

517102 RE T

05-07-2002



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To the Honorable Commissioner of Patents

102082302

Attached original documents or copy thereof.

1. Name of conveying party(ies):  
The Western Sugar Company

Individual(s)                       Association  
 General Partnership               Limited Partnership  
 Corporation-State Delaware  
 Other \_\_\_\_\_

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

2. Name and address of receiving party(ies):  
Name: The CIT Group/Business Credit, Inc.,  
as Agent  
Internal Address: Attn: Western Sugar Acct Office  
Street Address: 300 S. Grand Ave., 3rd Floor  
City: Los Angeles State: CA ZIP: 90071

Individual(s) citizenship \_\_\_\_\_  
 Association \_\_\_\_\_  
 General Partnership \_\_\_\_\_  
 Limited Partnership \_\_\_\_\_  
 Corporation-State New York  
 Other \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
 (Designations must be a separate document from Assignment)  
 Additional name(s) & address(es) attached?  Yes  No

3. Nature of conveyance:  
 Assignment                       Merger  
 Security Agreement               Change of Name  
 Other \_\_\_\_\_

Execution Date: April 30, 2002

4. Application number(s) or registration number(s):  
A. Trademark Application No.(s)  
n/a

B. Trademark registration No.(s)  
1852026                      0598851  
1544719

Additional numbers attached?  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:  
Name: Sheppard, Mullin, Richter & Hampton  
LLP  
Internal Address: Attn: J. Cravitz  
Street Address: 333 S. Hope St., 48th Floor  
City: Los Angeles State: CA ZIP: 90071

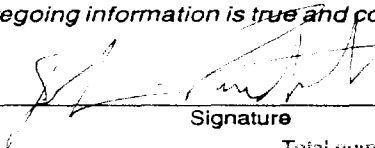
6. Total number of applications and registrations involved: 3

7. Total fee (37 CFR 3.41):..... \$ 90.00  
 Enclosed  
 Authorized to be charged to deposit account

8. Deposit account number:  
(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. 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.*

John E. Friedrichs, Esq.                                            May 3, 2002  
Name of Person Signing                      Signature                      Date

Total number of pages comprising cover sheet: 13

OMB No. 0651-0011 (exp. 4/94)

Do not detach this portion

Mail documents to be recorded with required cover sheet information to:

5/08/2002 GTQM11 00000665 1852026  
01 FC:481 40.00 GP  
02 FC:482 50.00 GP

Commissioner of Patents and Trademarks  
Box Assignments  
Washington, D.C. 20231

Public burden reporting for this sample cover sheet is estimated to average about 30 minutes per document to be recorded, including time for reviewing the document and gathering the data needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of Information Systems, PK2-1000C, Washington, D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project (0651-0011), Washington, D.C. 20503.

**TRADEMARK**  
**REEL: 2499 FRAME: 0897**

## TRADEMARK AND PATENT SECURITY AGREEMENT

AGREEMENT made as of the 30<sup>th</sup> day of April, 2002, between THE WESTERN SUGAR COMPANY, a Delaware corporation, with offices located at 3900 E. Mexico Ave, Suite 6410, Denver, CO 80210 ("WSC"), ROCKY MOUNTAIN SUGAR GROWERS COOPERATIVE, a Colorado cooperative corporation ("RMSGC" and, together with WSC, "Debtors"), and THE CIT GROUP/BUSINESS CREDIT, INC., a New York corporation, with offices located at 300 South Grand Avenue, 3<sup>rd</sup> Floor, Los Angeles, California 90071, as agent for the Lenders referred to below ("Secured Party").

### 1. SECURITY INTEREST

WHEREAS, Debtors have adopted, used and is using, and is the owner of the entire right, title, and interest in and to the trademarks, trade names, terms, designs and applications therefor described in Schedule A annexed hereto, and the patents and applications therefor described in Schedule B annexed hereto and made a part hereof, and

WHEREAS, pursuant to a Financing Agreement dated as of April 30, 2002 by and among Debtors, the Lenders referred therein (the "Lenders"), and Secured Party (the "Financing Agreement"), the Lenders are providing certain financing to Debtors (the Financing Agreement, together with this Agreement, and all other related documents, agreements, instruments or notes, as the same may now exist or may hereafter be amended or supplemented, are collectively referred to herein as the "Agreements").

NOW, THEREFORE, in order to induce Secured Party to enter into the Agreements and in consideration thereof, Debtors hereby grant to Secured Party a security interest in: (a) all of Debtors' now existing or hereafter acquired right, title, and interest in and to: all of Debtors' trademarks, trade names, trade styles and service marks; all prints and labels on which said trademarks, trade names, trade styles and service marks appear, have appeared or will appear, and all designs and general intangibles of a like nature; all applications, registrations and recordings relating to the foregoing in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof, any political subdivision thereof or in any other countries, and all reissues, extensions and renewals thereof including those trademarks, terms, design and applications described in Schedule A hereto (the "Trademarks"); (b) the goodwill of the business symbolized by each of the Trademarks, including, without limitation, all customer lists and other records relating to the distribution of products or services bearing the Trademarks; and (c) all of Debtors' now existing or hereafter acquired right, title and interest in and to: all of Debtors' interests in any patents, whether foreign or domestic; all applications, registrations and recordings relating to such patents in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof, any political subdivision thereof and all reissues, extensions and renewals thereof, including, without limitation, those patents, applications, registrations and recordings described in Schedule B hereto (the "Patents"); and

(d) any and all proceeds of any of the foregoing, including, without limitation, any claims by Debtors against third parties for infringement of the Trademarks, Patents or any licenses with respect thereto (all of the foregoing are collectively referred to herein as the "Collateral").

## 2. OBLIGATIONS SECURED

The security interests granted to Secured Party in this Agreement shall secure the prompt and indefeasible payment and performance of all now existing and future obligations, liabilities and indebtedness of Debtors to Secured Party of every kind, nature and description, including without limitation, the "Obligations" as defined in the Financing Agreement (all the foregoing hereinafter referred to as "Obligations").

## 3. WARRANTIES AND COVENANTS

Debtors hereby covenant, represent and warrant that (all of such covenants, representations and warranties being continuing in nature so long as any of the Obligations are outstanding):

A. Debtors will pay and perform all of the Obligations according to their terms.

B. All of the existing Collateral is valid and subsisting in full force and effect to Debtors' knowledge, and Debtors own sole, full, and clear title thereto, and have the right and power to grant the security interests granted hereunder. Debtors will, at Debtors' expense, perform all acts and execute all documents necessary to maintain the existence of the Collateral as valid, subsisting and registered trademarks and patents including without limitation the filing of any renewal affidavits and applications. The Collateral is not subject to any liens, claims, mortgages, assignments, licenses, security interests, or encumbrances of any nature whatsoever except the security interests granted hereunder or as otherwise consented to in writing by Secured Party, and the licenses, if any, which are specifically described in Schedule C hereto.

C. Debtors will not assign, sell, mortgage, lease, transfer, pledge, hypothecate, grant a security interest in or lien upon, encumber, grant an exclusive or non-exclusive license relating thereto, except to Secured Party or as otherwise consented to in writing by Secured Party, or otherwise dispose of any of the Collateral without the prior written consent of Secured Party.

D. Debtors will, at Debtors' expense, perform all acts and execute all documents requested at any time by Secured Party to evidence, perfect, maintain, record, or enforce the security interest in the Collateral granted hereunder or to otherwise further the provisions of this Agreement. Debtors hereby authorize Secured Party to execute and file one or more financing statements (or similar documents) with respect to the Collateral. Debtors further authorize Secured Party to have this or any other similar Security Agreement filed with the Commissioner of Patents and Trademarks or other appropriate federal, state or government office.

E. Debtors will, concurrently with the execution and delivery of this Agreement, execute and deliver to Secured Party five (5) originals of a Power of Attorney ("Power of Attorney") in the form of Exhibit 1 annexed hereto for the implementation of the assignment, sale or other disposition of the Collateral pursuant to Secured Party's exercise of the rights and remedies granted to Secured Party hereunder. Secured Party agrees it will not exercise the Powers of Attorney unless and until there is an Event of Default (defined below).

F. Secured Party may, in its sole discretion, pay any amount or do any act which Debtors fail to pay or do as required hereunder or as requested by Secured Party to maintain and preserve the Collateral, defend, protect, record, amend or enforce the Obligations, the Collateral, or the security interest granted hereunder including but not limited to, all filing or recording fees, court costs, collection charges and reasonable attorneys' fees. Debtors will be liable to Secured Party for any such payment, which payment shall be deemed a borrowing by Debtors from Secured Party, and shall be payable on demand together with interest at the rate set forth in the Agreements and shall be part of the Obligations secured hereby.

G. As of the date hereof, Debtors do not have any Trademarks or Patents registered, or subject to pending applications, in the United States Patent and Trademark Office or any similar office or agency in the United States other than those described in Schedules A and B annexed hereto.

H. Debtors shall notify Secured Party in writing of the filing of any application for the registration of a Trademark or Patent with the United States Patent and Trademark Office or any similar office or agency in the United States or any state therein within thirty (30) days of such filing. Upon request of Secured Party, Debtors shall execute and deliver to Secured Party any and all assignments, agreements, instruments, documents, and such other papers as may be requested by Secured Party to evidence the security interests of Secured Party in such Trademark or Patent.

I. Debtors have not abandoned any of the Trademarks or Patents material to the conduct of the business and Debtors will not do any act, nor omit to do any act, whereby the Trademarks or Patents may become abandoned, canceled, invalidated, unenforceable, avoided, or avoidable. Debtors shall notify Secured Party immediately if Debtors know or have reason to know of any reason why any application, registration, or recording may become abandoned, canceled, invalidated, unenforceable, avoided, or avoidable.

J. Debtors will render any assistance, as Secured Party may determine is necessary, to Secured Party in any proceeding before the United States Patent and Trademark Office, any federal or state court, or any similar office or agency in the United States or any state therein or any other country to maintain such application and registration of the Trademarks or Patents as Debtors' exclusive property and to protect Secured Party's interest therein, including, without limitation, filing of renewals, affidavits of use, affidavits of incontestability and opposition, interference, and cancellation proceedings.

K. Debtors will promptly notify Secured Party if Debtors (or any affiliate or subsidiary thereof) learn of any use by any person of any term or design likely to cause confusion with any Trademark or of any use any person of any other process or product which infringes upon any Patent or Trademark. If requested by Secured Party, Debtors, at Debtors' expense, shall join with Secured Party in such action as Secured Party, in Secured Party's discretion, may deem advisable for the protection of Secured Party's interest in and to the Trademarks or Patents.

L. Debtors assume all responsibility and liability arising from the use of the Trademarks or Patents by Debtors, and Debtors hereby indemnify and hold Secured Party harmless from and against any claim, suit, loss, damage, or expense (including reasonable attorneys' fees) arising out of any alleged defect in any product manufactured, promoted, or sold by Debtors (or any affiliate or subsidiary thereof) in connection with any Trademark and Patent or out of the manufacture, promotion, labeling, sale or advertisement of any such product by Debtors (or any affiliate or subsidiary thereof).

M. In any action or proceeding instituted by Secured Party in connection with any matters arising at any time out of or with respect to this Agreement, Debtors will not interpose any counterclaim of any nature.

N. Prior to an Event of Default, Secured Party hereby grants to each Debtor the exclusive nontransferable right and license to use the Trademarks owned by such Debtors and the goodwill of the business symbolized by the marks for Debtors' own benefit. Debtors will maintain the quality of the products associated with the Trademarks at a level consistent with the quality at the time of this Agreement. Debtors will not change the quality of the products associated with the Trademarks without the Secured Party's prior written consent. Debtors hereby grant to Secured Party the right to visit Debtors' plant and facilities which manufacture or store products sold under any of the Trademarks and to inspect the products and quality-control records relating thereto at any time during regular business hours, or at such other times as Secured Party may reasonably request.

#### 4. EVENTS OF DEFAULT

All Obligations shall, at Secured Party's option, become immediately due and payable without notice or demand upon the occurrence of any of the following events of default ("Events of Default"):

A. Debtors fail to pay or perform any Obligations when due.

B. Debtors default in the observance or performance of any agreements, covenants or conditions contained herein or in any of the Agreements or in any other document or instrument referred to herein or therein.

C. Any present or future representation or warranty made by or on behalf of either Debtor, whether contained herein or in any of the other Agreements or in any other document or instrument referred to herein or therein in connection with any of the transactions contemplated herein or therein, shall be false or incorrect in any material respect.

D. Any other event of default pursuant to the Agreements shall have occurred, including, but not limited to, any event of default under the Financing Agreement.

## 5. RIGHTS AND REMEDIES

Upon the occurrence of any such Event of Default and at any time thereafter, in addition to all other rights and remedies of Secured Party, whether provided under law, the Agreements or otherwise, and after expiration of any grace period, Secured Party shall have the following rights and remedies which may be exercised without notice to, or consent by, Debtors except as such notice or consent is expressly provided for hereunder.

A. Secured Party may require that neither Debtors nor any affiliate or subsidiary of Debtors make any use of the Trademarks or any marks similar thereto or any Patent for any purpose whatsoever. Secured Party may make use of any Trademarks or Patents for the sale of goods, or rendering of services in connection with enforcing any other security interest granted to Secured Party by Debtors or any subsidiary of Debtors.

B. Secured Party may grant a license or licenses relating to the Collateral for such term or terms, on such conditions, and in such manner, as Secured Party shall in its sole discretion deem appropriate. Such license or licenses may be general, special, or otherwise, and may be granted on an exclusive or non-exclusive basis throughout all or any part of the United States of America, its territories and possessions, and all foreign countries.

C. Secured Party may assign, sell, or otherwise dispose of the Collateral or any part thereof, either with or without special conditions or stipulations, except that Secured Party agrees to provide Debtors with ten (10) days prior written notice of any proposed disposition of the Collateral. Secured Party shall have the power to buy the Collateral or any part thereof, and Secured Party shall also have the power to execute assurances and perform all other acts which Secured Party may, in Secured Party's sole discretion, deem appropriate or proper to complete such assignment, sale or disposition. In any such event, Debtors shall be liable for any deficiency.

D. In addition to the foregoing, in order to implement the assignment, sale, or other disposition of any of the Collateral, Secured Party may at any time execute and deliver on behalf of Debtors, pursuant to the authority granted in the Powers of Attorney, one or more instruments of assignment of the Trademarks or Patents (or any application, registration, or recording relating thereto), in form suitable for filing, recording or registration. Debtors agree to pay Secured Party on demand all costs incurred in any such transfer of the Collateral, including, but not limited to, any taxes, fees, and reasonable attorneys' fees.

E. Secured Party may apply the proceeds actually received from any such license, assignment, sale, or other disposition of Collateral first to the reasonable costs and expenses thereof, including, without limitation, reasonable attorneys' fees, and other expenses which may be incurred by Secured Party. Thereafter, Secured Party may apply any remaining proceeds to such of the Obligations as Secured Party may in its sole discretion determine. Debtors shall remain liable to Secured Party for any expenses or obligations remaining unpaid after the application of such proceeds, and Debtors will pay Secured Party on demand any

such unpaid amount, together with interest at the Default Rate set forth in the Financing Agreement.

F. In the event that any such license, assignment, sale or disposition of the Collateral (or any part thereof) is made after the occurrence of an Event of Default, Debtors shall supply to Secured Party or Secured Party's designee Debtors' knowledge and expertise relating to the manufacture and sale of the products and services bearing the Trademarks or to which the Patents relate and Debtors' customer lists and other records relating to the Trademarks and Patents and the distribution thereof.

Nothing contained herein shall be construed as requiring Secured Party to take any such action at any time. All of Secured Party's rights and remedies, whether provided under law, the Agreements, this Agreement, or otherwise, shall be cumulative and none is exclusive. Such rights and remedies may be enforced alternatively, successively, or concurrently.

## 6. MISCELLANEOUS

A. Any failure or delay by Secured Party to require strict performance by Debtors of any of the provisions, warranties, terms and conditions contained herein or in any other agreement, document, or instrument, shall not affect Secured Party's right to demand strict compliance and performance therewith, and any waiver of any default shall not waive or affect any other default, whether prior or subsequent thereto, and whether of the same or of a different type. None of the warranties, conditions, provisions, and terms contained herein or in any other agreement, document, or instrument shall be deemed to have been waived by any act or knowledge of Secured Party, its agents, officers, or employees, but only by an instrument in writing, signed by an officer of Secured Party and directed to Debtor, specifying such waiver.

B. All notices, requests and demands to or upon the respective parties hereto shall be deemed to have been duly given or made: if by hand, immediately upon delivery; if by facsimile (fax), telex or telegram, immediately upon sending; if by any overnight delivery service, one day after dispatch; and if mailed by first class or certified mail, three (3) days after mailing. All notices, requests and demands are to be given or made to the respective parties at the following addresses (or to such other addresses as either party may designate by notice in accordance with the provisions of this paragraph):

If to Debtors:

The Western Sugar Company  
Rocky Mountain Sugar Growers Cooperative  
3900 E. Mexico Ave., Suite GL10  
Denver, Colorado 80210  
Attn: \_\_\_\_\_

If to Secured Party:

The CIT Group/Business Credit, Inc.  
300 South Grand Avenue, 3<sup>rd</sup> Floor  
Los Angeles, California 90017  
Attn: \_\_\_\_\_

C. In the event any term or provision of this Agreement conflicts with any term or provision of the Financing Agreement, the term or provision of the Financing Agreement shall control.

D. In the event that any provision hereof shall be deemed to be invalid by any court, such invalidity shall not affect the remainder of this Agreement.

E. This Agreement shall be binding upon and for the benefit of the parties hereto and their respective legal representatives, successors and assigns. No provision hereof shall be modified, altered or limited except by a written instrument expressly referring to this Agreement signed by the party to be charged thereby.

F. The security interest granted to Secured Party shall terminate and the Collateral will be reassigned to the applicable Debtor, at Debtors' sole expense, upon termination of the Financing Agreement and indefeasible payment in full to Secured Party of all Obligations thereunder.

G. THE VALIDITY, INTERPRETATION AND EFFECT OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE UNITED STATES OF AMERICA AND THE LAWS OF THE STATE OF CALIFORNIA. DEBTORS HEREBY IRREVOCABLY CONSENT AND SUBMIT IN ADVANCE TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN THE CENTRAL DISTRICT OF CALIFORNIA, TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES PERTAINING DIRECTLY OR INDIRECTLY TO THIS AGREEMENT, THE OTHER AGREEMENTS OR TO ANY MATTER ARISING THEREFROM IN ANY SUCH ACTION OR PROCEEDING. DEBTORS AGREE THAT SERVICE OF SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE OUTSIDE THE CENTRAL DISTRICT OF CALIFORNIA BY REGISTERED OR CERTIFIED MAIL, ADDRESSED TO THE DEBTORS AT THE ADDRESS SET FORTH HEREIN OR IN SUCH OTHER MANNER AS MAY BE PERMISSIBLE UNDER THE RULES OF SAID COURTS.

H. THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING OF ANY KIND OR NATURE IN ANY COURT WHETHER ARISING OUT OF, UNDER OR BY REASON OF THIS AGREEMENT, THE OTHER AGREEMENTS OR ANY MATTER OR PROCEEDING RELATING THERETO.



IN WITNESS WHEREOF, Debtors and Secured Party have executed this Agreement as of the day and year first above written.

DEBTORS:

THE WESTERN SUGAR COMPANY

By: Richard A. Dorn

Title: President / CEO

ROCKY MOUNTAIN SUGAR GROWERS COOPERATIVE

By: Richard A. Dorn

Title: Chairman

SECURED PARTY

THE CIT GROUP/BUSINESS CREDIT, INC., as Agent

By: [Signature]

Title: VP

EXHIBIT I

SPECIAL POWER OF ATTORNEY

STATE OF )  
 ) ss:  
COUNTY OF )

KNOW ALL MEN BY THESE PRESENTS, that THE WESTERN SUGAR COMPANY, (hereinafter "Debtor"), hereby appoints and constitutes THE CIT GROUP/BUSINESS CREDIT, INC. ("Secured Party"), and each officer thereof, its true and lawful attorney, with full power of substitution and with full power and authority to perform the following acts on behalf of Debtor;

1. Execution and delivery of any and all agreements, documents, instruments of assignment, or other papers which Secured Party, in its sole discretion, deems necessary or advisable for the purpose of assigning, selling, or otherwise disposing of all of right, title, and interest of Debtor in and to any trademarks or patents and all registrations, recordings, reissues, extensions, and renewals thereof, or for the purpose of recording, registering and filing of, or accomplishing any other formality with respect to the foregoing.

2. Execution and delivery of any and all documents, statements, certificates or other papers which Secured Party, in its sole discretion, deems necessary or advisable to further the purposes described in subparagraph 1 hereof.

This Power of Attorney is made pursuant to a Trademark and Patent Security Agreement between Debtor, Rocky Mountain Sugar Growers Cooperative and Secured Party of even date herewith (the "Security Agreement") and may not be revoked until indefeasible payment in full of all Debtor's "Obligations", as such term is defined in the Security Agreement.

Dated as of April \_\_\_\_, 2002

THE WESTERN SUGAR COMPANY

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

Title: \_\_\_\_\_

SCHEDULE A  
to  
TRADEMARK AND PATENT SECURITY AGREEMENT

Trademarks / Service Marks

Debtor The Western Sugar Company:

<u>Trademark/ Service Mark</u>	<u>Application No./ Registration No.</u>	<u>Filed/ Registered</u>
GW and design	1852026	8/30/1994
W and design	1544719	6/20/1989
GW Stylized Letter	0598851	11/30/1954

Debtor Rocky Mountain Sugar Growers Cooperative:

None

SCHEDULE B  
to  
TRADEMARK AND PATENT SECURITY AGREEMENT

Patents and Applications

None

SCHEDULE C  
to  
TRADEMARK AND PATENT SECURITY AGREEMENT

Permitted Licenses

None