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04-10-2003

Form **PTO-1594**  
(Rev. 03/01)  
OMB No. 0651-0027 (exp. 5/31/2002)

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U.S. DEPARTMENT OF COMMERCE  
U.S. Patent and Trademark Office

Tab settings

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To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):  
SURE FIT PROPERTIES, INC. **4-10-03**

- Individual(s)
- General Partnership
- Corporation-State
- Other DELAWARE CORPORATION
- Association
- Limited Partnership

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

3. Nature of conveyance:
- Assignment
  - Security Agreement
  - Other AMENDED & RESTATED
  - Merger
  - Change of Name

Execution Date: 10/11/02

2. Name and address of receiving party(ies)  
Name: WACHOVIA BANK NATIONAL ASSOCIATION

Internal Address: \_\_\_\_\_

Street Address: 1339 CHESTNUT STREET

City: PHILADELPHIA State: PA Zip: 19107

- Individual(s) citizenship \_\_\_\_\_
- Association BANKING
- General Partnership \_\_\_\_\_
- Limited Partnership \_\_\_\_\_
- Corporation-State \_\_\_\_\_
- 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

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)  
SEE ATTACHED

Additional number(s) attached  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: TONYA CHAPPLE

Internal Address: C/O CSC

Street Address: 80 STATE STREET

City: ALBANY State: NY Zip: 12207

6. Total number of applications and registrations involved: 4

7. Total fee (37 CFR 3.41).....\$ 115.00

- 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.*

TONYA CHAPPLE  
Name of Person Signing

Tonya Chapple  
Signature

3/7/03  
Date

Total number of pages including cover sheet, attachments, and document: 20

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

**TRADEMARK**  
**REEL: 002710 FRAME: 0741**

SCHEDULE A TO TRADEMARK SECURITY AGREEMENT

<u>U.S. TRADEMARKS</u>	<u>SERIAL NUMBER</u>	<u>REGISTRATION NO.</u>	<u>DATE FILED</u>	<u>REGISTRATION DATE</u>
DECOR EXPRESS & Design	74/193,303	2,542,468	8/8/91	3/12/00
SURE-FIT (Stylized)	71/541,351	521,780	11/15/47	3/7/50
HOMESCAPES	75/941,254	2,423,484	3/10/00	1/23/01
SLIPCOVERS BY MAIL	75/792,534	2,392,448	9/3/99	10/3/00

**AMENDED AND RESTATED  
TRADEMARK SECURITY AGREEMENT**

This Amended and Restated Trademark Security Agreement ("Agreement") is made as of the 11<sup>th</sup> day of October, 2002, by Sure Fit Properties, Inc. ("SFPI") (the "Company"), having a mailing address at 103 Foulk Road, Suite 202, Wilmington, Delaware 19803 and delivered to Wachovia Bank, National Association, f/k/a First Union National Bank, ("Lender") with an address at 1339 Chestnut Street, Philadelphia, Pennsylvania 19107.

**BACKGROUND**

A. This Agreement is being executed in connection with that certain Loan and Security Agreement dated as of January 11, 1999, as amended from time to time including, as of the date hereof, among Company, the other Borrowers and Lender (as it may hereafter be supplemented, restated, amended, superseded or replaced from time to time, the "Loan Agreement"), under which Company granted Lender a lien on and security interest in certain assets of Company associated with or relating to products leased or sold under Company's trademarks and the goodwill associated therewith, and under which Lender is entitled to foreclose or otherwise deal with such assets, trademarks, servicemarks and tradenames under the terms and conditions set forth therein. Capitalized terms not defined herein shall have the meanings given to such terms in the Loan Agreement.

B. Company has acquired the trademarks and servicemarks and the registrations thereof, listed on Schedule "A" attached hereto and made part hereof (all such marks or names hereinafter referred to as the "Trademarks").

C. Pursuant to the Loan Agreement, Lender is acquiring a lien on, and security interest in, the Trademarks and the registrations thereof, together with all the goodwill of Company associated therewith and represented thereby, as security for all of the Obligations, and desires to have its security interest in such Trademarks confirmed by a document identifying same and in such form that it may be recorded in the United States Patent and Trademark Office.

D. This Agreement amends and restates that certain Trademark Security Agreement from Sure Fit, Inc. ("Sure Fit") to Lender, dated January 11, 1999. Sure Fit assigned all of its right, title and interest in and to the Trademarks to Company pursuant to the terms and conditions of that certain Assignment of Trademarks dated as of August 31, 2002.

NOW THEREFORE, with the foregoing Background hereinafter deemed incorporated by reference and made a part hereof, and in consideration of the premises and mutual promises herein contained, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

1. In consideration of and pursuant to the terms of the Loan Documents, and for other good, valuable and sufficient consideration, the receipt of which is hereby acknowledged, and to secure the Obligations (whether at the stated maturity, by acceleration or otherwise), Company grants a lien and security interest to Lender in all of its present and future right, title and interest in and to the Trademarks, together with all the goodwill of Company associated with and represented by the Trademarks, and the registration thereof and the right (but not the obligation) to sue for past,

present and future infringements, and the proceeds thereof, including, without limitation, license royalties and proceeds of infringement suits.

2. Company hereby covenants and agrees to maintain the Trademarks in full force and effect until all of the Obligations are satisfied in full and the Revolving Credit has terminated, unless the Company's board of directors has determined that the abandonment of any Trademark would not have an adverse effect on the Company's business.

3. Company represents, warrants and covenants that:

(a) The Trademarks are subsisting and have not been adjudged invalid or unenforceable;

(b) Each of the Trademarks is valid and enforceable;

(c) Company is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, and each of the Trademarks is free and clear of any liens, claims, charges and encumbrances, including, without limitation, pledges, assignments, licenses (other than a license in favor of Sure Fit and licenses in the ordinary course of business, if any) and covenants by Company not to sue third persons;

(d) Company has the unqualified right, power and authority to enter into this Agreement and perform its terms;

(e) Company has complied with, and will continue for the duration of this Agreement to comply with, the requirements set forth in 15 U.S.C. §1051-1127 and any other applicable statutes, rules and regulations in connection with its use of the Trademarks; and

(f) Company has used, and will continue to use for the duration of this Agreement, consistent standards of quality in products leased or sold under the Trademarks and hereby grants to Lender (with no obligation of any kind upon Lender to do so) the right to upon notice visit Company's locations which manufacture, process, sell, or store products under any of the Trademarks and to inspect the products and quality control records relating thereto at reasonable times during regular business hours to ensure Company's compliance with this paragraph 3(f).

4. Company further covenants that:

(a) Until all of the Obligations have been satisfied in full and the Revolving Credit has been terminated, it will not enter into any agreement, including without limitation, license agreements or options, which are inconsistent with Company's obligations under this Agreement.

(b) The Trademarks listed on Schedule "A" constitute all of the Trademarks, and all applications for any of the foregoing, now owned by Company. If, before all Obligations shall have been satisfied in full and the Revolving Credit shall have been terminated, Company shall (i) obtain rights to any new trademarks, trademark registrations or tradenames, or (ii) become entitled to the benefit of any trademark application, trademark or trademark registration, the provisions of this Agreement shall automatically apply thereto and such trademark application,

trademark or trademark registration, shall be deemed part of the Trademarks. Company shall give Lender prompt written notice thereof along with an amended Schedule "A."

5. So long as this Agreement is in effect and while an Event of Default does not exist, Company shall continue to have the exclusive right to use the Trademarks and Lender shall have no right to use the Trademarks or issue any exclusive or non-exclusive license with respect thereto, or assign, pledge or otherwise transfer title in the Trademarks to anyone else.

6. Company shall not sell, license, grant any option, assign or further encumber its rights and interest in the Trademarks. Notwithstanding the foregoing, Company shall be permitted to license the Trademarks in the ordinary course of business.

7. Anything herein contained to the contrary notwithstanding, if and while an Event of Default exists under the Loan Agreement, Company hereby covenants and agrees that Lender, as the holder of a security interest under the Uniform Commercial Code, as now or hereafter in effect in Pennsylvania, may take such action permitted under the Loan Documents or permitted by law, in its exclusive discretion, to foreclose upon the Trademarks covered hereby. For such purposes, and in the event of an Event of Default under the Loan Agreement and while such Event of Default exists, Company hereby authorizes and empowers Lender, its successors and assigns, and any officer or agent of Lender as Lender may select, in its exclusive discretion, as Company's true and lawful attorney-in-fact, with the power to endorse Company's name on all applications, assignments, documents, papers and instruments necessary for Lender to use the Trademarks or to grant or issue any exclusive or non-exclusive license under the Trademarks to anyone else, or necessary for Lender to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone else including, without limitation, the power to execute a trademark assignment in the form attached hereto as Exhibit 1. Company hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof, except for the gross negligence or willful misconduct of such attorney. This power of attorney shall be coupled with an interest, irrevocable for the life of this Agreement and the Loan Documents, and until all Obligations are satisfied in full and the Revolving Credit has terminated.

8. This Agreement shall be subject to the terms, provisions, and conditions set forth in the Loan Agreement and may not be modified without the written consent of the party against whom enforcement is being sought.

9. All rights and remedies herein granted to Lender shall be in addition to any rights and remedies granted under the Loan Documents. In the event of an inconsistency between this Agreement and the Loan Agreement, the language of the Loan Agreement shall control.

10. Upon full and unconditional satisfaction of all Obligations and termination of the Revolving Credit, Lender shall execute and deliver to Company (at Company's expense) all documents reasonably necessary to terminate Lender's security interest in the Trademarks.

11. Any and all reasonable fees, costs and expenses, of whatever kind or nature, including the reasonable attorneys' fees and legal expenses incurred by Lender 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, reasonable counsel fees, maintenance fees, encumbrances or costs otherwise incurred in protecting, maintaining, preserving the Trademarks, or

in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks, or defending, protecting or enforcing Lender's rights hereunder, in each case in accordance with the terms of this Agreement, shall be borne and paid by Company on demand by Lender and until so paid shall be added to the principal amount of all Obligations and shall bear interest at the applicable rate for Base Rate Loans under the Revolving Credit or the rate prescribed in Section 2.11(c) of the Loan Agreement applicable to the Revolving Credit.

12. Unless the Company's board of directors has determined that the failure to do so would not have an adverse effect on the Company's business, Company shall have the duty to prosecute diligently any trademark application with respect to the Trademarks pending as of the date of this Agreement or thereafter, until all Obligations shall have been satisfied in full and the Revolving Credit terminated, to preserve and maintain all rights in the Trademarks, and upon reasonable request of Lender, Company shall make federal application on registerable but unregistered trademarks belonging to Company. Any reasonable expenses incurred in connection with such applications shall be borne by Company. Company shall not abandon any Trademark without the prior written consent of Lender, unless the Company's board of directors has determined that such abandonment would not have an adverse effect on the Company's business.

13. Company shall have the right to bring suit in its own name to enforce the Trademarks, in which event Lender, may, if Company reasonably deems it necessary, be joined as a nominal party to such suit if Lender shall have been satisfied, in its sole discretion, that it is not thereby incurring any risk of liability because of such joinder. Company shall promptly, upon demand, reimburse and indemnify Lender for all damages, reasonable costs and expenses, including attorneys' fees, incurred by Lender in the fulfillment of the provisions of this paragraph.

14. During the existence of an Event of Default, Lender may, without any obligation to do so, complete any obligation of Company hereunder, in Company's name or in Lender's name, but at Company's expense, and Company hereby agrees to reimburse Lender in full for all reasonable costs and expenses, including reasonable attorneys' fees, incurred by Lender in protecting, defending and maintaining the Trademarks.

15. No course of dealing between Company and Lender nor any failure to exercise, nor any delay in exercising, on the part of Lender any right, power or privilege hereunder, shall operate as a waiver thereof, and all of Lender's rights and remedies with respect to the Trademarks, whether established hereby or by the Loan Documents, or by any other future agreements between Company and Lender or by law, shall be cumulative and may be exercised singularly or concurrently.

16. The provisions of this Agreement are severable and the invalidity or unenforceability of any provision herein shall not affect the remaining provisions which shall continue unimpaired and in full force and effect.

17. This Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

18. This Agreement shall be governed by and construed in accordance with the substantive laws of the Commonwealth of Pennsylvania, without regard to its otherwise applicable principles of conflicts of laws.

19. To the extent that any Dispute is not submitted under Section 9.19 of the Loan Agreement, Company and Lender each waives any and all rights it may have to a jury trial in connection with any litigation, proceeding or counterclaim arising with respect to rights and obligations of the parties hereto or under the Loan Documents or with respect to any claims arising out of any discussions, negotiations or communications involving or related to any proposed renewal, extension, amendment, modification, restructure, forbearance, workout, or enforcement of the transactions contemplated by the Loan Documents.

IN WITNESS WHEREOF, the parties hereto have executed this Trademark Security Agreement, under seal, the day and year first above written.

**SURE FIT PROPERTIES, INC.**

By: Robert A. Sagedy, Jr.  
and Attest: Robert A. Sagedy, Jr. (Corporate Seal)  
Secretary

PROPERTIES INC.  
FIT  
SURE

Approved and Accepted:

**WACHOVIA BANK, NATIONAL ASSOCIATION  
f/k/a FIRST UNION NATIONAL BANK**

By: James A. Kelly  
Name: JAMES A. KELLY  
Title: VICE PRESIDENT

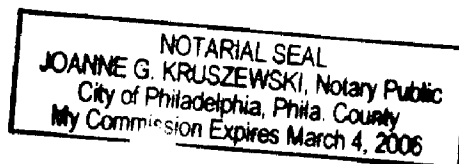
CORPORATE ACKNOWLEDGEMENT

UNITED STATES OF AMERICA :  
STATE OF: : SS  
COUNTY OF: :

On this 21<sup>st</sup> day of Oct, 2002, before me personally appeared JAMES A. KELLY to me known and being duly sworn, deposes and says that s/he is VICE PRESIDENT of WACHOVIA BANK, NATIONAL ASSOCIATION, F/K/A FIRST UNION NATIONAL BANK, the banking association described in the foregoing Agreement; that he signed the Agreement as such officer pursuant to the authority vested in him/her bylaw; that the within Agreement is the voluntary act of such corporation; and s/he desires the same to be recorded as such.

*Joanne G. Kruszewski*  
Notary Public

My Commission Expires: MARCH 4, 2006





CORPORATE ACKNOWLEDGEMENT

UNITED STATES OF AMERICA  
STATE OF: DELAWARE  
COUNTY OF: NEW CASTLE

:  
:  
: SS  
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On this 11TH day of OCTOBER, 2002, before me personally appeared ROBERT A. SAGEDY, JR., to me known and being duly sworn, deposes and says that s/he is SECRETARY of SURE FIT PROPERTIES, INC., the Company corporation described in the foregoing Agreement; that he/she knows the seal of the corporation; that the seal so affixed to the Agreement is such corporate seal; that he/she signed the Agreement and affixed the seal of the corporation thereto as such officer pursuant to the authority vested in him/her by law; that the within Agreement is the voluntary act of such corporation; and s/he desires the same to be recorded as such.



*Mary S. Stawickey*  
\_\_\_\_\_  
Notary Public

My Commission Expires:

MARY S. STAWIKEY, NOTARY PUBLIC  
State of Delaware, New Castle County  
Commission No. 200044067  
My Commission Expires 9/3/2004

SCHEDULE A TO TRADEMARK SECURITY AGREEMENT

<u>TRADEMARKS</u>	<u>SERIAL NUMBER</u>	<u>REGISTRATIO N NO.</u>	<u>DATE FILED</u>	<u>ISSUE DATE</u>	<u>REGISTRATION DATE</u>
DECOR EXPRESS & DESIGN	74/193,303	2,542,468	8/8/91		3/12/00
SURE FIT	71/541,351	521,780	11/15/47		3/7/50
HOMESCAPES	75/941,254	2,423,484	3/10/00		1/23/01
SLIPCOVERS BY MAIL	75/792,534	2,392,448	9/3/99		10/3/00

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**EXHIBIT 1**

**TRADEMARKS ASSIGNMENT**

WHEREAS, \_\_\_\_\_, a \_\_\_\_\_ corporation ("Grantor") is the registered owner of the United States trademarks, service marks, trade names, service mark applications and trademark applications listed on **Schedule A** attached hereto and made a part hereof ("Trademarks"), which are registered in the United States Patent and Trademark Office; and

WHEREAS, \_\_\_\_\_ ("Grantee"), having a place of business at \_\_\_\_\_, is desirous of acquiring said Trademarks;

NOW THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound hereby, Grantor, its successors and assigns, does hereby transfer, assign and set over unto Grantee, its successors, transferees and assigns, subject to the terms of the Amended and Restated Trademark Security Agreement, of even date herewith, between Grantor and Grantee, all of its present and future right, title and interest in and to the Trademarks and all proceeds thereof and all goodwill associated therewith.

IN WITNESS WHEREOF, the undersigned has caused this Trademarks Assignment to be executed as of the \_\_\_\_ day of \_\_\_\_\_.

**SURE FIT PROPERTIES, INC.**

By: \_\_\_\_\_  
Attorney-in-fact

Witness:  
  
\_\_\_\_\_

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

My Commission Expires:  
  
\_\_\_\_\_

**EXHIBIT 1**

**CORPORATE ACKNOWLEDGMENT**

UNITED STATES OF AMERICA :  
STATE OF : S.S.  
COUNTY OF :

On this \_\_\_\_ day of \_\_\_\_\_ 2002, before me, a Notary Public for the said County and State, personally appeared \_\_\_\_\_ known to me or satisfactorily proven to me to be attorney-in-fact on behalf of \_\_\_\_\_, and s/he acknowledged to me that s/he executed the foregoing Trademark Assignment on behalf of Grantor, and as the act and deed of Grantor for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

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

My Commission Expires:  
  
\_\_\_\_\_

**POWER OF ATTORNEY**

SURE FIT PROPERTIES, INC., a Delaware corporation ("Grantor"), hereby authorizes WACHOVIA BANK, NATIONAL ASSOCIATION, its successors and assigns, and any officer or agent thereof (collectively, the "Grantee") as Grantor's true and lawful attorney-in-fact, with the power to endorse Grantor's name on all applications, assignments, documents, papers and instruments necessary for Grantee to enforce and effectuate its rights under a certain Amended and Restated Trademark Security Agreement between Grantor and Grantee dated the date hereof (as it may hereafter be supplemented, restated, superseded, amended or replaced, the "Agreement"), including, without limitation, the power to use the Trademarks (as defined in the Agreement) and listed on Schedule A attached to the Agreement, to grant or issue any exclusive or nonexclusive license under the Trademarks to anyone else, or to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks, in each case subject to the terms of the Agreement.

This Power of Attorney is given and any action taken pursuant hereto is intended to be so given or taken pursuant to and subject to the provisions of a certain Loan and Security Agreement dated as of January 11, 1999, as amended from time to time, among Grantor and certain other parties as borrowers and Grantee, as each document has been and may be hereinafter supplemented, restated, superseded, amended or replaced.

Grantor hereby unconditionally ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof and in accordance with the terms of the Agreement.

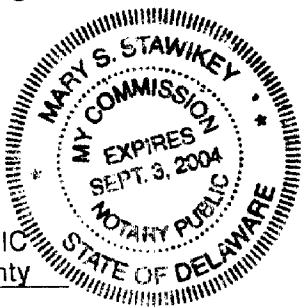
This Power of Attorney shall be irrevocable for the life of the Agreement.

IN WITNESS WHEREOF, the Grantor has executed this Power of Attorney, under seal, this \_\_\_\_ day of \_\_\_\_\_, 2002.

**SURE FIT PROPERTIES, INC.**

By: *Robert A. Sagedy, Jr.*  
Name: ROBERT A. SAGEDY, JR.  
Title: SECRETARY

*Mary S. Stawieky*  
Notary Public



My Commission Expires:

MARY S. STAWIKEY, NOTARY PUBLIC  
State of Delaware, New Castle County  
Commission No. 200044067  
My Commission Expires 9/3/2004

**CORPORATE ACKNOWLEDGMENT**

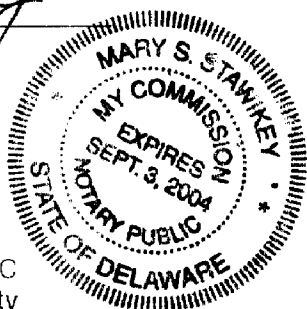
UNITED STATES OF AMERICA :  
STATE OF ~~NEW JERSEY~~ Delaware : SS  
COUNTY OF NEW CASTLE :

On this 11TH of OCTOBER, 2002, before me personally appeared <sup>ROBERT A.</sup> SAGEDY, JR., to me known and being duly sworn, deposes and says that s/he is SECRETARY of Sure Fit Properties, Inc., the Grantor described in the foregoing Power of Attorney; that s/he signed the Power of Attorney thereto as such officer pursuant to the authority vested in her/him by law; that the within Power of Attorney is the voluntary act of such corporation; and s/he desires the same to be recorded as such.

*Mary S. Stawieky*

Notary Public

My Commission Expires:



MARY S. STAWIEKY, NOTARY PUBLIC  
~~State of Delaware, New Castle County~~  
Commission No. 200044067  
My Commission Expires 9/3/2004