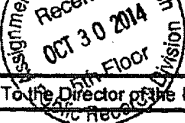


10/30/2014

U.S. DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office



RE



103669527

To the Director of the U. S. Patent and Trademark Office

Documents or the new address(es) below.

1. Name of conveying party(ies):

Nicholas Consolidated, Inc.

- ☐ Individual(s) ☐ Association  
☐ Partnership ☐ Limited Partnership  
☒ Corporation- State: AZ  
☐ Other \_\_\_\_\_

Citizenship (see guidelines) \_\_\_\_\_

Additional names of conveying parties attached? ☐ Yes ☒ No

3. Nature of conveyance/Execution Date(s):

Execution Date(s) 9/11/2014

- ☐ Assignment ☐ Merger  
☐ Security Agreement ☐ Change of Name  
☒ Other Asset Purchase Agreement

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached? ☐ Yes ☒ No

Name: Nordyne LLC

Street Address: 8000 Phoenix Parkway

City: O'Fallon

State: MO

Country: USA Zip: 63368

- ☐ Individual(s) Citizenship \_\_\_\_\_  
☐ Association Citizenship \_\_\_\_\_  
☐ Partnership Citizenship \_\_\_\_\_  
☐ Limited Partnership Citizenship \_\_\_\_\_  
☐ Corporation Citizenship \_\_\_\_\_  
☒ Other LLC Citizenship DE

If assignee is not domiciled in the United States, a domestic representative designation is attached: ☐ Yes ☐ No  
(Designations must be a separate document from assignment)

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s)

Text

B. Trademark Registration No.(s)

2,110,280

Additional sheet(s) attached? ☐ Yes ☒ No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

5. Name & address of party to whom correspondence concerning document should be mailed:

Name: Dawn Valois

Internal Address: c/o Nortek, Inc.

Street Address: 500 Exchange Street

City: Providence

State: RI Zip: 02903

Phone Number: 401-751-1800

Docket Number: \_\_\_\_\_

Email Address: dawn.valois@nortekinc.com

6. Total number of applications and registrations involved:

1

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$40

- ☐ Authorized to be charged to deposit account  
☒ Enclosed

8. Payment Information:

10/30/2014 KHUYEN1 00000013 2110280

Deposit Account Number 81-57-1521 40.00 OP

Authorized User Name \_\_\_\_\_

9. Signature:

Dawn Valois  
Signature

Dawn Valois

Name of Person Signing

10/27/2014

Date

Total number of pages including cover sheet, attachments, and document

7

Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to:  
Mail Stop Assignment Recordation Branch, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

TRADEMARK  
REEL: 005397 FRAME: 0208

## EXECUTION VERSION

### ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is made this 11th day of September, 2014 (the "Effective Date") by and among Phoenix Wholesale, Inc., an Arizona corporation ("Seller"), Nicholas Consolidated, Inc., an Arizona corporation ("Parent"), Nordyne LLC, a Delaware limited liability company ("Purchaser"); and, for purposes of Section 6.7, Section 6.8 and Section 6.10 of this Agreement only, Nicholas C. Formento, Sr. ("Principal"). Purchaser, Seller, Parent and Principal may be referred to herein individually as a "Party" or collectively as the "Parties."

#### RECITALS

A. Seller is a wholly-owned subsidiary of Parent and is in the business of distributing residential HVAC equipment, parts and supplies (the "HVAC Business"). Canyon Pipe & Supply Inc. ("Canyon Pipe") is a wholly-owned subsidiary of Parent and is in the business of distributing plumbing equipment, parts and supplies (the "Plumbing Business"). Principal is the shareholder with sole voting control of both Seller and Canyon Pipe.

B. Seller desires to sell and assign to Purchaser, and Purchaser desires to purchase and assume from Seller, substantially all of the assets related to the ownership and operation of the HVAC Business and the ancillary Plumbing Business at the Acquired Locations and only those liabilities specified herein, pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the premises and mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the Parties, intending to be legally bound, hereby agree as follows:

#### ARTICLE I DEFINITIONS

##### 1.1 Definitions.

The following terms have the respective meanings given to them by definition as follows:

"**Acquired Locations**" means the facilities operated by Seller and/or Canyon Pipe in Tempe, Arizona, Tucson, Arizona and Flagstaff, Arizona

"**Action**" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

"**Affiliate**" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the

**"Intellectual Property"** means all of the following and similar intangible property and related proprietary rights, interests and protections, however arising, pursuant to applicable Laws: (a) trademarks, service marks, trade names, brand names, logos, trade dress and other proprietary indicia of goods and services, whether registered, unregistered or arising by Law, and all registrations and applications for registration of such trademarks, including intent-to-use applications, and all issuances, extensions and renewals of such registrations and applications; (b) internet domain names, whether or not trademarks, registered in any generic top level domain by any authorized private registrar or Governmental Authority; (c) original works of authorship in any medium of expression, whether or not published, all copyrights (whether registered, unregistered or arising by Law), all registrations and applications for registration of such copyrights, and all issuances, extensions and renewals of such registrations and applications; (d) confidential information, formulas, designs, devices, technology, know-how, research and development, inventions, methods, processes, compositions and other trade secrets, whether or not patentable; and (e) patented and patentable designs and inventions, all design, plant and utility patents, letters patent, utility models, pending patent applications and provisional applications and all issuances, divisions, continuations, continuations-in-part, reissues, extensions, reexaminations and renewals of such patents and applications.

**"Intellectual Property Assets"** means all Intellectual Property that is owned by Seller and used in or necessary for the conduct of the HVAC Business as currently conducted.

**"Intellectual Property Licenses"** means all licenses, sublicenses and other agreements by or through which other Persons, including Seller's Affiliates, grant Seller exclusive or non-exclusive rights or interests in or to any Intellectual Property that is used in or necessary for the conduct of the HVAC Business as currently conducted.

**"Intellectual Property Registrations"** means all Intellectual Property Assets that are subject to any issuance, registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, including registered trademarks, domain names and copyrights, issued and reissued patents and pending applications for any of the foregoing.

**"Inventory"** means all inventory of supplies, parts, accessories and other tangible assets of every kind, nature and description (and interests in any of the foregoing) used, or held for use, principally in connection with a business.

**"Knowledge of Seller" or "Seller's Knowledge"** means the actual or constructive knowledge of Principal, Nicholas C. Formento II or Ed Kondrat, after reasonable due inquiry.

**"Law"** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

**"Liabilities"** means liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise.

**"Losses"** means losses, damages, Liabilities, Actions, judgments, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any

**"Transferred HVAC Trade Accounts Payable"** means all of the trade accounts payable related to the HVAC Business at any of the Acquired Locations or Shared Locations except for any trade accounts payable for the WIT HVAC Vendors.

**"Transition Services Agreement"** means the Transition Services Agreement in the form attached hereto as Exhibit C between Purchaser and Parent, which will provide for the continued provision of all applications, systems processes, support and services by Parent and its Affiliates as such parties have provided to the HVAC Business prior to the Closing.

**"WARN Act"** means the federal Worker Adjustment and Retraining Notification Act of 1988, and similar state, local and foreign laws related to plant closings, relocations, mass layoffs and employment losses.

## **ARTICLE II**

### **PURCHASE AND SALE OF ASSETS AND PURCHASE PRICE**

2.1 **Purchase and Sale of Transferred Assets**. Subject to the terms and conditions of this Agreement, on the Closing Date, Seller shall sell, transfer, convey, assign and deliver ("Transfer") to the Purchaser, and the Purchaser shall purchase, acquire and accept from Seller, all of Seller's right, title and interest in, to and under (i) all of the assets, properties, rights and business of Seller, whether tangible or intangible, whether accrued, contingent or otherwise, and relating to the HVAC Business as of the Closing Date, except the Excluded Assets (as defined in Section 2.4) (collectively, the "Transferred HVAC Assets") and (ii) the Transferred Plumbing Assets (together with the Transferred HVAC Assets, the "Transferred Assets"), all of which shall be delivered by Seller and accepted by Purchaser, free and clear of all Encumbrances (except for Permitted Encumbrances (as defined in Section 4.8)). The Transferred Assets include, without limitation, the following:

(a) all Intellectual Property Assets, including, without limitation, use of and any rights to the name "Phoenix Wholesale" and all associated goodwill;

(b) all financial books, ledgers, files, documents, lists, plans, schematics, drawings, specifications, studies, data, process documentation, records relating to the operation of the HVAC Business, including, without limitation, customer lists, customer programs, customer special pricing, customer price files, bills of material, and records, creative materials, marketing and promotional materials and personnel records (to the extent employees will become employees of Purchaser and allowed by applicable Law);

(c) the tangible personal property (such as machinery, equipment, trucks, vehicles, forklifts, trailers, and tools) listed on Schedule 2.1(c), including the racking located at the Acquired Locations ("Tangible Property");

(d) all Inventory related to the HVAC Business at any of the Acquired Locations or the Shared Locations ("Transferred HVAC Inventory" and, together with all Inventory related to the ancillary Plumbing Business at any of the Acquired Locations ("Transferred Inventory");

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

PURCHASER:

NORDYNE LLC

By: 

Title: Vice President + Assistant Secretary

SELLER:

PHOENIX WHOLESALE, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

PARENT:

NICHOLAS CONSOLIDATED, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

For purposes of Section 6.7, Section 6.8 and Section 6.10 only:

PRINCIPAL:

NICHOLAS C. FORMENTO, SR.

\_\_\_\_\_

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

PURCHASER:

NORDYNE LLC

By: \_\_\_\_\_

Title: \_\_\_\_\_

SELLER:

PHOENIX WHOLESALE, INC.

By: [Signature]

Title: President

PARENT:

NICHOLAS CONSOLIDATED, INC.

By: [Signature]

Title: President

For purposes of Section 6.7, Section 6.8 and Section 6.10 only:

PRINCIPAL:

NICHOLAS C. FORMENTO, SR.

[Signature]

*Signature Page to Asset Purchase Agreement*

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