

03-01 - 1999



100975275

RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

2-25-99

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
Effective Date
Month Day Year

☐ Change of Name

☐ Other

Conveying Party

☐ Mark if additional names of conveying parties attached

Execution Date
Month Day Year

Name

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)

☐ 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.)

FOR OFFICE USE ONLY

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)

72-415930

72-088277

72-062890

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.

Sharon S. McMahan

Sharon S. McMahan

2/23/99

Name of Person Signing

Signature

Date Signed

COLLATERAL TRADEMARK SECURITY AGREEMENT

THIS COLLATERAL TRADEMARK SECURITY AGREEMENT ("Security Agreement") made as of the 17th day of February, 1999, by LUMBER TRADEMARK COMPANY, an Illinois corporation (the "Company") and BANKBOSTON, N.A., as agent on behalf of itself and the Lenders (as defined below) (the "Agent").

WITNESSETH:

WHEREAS, Wickes Inc., a Delaware corporation ("Wickes"), has entered into a Credit Agreement dated as of February 17, 1999 (said Credit Agreement, as it may hereafter be amended or otherwise modified from time to time, being called the "Credit Agreement"; capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Credit Agreement) with the Agent, BankBoston, N.A., as issuing bank, NationsBank, N.A., as documentation agent, BancBoston Robertson Stephens, Inc., as syndication agent, and various financial institutions which may now be or hereafter become parties thereto (the "Lenders"); and

WHEREAS, the Company has executed and delivered, among other things, that certain Corporate Guaranty of even date herewith in favor of the Agent and the Lenders (the "Guaranty");

NOW, THEREFORE, in consideration of the premises set forth herein and for good and valuable consideration, the receipt of which is hereby acknowledged, the Company hereby agrees with the Agent as follows:

1. Grant of Security Interest. To secure the prompt and complete payment, observance and performance of all of the Company's liabilities and other obligations under or in connection with the Guaranty, the Company hereby grants a security interest in, mortgages and collaterally assigns to the Agent, for the benefit of the Agent and the Lenders, as and by way of a first mortgage and security interest having priority over all other security interests, with power of sale as hereinafter provided after the occurrence of an Event of Default, to the extent permitted by law, all of the Company's right, title and interest in the following property, whether now owned or existing or hereafter acquired or arising (collectively, the "Collateral"):

(a) United States and foreign trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, brand names, logos, other business identifiers, prints and labels on which any of the foregoing have appeared or appear, all registrations and recordings thereof, and all applications in connection therewith and renewals thereof, including, without limitation, the trademarks and service marks and registrations and applications thereof list on Exhibit A attached hereto and made a part hereof and the trademark license agreements (both as licensee and licensor) listed on Exhibit B, and all income, royalties, damages and payments now and hereafter due and/or payable under or with respect to

any of the foregoing, including damages and payments for past, present and future infringements of any of the foregoing and the right to sue for past, present and future infringements of any of the foregoing, and all rights corresponding to any of the foregoing throughout the world (all of the foregoing property described in this clause (a) being herein referred to as the "Trademarks"); and

(b) the goodwill of the Company's business associated with the Trademarks.

2. Restrictions on Future Agreements. The Company agrees that until all Obligations shall have been satisfied in full and the Credit Agreement shall have been terminated, the Company will not, without the Agent's prior written consent, enter into any agreement, including, without limitation, any license agreement, which is inconsistent with the Company's obligations under this Security Agreement and the Company further agrees that it will 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 adversely affect the validity or enforcement of the rights transferred to the Agent under this Security Agreement and any such agreement or action if it shall take place shall be null and void and of no effect whatsoever.

3. New Trademarks. The Company represents and warrants that the Trademarks listed on Exhibit A and the license agreements listed on Exhibit B constitute all of the registered Trademarks now owned by or licensed to or by the Company on the date hereof. If, before the Borrower's Obligations have been satisfied in full and the Credit Agreement has been terminated, the Company shall (i) obtain rights to any new trademarks, trademark registrations or applications or trade names or (ii) become entitled to the benefit of any trademark application, trademark, trademark registration or trade name, the provisions of paragraph 1 above shall automatically apply thereto and the Company shall give to the Agent prompt written notice thereof. The Company hereby authorizes the Agent to modify this Security Agreement by amending Exhibit A and Exhibit B to include any future trademarks, trademark registrations, trademark applications, trade names and license agreements which are Trademarks, as applicable, under paragraph 1 above or under this paragraph 3.

4. Additional Representations, Warranties and Covenants. The Company hereby represents, warrants, covenants and agrees that:

(a) It is and will continue to be the owner of all of its right, title and interest in the Collateral, free from any lien or security interest in favor of any Person except for the security interest granted to the Agent.

(b) It has the full right and power to grant the security interest in the Collateral made hereby.

(c) It has made no previous assignment, transfer or agreements in conflict herewith or constituting a present or future assignment, transfer, or

encumbrance on any of the Collateral except for license agreements to use such Collateral granted to licensees described on Exhibit B hereto.

(d) There is no financing statement or other document or instrument now signed or on file in any public office covering any part of the Collateral, except those showing the Agent as secured party, and so long as any Borrower's Obligations remain outstanding or the Credit Agreement has not been terminated, the Company shall execute and deliver financing statements and such other documents and instruments as the Agent may reasonably request to perfect, maintain and protect the lien and security interest created hereby, and the Company shall not execute, and there shall not be on file in any public office, any such financing statement or other document or instrument, except financing statements, documents and instruments filed or to be filed in favor of the Agent.

(e) All information furnished to the Agent or the Lenders by the Company concerning the Collateral and proceeds thereof is, or will be at the time the same is furnished, accurate and correct in all material respects.

(f) To the best of the Company's knowledge after due inquiry, no infringement or unauthorized use presently is being made of any of the Trademarks which would adversely affect the fair market value of the Collateral or the benefits of this Security Agreement granted to the Agent including, without limitation, the priority or perfection of the security interest granted herein or the remedies of the Agent hereunder.

5. Royalties; Terms. The Company hereby agrees that any rights granted hereunder to the Agent with respect to all Collateral as described above shall be worldwide and without any liability for royalties or other related charges from the Agent to the Company. The term of the assignments of security interest granted herein shall extend until the earlier of (i) the expiration or termination of each of the Trademarks assigned hereunder or (ii) all Borrower's Obligations have been paid in full and the Credit Agreement has been terminated.

6. Sale, Assignment or Lease. The Company agrees not to sell or assign its interest in, or grant any license under, any of the Collateral without the prior written consent of the Agent.

7. Release of Security Interest. This Security Agreement is made for collateral purposes only. Upon payment in full of all Borrower's Obligations (as defined in the Guaranty) and termination of the Credit Agreement, the Agent shall, at the Company's sole cost and expense, execute and deliver to the Company all termination statements, assignments and other instruments as may be necessary or proper to re-vest in the Company full title to the Collateral granted hereby, subject to any disposition thereof which may have been made by the Agent pursuant hereto or pursuant to any other agreement between the Company and the Agent.

8. Duties of the Company. The Company shall have the duty, to the extent commercially reasonable, (i) to file and prosecute diligently any trademark or service mark application that is part of the Trademarks pending as of the date hereof or thereafter until all Borrower's Obligations shall have been paid in full and the Credit Agreement shall have been terminated, (ii) to make application on Trademarks, as appropriate, and (iii) to preserve and maintain all rights in the Trademarks. Any expenses incurred in connection with this paragraph 8 shall be borne by the Company.

If the Company fails to comply with any of the foregoing duties, the Agent may, but shall not be required to, do so in the Company's name to the extent permitted by law, and at the Company's expense, and the Company hereby agrees to reimburse the Agent in full for all expenses, including the fees and disbursements of counsel incurred by the Agent in protecting, defending and maintaining the Collateral, which counsel may be an employee of the Agent.

In the event that the Company shall fail to pay when due any fees required to be paid by it hereunder, or shall fail to discharge any lien or security interest prohibited hereby, or shall fail to comply with any other duty hereunder, the Agent may, but shall not be required to, pay, satisfy, discharge or bond the same for the account of the Company, and all moneys so paid out shall be repayable on demand, together with interest at the rate of interest applicable to Revolving Loans under the Credit Agreement.

9. Right to Sue. Upon the occurrence and during the continuance of an Event of Default, the Agent shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Trademarks, and any licenses thereunder, and, if the Agent shall commence any such suit, the Company shall, at the request of the Agent, do any and all lawful acts and execute any and all proper documents required by the Agent or such other party in aid of such enforcement and the Company shall promptly, upon demand, reimburse and indemnify the Agent or such other party for all costs and expenses incurred by the Agent or such other party in the exercise of its or their rights under this paragraph 9.

10. Waivers. No course of dealing between the Company and the Agent, nor any failure to exercise, nor any delay in exercising, on the part of the Agent, any right, power or privilege hereunder 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.

11. Severability. The provisions of this Security Agreement are severable, and if any clause or provision shall be held invalid or 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.

12. Modification. This Security Agreement cannot be altered, amended or modified in any way, except as specifically provided in paragraph 3 hereof or by a writing signed by the parties hereto.

13. Cumulative Remedies; Power of Attorney. All of the rights and remedies of the Agent with respect to the Collateral, whether established hereby or by any other agreement between the Agent and the Company, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. The Company hereby authorizes the Agent to make, constitute and appoint any officer or agent of the Agent as the Agent may select, in its sole discretion, as the Company's true and lawful attorney-in-fact, with power at any time after the occurrence of an Event of Default and during the continuance thereof, (i) to endorse the Company's name on all applications, documents, papers and instruments necessary or desirable for the Agent in the use of the Collateral, or to grant or issue any exclusive or non-exclusive license under the Collateral to anyone, or to assign, pledge, convey or otherwise transfer title in or dispose of the Collateral to anyone free and clear of any encumbrance upon title thereof created after the date of this Security Agreement or which is otherwise subordinate to the lien and security interest created hereby, and (ii) to take any other actions with respect to the Collateral as the Agent reasonably deems in its best interests. This power of attorney, being coupled with an interest, shall be irrevocable until all Obligations shall have been paid in full and the Credit Agreement has been terminated. The Agent shall have, in addition to all other rights and remedies given it by the terms of this Security Agreement, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Trademarks may be located. Recourse to security will not be required at any time. Without limiting the foregoing, the Agent shall have all rights and remedies set forth in that certain Security Agreement of even date herewith between Wickes and the Agent, as if the Company were a party thereto and as if the Collateral were the subject thereto.

14. Care of Collateral. The Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral if it takes such action for that purpose as the Company may request in writing, but failure of the Agent to comply with any such request shall not of itself be deemed a failure to exercise reasonable care, and no failure of the Agent to preserve or protect any rights with respect to the Collateral against prior parties, or to do any act with respect to preservation of the Collateral not so requested by the Company shall be deemed a failure to exercise reasonable care in the custody or preservation of the Collateral.

15. Certain Rights Regarding Collateral and Obligations. The Agent may from time to time, whether before or after any of the Borrower's Obligations shall become due and payable, without notice to the Company, take all or any of the following actions following the occurrence of an Event of Default: (a) transfer all or any part of the Collateral into the name of the Agent or its nominee, with or without disclosing that such Collateral is subject to the lien and security interest hereunder, (b) notify the parties obligated on any of the Collateral to make payment to the Agent of any amounts due or to become due hereunder, (c) enforce collection of any of the Collateral by suit or otherwise, and surrender, release or exchange all or any part thereof, or compromise or extend or renew for any period (whether or not longer than

the original period) any obligations of any nature of any party with respect thereto and (d) take control of any proceeds of the Collateral. The Agent may, furthermore, from time to time, whether before or after any of the Borrower's Obligations shall become due and payable, without notice to the Company, take all or any of the following actions: (a) retain or obtain a security interest in any property, in addition to the Collateral, to secure any of the Borrower's Obligations, (b) retain or obtain the primary or secondary liability of any party or parties, in addition to the Company with respect to any of the Borrower's Obligations, (c) extend or renew for any period (whether or not longer than the original period) or exchange any of the Borrower's Obligations or release or compromise any obligation of any nature of any party with respect thereto, (d) surrender, release or exchange all or any part of any property, in addition to the Collateral, securing any of the Borrower's Obligations, or compromise or extend or renew for any period (whether or not longer than the original period) any obligations of any nature of any party with respect to any such property, and (e) resort to the Collateral in accordance with the terms hereof for payment of any of the Borrower's Obligations whether or not it shall have resorted to any other property securing the Borrower's Obligations or shall have proceeded against any party primarily or secondarily liable on any of the Borrower's Obligations.


16. Binding Effect; Benefits. This Security Agreement shall be binding upon the Company and its successors and assigns, and shall inure to the benefit of the Agent and the Lenders and their respective successors, transferees and assigns.

17. Governing Law. THE VALIDITY, INTERPRETATION AND ENFORCEMENT OF THIS SECURITY AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF MASSACHUSETTS WITHOUT GIVING EFFECT TO THE CONFLICT OF LAW PRINCIPLES THEREOF.

18. Notice. Whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon either of the parties by the other, or whenever either of the parties desires to give or serve upon the other any communication with respect to this Security Agreement, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and shall be delivered to the Company in care of Wickes in accordance with Section 11.5 of the Credit Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Security Agreement as of the date first above written.

LUMBER TRADEMARK COMPANY

By 
Title John Patterson

BANKBOSTON, N.A., as Agent

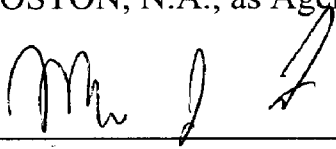
By 
Title Mike Prosser

EXHIBIT A
to
Collateral Trademark Security Agreement

TRADEMARK REGISTRATIONS AND APPLICATIONS

TRADEMARKS

<u>Mark</u>	<u>Reg. No.</u>
W	72-415930
Wickes	72-088277
Wickes	72-062890

TRADEMARK APPLICATIONS

None

EXHIBIT B
to
Collateral Trademark Security Agreement
TRADEMARK LICENSE AGREEMENTS

LTC Sublicense Agreement (as defined in the Credit Agreement)