

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

<b>SUBMISSION TYPE:</b>		NEW ASSIGNMENT	
<b>NATURE OF CONVEYANCE:</b>		SECURITY INTEREST	
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Park B. Smith Ltd.		03/22/2011	CORPORATION: NEW JERSEY
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	FCC, LLC		
<b>Doing Business As:</b>	DBA First Capital		
<b>Street Address:</b>	565 Fifth Avenue, 19th Floor		
<b>City:</b>	New York		
<b>State/Country:</b>	NEW YORK		
<b>Postal Code:</b>	10017		
<b>Entity Type:</b>	LIMITED LIABILITY COMPANY: FLORIDA		
<b>PROPERTY NUMBERS Total: 3</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	1611290	PARK B. SMITH LTD.	
<b>Registration Number:</b>	3841380	WATERSHED	
<b>Registration Number:</b>	3840603	WATERSHED	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	(914)288-0023		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
<b>Phone:</b>	(914) 821-9078		
<b>Email:</b>	tmdocket@leasonellis.com		
<b>Correspondent Name:</b>	Maren C. Perry/Leason Ellis LLP		
<b>Address Line 1:</b>	81 Main Street, Suite 503		
<b>Address Line 4:</b>	White Plains, NEW YORK 10601		
<b>ATTORNEY DOCKET NUMBER:</b>	3503/8000-000		
<b>NAME OF SUBMITTER:</b>	Maren C. Perry		

OP \$90.00 1611290

**900189875**

**TRADEMARK**  
**REEL: 004525 FRAME: 0970**

Signature:	/mcp/
Date:	04/20/2011
Total Attachments: 8 source=20110420_181847#page1.tif source=20110420_181847#page2.tif source=20110420_181847#page3.tif source=20110420_181847#page4.tif source=20110420_181847#page5.tif source=20110420_181847#page6.tif source=20110420_181847#page7.tif source=20110420_181847#page8.tif	

## TRADEMARK SECURITY AGREEMENT

This Trademark Security Agreement (this "Agreement"), dated as of March 22, 2011, is made by and among PARK B. SMITH LTD., a New Jersey corporation ("Obligor"), and FCC, LLC, a Florida limited liability company, d/b/a First Capital (the "Factor").

### Recitals

Obligor and Factor are parties to a Factoring and Inventory Advance and Security Agreement of even date herewith (as the same may hereafter be amended, supplemented or restated from time to time, the "Factoring Agreement") setting forth the terms on which Factor may now or hereafter extend credit to or for the account of Obligor.

As a condition to extending credit to or for the account of Obligor, Factor has required the execution and delivery of this Agreement by Obligor.

ACCORDINGLY, in consideration of the mutual covenants contained in the Factoring Documents and herein, the parties hereby agree as follows:

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

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

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

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

2. Security Interest. Obligor hereby irrevocably pledges and assigns to, and grants Factor a security interest (the "Security Interest") with power of sale to the extent

permitted by law, in the Trademarks to secure payment of the Obligations. As set forth in the Factoring Agreement, the Security Interest is coupled with a security interest in substantially all of the personal property of Obligor. This Agreement grants only the Security Interest herein described, is not intended to and does not affect any present transfer of title of any trademark registration or application and makes no assignment and grants no right to assign or perform any other action with respect to any intent to use trademark application, unless such action is permitted under 15 U.S.C. § 1060.

3. Representations, Warranties and Agreements. Obligor represents, warrants and agrees as follows:

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

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

(c) **Title.** Obligor has absolute title to each Trademark listed on **Exhibit A**, free and clear of all Liens except Permitted Liens. Obligor (i) will have, at the time Obligor acquires any rights in Trademarks hereafter arising, absolute title to each such Trademark free and clear of all Liens except Permitted Liens, and (ii) will keep all Trademarks free and clear of all Liens except Permitted Liens.

(d) **No Sale.** Obligor will not assign, transfer, encumber or otherwise dispose of the Trademarks or any interest therein, without Factor's prior written consent.

(e) **Defense.** Obligor will, at its own expense and using commercially reasonable efforts, protect and defend the Trademarks against all claims or demands of all Persons other than those holding Permitted Liens.

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

(g) **Factor's Right to Take Action.** If Obligor fails to perform or observe any of its covenants or agreements set forth in this Section 3, and if such failure continues for a period of ten (10) calendar days after Factor gives Obligor written notice thereof (or, in the case of the agreements contained in subsection (h), immediately upon the occurrence of such failure, without notice or lapse of time), or if Obligor notifies Factor that it intends to abandon a Trademark, Factor may (but need not) perform or observe such covenant or agreement or take steps to prevent such intended abandonment on behalf and in the name, place and stead of Obligor (or, at Factor's option, in Factor's own name) and may (but need not) take any and all other actions which Factor may reasonably deem necessary to cure or correct such failure or prevent such intended abandonment.

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

(i) **Power of Attorney.** To facilitate Factor's taking action under subsection (i) and exercising its rights under Section 6, Obligor hereby irrevocably appoints (which appointment is coupled with an interest) Factor, or its delegate, as the attorney-in-fact of Obligor with the right (but not the duty) from time to time to create, prepare, complete, execute, deliver, endorse or file, in the name and on behalf of Obligor, any and all instruments, documents, applications, financing statements, and other agreements and

writings required to be obtained, executed, delivered or endorsed by Obligor under this Section 3, or, necessary for Factor, after a Default, to enforce or use the Trademarks or to grant or issue any exclusive or non-exclusive license under the Trademarks to any third party, or to sell, assign, transfer, pledge, encumber or otherwise transfer title in or dispose of the Trademarks to any third party. Obligor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. The power of attorney granted herein shall terminate upon the termination of the Factoring Agreement as provided therein and the payment and performance of all Obligations.

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

5. Defaults. Each of the following occurrences shall constitute an event of default under this Agreement (herein called a "Default"): (a) a Default, as defined in the Factoring Agreement, shall occur; or (b) Obligor shall fail promptly to observe or perform any covenant or agreement herein binding on it; or (c) any of the representations or warranties contained in Section 3 shall prove to have been incorrect in any material respect when made.

6. Remedies. While a Default exists, Factor may, at its option, take any or all of the following actions:

(a) Factor may exercise any or all remedies available under the Factoring Agreement.

(b) Factor may sell, assign, transfer, pledge, encumber or otherwise dispose of the Trademarks.

(c) Factor may enforce the Trademarks and any licenses thereunder, and if Factor shall commence any suit for such enforcement, Obligor shall, at the request of Factor, do any and all lawful acts and execute any and all proper documents required by Factor in aid of such enforcement.

7. Miscellaneous. This Agreement can be waived, modified, amended, terminated or discharged, and the Security Interest can be released, only explicitly in a writing signed by Factor. A waiver signed by Factor shall be effective only in the specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of Factor's rights or remedies. All rights and remedies of Factor shall be cumulative and may be exercised singularly or concurrently, at Factor's option, and the exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other. All notices to be given to Obligor under this Agreement shall be given in the manner and with the effect provided in the Factoring Agreement. Factor

shall not be obligated to preserve any rights Obligor may have against prior parties, to realize on the Trademarks at all or in any particular manner or order, or to apply any cash proceeds of Trademarks in any particular order of application. This Agreement shall be binding upon and inure to the benefit of Obligor and Factor and their respective participants, successors and assigns and shall take effect when signed by Obligor and delivered to Factor, and Obligor waives notice of Factor's acceptance hereof. Factor may execute this Agreement if appropriate for the purpose of filing, but the failure of Factor to execute this Agreement shall not affect or impair the validity or effectiveness of this Agreement. A carbon, photographic or other reproduction of this Agreement or of any financing statement authorized by Obligor shall have the same force and effect as the original for all purposes of a financing statement. This Agreement shall be governed by the internal law of New York without regard to conflicts of law provisions. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications which can be given effect and this Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby. All representations and warranties contained in this Agreement shall survive the execution, delivery and performance of this Agreement and the creation and payment of the Obligations.

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

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

PARK B. SMITH LTD.

By: *Park B. Smith*  
Name: PARK B. SMITH  
Title: CHAIRMAN

FCC, I.L.C. d/b/a FIRST CAPITAL

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF New York )  
COUNTY OF Queens )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of March, 2011, by Park B. Smith the Chairman of Park B. Smith Ltd., on behalf of such corporation.

*Margarita E. Vazquez*  
Notary Public

Margarita E. Vazquez  
Notary Public, State of New York  
Qualified in Queens County  
My Commission Expires  
May 4, 2013  
ID # 01VA6205035

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of March, 2011, by \_\_\_\_\_, a \_\_\_\_\_ of FCC, LLC, a Florida limited liability company, d/b/a First Capital, on behalf of such limited liability company.

\_\_\_\_\_  
Notary Public





EXHIBIT A  
UNITED STATES ISSUED TRADEMARKS  
REGISTRATIONS

<u>Mark</u>	<u>Registration Number</u>	<u>Registration Date</u>
Park B. Smith Ltd.	1611290	August 28, 1990
Watershed	3841380	August 31, 2010
Watershed	3840603	August 31, 2010

APPLICATIONS

None.

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