

10-08-1999



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MLP  
8-6-99

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

☐ 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

07 20 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 ☐ 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.)  
☒ Corporation ☐ Association  
☐ Other

☐ Citizenship/State of Incorporation/Organization

04/09/1999 NTHAI1 00000006 75516039

FOR OFFICE USE ONLY

01 FC:481 40.00 OP  
02 FC:482 150.00 OP

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 Practices. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to  
Patents and Trademarks, Box Assignments, Washington, D.C. 20231

**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.

#

9

**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)**

75-516039

1,702,822

1,740,848

1,583,068

1,576,986

1,218,047

2,228,253

**Number of Properties**

Enter the total number of properties involved.

#

7

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41):

\$ 190<sup>00</sup>

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.

Deneen Sanders

*Deneen Sanders*

7/20/99

Name of Person Signing

Signature

Date Signed

# TRADEMARK MORTGAGE

THIS TRADEMARK MORTGAGE (this "Mortgage"), made as of the 20<sup>th</sup> day of July, 1999 by Copperfield Chimney Supply, Inc., an Oklahoma corporation, (together with each of its successors, "Company"), and NationsCredit Commercial Corporation, as Agent ("Agent") for the Lenders referred to below.

## WITNESSETH

WHEREAS, pursuant to a certain Credit Agreement of even date herewith among Company, Westminster Chimney Supply, Ltd., a Maryland corporation, Riverton Machine & Foundry, Inc., a Kentucky corporation, and Lyemance International, Inc., a Kentucky corporation (together with each of its successors, "Borrowers"), certain lenders (the "Lenders") and the Agent (as the same may hereafter be amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), Agent and the Lenders have agreed to make certain loans to the Borrowers, and to extend certain other financial accommodations to or for the benefit of the Borrowers; and

WHEREAS, pursuant to a certain Security Agreement of even date herewith among the Agent and the Borrowers (as the same may hereafter be amended, supplemented or otherwise modified from time to time, the "Security Agreement"), Company has granted to the Agent, for the ratable benefit of the Agent and the Lenders, a continuing security interest in certain of Company's assets, including, without limitation, the Trademarks (as defined below);

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Company and the Agent agree as follows:

1. Incorporation of Security Agreement; Credit Agreement Definitions. The Security Agreement and the provisions thereof are hereby incorporated herein in their entirety by this reference thereto. Capitalized terms used but not defined herein shall have the respective meanings given thereto in the Credit Agreement.

2. Grant and Reaffirmation of Grant of Security Interest. To secure the complete and timely payment and satisfaction of the Secured Obligations (as such term is defined in the Security Agreement), Company hereby grants to the Agent, and hereby reaffirms its prior grant pursuant to the Security Agreement of, a continuing security interest in Company's entire right, title and interest in and to all of its now owned or existing and hereafter acquired or arising trademarks, trademark licenses, rights in intellectual property, goodwill, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, other business identifiers, prints and labels on which any of the foregoing have appeared or appear, all registrations and recordings thereof,

all General Intangibles related thereto, and all applications (other than "intent to use" applications until a verified statement of use is filed with respect to such applications) in connection therewith, including, without limitation, the trademarks and applications listed on Schedule A attached hereto and made a part hereof and the Trademarks (as such term is defined in the Security Agreement), and renewals thereof, and all income, royalties, damages and payments now or hereafter due and/or payable under or with respect to any of the foregoing or with respect to any of the foregoing, including, without limitation, 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 (all of the foregoing are sometimes hereinafter individually and/or collectively referred to as the "Trademarks"); all rights corresponding to any of the foregoing throughout the world and the goodwill of Company's business connected with the use of and symbolized by the Trademarks.

3. Warranties and Representations. Company warrants and represents to

Agent that:

i. no Trademark has been adjudged invalid or unenforceable by a court of competent jurisdiction nor has any such Trademark been cancelled, in whole or in part and each such Trademark is presently subsisting;

ii. each Trademark is valid and enforceable;

iii. Company is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each Trademark, free and clear of any liens, charges and encumbrances, including without limitation licenses, shop rights and covenants by Company not to sue third persons, except Permitted Liens;

iv. Company has no notice of any suits or actions commenced or threatened with reference to any Trademark; and

v. Company has the unqualified right to execute and deliver this Mortgage and perform its terms.

4. Restrictions on Future Agreements. Company agrees that until the Secured Obligations shall have been satisfied in full and the Security Agreement shall have been terminated, Company shall not, without the prior written consent of Agent, sell or assign its interest in, or grant any license under, any Trademark or enter into any other agreement with respect to any Trademark, and Company further agrees that it shall 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 affect the validity or enforcement of the rights transferred to Agent under this Mortgage.

5. New Trademarks. Company represents and warrants that the Trademarks listed on Schedule A constitute all of the federally registered Trademarks now owned by Company. If, before the Secured Obligations shall have been satisfied in full and the Security Agreement has been terminated, Company shall (i) become aware of any existing Trademarks of which Company has not been previously informed, or (ii) become entitled to the benefit of any Trademarks, which benefit is not in existence on the date hereof, the provisions of this Mortgage above shall automatically apply thereto and Company shall give the Agent prompt written notice thereof. Company hereby agrees that, upon the Agent's written request, Company will execute and deliver to the Agent one or more supplements to this Mortgage, each in form and content substantially similar to this Mortgage, in respect of any and all new federally registered Trademarks owned by Company.

6. Royalties; Term. The term of the security interests granted herein shall extend until the earlier of (i) the expiration of each of the Trademarks, and (ii) the payment in full of the Secured Obligations and the termination of the Security Agreement in accordance with its terms. Company agrees that upon the occurrence of an Event of Default, the use by the Agent of all Trademarks shall be worldwide, except as limited by their terms, and without any liability for royalties or other related charges from Agent to Company.

7. Product Quality. Company agrees (i) to maintain the quality of any and all products in connection with which the Trademarks are used, consistent with commercially reasonable business practices and with the historical practices of Company, and (ii) to provide Agent, upon Agent's request from time to time, with a certificate of an officer of such Company certifying Company's compliance with the foregoing. Upon the occurrence of an Event of Default, Company agrees that Agent, or a conservator appointed by Agent, shall have the right to establish such additional product quality controls as Agent, or said conservator, in its reasonable judgment, may deem necessary to assure maintenance of the quality of products sold by Company under the Trademarks.

8. Release of Mortgage. This Mortgage is made for collateral purposes only. Upon payment in full of the Secured Obligations and termination of the Security Agreement, Agent shall take such actions as may be necessary or proper to terminate the security interests created hereby and pursuant to the Financing Documents.

9. Expenses. All expenses incurred in connection with the performance of any of the agreements set forth herein shall be borne jointly and severally by Company. All fees, costs and expenses, of whatever kind or nature, including reasonable attorneys' fees and legal expenses, incurred by Agent in connection with the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, reasonable counsel fees, maintenance fees, encumbrances or otherwise in protecting, maintaining or preserving the Trademarks or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks shall be borne by and paid jointly and severally by Company and shall be charged against the Secured Obligations.

10. Duties of Company. Company shall have the duty (i) to file and prosecute diligently any trademark applications pending as of the date hereof or hereafter until the Secured Obligations shall have been paid in full and the Security Agreement has been terminated, (ii) to preserve and maintain all rights in the Trademarks, as commercially reasonable and (iii) to ensure that the Trademarks are and remain enforceable, as commercially reasonable. Any expenses incurred in connection with Company's obligations under this Section 10 shall be borne by Company.

11. Agent's Right to Sue. After an Event of Default, each Agent shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Trademarks and, if Agent shall commence any such suit, Company shall, at the request of Agent, do any and all lawful acts and execute any and all proper documents required by Agent in aid of such enforcement and Company shall promptly, upon demand, reimburse and indemnify Agent for all costs and expenses incurred by Agent in the exercise of its rights under this Section 11.

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

13. Severability. The provisions of this Mortgage 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 Mortgage in any jurisdiction.

14. Modification. This Mortgage cannot be altered, amended or modified in any way, except as specifically provided in Section 5 hereof or by a writing signed by the parties hereto.

15. Effect on Other Agreements; Power of Attorney; Cumulative Remedies. Company acknowledges and agrees that this Mortgage is not intended to limit or restrict in any way the rights and remedies of the Agent or any Lender under the Credit Agreement or the Security Agreement but rather is intended to supplement and facilitate the exercise of such rights and remedies. Company hereby authorizes Agent upon the occurrence of an Event of Default, to make, constitute and appoint any officer or agent of Agent as Agent may select, in its sole discretion, as Company's true and lawful attorney-in-fact, with power to (i) endorse Company's name on all applications, documents, papers and instruments necessary or desirable for Agent in the use of the Trademarks or (ii) take any other actions with respect to the Trademarks as Agent deems to be in the best interest of Agent, or (iii) grant or issue any

exclusive or non-exclusive license under the Trademarks to anyone, or (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone. Company hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable until the Secured Obligations shall have been paid in full and the Security Agreement has been terminated. All of the rights and remedies of the Agent and each Lender with respect to the Trademarks, whether established hereby, by the Credit Agreement or the Security Agreement, by any other agreements, or by law, shall be cumulative and may be exercised singularly or concurrently. Agent shall have, in addition to all other rights and remedies given it by the terms of this Mortgage and the Financing Documents, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in New York.

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

17. APPLICABLE LAW; SEVERABILITY. THIS MORTGAGE SHALL BE CONSTRUED IN ALL RESPECTS IN ACCORDANCE WITH, AND GOVERNED BY, ALL OF THE PROVISIONS OF THE NEW YORK UNIFORM COMMERCIAL CODE AND BY THE OTHER INTERNAL LAWS (AS OPPOSED TO CONFLICT OF LAWS PROVISIONS) OF THE STATE OF NEW YORK, EXCEPT FOR THE PERFECTION AND ENFORCEMENT OF SECURITY INTERESTS AND LIENS IN OTHER JURISDICTIONS, WHICH SHALL BE GOVERNED BY THE LAWS OF THOSE JURISDICTIONS OR, AS APPLICABLE, BY THE LAWS OF THE UNITED STATES OF AMERICA. WHENEVER POSSIBLE, EACH PROVISION OF THIS MORTGAGE SHALL BE INTERPRETED IN SUCH A MANNER AS TO BE EFFECTIVE AND VALID UNDER APPLICABLE LAW, BUT IF ANY PROVISION OF THIS MORTGAGE SHALL BE PROHIBITED BY OR INVALID UNDER APPLICABLE LAW, SUCH PROVISION SHALL BE INEFFECTIVE ONLY TO THE EXTENT OF SUCH PROHIBITION OR INVALIDITY, WITHOUT INVALIDATING THE REMAINDER OF SUCH PROVISIONS OR THE REMAINING PROVISIONS OF THIS MORTGAGE.

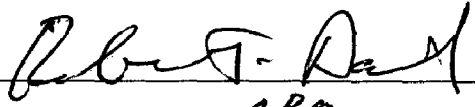
18. Headings. Paragraph headings used herein are for convenience only and shall not modify the provisions which they precede.

19. Further Assurances. Company agrees to execute and deliver such further agreements, instruments and documents, and to perform such further acts, as Agent shall reasonably request from time to time in order to carry out the purpose of this Mortgage and agreements set forth herein.

20. Survival of Representations. All representations and warranties of Company contained in this Mortgage shall survive the execution and delivery of this Mortgage and shall be remade on the date of each borrowing under the Financing Documents.


IN WITNESS WHEREOF, the parties hereto have duly executed this Mortgage as of the date first above written.

COPPERFIELD CHIMNEY SUPPLY, INC.

By:   
Title ceo

Accepted and Agreed to as of the date first written above:

NATIONSCREDIT COMMERCIAL CORPORATION,  
AS AGENT

By   
Its AUTHORIZED SIGNATORY



## SCHEDULE A

### TRADEMARK OR SERVICEMARK REGISTRATION

<u>Company</u>	<u>Trademark Description</u>	<u>U.S. Serial/Registratio n No.</u>	<u>Date Registered</u>
Copperfield Chimney Supply, Inc.	HOMESAVER (Words Design)	1,702,822	7/28/92
Copperfield Chimney Supply, Inc.	HOMESAVER	1,740,848	12/22/92
Copperfield Chimney Supply, Inc.	COPPERFIELD	1,583,068	2/13/90
Copperfield Chimney Supply, Inc.	(Design Only)	1,576,986	1/9/90
Copperfield Chimney Supply, Inc.	COPPERFIELD	1,218,047	11/30/82
Copperfield Chimney Supply, Inc.	GET IT ALL WITH ONE CALL	2,228,253	3/2/99

### TRADEMARK OR SERVICEMARK APPLICATIONS

<u>Company</u>	<u>Trademark Application Description</u>	<u>U.S. Application No.</u>	<u>Date Applied</u>
Copperfield Chimney Supply, Inc.	HOMESAVER	75-516039	7/9/98