


Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002) Tab settings ⇌ ⇌ ⇌ ▼	<b>RECORDATION FORM COVER SHEET</b> <b>TRADEMARKS ONLY</b>	U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office
To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.		
1. Name of conveying party(ies): <u>Super Stores of America, Inc.</u>  <input type="checkbox"/> Individual(s) <input type="checkbox"/> Association <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership <input checked="" type="checkbox"/> Corporation-State CA <input type="checkbox"/> Other _____  Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	2. Name and address of receiving party(ies) Name: <u>LaSalle Retail Finance, Division of LaSalle</u> <u>Internal Business Credit, LLC</u> Address: _____  Street Address: <u>25 Braintree Hill Office Park</u> City: <u>Braintree</u> State: <u>MA</u> Zip: <u>02184</u>  <input type="checkbox"/> Individual(s) citizenship _____ <input checked="" type="checkbox"/> Association _____ <input type="checkbox"/> General Partnership _____ <input type="checkbox"/> Limited Partnership _____ <input type="checkbox"/> Corporation-State _____ <input type="checkbox"/> Other _____  <small>If assignee is not domiciled in the United States, a domestic representative designation is attached: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (Designations must be a separate document from assignment)</small> Additional name(s) & address(es) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
3. Nature of conveyance: <input type="checkbox"/> Assignment <input type="checkbox"/> Merger <input checked="" type="checkbox"/> Security Agreement <input type="checkbox"/> Change of Name <input type="checkbox"/> Other _____ Execution Date: <u>6/10/2003</u>	4. Application number(s) or registration number(s): A. Trademark Application No.(s) <u>78/239250;</u> <u>78/238527; 78/238532</u>  B. Trademark Registration No.(s) <u>2462769;</u> <u>2500896; 2495005; 2511096</u>  Additional number(s) attached <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
5. Name and address of party to whom correspondence concerning document should be mailed: Name: <u>Christopher E. Kondracki</u>  Internal Address: _____  Street Address: <u>2001 Jefferson Davis, Hwy.</u> <u>Suite 505</u>  City: <u>Arlington</u> State: <u>VA</u> Zip: <u>22202</u>	6. Total number of applications and registrations involved: ..... <span style="border: 1px solid black; padding: 2px;">7</span>  7. Total fee (37 CFR 3.41).....\$ <u>190.00</u> <input type="checkbox"/> Enclosed <input checked="" type="checkbox"/> Authorized to be charged to deposit account  8. Deposit account number: <u>19-3545</u>	
<b>DO NOT USE THIS SPACE</b>		
9. Signature.  <u>Christopher E. Kondracki</u> <u></u> <u>10/16/03</u> Name of Person Signing                      Signature                      Date Total number of pages including cover sheet, attachments, and document: <span style="border: 1px solid black; padding: 2px;">13</span>		

Mail documents to be recorded with required cover sheet information to:  
 Commissioner of Patent & Trademarks, Box Assignments  
 Washington, D.C. 20231

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**TRADEMARK AND TRADEMARK  
APPLICATIONS SECURITY AGREEMENT**

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**LaSalle Retail Finance**

As of June 10, 2003

**THIS TRADEMARK AND TRADEMARK APPLICATIONS SECURITY  
AGREEMENT (this "Agreement") is made between**

**LASALLE RETAIL FINANCE**, a Division of LaSalle Business Credit, LLC, as agent for Standard Federal Bank National Association (together with its successors and assigns, the "Lender"), with offices at 25 Braintree Hill Office Park, Braintree, Massachusetts 02184

and

**Super Stores of America, Inc. ( the " Debtor")**, a California corporation with its principal executive offices at 8996 Miramar Road, #360, San Diego, California 92126. in consideration of the mutual covenants contained herein and benefits to be derived herefrom,

**WITNESSETH:**

- A. The Debtor entered into that certain Loan and Security Agreement dated August 7, 2001 (as amended, the "Original Loan Agreement") between the Debtor and Bay View Financial Corporation, predecessor to the Lender pursuant to which Debtor granted to Lender a security interest in all its assets including, without limitation, all trademarks and other intellectual property.
- B. The Debtor and the Lender are on the date hereof entering into an amendment and restatement of the Original Loan Agreement (as so amended and restated, and as the same may be further amended, modified, supplemented from time to time, the "Loan Agreement"). Terms used herein which are defined in the Loan Agreement are used as so defined.
- C. It is a condition precedent to the Lender extending credit to the Debtor under the Loan Agreement that the Debtor executes and delivers to the Lender this Agreement.

NOW, THEREFORE, in consideration of the premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged,

the parties hereto agree as follows:

1. **GRANT OF SECURITY INTEREST:** To secure the Liabilities, the Debtor hereby creates a security interest in favor of the Lender, with power of sale (which power of sale shall be exercisable only following the occurrence of an Event of Default) in and to the following and all proceeds thereof (collectively, the "TM Collateral"):

(a) All of the Debtor's now owned or existing or hereafter acquired or arising trademarks, trademark applications, service marks, registered service marks and service mark applications including, without limitation, those listed on **EXHIBIT A** annexed hereto and made a part hereof, together with any goodwill connected with and symbolized by any such trademarks, trademark applications, service marks, registered service marks, and service mark applications.

(b) All renewals of any of the foregoing.

(c) All income, royalties, damages and payments now and hereafter due and/or payable under and with respect to any of the foregoing, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof.

(d) The right to sue for past, present and future infringements and dilutions of any of the foregoing.

(e) All of the Debtor's rights corresponding to any of the foregoing throughout the world.

2. **PROTECTION OF MARKS BY DEBTOR:** Except as set forth below in this Section 2, the Debtor shall undertake the following with respect to each of the items respectively described in Sections 1(a) and 1(b) (collectively, the "Marks"):

(a) Pay all renewal fees and other fees and costs associated with maintaining the Marks and with the processing of the Marks.

(b) At the Debtor's sole cost, expense, and risk, pursue the prompt, diligent processing of each Application for Registration which is the subject of the security interest created herein and not abandon or delay any such efforts.

(c) At the Debtor's sole cost, expense, and risk, take any and all action which the Debtor deems desirable to protect the Marks, including, without limitation, but subject to Debtor's discretion, the prosecution and defense of infringement actions.

Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, and no Material Adverse Effect would result therefrom, the Debtor shall have no obligation to use or to

maintain any Mark (i) that relates solely to any product, that has been discontinued, abandoned or terminated or (ii) that has been replaced with a Mark substantially similar to the Mark that may be abandoned or otherwise become invalid, so long as the failure to use or maintain such Mark does not materially adversely affect the validity of such replacement Mark and so long as such replacement Mark is subject to the lien created by this Agreement.

3. **DEBTOR'S REPRESENTATIONS AND WARRANTIES:** The Debtor represents and warrants that:

(a) **EXHIBIT A** includes all of the registered trademarks, Federal trademark applications, registered service marks and Federal service mark applications now owned by the Debtor.

(b) All TM Collateral is, and shall remain, free and clear of all liens, Encumbrances, or security interests in favor of any Person, other than Permitted Encumbrances and liens, Encumbrances and security interests in favor of the Lender.

(c) The Debtor shall give the Lender written notice (with reasonable detail) within ten (10) days following the occurrence of any of the following:

(i) The Debtor's obtaining rights to, and filing applications for registration of, any new trademarks, or service marks, or otherwise acquiring ownership of any newly registered trademarks, registered service marks, trademark applications, or service mark applications, (other than the Debtor's right to sell products containing the trademarks of others in the ordinary course of the Debtor's business).

(ii) The Debtor's becoming entitled to the benefit of any registered trademarks, trademark applications, trademark licenses, trademark license renewals, registered service marks, service mark applications, service mark licenses or service mark license renewals whether as licensee or licensor (other than the Debtor's right to sell products containing the trademarks of others in the ordinary course of the Debtor's business).

(iii) The Debtor's entering into any new trademark license agreement or service mark license agreement.

4 **AGREEMENT APPLIES TO FUTURE MARKS:**

(a) The provisions of this Agreement shall automatically apply to any such additional property or rights described in 3(c), above, all of which shall be deemed to be and treated as "Marks" within the meaning of this Agreement.

(b) The Debtor hereby authorizes the Lender to take all such reasonable action to protect the Lender's interest in and concerning any future registered trademarks, trademark

applications, registered service marks and service mark applications, written notice of which is so given, *provided, however*, the Lender's taking of such action shall not be a condition to the creation or perfection of the security interest created hereby.

5. **DEBTOR'S RIGHTS TO ENFORCE MARKS:** Prior to the Lender's giving of notice to the Debtor following the occurrence of an Event of Default, the Debtor shall have the exclusive right to sue for past, present and future infringement of the Marks including the right to seek injunctions and/or money damages, in an effort by the Debtor to protect the Marks against encroachment by third parties, *provided, however*:

(a) The Debtor first provides the Lender with written notice of the Debtor's intention to so sue for enforcement of any Mark.

(b) Any money damages awarded or received by the Debtor on account of such suit (or the threat of such suit) shall constitute TM Collateral.

(c) Following the occurrence of any Event of Default, the Lender, by notice to the Debtor may terminate or limit the Debtor's rights under this Section 5.

6. **LENDER'S ACTIONS TO PROTECT MARKS:** In the event of:

(a) the Debtor's failure, within five (5) days of written notice from the Lender, to cure any failure by the Debtor to perform any of the Debtor's obligations hereunder; and/or

(b) the occurrence and continuance of any Event of Default,

the Lender, acting in its own name or in that of the Debtor, may (but shall not be required to) act in the Debtor's place and stead and/or in the Lender's own right in connection therewith.

7. **RIGHTS UPON DEFAULT:** Upon the occurrence of any Event of Default, the Lender may exercise all rights and remedies of a secured party upon default under the Uniform Commercial Code as adopted in the Commonwealth of Massachusetts, with respect to the Marks, in addition to which the Lender may sell, license, assign, transfer, or otherwise dispose of the Marks. Any person may conclusively rely upon an affidavit of an officer of the Lender that an Event of Default has occurred and that the Lender is authorized to exercise such rights and remedies.

8. **LENDER AS ATTORNEY IN FACT:**

(a) The Debtor hereby irrevocably constitutes and designates the Lender as and for the Debtor's attorney in fact, effective following the occurrence and during the continuance of any Event of Default:

(i) To exercise any of the rights and powers referenced herein.

(ii) To execute all such instruments, documents, and papers as the Lender determines to be appropriate in connection with the exercise of such rights and remedies and to cause the sale, license, assignment, transfer, or other disposition of the Marks.

(b) The within grant of a power of attorney, being coupled with an interest, shall be irrevocable until this Agreement is terminated by a duly authorized officer of the Lender.

(c) The Lender shall not be obligated to do any of the acts or to exercise any of the powers authorized by Section 8(a) herein, but if the Lender elects to do any such act or to exercise any of such powers, it shall not be accountable for more than it actually receives as a result of such exercise of power, and shall not be responsible to the Debtor for any act or omission to act except for any act or omission to act as to which there is a final determination made in a judicial proceeding (in which proceeding the Lender has had an opportunity to be heard) which determination includes a specific finding that the subject act or omission to act had been grossly negligent or in actual bad faith.

**9. LENDER'S RIGHTS:**

(a) Any use by the Lender of the Marks, as authorized hereunder in connection with the exercise of the Lender's rights and remedies under this Agreement and under the Loan Agreement shall be coextensive with the Debtor's rights thereunder and with respect thereto and without any liability for royalties or other related charges.

(b) None of this Agreement, the Loan Agreement, or any act, omission, or circumstance taken or arising hereunder may be construed as directly or indirectly conveying to the Lender any rights in and to the Marks, which rights are effective except following the occurrence of any Event of Default.

**10. INTENT:** It is intended that this Agreement supplement the Loan Agreement. All provisions of the Loan Agreement shall apply to the Marks. The Lender shall have the same rights, remedies, powers, privileges and discretions, with respect to the security interests created in the TM Collateral as in all other Collateral. In the event of a conflict between this Agreement and the Loan Agreement, the terms of this Agreement shall control with respect to the TM Collateral and the Loan Agreement with respect to all other Collateral.

**11. CHOICE OF LAWS:** This Agreement and all rights and obligations hereunder, including matters of construction, validity, and performance, shall be governed by the internal law of The State of California.

**12. CONSENT TO JURISDICTION:**

(a) The Borrower agrees that any legal action, proceeding, case, or controversy against the Borrower with respect to this Agreement may be brought in the Superior Court of Suffolk

County Massachusetts or in the United States District Court, District of Massachusetts, sitting in Boston, Massachusetts, or any California or Federal court sitting in San Diego County, as the Lender may elect in the Lender's sole discretion. By execution and delivery of this Agreement, the Borrower, for itself and in respect of its property, accepts, submits, and consents generally and unconditionally, to the jurisdiction of the aforesaid courts.

(b) The Borrower WAIVES personal service of any and all process upon it, and irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by certified mail, postage prepaid, to the Borrower at the Borrower's address for notices as specified in the Loan Agreement, such service to become effective five (5) Business Days after such mailing.

(c) The Borrower WAIVES any objection based on forum non conveniens and any objection to venue of any action or proceeding instituted under any of the Loan Documents and consents to the granting of such legal or equitable remedy as is deemed appropriate by the Court.

(d) Nothing herein shall affect the right of the Lender to bring legal actions or proceedings in any other competent jurisdiction.

(e) The Borrower agrees that any action commenced by the Borrower asserting any claim arising under or in connection with this Agreement or any other Loan Document shall be brought solely in the Superior Court of Suffolk County Massachusetts or in the United States District Court, District of Massachusetts, sitting in Boston, Massachusetts, and that such Courts shall have exclusive jurisdiction with respect to any such action.

**[REMAINDER OF PAGE INTENTIONALLY BLANK]**

IN WITNESS WHEREOF, the Debtor and the Lender respectively have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

**DEBTOR:**

**SUPER STORES OF AMERICA, INC.**

By:   
Name: Jeff Hawk  
Title: CEO

**LENDER:**

**LASALLE RETAIL FINANCE,**  
A Division of LaSalle Business Credit, LLC,  
As agent for Standard Federal Bank National  
Association

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



IN WITNESS WHEREOF, the Debtor and the Lender respectively have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

**DEBTOR:**

**SUPER STORES OF AMERICA, INC.**

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

**LENDER:**

**LASALLE RETAIL FINANCE,**  
A Division of LaSalle Business Credit, LLC,  
As agent for Standard Federal Bank National  
Association

By: Daniel O'Rourke  
Name: Daniel O'Rourke  
Title: Vice President

STATE OF CALIFORNIA )  
 )  
COUNTY OF San Diego ) ss.

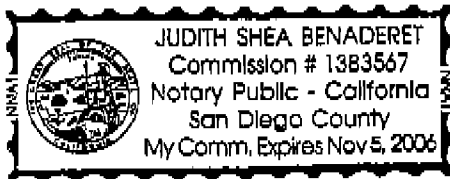
On this 23<sup>rd</sup> day of June, 2003, before me, a Notary Public in and for the State of California, personally appeared, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

My commission expires November 5, 2006

*Judith Shea Benaderet*  
Notary Public

(Seal)



Commonwealth of Massachusetts  
County of ~~Suffolk~~, S.S.  
*NORFOLK*

Then personally appeared before me DANIEL F. O'ROURKE, who acknowledged that such person is the duly authorized VICE - PRESIDENT of LaSalle Retail Finance, a Division of LaSalle Business Credit, LLC, as agent for Standard Federal Bank National Association, and that such person had executed the foregoing instrument on its behalf.

Witness my hand and seal this 29 day of <sup>SEPTEMBER</sup> ~~June~~, 2003

*Victoria Q. Queeney*

, Notary Public  
My Commission Expires:

Victoria Q. Queeney, Notary Public  
Commonwealth of Massachusetts  
My Commission Expires 7/31/09

EXHIBIT A

Debtor's now owned or existing or hereafter acquired or arising registered service marks and Federal service mark applications, registered trademarks and Federal trade mark applications:

**Trademark/Service Mark Registrations**

<u>Trademark</u>	<u>Registration Number</u>	<u>Registration Date</u>
MOR	2462769	June 19, 2001
MOR	2500896	October 23, 2001
MOR FURNITURE	2495005	October 2, 2001
MOR FURNITURE FOR LESS	2511096	November 20, 2001

**Trademark Applications**

MOR KID'S FURNITURE FOR LESS	filed 4/17/03	78239250	service mark
MOR KID'S FURNITURE FOR LESS (form)	filed 4/16/03	78238527	service mark (logo)
WHERE AMERICA BUYS FURNITURE FOR LESS	filed 4/16/03	78238532	service mark