

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	SECURITY INTEREST

**CONVEYING PARTY DATA**

Name	Formerly	Execution Date	Entity Type
The Swan Corporation		05/29/2009	CORPORATION: MISSOURI

**RECEIVING PARTY DATA**

Name:	FCC, LLC
Doing Business As:	DBA First Capital
Street Address:	3520 NW 58th Street
City:	Oklahoma City
State/Country:	OKLAHOMA
Postal Code:	73112
Entity Type:	LIMITED LIABILITY COMPANY: FLORIDA

**PROPERTY NUMBERS Total: 12**

Property Type	Number	Word Mark
Serial Number:	78297130	EVERYDAY ESSENTIALS
Serial Number:	77155205	FIT-FLO
Serial Number:	78333457	LYRIC
Serial Number:	78297145	METROPOLITAN COLLECTION
Serial Number:	75244958	SWANSTONE
Serial Number:	74616525	SWANSTONE
Serial Number:	73721769	SWANSTONE
Serial Number:	78118261	SWANSTONE STRENGTH BALANCE BEAUTY
Serial Number:	77008557	SWANTILE
Serial Number:	78815427	THERE IS NOTHING LIKE SWANSTONE
Serial Number:	78118268	VERITEK
Serial Number:	77726811	OUR PLANET

**CORRESPONDENCE DATA**

**900135404**

**TRADEMARK  
 REEL: 003998 FRAME: 0488**

**CH \$315.00 78297130**

Fax Number: (678)553-2693  
*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*  
Phone: 6785532692  
Email: withersS@gtlaw.com  
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ATTORNEY DOCKET NUMBER:	069528.018200 (WITHERS)
NAME OF SUBMITTER:	Sarah Withers
Signature:	/S. Withers/
Date:	06/03/2009

Total Attachments: 9  
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## PATENT AND TRADEMARK SECURITY AGREEMENT

This Patent and Trademark Security Agreement (this "Agreement"), dated as of May 29, 2009, is made by and between THE SWAN CORPORATION, a Missouri corporation ("Borrower"), and FCC, LLC, d/b/a FIRST CAPITAL, a Florida limited liability company ("Lender").

### Recitals

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

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

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

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

"Obligations" means each and every debt, liability and obligation of every type and description arising under or in connection with any Loan Document which Borrower may now or at any time hereafter owe to Lender, whether such debt, liability or obligation now exists or is hereafter created or incurred and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, independent, joint, several or joint and several.

"Patents" means all of Borrower's right, title and interest in and to patents or applications for patents, fees or royalties with respect to each, and including without limitation the right to sue for past infringement and damages therefor, and licenses thereunder, all as presently existing or hereafter arising or acquired, including without limitation the patents listed on **Exhibit A**.

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

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

2. Security Interest. Borrower hereby irrevocably pledges and assigns to, and grants Lender a security interest (the "Security Interest") with power of sale to the extent permitted by law, in the Patents and in the Trademarks to secure payment of the Obligations. As set forth in the Loan Agreement, the Security Interest is coupled with a security interest in substantially all of the personal property of Borrower. This Agreement grants only the Security Interest herein described, is not intended to and does not affect any present transfer of title of any Patents or Trademarks and makes no assignment and grants no right to assign or perform any other action with respect to any intent to use any trademark application, unless such action is permitted under 15 U.S.C. § 1060.

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

(a) **Patents.** **Exhibit A** accurately lists all Patents owned or controlled by Borrower as of the date hereof, or to which Borrower has a right as of the date hereof to have assigned to it, and accurately reflects the existence and status of applications and letters patent pertaining to the Patents as of the date hereof. If after the date hereof, Borrower owns, controls or has a right to have assigned to it any Patents not listed on **Exhibit A**, or if **Exhibit A** ceases to accurately reflect the existence and status of applications and letters patent pertaining to the Patents, then Borrower shall within 30 days provide written notice to Lender with a replacement **Exhibit A**, which upon acceptance by Lender shall become part of this Agreement.

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

(c) **Title.** Borrower has absolute title to each Patent and each Trademark claimed to be owned by Borrower, free and clear of all Liens except Permitted Liens. Borrower (i) will have, at the time Borrower acquires any rights in Patents or Trademarks hereafter arising, absolute title to each such Patent or Trademark claimed to be owned by Borrower free and clear of all Liens except Permitted Liens, and (ii) will keep all Patents and Trademarks free and clear of all Liens except Permitted Liens.

(d) **No Sale.** Borrower will not assign, transfer, encumber or otherwise dispose of any Patent or Trademark, or any interest therein, without Lender's prior written consent.

(e) **Defense.** Borrower will, at its own expense and using commercially reasonable efforts, protect and defend the Patents and Trademarks against all claims or demands of all Persons other than those holding Permitted Liens, except to the extent that Borrower, in good faith, does not deem such protection and defense as to any Patent or Trademark to be in the best interest of Borrower's business.

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

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

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

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

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

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

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

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

(a) Lender may exercise any or all remedies available under the Loan Agreement.

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

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

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

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

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

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

THE SWAN CORPORATION, a Missouri corporation

By: David A. King  
David A. King, Chief Financial Officer

FCC, LLC, d/b/a FIRST CAPITAL

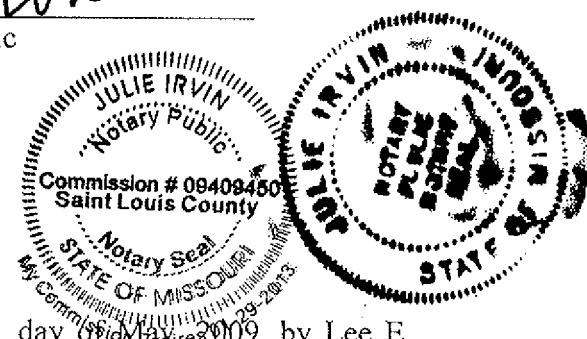
By: \_\_\_\_\_  
Lee E. Elmore, Senior Vice President

STATE OF MISSOURI     )  
                                  )  
COUNTY OF ST. LOUIS    )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of May, 2009, by David A. King, the Chief Financial Officer of The Swan Corporation, on behalf of such entity.

Julie Irvin  
Notary Public

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



The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2009, by Lee E. Elmore, a Senior Vice President of FCC, LLC, a Florida limited liability company, d/b/a First Capital, on behalf of such limited liability company.

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




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

THE SWAN CORPORATION

By: \_\_\_\_\_  
Name: David A. King  
Title: Chief Financial Officer

FCC, LLC, d/b/a FIRST CAPITAL

By:   
Lee E. Elmore, Senior Vice President

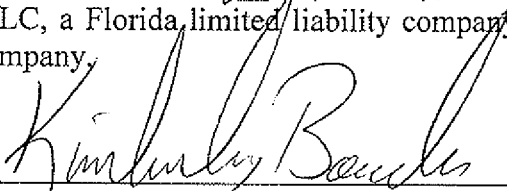
STATE OF \_\_\_\_\_ )  
  )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_ day of May, 2009, by David A. King, the Chief Financial Officer of The Swan Corporation, on behalf of such entity.

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

STATE OF OKLAHOMA )  
  )  
COUNTY OF Oklahoma )

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of May, 2009, by Lee E. Elmore, a Senior Vice President of FCC, LLC, a Florida limited liability company, d/b/a First Capital, on behalf of such limited liability company.

  
Notary Public

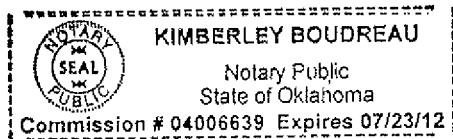


EXHIBIT A

UNITED STATES ISSUED PATENTS

<u>Title</u>	<u>Patent Number</u>	<u>Issue Date</u>
SHOWER BASE (design)	D 351019	27-Sep-1994
LAVATORY BOWL (design)	D506814 S	28-Jun-2005
DECORATIVE BOWL (design)	D508282 S	09-Aug-2005
DOUBLE BOWL SINK	D554239	30-Oct-2007
BILEVEL SUMP SINK	D552721	09-Oct-2007
SINGLE BOWL SINK	D557388	11-Dec-2007
DOUBLE BOWL SINK WITH LOW PARTITION WALL	D552223	02-Oct-2007

UNITED STATES PATENT APPLICATIONS

[None]

EXHIBIT B

UNITED STATES ISSUED TRADEMARKS, SERVICE MARKS  
AND COLLECTIVE MEMBERSHIP MARKS

REGISTRATIONS

Mark	Registration Number	Registration Date
EVERYDAY ESSENTIALS	78/297130	30-Aug-2005
FIT-FLO	77/155205	09-Oct-2007 (P)
LYRIC	78/333457	19-Jul-2005
METROPOLITAN COLLECTION	78/297145	13-Sep-2005
SWANSTONE	75/244958	22-Sep-1998
SWANSTONE	74/616525	28-Jan-1997
SWANSTONE	73/721769	24-Jan-1989
SWANSTONE STRENGTH BALANCE BEAUTY and Design	78/118261	30-Dec-2003
SWANTILE	77/008557	28-Aug-2007
THERE IS NOTHING LIKE SWANSTONE	78/815427	02-Jan-2007
VERITEK	78/118268	09-Dec-2003
OUR PLANET	77726811	01-May-2009