

11-02-1999



101189547

RECORDATION FORM COVER SHEET TRADEMARKS ONLY

MKD 10/18/99

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
- Change of Name
- Other

Effective Date
Month Day Year
09/13/99

Conveying Party

Mark if additional names of conveying parties attached

Name

Execution Date
Month Day Year
09/28/99

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

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.)

Citizenship/State of Incorporation/Organization

11/01/1999 DNGUYEN 00000161 75019490

FOR OFFICE USE ONLY

01 FC:481
02 FC:482

40.00 DP
100.00 DP

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)		
<input type="text" value="75019490"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="2,082,812"/>	<input type="text" value="2,056,024"/>	<input type="text" value="2,097,954"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="2,072,162"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Number of Properties Enter the total number of properties involved. #

Fee Amount Fee Amount for Properties Listed (37 CFR 3.41): \$

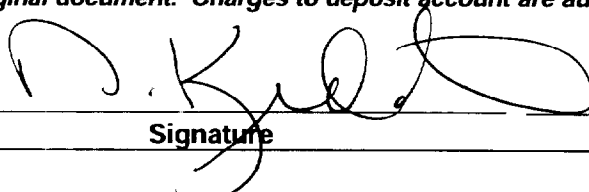
Method of Payment: Enclosed Deposit Account

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.

Dennis Kidder  9-28-99

Name of Person Signing Signature Date Signed

SECURITY AGREEMENT

THIS SECURITY AGREEMENT is made and granted by as of September 13, 1999, by DENNY KIDDER ENTERPRISES, INC., a Washington corporation ("Debtor") in favor of DENNIS KIDDER ("Secured Party").

RECITALS

A. Secured Party, Debtor, and Matthew D. Kaplan are parties to that certain Stock Purchase Agreement of even date herewith (together with any and all supplements, exhibits and amendments thereto, the "Stock Purchase Agreement"), pursuant to which Secured Party and Debtor have agreed to restructure a debt owing by Debtor to Secured Party upon the terms and conditions contained in the Stock Purchase Agreement.

B. In connection with the Stock Purchase Agreement, Debtor has executed that certain Promissory Note of even date herewith (the "Note"), pursuant to which Debtor promises to pay Secured Party the principal amount of \$378,299.00, plus interest, fees and costs as provided for in the Note.

C. Debtor's execution and delivery of this Security Agreement is a condition precedent to Secured Party's obligation to close the purchase and sale of its shares of Debtor's stock as contemplated by the Stock Purchase Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Debtor hereby agrees as follows:

1. **Definitions.** As used herein, the following terms shall have the following meanings:

"Collateral" shall have the meaning given to that term on in Section 2 of this Security Agreement.

"Debtor" means Kidder Enterprises, Inc. and its successors and assigns.

"Trademark Claim" means all causes of action relating to and rights to enforce Debtor's interest in any of the Trademarks, including without limitation, all rights to sue and recover for past, present or future infringement of the Trademark.

"Proceeds" means "proceeds," as such term is defined in Section 9-306(1) of the UCC and, to the extent not included in such definition, shall include, without limitation, (a) any and all proceeds of any insurance, indemnity, warranty, guaranty or letter of credit payable to

Debtor, from time to time with respect to any of the Collateral, (b) all payments (in any form whatsoever) paid or payable to Debtor from time to time in connection with any taking of all or any part of the Collateral by any governmental authority or any Person acting under color of governmental authority), (c) all judgments in favor of Debtor in respect of the Collateral and (d) all other amounts from time to time paid or payable or received or receivable under or in connection with any of the Collateral.

"Secured Obligations" has the meaning given to it in Section 3 of this Security Agreement.

"Security Agreement" means this Security Agreement, as amended, supplemented or otherwise modified from time to time.

"Trademarks" means all trademarks, trademark registrations and trademark applications of the Debtor and the goodwill underlying those trademarks set forth in Schedule A, and (a) any amendments, modifications and renewals thereof and the goodwill represented by those trademarks and any legal equivalent in a foreign country for the full term of terms for which the same may be granted; (b) all rights to income, royalties, profits, damages, or other rights relating to said trademarks including the right to initiate Trademark Claims as provided in Section 4.5; (c) any other rights and benefits relating to said trademarks including any rights as a licensor or licensee of said trademark; and (d) after acquired trademarks that relate to water skis, wake boards and knee boards.

"Trademark License" means any agreement, material to the businesses of Debtor, written or oral providing for the grant by or to Debtor of any right to use any Trademark, including, without limitation, any thereof referred to in Schedule A hereto.

"UCC" means the Uniform Commercial Code as from time to time in effect in the State of Washington.

2. **Security Interest.** Debtor hereby grants and assigns to Secured Party and Secured Party's successors and assigns, a security interest in all of Debtor's right, title and interest in and to the Trademarks together with all proceeds and products thereof, (collectively, the "Collateral").

3. **Secured Obligations.** This Security Agreement is given to secure the payment and performance of all indebtedness and obligations (the "Secured Obligations") of Debtor to Secured Party, presently existing and hereafter arising, direct or indirect, including interest thereon, with respect to (i) the Note, and (ii) all future advances made by Secured Party for taxes, levies, insurance and preservation of the Collateral and all attorney's fees, court costs and expenses of whatever kind incident to the collection of any of said indebtedness or other obligations and the enforcement and protection of any and all security interests created by any and all instruments and documents executed by Debtor in connection with any of said indebtedness.

4. Covenants Regarding Trademarks.

4.1 Debtor (either itself or through licensees) will, except with respect to any Trademark that Debtor shall reasonably determine is of immaterial economic value to it, (A) continue to use each Trademark on each and every trademark class of goods applicable to its current line as reflected in its current catalogs, brochures and price lists in order to maintain such Trademark in full force free from any claim of abandonment for non-use, (B) maintain as in the past the quality of products and services offered under such Trademark, (C) use reasonable efforts to employ such Trademark with the appropriate notice of registration, (D) not adopt or use any mark which is confusingly similar or a colorable imitation of such Trademark unless within thirty (30) days after such use or adoption Secured Party, for its benefit, shall obtain a perfected security interest in such mark pursuant to this Security Agreement, and (E) not (and not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby any Trademark may become invalidated.

4.2 Debtor will promptly notify Secured Party if it knows, or has reason to know, that any application relating to any Trademark may become abandoned or dedicated, or of any adverse determination or material development (including, without limitation, the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark office or any court or tribunal in any country) regarding Debtor's ownership of any Trademark or its right to register the same or to keep and maintain the same.

4.3 Whenever Debtor, either by itself or through any agent, employee, licensee or designee, shall file an application for the registration of any Trademark with the United States Patent and Trademark Office, or any similar office or agency in any other country or any political subdivision thereof, Debtor shall report such filing to Secured Party within five (5) business days after the last day of the fiscal quarter in which such filing occurs. Upon request of Secured Party, Debtor shall execute and deliver any and all reasonably necessary agreements, instruments, documents, and papers as Secured Party may request to evidence Secured Party's security interest in any newly filed Trademark and the goodwill and general intangibles of Debtor relating thereto or represented thereby, and Debtor hereby constitutes Secured Party its attorney-in-fact to execute and file all such writings for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed; such power being coupled with an interest is irrevocable until the Secured Obligations are paid in full.

4.4 Except with respect to any Trademark Debtor shall reasonably determine is of immaterial economic value to it or it otherwise reasonably determines not to so do, Debtor will take all reasonable and necessary steps, including, without limitation, in any proceedings before any tribunal, office or agency in any other country or any political subdivision thereof, to maintain and pursue each application (and to obtain the relevant registration) and to maintain each registration of Trademarks, including, without limitation, filing of applications, applications for reissue, renewal or extensions, the payment of

maintenance fees, participation in reexamination, opposition and infringement proceedings, and the filing of renewal applications, affidavits use and affidavits of incontestability, when appropriate. Any expenses incurred in connection with such activities shall be paid by Debtor.

4.5 In the event Debtor knows or has reason to know of a material infringement, misappropriation or dilution of any Trademark included in the Collateral by a third party, Debtor shall promptly notify Secured Party after it learns thereof and shall, unless Debtor shall reasonably determine that such Trademark is of immaterial economic value to Debtor which determination Debtor shall promptly report to Secured Party, promptly sue for infringement, misappropriation or dilution, or take such other actions as Debtor shall reasonably deem appropriate under the circumstances to protect such Trademark.

4.6 Debtor will furnish to Secured Party each year, on the anniversary date of the execution of this Agreement, statements, schedules and an inventory identifying and describing the Collateral, including without limitation, all Trademarks acquired subsequent to the date of this agreement and not identified on Schedule A all transfers, assignments, licenses or sub-licenses of the Collateral by Debtor, and such other information in connection with the Collateral as Secured Party may reasonably request, all in reasonable detail. Any such Trademarks shall automatically become part of the Collateral.

5. **Use of Collateral.** Debtor agrees to comply with any governmental regulation affecting the use of the Collateral and will not waste, injure or destroy the Collateral, or use or permit the use of the Collateral in any unlawful manner. Debtor represents and agrees that the primary use of the Collateral is and will be business and commercial use. Debtor shall not engage in any unlawful trade or violate any law or otherwise do, suffer or permit to be done, anything which will in any way impair the security interest of Secured Party hereunder.

6. **Liens; Notice of Claims.** The Collateral is free and clear of all security interests and encumbrances of every nature. Except for the liens created hereunder, Debtor shall not create nor permit the existence of any lien or security interest other than that created hereby on the Collateral or otherwise in favor of Secured Party without the prior written consent of Secured Party. Debtor will provide Secured Party with prompt written notice at its address (i) of any lien on, or claim asserted against, Collateral and (ii) of the occurrence of any other event which could reasonably be expected to have a material adverse effect on the aggregate value of the Collateral or on the liens created hereunder.

7. **Taxes.** Debtor will pay or cause to be paid before delinquency all taxes or other governmental charges that are or may become a lien or charge on the Collateral and will pay any tax which may be levied on any obligation secured hereby; provided, that Debtor shall not be required to pay or discharge any such tax, lien, or charge so long as the legality thereof is contested in good faith through appropriate proceedings and Debtor sets aside adequate reserves with respect to any such tax lien or charge so contested.

8. **Performance.** Debtor agrees to fully and punctually perform all duties required of it by any and all contracts constituting Collateral hereunder, and will not take any action which will impair, damage or destroy Secured Party's collateral position.

9. **Appointment.** Upon the occurrence of an Event of Default (as defined in Section 15 below), Debtor does hereby designate and appoint Secured Party, and its successors and assigns, its true and lawful attorney or attorneys, with power irrevocable, for it and in its name, place and stead to take all such actions and to execute all such documents and instruments as Secured Party in its sole discretion shall deem appropriate or necessary to enforce any of Secured Party's rights under this Security Agreement, including, without limitation, the right and authority to ask, demand, receive, receipt and give acquittance for any and all amounts which may be or become due or payable under applicable accounts and contracts or any amendments or supplements thereto, and in its discretion to file any claim or take any other action or proceeding, or either, in its own name, or in the name of the undersigned, or otherwise, which to Secured Party or any successor or assignee thereof may seem necessary or desirable in order to collect or enforce payment of any and all amounts which may become due or owing on account of applicable accounts and contracts, or any amendments or supplements thereto. The mere acceptance of this appointment by Secured Party shall not obligate it to perform any duty, covenant or obligation required to be performed by Debtor under and by virtue of applicable accounts or contracts or any amendments or supplements thereto.

10. **Other Instruments and filings.** From time to time, upon the written request of Secured Party, and at the sole expense of Debtor, Debtor will promptly and duly execute and deliver such further instruments and documents and take such further action as Secured Party may reasonably request for the purpose of obtaining or preserving the full benefits of this Security Agreement and of the rights and powers herein granted, including, without limitation, the filing of any financing or continuation statements under the UCC in effect in any jurisdiction with respect to the liens created hereby. Debtor also hereby authorizes Secured Party to file any such financing or continuation statement without the signature of Debtor to the extent permitted by applicable law. A carbon, photographic or other reproduction of this Security Agreement shall be sufficient as a financing statement for filing in any jurisdiction.

11. **Inspection.** Secured Party may inspect all original filings and titles evidencing the Collateral at reasonable times and intervals.

12. **Removal, Sale or Assignment.** Without the prior written consent of Secured Party, Debtor shall not sell, license, sublicense, lease, or otherwise transfer the ownership of or any right to use the Collateral or any interest therein.

13. **Expenses Incurred by Secured Party.** Secured Party is not required to, but may, at its option, pay any tax or other charge or expense payable by Debtor, and any filing or recording fees and any amounts so paid shall be repayable by Debtor upon demand. Upon

the occurrence of an Event of Default hereunder, Debtor will also repay upon demand all of Secured Party's expenses incurred in collecting, conserving or protecting the Collateral or in any audits, inspections or other examinations by Secured Party in respect of the Collateral. All such sums shall bear interest at the Default Rate (as defined in the Note) from the date of payment by Secured Party until repaid by Debtor, and such sums and interest thereon shall be secured hereby. The rights granted by this paragraph are not a waiver of any other rights of Secured Party arising from breach of any of Debtor's covenants.

14. Waivers. This Security Agreement shall not be qualified or supplemented by course of dealing. No waiver nor modification by Secured Party of any of the terms or conditions hereof shall be effective unless in writing signed by Secured Party. No waiver nor indulgence by Secured Party as to any required performance by Debtor shall constitute a waiver as to any subsequent required performance or other obligations of Debtor hereunder.

15. Default. Each of the following events shall be an "Event of Default" hereunder:

- a) The failure by Debtor to comply with any term, obligation, covenant, or condition in the Stock Purchase Agreement, this Security Agreement or in the Note.
- b) The filing by or against Debtor of any bankruptcy petition or order of receivership.

Upon the occurrence of any such Event of Default, and after the expiration of any applicable notice and cure periods contained in this Security Agreement, the Stock Purchase Agreement or the Note, the entire amount of the Secured Obligations shall then or at any time thereafter, at the option of Secured Party, become due and payable. If an Event of Default occurs, Debtor shall act in good faith and cooperate with Secured Party in fulfilling the terms of this Security Agreement.

16. Remedies. Upon the occurrence of an Event of Default hereunder, Secured Party shall have all remedies provided by law and, without limiting the generality of the foregoing, shall be entitled to each of the following:

16.1 To make notification as provided by this Security Agreement and pursue collection or, at Secured Party's option, to sell all or part of the Collateral and make application of all proceeds or sums due on the Collateral, first to the costs of sale, and secondly to the payment of the amounts then owing under the Secured Obligations, with the residue, if any, to Debtor or its assigns.

16.2 To be paid on demand the amount of all expenses reasonably incurred by Secured Party in protecting or realizing on the Collateral. In the event that this Security Agreement or any obligation secured by it is referred to an attorney for protecting or defending the priority of Secured Party's interest or for collection or realization procedures,

Debtor agrees to pay a reasonable attorney's fee, including fees incurred in both trial and appellate courts, or fees incurred without suit, and expenses of title search and all court costs and costs of public officials. The sums agreed to be paid in this subparagraph shall be secured hereby.

16.3 To be paid any deficiency remaining after application of the net proceeds to amounts then owing under the Secured Obligations, if Secured Party disposes of the Collateral.

16.4 In addition to all other rights and remedies provided by this Agreement. Secured Party shall have all rights and remedies of a secured party under the UCC as enacted in any jurisdiction in which the Collateral may be located. All of Secured Party's rights and remedies with respect to the Collateral, whether established hereby or arising under other agreements or by law, shall be cumulative and may be exercised singularly or concurrently.

17. **Notification.** Debtor agrees that a period of 20 days from the time notice is sent, by first-class mail, certified, return receipt requested shall be a reasonable period of notification of a sale or other disposition of the Collateral. Any notice or other communication from Secured Party to Debtor under or pursuant to this Agreement or required by any statute shall be addressed to the mailing address of Debtor as herein stated or such other address as Debtor may designate in writing to Secured Party.

18. **Applicable Law.** This Security Agreement shall be governed by the laws of the State of Washington. Debtor irrevocably submits to the non-exclusive jurisdiction of the state and federal courts situated in King County, Seattle, Washington, in any proceeding relating to this Agreement and agrees that any service of process or summons in any such action may be served by telefax with acknowledgment or by overnight air courier with documented receipt. As used in this Section, the phrase "the laws of the State of Washington" includes all laws of the State of Washington except the conflicts of laws principles, it being the intent of the parties that the substantive laws of the State of Washington shall always apply.

19. **Savings Provision.** Invalidity, unenforceability, or invalidation of any one or more of the provisions of this Security Agreement for any reason shall in no way affect any other provisions hereof, which other provisions shall remain in full force and effect.

20. **No Waiver.** Secured Party shall not be deemed to have waived any rights hereunder unless such waiver is in writing and is signed by such party. No delay or omission on the part of Secured Party in exercising any right hereunder shall operate as a waiver of such right or any other right. No consent or waiver, expressed or implied, by Secured Party to or of any breach or default by Debtor in the performance by Debtor of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by Debtor of the same or any other obligations hereunder.

21. **Notice of Claim.** In the event any claim or complaint is filed against Debtor which in any way may affect the security interest of Secured Party hereunder, Debtor shall promptly notify Secured Party by delivery in writing or by telecopier to its address herein provided and shall take all necessary steps to protect the security interest of Secured Party hereunder. In the event of Debtor's failure to do so, Secured Party shall have the right, but not the obligation, to take all necessary steps to protect the security interest granted hereunder, including but not limited to, hiring of attorneys, posting of bonds and incurring of other necessary expenses, and all such sums so expended shall be at once repayable by Debtor to Secured Party, shall bear interest at the Default Rate and shall be added to the total sum secured by this Security Agreement.

22. **Notice of Address.** For purposes of notice under this Agreement, the addresses of the parties are as follows:

DEBTOR: Kidder Enterprises, Inc.
Post Office Box 2131 (98071)
3223 "C" Street N.E., Bay #1
Auburn, WA 98002

Telecopier: (206) 735-9319

with copy to: Heller Ehrman White & McAuliffe
Attn: Bruce M. Pym
701 Fifth Avenue, Suite 6100
Seattle, WA 98104

Telecopier: (206) 447-0849

SECURED PARTY: Dennis Kidder
11997 Thorpe Prairie Road
Cle Elum, WA 98922

Telecopier: (509) 674-7473

with copy to: Carney Badley Smith & Spellman, P.S.
Attn: Steven J. Hopp, Esq.
701 Fifth Avenue, Suite 2200
Seattle, WA 98104-7091

Telecopier: 206-467-8215

23. **Mutual Negotiation.** Debtor acknowledges and confirms that this Security Agreement has been mutually negotiated by and among Debtor and Secured Party, and that

none of the terms or provisions hereof shall be construed strictly for or against Debtor or Secured Party.

24. Time of Essence. Time is of the essence in this Security Agreement.

25. Incorporation. All Schedules hereto are incorporated into this Security Agreement by this reference.

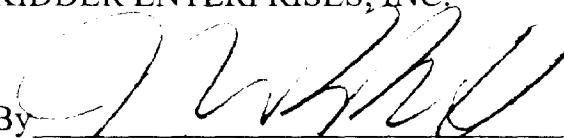
26. Successors and Assigns. This Security Agreement shall be binding upon, inure to the benefit of, and be enforceable by Debtor and Secured Party and their respective successors and assigns, except that Debtor may not assign any of its rights or obligations hereunder without the prior written consent of Secured Party.

**ORAL AGREEMENTS OR ORAL COMMITMENTS TO
LOAN MONEY, TO EXTEND CREDIT, OR TO
FORBEAR FROM ENFORCING REPAYMENT OF A
DEBT ARE NOT ENFORCEABLE UNDER
WASHINGTON LAW.**

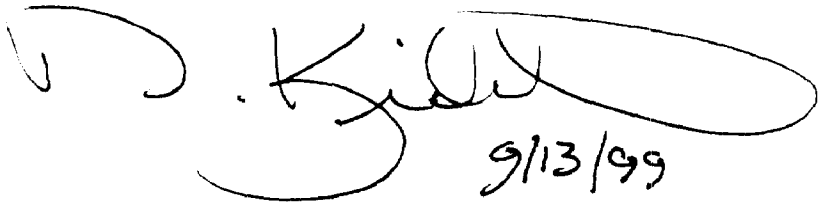
EXECUTED as of the day and year first written above.

KIDDER ENTERPRISES, INC.

By


JEFFREY B. PYATT
PRESIDENT

Its


9/13/99

SCHEDULE "A"

U.S. Trademark Application S.N. 75/019,490

For "**BLINDSIDE**" in Class 28, filed 11/14/95

Goods: Wake boards, snow boards and attachments therefor.

U.S. Trademark Registration No. 2,082,812 (S.N. 74/660,969)

For "**KIDDER**" in Class 28, filed 04/11/95, registered 07/29/97.

Goods: Water skis and bags for water skiing equipment and accessories.

U.S. Trademark Registration No. 2,056,024 (S.N. 74/659,069)

For "**KIDDER**" in Class 25, filed 04/11/95, registered 04/22/97.

Goods: Wet suits and clothing adapted for use in water skiing, namely t-shirts, caps, sweatshirts, swimsuits, jackets, warm up pants, gym shorts and warm-up shirts.

U.S. Trademark Registration No. 2,097,954 (S.N. 74/559,006)

For "**KD**" in **stylized form** in Class 25, filed 11/30/94, registered 09/16/97.

Goods: Swimming suits, wet suits and clothing adapted for use in water skiing, jackets, warm up pants and gym shorts.

U.S. Trademark Registration No. 2,072,162 (S.N. 74/558,995)

For "**stylized design of a water skier**" in Class 28, filed 08/09/94, registered 06/17/97.

Goods: Water skis, bindings for water skis, water ski bags, bags for water skiing equipment, ski boards, tow ropes, and gloves for water skiing.