

11-02-2004



RECOR
TR/

102873239

10/29/04

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies)/Execution Date(s):

Lephas Capital Partners, LLP

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

Citizenship (see guidelines) _____

Execution Date(s) October 31, 2001

Additional names of conveying parties attached? Yes No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other Release of Security Agreement
- Merger
- Change of Name

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached? Yes No

Name: Xelus, Inc.

Internal

Address: _____

Street Address: 290 Woodcliff Drive

City: Fairport

State: New York

Country: USA Zip: 14450

- Association Citizenship _____
- General Partnership Citizenship _____
- Limited Partnership Citizenship _____
- Corporation Citizenship DE
- Other _____ Citizenship _____

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)

B. Trademark Registration No.(s)

2,253,332; 2,251,304

Additional sheet(s) attached? Yes No

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

LPA; LPA SOFTWARE

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

Name: Esther G. Eagan

Internal Address: Phillips Lytle LLP

Street Address: 3400 HSBC Center

City: Buffalo

State: New York Zip: 14203

Phone Number: (716) 847-8400

Fax Number: (716) 852-6100

Email Address: eeagan@phillipslytle.com

6. Total number of applications and registrations involved:

2

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 65.00

- Authorized to be charged by credit card
- Authorized to be charged to deposit account
- Enclosed

8. Payment Information:

a. Credit Card Last 4 Numbers _____
Expiration Date _____

b. Deposit Account Number _____

Authorized User Name _____

9. Signature: Esther G. Eagan
Signature

October 27, 2004
Date

Esther G. Eagan

Name of Person Signing

Total number of pages including cover sheet, attachments, and document: 4

Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to:
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

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25.00 DP

CONSENT AND WAIVER

WHEREAS, XELUS, INC., a Delaware corporation ("Xelus"), has borrowed an aggregate of \$2,000,000 from **CEPHAS CAPITAL PARTNERS, L.P.,** a New York limited partnership ("Cephas") pursuant to a certain Note and Warrant Purchase Agreement, dated as of April 16, 2001 (the "Agreement"); and

WHEREAS, as security for such loan, Xelus granted Cephas a subordinated security interest in all of its assets pursuant to a certain Security Agreement and a certain Contingent Patent, Trademark, and License Agreement, both dated as of April 16, 2001 (collectively, the "Security Agreements"); and

WHEREAS, Xelus desires to transfer the assets of its Custom Software Solutions business (the "Assets") to Donald Soule or a company organized by him (collectively, the "Buyer") pursuant to the terms of a letter of intent being negotiated between Xelus and the Buyer, the current draft of which is attached as Exhibit A; and

WHEREAS, Xelus is prohibited from selling the Assets pursuant to the terms of the Agreement and the Security Agreements;

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Cephas hereby agrees as follows:

1. **Consent to Sale.** As a part of the transaction contemplated with the Buyer as generally outlined in Exhibit A, Xelus may transfer and sell the Assets to the Buyer notwithstanding any provision of the Agreement and the Security Agreements or any other agreement or instrument between Cephas and Xelus.
2. **Release of Lien.** Cephas hereby releases its lien on the Assets for the purpose of the above-described transfer. Cephas hereby agrees to execute and deliver and take such further acts, documents or instruments as are necessary to evidence the release of such lien, including any UCC-3 partial termination statements.

Dated: October 31, 2001

CEPHAS CAPITAL PARTNERS, L.P.

By: Clint W Campbell
Name: Clint W Campbell
Title: Managing Director

TERM SHEET
re Proposed Xelus Custom Group Spinoff to Don Soule

1) Basic terms of deal:

- (a) Sell Newco surplus Xelus pc computer equipment and related software licenses at FMV.
- (b) Newco to be called "LPA Solutions Inc.". Transfer to Newco right to use tradenames "LPA" and "LPA Software", but prohibited from using these names for 2 years following closing as a legal or assumed name or in any general advertising or public announcements.
- (c) Transfer right to use domain name "www.lpa.com" 2 years after closing.
- (d) Transfer rights Xelus may have to CMM Level 2 Certification (goes with custom projects).
- (e) Transfer any rights under approx 7 inactive custom contracts, plus legally assign rights to 3 Xerox Corp. ongoing custom projects (SIMON, PIC&S, and MARS/GARS/GAMS) so Xelus has no ongoing liabilities/obligations.

2) Purchase price: approx. \$325,000 (\$200,000 plus FMV of computer equipment being purchased). Payable at closing, and in part by offset of \$91,000 Note plus interest owed to Soule under 1998 buyout.

3) Additional terms:

- (a) Sublease Newco approx 5,000 SF of Xelus office space on 2d floor 290 Woodcliff Drive for minimum 1 year, "as is" furnished.
- (b) Newco to have right to offer employment to approx 16 Xelus employees that constitute Xelus' "Custom Group" (these jobs planned to be eliminated at Xelus by 12/31/01). Thereafter, for 2 years following closing, Newco will not solicit any Xelus employees other than (i) any Xelus employees involuntarily terminated by Xelus, or (ii) any Xelus employee who voluntarily leaves Xelus after they have been gone 6 months or if sooner, only with Mike Fabiaschi's consent.
- (c) Xelus IT to provide transition support for setup of Newco's subleased office space (install and configure pc network, security system service, etc.) and post-closing computer system support on T&M hourly basis at market rates.
- (d) For 3 years following closing, Xelus will treat Newco as a preferred vendor re any outsourcing/subcontracting of integration services or custom development projects.
- (e) Xelus will work with Newco re appropriate references/introductions to Newco client prospects.
- (f) For 3 years following closing, Newco will agree not to compete against Xelus:
 - (i) in licensing, maintaining or servicing productized (non-custom) software in the "ESM" marketplace as currently exists [to be more specifically defined by Mike Fabiaschi, Bill Perry];
 - (ii) will not do any work for named competitors of Xelus [i2, Manu, SAP, Servogistics, Baxter, Siebel, PeopleSoft, ViryaNet, Yantra, Oracle];
 - (iii) will not knowingly do custom development of software in ESM marketplace that client company intends (1) to productize or (2) use for service bureau use, or Xelus gets 50% of all royalties Newco receives from developing/licensing such work [to be refined].

Newco can do integration services for clients other than named competitors.

Newco can do custom services with respect to licensed (productized) third party software of any kind for clients other than named competitors.

(g) Closing targeted for 12/31/01, subject to Conditions listed below. Xelus willing to negotiate this deal exclusively with Soule through 12/31/01. Newco to pay initial \$15,000 of Xelus' outside legal fees.

4) Conditions to Closing:

\\FS1\young\Xelus\Gen Corp\Acquisitions-Mergers\LPA Buyout\Term Sheet (BOD) (11-2-01) draft.doc

- (a) Approval of this Term Sheet by Xelus BOD, and letter of intent reflecting these terms satisfactory to Mike Fabiaschi.
- (b) Consent of Transamerica Business Credit Corp.
- (c) Consent of Cephas Capital Partners.
- (d) Consent to assignment of contracts as necessary under their terms.
- (e) Waiver by Soule of right to any further severance payments or benefits subsequent to closing.
- (f) Consent of Landlord to sublease contemplated.