

12-28-2000

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



12-04-2000

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U.S. Patent & TMO/TM Mail Rpt Dt. #26

### RECORDATION FORM COVER SHEET TRADEMARKS ONLY

12-4-00

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
  - Merger
  - Change of Name
  - Other
- Effective Date  
Month Day Year

#### 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)

City

State/Country

Zip Code

- Individual  General Partnership  Limited Partnership  Corporation  Association
- Other
- Citizenship/State of Incorporation/Organization

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.)

12/26/2000 JJALLAH2 00000279 014433

FOR OFFICE USE ONLY

01 FC:481  
02 FC:482

40.00 OP  
25.00 OP

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: 002202 FRAME: 0050

**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"/>	<input type="text"/>	<input type="text"/>	TM 14433	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	TM 14434	<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:

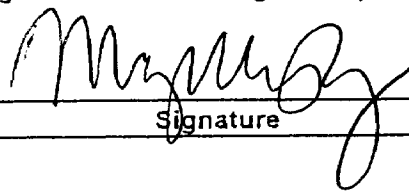
Yes  No

**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.

Mary Ellen Welch Rogers

Name of Person Signing



Signature

11-30-00

Date Signed

## RELEASE OF TRADEMARK SECURITY AGREEMENT

WHEREAS, a certain Trademark Collateral Assignment and Security Agreement, a copy of which is attached hereto as Exhibit A, was made as of June 19, 1997 by and between Stambaugh Hardware Company, L.L.C., a Delaware limited liability company, having an address at 3745 Henricks Road, Youngstown, Ohio 44515 and American National Bank and Trust Company of Chicago, a national banking association, with an office at 33 North LaSalle Street, Chicago, Illinois 60690.

WHEREAS, the parties desire that the security interest created by said Trademark Collateral Assignment and Security Agreement, and held by American National Bank and Trust Company of Chicago, be released and forever discharged.

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. American National Bank and Trust Company of Chicago hereby releases and forever discharges its entire security interest, including all mortgages, pledges, grants and liens, created by said Trademark Collateral Assignment and Security Agreement.

2. American National Bank and Trust Company of Chicago agrees that said Trademark Collateral Assignment and Security Agreement is hereby terminated and all right, title and interest it may have in and to the collateral secured thereby is released. American National Bank and Trust Company of Chicago hereby reassigns, grants and conveys to Stambaugh Hardware Company, L.L.C., without any representation, recourse or undertaking, all of its rights, title and interest, if any, in the trademarks and other collateral which are the subject of said Trademark Collateral Assignment and Security Agreement.

3. American National Bank and Trust Company of Chicago agrees that it will, when requested and without expense to itself, execute all papers, take all rightful oaths and do all acts which may be necessary, desirable or convenient for recording this Release of Trademark Collateral Assignment and Security Agreement with the United States Patent and Trademark Office or any other domestic or foreign agency. American National Bank and Trust Company of Chicago further agrees, without expense to itself, to provide and execute any and all further documentation which may be necessary to secure the release of the security interest created by the aforementioned Trademark Collateral Assignment and Security Agreement .

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12-04-2000

U.S. Patent & TMOtc/TM Mail Rcpt Dt. #26

TRADEMARK COLLATERAL ASSI AGREEMENT

THIS TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT (this "Security Agreement") made as of this (4th) day of June, 1997, is made by Stambaugh Hardware Company, L.L.C., a Delaware limited liability company, having an address at 3745 Henricks Road, Youngstown, Ohio 44515 ("Mortgagor"), in favor of American National Bank and Trust Company of Chicago, a national banking association, with an office at 33 North LaSalle Street, Chicago, Illinois 60690 ("Mortgagee"):

W I T N E S S E T H:

WHEREAS, Mortgagor and Mortgagee are parties to a certain Loan and Security Agreement (as the same may be amended, supplemented or modified from time to time, the "Loan Agreement") and other related loan documents of even date herewith (collectively, with the Loan Agreement, the "Loan Agreements"), which Loan Agreements provide (i) for Mortgagee, from time to time, to extend credit to or for the account of Mortgagor and (ii) for the grant by Mortgagor to Mortgagee of a security interest in certain of Mortgagor's assets, including, without limitation, its registered trademarks, trademark applications, trade names, registered service marks, service mark applications, common law trademarks and service marks, the goodwill of its business related to all of the foregoing, and its rights under any licenses with respect thereto;

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor agrees as follows:

1. Incorporation of Loan Agreements. The Loan Agreements and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto. All terms capitalized but not otherwise defined herein shall have the same meanings herein as in the Loan Agreement.

2. Mortgage of Trademarks and Licenses. To secure the complete and timely satisfaction and payment of all of Mortgagor's liabilities (as defined in the Loan Agreement), Mortgagor hereby grants to Mortgagee, as and by way of a first mortgage and security interest having priority over all other security interests and liens, with power of sale, to the fullest extent permitted by law, upon the occurrence of a Default (as defined in the Loan Agreement), in all of Mortgagor's right, title and interest in and to all of its now existing and hereafter created or acquired:

- (i) trademark registrations, trademark applications, trade names and tradestyles, brand names, service mark registrations and service mark applications, and common law trademarks and service marks including, without limitation, the trademarks, trade names, brand names, service marks and applications and registrations therefor listed on Exhibit A attached hereto and hereby

made a part hereof, and (a) renewals or extensions thereof, (b) all income, royalties, damages and payments now and hereafter due or payable to Mortgagor with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing trademarks, trade names and tradestyles, brand names, service marks and applications and registrations thereof, together with the items described in clauses (a)-(d) of this subsection 2(i), are hereinafter referred to individually as a "Trademark" and, collectively, as the "Trademarks");

(ii) license agreements (to the extent such license agreements may be assigned without violating the terms of any such license agreement) with respect to any of the Trademarks or any application or registration thereof between Mortgagor and any other party, whether Mortgagor is a licensor or licensee under any such license agreement, including, without limitation, the licenses listed on Exhibit B attached hereto (all of the foregoing license agreements and Mortgagor's rights thereunder are hereinafter referred to individually as a "License" and, collectively as the "Licenses"); and

(iii) the goodwill of Mortgagor's business related to the Trademarks.

3. Warranties and Representations. Mortgagor hereby warrants and represents to Mortgagee that:

(i) no Trademark or License has been adjudged invalid or unenforceable nor has any Trademark or License been abandoned, cancelled, and each such Trademark and License is presently subsisting;

(ii) each Trademark and License material to the Mortgagor's business is valid and enforceable;

(iii) Mortgagor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each Trademark and License, free and clear of any liens, charges and encumbrances;

(iv) Mortgagor has no knowledge of any suits or actions commenced or threatened against it with respect to the Trademarks or Licenses; and

(v) Mortgagor has the unqualified right to execute and deliver this Mortgage and perform its terms.

4. Restrictions on Future Agreements. Mortgagor agrees that until all Liabilities shall have been satisfied in full and

the Loan Agreements shall have been terminated, Mortgagor shall not, without the prior written consent of Mortgagee, sell or assign its interest in, or grant any exclusive license or sublicense under the Trademarks or Licenses, and Mortgagor further agrees that it shall not take any action or permit any action to be taken by others subject to its control, including licensees, or fail to take any action which would affect the validity of the rights transferred to Mortgagee under this Security Agreement.

5. New Trademarks and Licenses. Mortgagor represents and warrants that the Trademarks and Licenses listed on Exhibits A and B, respectively, constitute all of the Trademarks, and Licenses now owned by Mortgagor. If, before all Liabilities shall have been satisfied in full or before the Loan Agreements have been terminated, Mortgagor shall (i) become aware of any existing Trademarks or Licenses of which Mortgagor has not previously informed Mortgagee, (ii) obtain rights to any new Trademarks or Licenses, or (iii) become entitled to the benefit of any Trademarks or Licenses which benefit is not in existence on the date hereof, the provisions of this Security Agreement above shall automatically apply thereto and Mortgagor shall give to Mortgagee prompt written notice thereof. Mortgagor hereby authorizes Mortgagee to modify this Security Agreement by amending Exhibits A and B, as applicable, to include any such Trademarks and Licenses. Mortgagor agrees to execute and deliver any and all documents and instruments necessary or advisable to record or preserve Mortgagee's interest in all Trademarks or Licenses added to Exhibits A and B pursuant to this Section.

6. Royalties; Terms. The term of the security interests granted herein shall extend until the earlier of (i) the expiration of each of the respective Trademarks and Licenses assigned hereunder, and (ii) the payment in full of all Liabilities and the termination of the Loan Agreements. Mortgagor agrees that upon the occurrence of a Default.

7. Mortgagor's Rights. Unless and until a Default shall have occurred, Mortgagor shall have the exclusive, nontransferable right to use the Trademarks in the ordinary course of its business. From and after the occurrence of a Default Mortgagee shall have, in addition to all other rights and remedies given it by this Security Agreement, those allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in Illinois without liability for royalties on other similar charges to Mortgagor.

8. Mortgagee's Right to Inspect. Mortgagee shall have the right, at any time and from time to time during normal business hours and prior to payment in full of all Liabilities and termination of the Loan Agreements, to inspect Mortgagor's premises and to examine Mortgagor's books, records and operations, including, without limitation, Mortgagor's quality control processes. Mortgagor agrees (i) to maintain the quality of any and all products in connection with which the Trademarks are used, consistent with the quality of said products as of the date hereof

and (ii) to provide Mortgagee, upon Mortgagee's request from time to time, with a certificate of an officer of Mortgagor certifying Mortgagor's compliance with the foregoing. Upon the occurrence of a Default, Mortgagor agrees that Mortgagee, or a conservator appointed by Mortgagee, shall have the right to establish such additional product quality controls as Mortgagee, or said conservator, in its sole judgment, may deem necessary to assure maintenance of the quality of products sold by Mortgagor under the Trademarks. The foregoing notwithstanding, unless and until a Default shall have occurred, Mortgagee agrees to hold confidential and not disclose or use any information regarding any Trademark or License unless such disclosure is required by applicable law or court order. This obligation shall survive the termination of this Agreement, the release of the mortgage herein and such reassignment of the Trademarks or Licenses, as applicable, unless such termination is due to a Default.

9. Release of Security Agreement. This Security Agreement is made for collateral purposes only. Upon payment in full of all Liabilities and termination of the Loan Agreements, Mortgagee shall execute and deliver to Mortgagor all deeds, assignments and other instruments, and shall take such other actions, as may be necessary or proper to release its security interest and re-vest in Mortgagor full title to the Trademarks and Licenses, subject to any disposition thereof which may have been made by Mortgagee pursuant to the Loan Agreements.

10. Expenses. All costs and expenses incurred in connection with the performance of any of the agreements set forth herein shall be borne by Mortgagor. All fees, costs and expenses, of whatever kind or nature, including attorneys' and paralegals' fees and legal expenses, incurred by Mortgagee in connection with the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise in protecting, maintaining or preserving the Trademarks and Licenses, or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks and Licenses, shall be borne by and paid by Mortgagor on demand by Mortgagee and until so paid shall be added to the principal amount of the Liabilities and shall bear interest at the rate for Revolving Loans.

11. Duties of Mortgagor. Mortgagor shall have the duty (i) to prosecute diligently any trademark or service mark applications pending as of the date hereof or hereafter until all Liabilities shall have been paid in full and the Loan Agreements have been terminated, (ii) to preserve and maintain all rights in the Trademarks and Licenses (including, but not limited to, with respect to Trademarks, the filing of affidavits of use and, incontestability, where applicable, under §§8 and 15 of the Lanham Act (15 U.S.C. § 1058, 1065) and renewals and, to the extent commercially reasonable, initiating opposition or cancellation proceedings or litigation against users of the same or confusingly similar marks who, in Mortgagor's judgment, seriously threaten the



validity or rights of Mortgagor in its Trademarks), and (iii) to take commercially reasonable steps to ensure that the Trademarks and Licenses are and remain enforceable; provided, however, that the Mortgagor may abandon any pending application or registered trademark if, in the exercise of Mortgagor's commercial judgment, such action is prudent or necessary for its business. Any expenses incurred in connection with Mortgagor's obligations under this Section 11 shall be borne by Mortgagor. Mortgagor shall not abandon any right to file a trademark or service mark application or any other Trademark or License without the consent of Mortgagor.

12. Mortgagee's Right to Sue. After a Default, Mortgagee shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Trademarks and Licenses, and, if Mortgagee shall commence any such suit, Mortgagor shall, at the request of Mortgagee, do any and all lawful acts and execute any and all proper documents required by Mortgagee in aid of such enforcement and Mortgagor shall promptly, upon demand, reimburse and indemnify Mortgagee for all costs and expenses incurred by Mortgagee in the exercise of its rights under this Section 12.

13. Waivers. No course of dealing between Mortgagor and Mortgagee, nor any failure to exercise, nor any delay in exercising, on the part of Mortgagee, any right, power or privilege hereunder or under the Loan Agreements shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

14. Severability. The provisions of this Security Agreement are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Security Agreement in any jurisdiction.

15. Modification. This Security Agreement cannot be altered, amended or modified in any way, except as specifically provided in Section 5 hereof or by a writing signed by the parties hereto.

16. Cumulative Remedies; Power of Attorney; Effect on Loan Agreements. All of Mortgagee's rights and remedies with respect to the Trademarks and Licenses, whether established hereby or by the Loan Agreements, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Mortgagor hereby authorizes Mortgagee upon the occurrence of a Default, to make, constitute and appoint any officer or agent of Mortgagee as Mortgagee may select, in its sole discretion, as Mortgagor's true and lawful attorney-in-fact, with power to (i) endorse Mortgagor's name on all applications, documents, papers and

instruments necessary or desirable for Mortgagee in the use of the Trademarks and Licenses, or (ii) take any other actions with respect to the Trademarks and Licenses as Mortgagee deems to be in the best interest of Mortgagee, or (iii) grant or issue any exclusive or non-exclusive license under the Trademarks or Licenses to anyone, or (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks or Licenses to anyone. Mortgagor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney being coupled with an interest shall be irrevocable until all Liabilities shall have been paid in full and the Loan Agreements have been terminated. Mortgagor acknowledges and agrees that this Security Agreement is not intended to limit or restrict in any way the rights and remedies of Mortgagee under the Loan Agreements but rather is intended to facilitate the exercise of such rights and remedies. Mortgagee shall have, in addition to all other rights and remedies given it by the terms of this Security Agreement and the Loan Agreements, all rights and remedies allowed by law, in equity, and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in Illinois.

17. Indemnification. Mortgagor hereby agrees to and shall defend, indemnify, save, and hold Mortgagee and its officers, directors, employees, and agents harmless from and against: (a) all obligations, demands, claims, and liabilities claimed or asserted by any person or entity arising out of or relating to this Security Agreement or the transactions contemplated hereby, and (b) all losses (including, without limitation, reasonable attorneys' fees and out-of-pocket costs and expenses) in any way suffered, incurred, or paid by Mortgagee as a result of or in any way arising out of, following, or consequential to this Security Agreement or the transactions contemplated hereby, except for any demands, claims, liabilities and losses suffered or incurred by Mortgagee because of its wilful misconduct or gross negligence. The indemnification obligations of Mortgagor provided hereby shall survive the termination of this Security Agreement and the Loan Agreements.

18. Binding Effect; Benefits. This Security Agreement shall be binding upon Mortgagor and its respective successors and assigns, and shall inure to the benefit of Mortgagee, its successors, nominees and assigns; provided, however, Mortgagor shall not assign this Security Agreement or any of Mortgagor's obligations hereunder without the prior written consent of Mortgagee.

19. Governing Law. This Security Agreement shall be governed by, enforced and construed in accordance with the internal laws of the State of Illinois.

20. Headings; Counterparts. Paragraph headings used herein are for convenience only and shall not modify the provisions which they precede. This Security Agreement may be signed in one or more counterparts, but all of such counterparts shall constitute and be deemed to be one and the same instrument.

21. Further Assurances. Mortgagor agrees to execute and deliver such further agreements, instruments and documents, and to perform such further acts, as Mortgagee shall reasonably request from time to time in order to carry out the purpose of this Security Agreement and agreements set forth herein. Mortgagor acknowledges that a copy of this Security Agreement will be filed by the Mortgagee with the United States Patent and Trademark Office, at the sole cost and expense of the Mortgagor.


22. Survival of Representations. All representations and warranties of Mortgagor contained in this Security Agreement shall survive the execution and delivery of this Security Agreement and shall be remade on the date of each borrowing under the Loan Agreement.


[Signature Page Follows]

IN WITNESS WHEREOF, Mortgagor has duly executed this Trademark Collateral Assignment and Security Agreement in favor of Mortgagee, as of the date first written above.

STAMBAUGH HARDWARE COMPANY,  
L.L.C.


ATTEST:

  
\_\_\_\_\_  
Its MICHAEL J. LARGENT  
Name:

By   
\_\_\_\_\_  
Its Senior Vice President + CFO  
Name: Michael P Good

Agreed and Accepted as of this  
19 day of June, 1997

AMERICAN NATIONAL BANK AND  
TRUST COMPANY OF CHICAGO

By   
\_\_\_\_\_  
Its VICE PRESIDENT

STATE OF OHIO )  
 ) SS.  
COUNTY OF MAHONING )

The foregoing Trademark Collateral Assignment and Security Agreement was executed and acknowledged before me this \_\_\_ day of June, 1997, by MICHAEL P. GOOD and SR VICE PRESIDENT and CFO personally known to me to be the of Stambaugh Hardware Company, L.L.C., a Delaware limited liability company, on behalf of such company.

James C. Feist  
Notary Public  
County, COLUMBIANA  
My Commission expires:  
8-14-2001

JAMES C. FEIST  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES AUG. 14, 2001

THIS INSTRUMENT PREPARED BY AND  
AFTER FILING RETURN TO:

David F. Kolin, Esq.  
Holleb & Coff  
Suite 4100  
55 East Monroe Street  
Chicago, Illinois 60603

**SCHEDULE A**

All of Seller's right, title and interest in the following marks and names has been conveyed to Borrower:

ProBuilding Barns, Tuff Test, Task Master, Versa Barn, Craft Master, Easy-Build Barns, Wickliffe Wood Products, Quick-Build Barns, Sturdy-Build Barns, Pro-Build Barns, Wickliffe Wholesale, Esteco, Supreme Tuff Test, Homeowner's Choice and Homeowner's Choice Paints.

The following names and marks set forth above are currently registered:

<u>Trademarks</u>	<u>State of Registration</u>	<u>Registration No.</u>
Homeowner's Choice	Ohio	TM 14433
Homeowner's Choice Paints Stains (and Design)	Ohio	TM 14434

**SCHEDULE B**

**LICENSES**

None



12-04-2000

U.S. Patent & TMO/TM Mail Rcpt Dt. #26

Mary Ellen Welch Rogers  
Ext.: 243  
mer@siwlaw.com

November 30, 2000  
**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Assistant Commissioner of Patents and Trademarks  
United States Patent & Trademark Office  
2900 Crystal Drive  
Arlington, VA 22202-3513

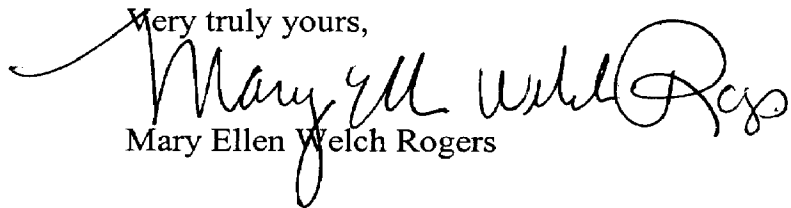
**RE: American National Bank and Trust Company of Chicago  
Stambaugh Hardware Company, L.L.C.**

To the Commissioner:

Enclosed please find for filing a Trademark Recordation Form Cover Sheet and Release of Trademark Security Agreement, together with our check in the amount of \$65.00 representing the filing fee.

If you have any questions, please do not hesitate to call.

Very truly yours,



Mary Ellen Welch Rogers

MEWR:pm

Enclosure

cc: Robert J. Shusterman