

03-25-1999



MRD  
3-23-99

100994277  
RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY

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  
Effective Date  
Month Day Year
- Merger
- 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)

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.)

RECEIVED  
99 MAR 23 AM 9 42  
DIA/HCH

03/24/1999 JSHABAZZ 00000145 0602363

FOR OFFICE USE ONLY

01 FC:481  
02 FC:482

40.00 DP  
25.00 CP

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: 1873 FRAME: 0652

**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)

**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.

Dan M. Swain, Jr.

- 3-11-99

Name of Person Signing

Signature

Date Signed

## RELEASE AND TERMINATION OF SECURITY INTEREST


WHEREAS, Yazoo Power Equipment, L.L.C., a Delaware limited liability company ("YPE") and KR Holdings, Inc., a Mississippi corporation ("KR") are parties to that certain Trademark Security Agreement (the "Security Agreement") dated as of May 8, 1997, a copy of which is attached hereto; and

WHEREAS, KR wishes to release and terminate its security interest in certain Trademarks registered to YPE and having registration numbers 0602363 and 1815339;

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, KR has released and terminated, and by these presents does release and terminate, the above described security interest.

Executed as of March 10, 1999.

KR HOLDINGS, INC.

By:   
\_\_\_\_\_  
Dan M. Swain, Jr., President

## TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT (this "Security Agreement") made as of the 8th day of May, 1997 by Yazoo Power Equipment, L.L.C., a Delaware limited liability company having an office at 3650 Bay Street, Jackson, Mississippi 39213 ("YPE") and KR Holdings, Inc., a Mississippi corporation having an office at 711 West Capitol Street, Jackson, Mississippi 39209 ("Lender"):

### W I T N E S S E T H:

WHEREAS, Lender, YPE and FD Kees Power Equipment, L.L.C., a Delaware limited liability company, have entered into a Loan and Security Agreement dated as of May 8, 1997 (said Loan and Security Agreement, as it may hereafter be amended, restated, supplemented or otherwise modified from time to time, being called the "Loan Agreement", the terms defined therein and not otherwise defined herein being used herein as therein defined); and

WHEREAS, it is a condition precedent to the making of the Revolving Credit Loan under the Loan Agreement by Lender that YPE shall have granted the security interest and made the collateral assignment contemplated by this Security Agreement;

NOW, THEREFORE, in consideration of the premises and in order to induce Lender to make the loans and the other extensions of credit under and pursuant to the Loan Agreement, including, without limitation, the Revolving Credit Loan and all other Obligations thereunder (collectively, the "Loans"), YPE hereby agrees with Lender and its successors, transferees and assigns as follows:

1. Grant of Security Interest. To secure the prompt and complete payment, observance and performance of all of the Obligations, YPE hereby grants, bargains, assigns, mortgages, pledges, sells and creates a security interest in and transfers and conveys same to Lender, and its respective successors, transferees and assigns, 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, to the extent permitted by law, with respect to all of the following property of YPE, whether now owned or existing or hereafter acquired or arising (collectively, the "Collateral"):

(a) trademarks, trademark registrations, interests under trademark license agreements, trade names and trademark applications for which registrations have been issued or applied for in the United States Patent and Trademark Office or Canadian Intellectual Property Office Trademarks, or used in the United States, Canada or any state, territory or possession thereof, including, without limitation, the trademarks, trademark registrations and applications listed on Annex A attached hereto and made a part hereof and the trademark license agreements (both as licensee and licensor) listed on Annex B attached hereto and made a part hereof and (i) all renewals thereof, (ii) all income,

royalties, damages and payments now or hereafter due and/or payable under and with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements thereof but excluding attorneys' fees and court costs payable to YPE in respect thereto, (iii) the right to sue for past, present and future infringements thereof, and (iv) all rights corresponding thereto throughout the world (all of the foregoing trademark, trademark registrations, and interests under trademark license agreements, trade names and applications, together with the items described in clauses (i) through (iv) in this subparagraph (a), are sometimes hereinafter individually and/or collectively referred to as the "Trademarks"); and

(b) the goodwill of YPE's business connected with the Trademarks.

2. Restrictions on Future Agreements. YPE agrees that until all Obligations shall have been satisfied in full and the Loan Agreement shall have been terminated pursuant to the terms thereof, YPE will not, without Lender's prior written consent, abandon any Trademark or enter into any agreement, including, without limitation, any license agreement, which is inconsistent with YPE's obligations under this Security Agreement if such actions could reasonably be expected to materially adversely affect the fair market value of the Collateral or the benefits of this Security Agreement granted to Lender, including, without limitation, the priority or perfection of the security interest granted herein or the remedies of Lender hereunder, and YPE 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 could reasonably be expected to affect the validity or enforcement of the rights transferred to Lender 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. YPE represents and warrants that the Trademarks listed on Annex A and the license agreements listed on Annex B constitute all of the Trademarks and applications now owned by or licensed to or by YPE for which registrations have been issued or applied for in the United States Patent and Trademark Office or Canadian Intellectual Property Office Trademarks. If, before the Obligations have been satisfied in full and the Loan Agreement terminated pursuant to the terms thereof, YPE shall (i) obtain rights to any new trademarks, trademark registrations or applications or trade names used in the United States or any state, territory or possession thereof, or (ii) become entitled to the benefit of any trademark application, trademark, trademark registration or trade name used in the United States or any state, territory or possession thereof, the provisions of paragraph 1 above shall automatically apply thereto and YPE shall give to Lender written notice thereof on at least a quarterly basis. YPE hereby authorizes Lender to modify this Security Agreement by amending Annex A and Annex 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 and Warranties. YPE hereby represents, warrants, covenants and agrees that:

(a) Except as otherwise provided herein or in the Loan Agreement, it is and will continue to be the owner of all right, title and interest in the Collateral so long as the Trademarks shall continue in force, free from any lien or security interest in favor of any Person except for the security interest granted to Lender.

(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 Annex 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 Lender as secured party, and so long as any Obligations remain outstanding under the Loan Agreement or the Loan Agreement has not terminated, it will not execute, and there will not be on file in any public office, any such financing statement or other document or instruments, except financing statements filed or to be filed in favor of Lender.

(e) Subject to any limitation stated therein or in connection therewith, all information furnished to Lender concerning the Collateral and proceeds thereof, for the purpose of obtaining credit or an extension of credit, is, or will be at the time the same is furnished, accurate and correct in all material respects.

(f) To the best of YPE's knowledge, no material infringement or unauthorized use presently is being made of any of the Trademarks which could reasonably be expected to materially adversely affect the fair market value of the Collateral or the benefits of this Security Agreement granted to Lender, including, without limitation, the priority or perfection of the security interest granted herein or the remedies of Lender hereunder.

5. Royalties; Terms. YPE hereby agrees that any rights granted hereunder to use by Lender and its successors, transferees and assigns with respect to all Collateral as described above shall be worldwide and without any liability for royalties or other related charges from Lender to YPE. 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 Obligations have been paid in full and the Loan Agreement has

been terminated pursuant to the terms thereof.

6. Lender's Right to Inspect. Lender shall have the right to inspect YPE's premises and to examine YPE's books, records and operations, to the extent and at the time or times provided in the Loan Agreement.

7. Release of Security Interest.

(a) This Security Agreement is made for collateral purposes only. Upon payment in full of all Obligations and termination of the Loan Agreement pursuant to the terms thereof, Lender shall, at YPE's sole cost and expense, execute and deliver to YPE all termination statements, assignments and other instruments as may be necessary or proper to re-vest in YPE full title to the Collateral granted hereby, subject to any disposition thereof which may have been made by Lender pursuant hereto or pursuant to the Loan Agreement.

(b) Upon any sale, assignment, lease or other disposition of all or any part of the Collateral permitted by the Loan Agreement or in connection with the sale, assignment, lease or other disposition of assets permitted by the Loan Agreement, with application of the proceeds thereof made in accordance with the Loan Agreement, Lender acknowledges and agrees that the security interest in the Collateral granted hereby shall be released and that it shall execute and deliver to YPE all termination statements, assignments and other documents and instruments as may be necessary or desirable to fully release the security interest in such Collateral granted hereby.

8. Additional Covenants and Duties of YPE. YPE agrees not to sell or assign its interest in, or grant any license under, any of the Collateral without the prior written consent of Lender. YPE shall have the duty (i) to prosecute diligently any trademark application that is part of the Trademarks pending as of the date hereof or thereafter until all Obligations shall have been paid in full and the Loan Agreement shall have been terminated pursuant to the terms thereof, (ii) to make application for registration of Trademarks, as appropriate, as determined in accordance with YPE's reasonable business judgment and (iii) to preserve and maintain all rights in trademark applications, trademarks, trade names, interests under trademark license agreements and trademark registrations that are part of the Trademarks, unless the failure to do so could not reasonably be expected to materially adversely affect the fair market value of the Collateral or the benefits of this Security Agreement granted to Lender, including, without limitation, the priority or perfection of the security interest granted herein or the remedies of Lender hereunder. Any expenses incurred in-connection with such applications shall be borne by YPE. YPE agrees to retain an experienced trademark attorney approved by Lender for the filing and prosecution of all such applications and other proceedings. YPE shall not abandon any right to file a trademark application or any pending trademark application without the consent of Lender.

If YPE fails to comply with any of the foregoing duties, Lender may do so in YPE's name to the extent permitted by law, but at YPE's expense, and YPE hereby agrees to reimburse Lender in full for all expenses, including the reasonable fees and disbursements of counsel incurred by Lender in protecting, defending and maintaining the Collateral, which counsel may be the employee of Lender.

In the event that YPE 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, Lender may, but shall not be required to, pay, satisfy, discharge or bond the same for the account of YPE, and all moneys so paid out shall be Obligations of YPE repayable on demand, together with interest at the rate applicable to Revolving Loans under the Loan Agreement.

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

10. Waivers. No course of dealing among YPE and Lender or any of their respective successors, transferees and assigns, nor any failure to exercise, nor any delay in exercising, on the part of Lender or any such other party, any right, power or privilege hereunder or under the Loan Agreement 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 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.

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; Effect on Loan Agreement. All of the rights and remedies of Lender and its successors, transferees and assigns with respect to the Collateral, whether established hereby or by the Loan Agreement, or by any other



agreements or by law shall be cumulative and may be exercised singularly or concurrently. YPE hereby authorizes Lender to make, constitute and appoint any officer or agent of Lender as Lender may select, in its sole discretion, as YPE's true and lawful attorney-in-fact, with power (i) at any time after the occurrence of an Event of Default, to endorse YPE's name on all applications, documents, papers and instruments necessary or desirable for Lender 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, and (ii) at any time and from time to time to take any other actions with respect to the Collateral as Lender reasonably deems in its best interests. Lender hereby ratifies all that such attorney-in-fact 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 Obligations shall have been paid in full and the Loan Agreement has been terminated pursuant to the terms thereof. YPE acknowledges and agrees that this Security Agreement is not intended to limit or restrict in any way the rights and remedies of Lender or its successors, transferees and assigns under the Loan Agreement but rather is intended to facilitate the exercise of such rights and remedies. Lender and such other parties shall have, in addition to all other rights and remedies given it or them by the respective terms of the Loan Agreement and 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.

14. Care of Collateral. Lender 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 YPE shall request in writing, but failure of Lender to comply with any such request shall not of itself be deemed a failure to exercise reasonable care, and no failure of Lender 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 YPE shall be deemed a failure to exercise reasonable care in the custody or preservation of the Collateral.

15. Certain Rights Regarding Collateral and Obligations. Lender may from time to time, whether before or after any of the Obligations shall become due and payable, without notice to YPE, take all or any of the following actions: (a) transfer all or any part of the Collateral into the name of Lender 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 Lender 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. Lender may, furthermore, from time to time, whether before or after any of the Obligations shall become due and payable, without notice to YPE, 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 Obligations, (b) retain or obtain the primary or secondary liability of any party or parties, in addition to YPE with respect to any of the Obligations, (c) extend or renew for any period (whether or not longer than the original period) or exchange any of the 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 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 for payment of any of the Obligations whether or not it shall have resorted to any other property securing the Obligations or shall have proceeded against any party primarily or secondarily liable on any of the Obligations.

16. Binding Effect: Benefits. This Security Agreement shall be binding upon YPE and its respective successors and assigns, and shall inure to the benefit of Lender and its respective successors, transferees and assigns.

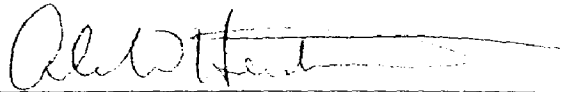
17. Governing Law. This Security Agreement shall be governed by and construed in accordance with the internal laws of the State of Mississippi (without regard to conflict of laws provisions), except to the extent that the validity or perfection of the security interest hereunder, or remedies hereunder, in respect of any of the Trademarks, are governed by the laws of a jurisdiction other than the State of Mississippi. Unless otherwise defined herein or in the Loan Agreement, terms used in Article 9 of the Uniform Commercial Code as enacted in the State of Mississippi are used herein as therein defined.

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 (and deemed to be delivered) in accordance with the Loan Agreement.

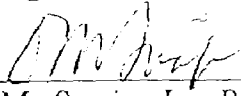
19. Conflicts with Loan Agreement. In case of any conflict between the terms of this Security Agreement and the terms of the Loan Agreement, the terms of the Loan Agreement shall prevail, but whenever possible, the provisions hereof shall be deemed supplemental to and not in derogation of the provisions of the Loan Agreement. Any default under this Security Agreement shall constitute a default under the Loan Agreement and any default under the Loan Agreement shall constitute a default hereunder.

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

YAZOO POWER EQUIPMENT, L.L.C.

By:   
Alan W. Herstrum, President

KR Holdings, Inc.

By:   
Dan M. Swain, Jr., President

ANNEX A  
to  
YPE Trademark Security Agreement

marks

1. "Yazoo" (U.S. reg. # 602,363)
2. "Yazoo" (Canada reg. # 422,406)
3. "Vari-Mulch" (U.S. reg. # 1,815,339)

ANNEX B  
to  
TYPE TRADEMARK SECURITY AGREEMENT

RECORDED: 03/23/1999

TRADEMARK  
REEL: 1873 FRAME: 0664