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Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings



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ET U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Success Lab, Inc.

12-24-02

- Individual(s) Association General Partnership Limited Partnership Corporation-State (IL) Other

Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)

Name: Nancy A. Ross\*

Internal Address: High Ridge Partners, Inc.

Street Address: 140 South Dearborn, Suite 820

City: Chicago State: IL Zip: 60603

Individual(s) citizenship U.S.A.

- Association General Partnership Limited Partnership Corporation-State Other

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) Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: 03/11/2002

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s) 2426664

Additional number(s) attached Yes No

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

Name: Raymond P. Mulry, Esq.

Internal Address:

Morrison Cohen Singer & Weinstein, LLP

Street Address: 750 Lexington Avenue

City: New York State: NY Zip: 10022

6. Total number of applications and registrations involved:

1

7. Total fee (37 CFR 3.41).....\$ 40.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

n/a

DO NOT USE THIS SPACE

9. Signature.

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Raymond P. Mulry Name of Person Signing

[Handwritten Signature]

Signature

12/23/2002

Date

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

7

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

\*Not individually, but solely in her capacity as Assignee for the Benefit of Creditors of Success Lab, Inc.

TRADEMARK REEL: 002638 FRAME: 0330

**TRUST AGREEMENT AND ASSIGNMENT FOR  
THE BENEFIT OF CREDITORS OF  
SUCCESS LAB, INC.**

THIS TRUST AND AGREEMENT AND ASSIGNMENT FOR THE BENEFIT OF CREDITORS, is made and entered into this 11<sup>th</sup> day of March, 2002, by and between Success Lab, Inc., an Illinois corporation, located at 1033 W. Van Buren St., Chicago, Illinois (hereinafter referred to as "Success Lab"), and Nancy A. Ross of HIGH RIDGE PARTNERS, INC., located at 140 South Dearborn Street, Suite 820, Chicago, Illinois 60603 (hereinafter referred to as the "Trustee-Assignee").

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

WHEREAS, Success Lab is indebted to various persons, corporations and other entities and is unable to pay its debts in full, and has decided to discontinue its business, and is desirous of transferring its property to an Assignee for the benefit of its creditors so that the property so transferred may be expeditiously liquidated and the proceeds thereof be fairly distributed to its creditors without any preference or priority, except such priority as is established and permitted by applicable law;

NOW, THEREFORE, in consideration of Success Lab's existing indebtedness to its creditors, the express undertakings of the Trustee-Assignee and the mutual covenants contained herein, it is hereby AGREED:

1. Creation and Object of Trust. The name of this Trust shall be the "Success Lab, Inc. Trust Agreement" and its object shall be the orderly liquidation of the assets and property of Success Lab, and the distribution of the proceeds therefrom to creditors of Success Lab in accordance with applicable law. Success Lab hereby nominates and appoints Nancy A. Ross as Trustee-Assignee to carry out the purpose of this Trust in accordance with its terms and conditions. The Trustee-Assignee shall have the powers and duties hereinafter set forth, and shall receive reasonable compensation for her services and reimbursement of her expenses, including, but not limited to reimbursement of her attorneys' fees and costs. The Trustee Assignee may serve without bond. In the event of death, inability or refusal to act, or the resignation of Nancy A. Ross, as Trustee-Assignee, then, in any such event, Patrick D. Cavanaugh also of High Ridge Partners, Inc., is hereby appointed as Successor Trustee-Assignee with all the duties, rights, and powers herein imposed upon and granted to Nancy A. Ross, as original Trustee-Assignee.

2. **Transfer of Assets.** Success Lab does hereby grant, convey, assign, transfer and set over to the Trustee-Assignee, and his Successor Trustee-Assignee, all property and assets of Success Lab, whatsoever and where so ever situated, which are now, or ever have been , used in connection with the operation of Success Lab's business. The property and assets transferred shall include, without limitation, if any such assets exists, all real and personal property, tangible and intangible, including, without limitation, all cash on hand, bonds, bank accounts, all accounts receivable, all furniture, fixtures, equipment leasehold improvements, inventory, general intangibles, patents, insurance premium and/or policy refunds, trade names, trademarks, franchises, service marks, and causes of action. Title to the property and assets of Success Lab shall immediately vest in the Trustee-Assignee for the use and purpose hereinafter set forth, subject to all existing liens and security interests.

3. **Powers and Duties of Trustee-Assignee.** The Trustee-Assignee shall have, inter alia, the following powers, rights and duties:

(a) To collect any and all accounts receivable owing to Success Lab .

(b) To sell, or otherwise dispose of, if such exists, all real property of Success Lab in such manner as the Trustee-Assignee deems best. The Trustee-Assignee shall have the power to execute any and all documents necessary to effectuate a sale of said real property and to convey title to same.

(c) To sell, or otherwise dispose of, if such exists, all tangible and intangible personal property of Success Lab, including, but not limited to, all of its machinery, equipment, inventory, service marks, trade names, trademarks, patents, franchises, causes of action and general intangibles, at private or public sale upon such notice and upon such terms as the Trustee-Assignee deems best. The Trustee-Assignee shall have the power to employ an auctioneer to conduct such a sale and to advertise such sale in such manner as the Trustee-Assignee deems best. The Trustee-Assignee shall have the power to execute bills of sale and any other documents necessary to convey title to Success Lab's personal property. The Trustee-Assignee shall have the power to enter into an agreement with any party to participate in a liquidation sale with the Trustee-Assignee hereunder for the benefit of creditors sharing in the profits from such sale.

(d) To employ attorneys, accountants, and such additional personnel to whatever extent may be necessary to handle the administrative details of this Trust.

(e) To require all creditors of Success Lab to whom a balance is now owing to submit verified statements of their accounts.

(f) To settle any and all claims against or in favor of Success Lab, with full power to compromise, or in the discretion of the Trustee-Assignee, to sue or be sued, and to prosecute or defend any claim or claims of any nature whatsoever existing against or in favor of Success Lab.

(g) To pay the creditors of Success Lab out of the moneys which shall come into his hands as Trustee, that are not subject to any valid subsisting and enforceable liens or other encumbrances according to the following priorities to the extent provided by existing law:

- (1) First, all costs for the preservation of the Trust assets, including the maintenance and insurance thereon, the expenses of operation, and such other administrative expenses as shall be reasonably be incurred.
- (2) Second, all costs and expenses incidental to the administration of the Trust, including the remuneration of the Trustee-Assignee and the payment of reasonable compensation for the services of attorneys for the Trustee-Assignee. These costs and expenses shall include those incidental to the preparation and execution of this Trust Agreement. The Trustee-Assignee shall also have the right to pay an accountant reasonable compensation for services performed in connection with the administration of this Trust and the attorneys for Success Lab for such services as shall be rendered in aid of the administration of this Trust and its property.
- (3) Third, all federal taxes of any nature whatsoever owing as of the date of this Trust Agreement, including, but not limited to, federal withholding tax, federal unemployment tax and other federal income, excise, property and employment taxes.
- (4) Fourth, all state and county taxes of any nature whatsoever owing as of the date of this Trust Agreement, including, but not limited to, state and county employment, property and income taxes.
- (5) Fifth, all distributions to other creditors shall be, within each class, pro rata in accordance with the terms of each creditor's indebtedness, until all such debts are paid in full. The Trustee-Assignee shall make interim distributions whenever the Trustee-Assignee accumulates sufficient funds to enable him to make a reasonable distribution. No distribution shall be in an amount less than \$100,000, except the final distribution or in the Trustee-Assignee's sole discretion.
- (6) Sixth, the surplus, if any, of the Trust's funds, when all debts of the Trust shall have been paid in full, shall be paid and transferred to Success Lab by the Trustee- Assignee.

(h) To do and perform any and all other acts necessary and proper for the orderly liquidation or other disposition, including, but not limited to, abandonment, of the assets and property of Success Lab and the distribution of the proceeds derived therefrom to the creditors of Success Lab.

4. **Employment of Counsel of Trustee-Assignee.** It is hereby represented and agreed by the parties that the Trustee/Assignee can retain counsel to render such legal services as the Trustee-Assignee requires during the existence of this Trust. Additional special counsel may be retained by the Trustee-Assignee should he deem the same necessary to prosecute or defend any legal or equitable action or to perform such other duties as may be required in the circumstances.

5. **Rights of Creditors.** All rights and remedies of the creditors against any surety or sureties for Success Lab are hereby expressly reserved and nothing herein contained shall prevent the creditors or any of them from suing any third parties or persons who may be liable to any of the creditors for all or any part of their claims against Success Lab, or from enforcing or otherwise obtaining the full benefit of any mortgage, charge, pledge, lien or other security which they now hold on any property, creditors or effects of Success Lab.

6. **Administration of Trust.** This Trust shall be administered out of court. The Trustee-Assignee shall, however, have the right to ask any court of competent jurisdiction for a declaratory judgment or such other relief as the Trustee-Assignee may deem necessary, if, in his opinion, said action is desirable in connection with any dispute or claim arising hereunder.

7. **Liability of Trustee-Assignee.** It is understood and agreed that the Trustee-Assignee is to assume no personal liability or responsibility for any of his acts as Trustee-Assignee herein, but his obligation shall be limited to the performance of the terms and conditions of the Trust Agreement, in good faith and in the exercise of his best judgment.

8. **Warranties of Success Lab** hereby warrants as follows:

(a) The list of creditors delivered concurrently herewith to the Trustee-Assignee is complete and correct as reflected by the books and records of Success Lab, or through its officers and directors, as to names of said creditors, their addresses and the amounts due them.

(b) Success Lab, through its officers and directors, shall perform any and all acts reasonably necessary and proper to assist the Trustee-Assignee in the orderly liquidation of Success Lab's assets and the collection of moneys owing to Success Lab, and in the distribution of said moneys and the proceeds of asset sales to

Success Lab's creditors; provided, however, the officers and directors of Success Lab shall only provide such assistance to the Trustee-Assignee to the extent, and on the condition that, they are reasonably compensated for such services.

9. Acceptance by Trustee-Assignee. The Trustee-Assignee does hereby accept the Trust herein created and agrees to faithfully perform the same according to the best of the Trustee-Assignee's skill, knowledge and ability. It is understood that the Trustee-Assignee shall receive reasonable compensation for his services rendered in connection with this Trust.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

Success Lab, Inc.

By: *Myra A. Schaffner*

Its PRESIDENT + CEO

Attest: *James R. Pomeroy*

Its Secretary

**ACCEPTANCE**

I, Nancy A. Ross, the Trustee-Assignee here in above named, do hereby accept the Trust hereinafter set forth, not individually, but as Trustee-Assignee, subject to the conditions set forth above.

*Nancy A. Ross*  
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At Chicago, Illinois, this 12 day of March 2002

Subscribed and Sworn to

before me 12 day  
of March 2002

*Janet M. Allen*  
\_\_\_\_\_

NOTARY PUBLIC

