store services featuring a wide variety of consumer goods
Status: Live

2. WEST 49
Application S/N 76/328,737
Applicant: West 49 Inc., 4335 Mainway Drive, Burlington, ON L7L 5N9
Filed: October 24, 2001
Wares/Services: ladies', men's, children's casual clothing; sporting goods; all purpose athletic bags, backpacks and wallets
Status: Notice of Allowance issued

EXHIBIT "B"

PATENTS

Nil.

EXHIBIT "D"

DESIGNS

Nil.

EXHIBIT "E"
LICENSES GRANTED

Nil.

TOR_LAW\5667763\3

IP Security Agreement – West 49 Inc.

RECORDED: 06/29/2004

TRADEMARK
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