

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL

**CONVEYING PARTY DATA**

Name	Formerly	Execution Date	Entity Type
Pinnacle Labs LLC		04/02/2006	LIMITED LIABILITY COMPANY: MINNESOTA

**RECEIVING PARTY DATA**

Name:	Douglas A. Larson
Street Address:	P.O. Box 636
City:	Menomonie
State/Country:	WISCONSIN
Postal Code:	54751
Entity Type:	INDIVIDUAL: UNITED STATES

**PROPERTY NUMBERS Total: 7**

Property Type	Number	Word Mark
Serial Number:	78831389	ROAR
Serial Number:	78239436	BRIGHT WATER
Serial Number:	76488262	SPRING AIRE
Serial Number:	76078943	SPRING TIME
Serial Number:	75481553	SPRING TIME
Serial Number:	73508388	BRIGHT WATER
Serial Number:	73508390	BRIGHT WATER

**CORRESPONDENCE DATA**

Fax Number: (973)251-8699  
*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*  
 Phone: 973-422-1100  
 Email: [ijkaplan@beckermeisel.com](mailto:ijkaplan@beckermeisel.com)  
 Correspondent Name: Ivan J Kaplan  
 Address Line 1: 354 Eisenhower Parkway

OP \$190.00 78831389

Address Line 4: Livingston, NEW JERSEY 07039

NAME OF SUBMITTER:

Ivan J. Kaplan

Signature:

/Ivan J. Kaplan/

Date:

10/12/2007

**Total Attachments: 20**

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**Additional Sheet to Recordation Form Cover Sheet  
United States Trademarks**

<b>Mark</b>	<b>Serial No./ Filing Date</b>	<b>Reg. No./ Reg. Date</b>	<b>Int. Class</b>	<b>Owner</b>	<b>Status</b>
BRIGHT WATER	78239436 18-APR-2003	2949989 10-MAY-2005	3	Heritage Brands, LLC	REGISTERED
SPRING AIRE	76488262 07-FEB-2003	3047324 24-JAN-2006	3	Heritage Brands, LLC	REGISTERED
SPRING TIME	76078943 28-JUN-2000	2473524 31-JUL-2001	3	Heritage Brands, LLC	REGISTERED
SPRING TIME	75481553 08-MAY-1998	2421790 16-JAN-2001	3	Heritage Brands, LLC	REGISTERED
BRIGHT WATER	73508388 13-NOV-1984	1336230 21-MAY-1985	3	Heritage Brands, LLC	RENEWED (REGISTERED)
BRIGHT WATER	73508390 13-NOV-1984	1336232 21-MAY-1985	3	Heritage Brands, LLC	RENEWED (REGISTERED)

# COPY

## VOLUNTARY SURRENDER, FORECLOSURE AND LIQUIDATION AGREEMENT

**THIS AGREEMENT** is made, entered into and effective as of \_\_\_:\_\_\_ .m. this ~~2<sup>nd</sup>~~ <sup>08</sup> day of May, 2006 ("Transfer Time"), by and among PINNACLE LABS LLC, a Minnesota limited liability company corporation ("Debtor"), and Douglas A. Larson ("Larson" or "Creditor"). DRL

### RECITALS:

**R.1** Debtor and Creditor are the original counterparties to the Loan Documents described on **Exhibit A** attached hereto ("Loan Documents"). Pursuant to the terms of the Loan Documents, Debtor granted Creditor a security interest in the Collateral (as defined in the Loan Documents), including but not limited to a) a Business Note dated February 1, 2002, the Economic Development Fund Loan Agreement dated February 1, 2002, the Revolving Credit Agreement dated February 22, 2005, the Term Credit Agreement dated February 22, 2005, the Business Note dated February 22, 2005, together with all related agreements, documents and/or instruments executed in connection therewith from Jennico 2, Inc. ("Jennico"), as debtor, to Royal Credit Union ("RCU") as creditor; b) Debtor's equipment, inventory, accounts, and general intangibles, as each such term is defined under the Uniform Commercial Code as adopted and in effect in Wisconsin (the "UCC"); and c) a Voluntary Surrender and Foreclosure Agreement dated May 2, 2006, by and between Jennico and Debtor ("Jennico Surrender").

**R.2** Pursuant to the terms of a Credit Facility Purchase Agreement of dated May 2, 2006 ("Pinnacle Purchase Agreement"), Debtor purchased from RCU, all of RCU's right, title and interest in, to and under the Loan Documents identified on **Exhibit A-1**, together with all attendant powers, rights and security granted by Jennico in favor of RCU, including, but not limited to, the right to payment of all principal and interest now owing or which may be owing in the future, and all rights, power, authority and obligations of RCU, as mortgagee, pledgee, secured party, assignee, agent, counterparty and otherwise, both express and implied, pursuant to any of the Loan Documents and the Forbearance Agreements.

**R.3** Debtor and Creditor entered into a Loan Agreement dated May 2, 2006, together with all related agreements, documents and/or instruments executed in connection therewith ("Pinnacle Loan Documents").

**R.4** Pursuant to the terms and provisions of the Pinnacle Loan Documents, Pinnacle has the right on or before July 1, 2006, to determine whether it will proceed with a final purchase and retention of assets under the Jennico Surrender.

**R.5** Debtor has offered to transfer, surrender and assign all of the Collateral to Creditor to reduce the Obligations, subject to the terms and provisions hereof.

**R.6** Debtor and Creditor have agreed, pursuant to the terms and conditions contained herein that Debtor will act as liquidating agent for creditor.

**R.7** Creditor deems it advisable to accept the surrender of all of the Collateral, as described herein, and to discharge the Obligations, all upon the terms and conditions herein contained.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed:

**1. Surrender of Assets by Debtor to Creditor.**

- A. Pursuant to § 409.609, Wis. Stats., and effective at the Transfer Time or such other date and time as the parties may agree, Debtor hereby transfers, conveys, surrenders and assigns to Creditor, Debtor's business as a going concern and all other of Debtor's assets and property constituting the Collateral, more particularly described on the attached **Exhibit B** (the "Surrendered Collateral"), without limitation and wherever located, owned, or held by Debtor or to which Debtor is entitled on the date hereof, except the Collateral identified on the attached **Exhibit C** (the "Excluded Assets").
- B. To the extent the Surrendered Collateral consists of inventory, accounts and/or general intangibles, such Surrendered Collateral shall consist of all such inventory, accounts and/or general intangibles owned by Debtor as of the Transfer Time.

**2. No Assumption of Liabilities of Debtor; Indemnification.**

- A. Except as set forth in Paragraph 5, this voluntary surrender of Creditor's Collateral is in consideration of Creditor agreeing to a full satisfaction of Debtor's Obligations, as set forth in Paragraph 5, hereof.
- B. Creditor shall assume no liability for any obligations owed by Debtor to third parties incurred prior to the surrender or incurred as a result of such surrender, except the liability and obligations identified on the attached **Exhibit D** (the "Assumed Liabilities").

**3. Documents of Transfer.** The conveyance, transfer, assignment, surrender and delivery of the Surrendered Collateral to Creditor shall be effected by bills of sale, endorsements, assignments, deeds, and other instruments of transfer and conveyance in such form as Creditor shall reasonably request. Debtor shall, at any time, and from time to time after the date hereof, upon the reasonable request of Creditor, execute, acknowledge, and deliver, or shall cause to be done, executed, acknowledged, and delivered, all such further acts, bills of sale, endorsements, assignments, deeds, transfers, conveyances, powers of attorney, and assurances as may be reasonably required for effectively selling, assigning, transferring, granting, conveying, assuring, and confirming to Creditor, or to its successors and assigns, or for aiding and assisting in collecting and reducing to possession any or all of

the Surrendered Collateral. If Debtor is unwilling or, for any reason, unable to take any of the foregoing actions, Debtor hereby authorizes and empowers Creditor (or any duly authorized officer of Creditor) in its own name, or in the name of its nominee, or in the name of, and as attorney hereby irrevocably constituted for, Debtor, to take any and all such action.

**4. INTENTIONALLY OMITTED.**

**5. Extinguishment of Obligations.**

- A. "Obligations" as used herein means the Obligations (as defined in the Pinnacle Loan Documents) assigned, transferred and conveyed to Creditor by Debtor.
- B. Pursuant to Wis. Stat. § 409.620, this Agreement constitutes a proposal by Creditor and consent by Debtor that the transfer of possession hereunder shall constitute a surrender of possession by Debtor and, except as provided herein, acceptance by Creditor of the Collateral in full payment, satisfaction and discharge of the Obligations.
- C. To the extent that the assignment of any contract, license, lease, commitment, or receivable to be assigned to Creditor shall require the consent of any other party to such contract, license, lease, commitment, or receivable, this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof. Debtor shall use its best efforts to obtain forthwith the consent of the other party to such contract, license, lease, commitment, or receivable to the assignment thereof to Creditor. If such consent is not obtained within thirty (30) days of the execution of this Agreement, Debtor shall cooperate with Creditor in any reasonable arrangement designed to provide to Creditor or its assigns the benefits under any such contract, license, lease, commitment, or receivable, including enforcement, at the cost and for the benefit of Debtor, of any and all rights of Debtor against the other party thereto arising out of the breach or cancellation by such other party or otherwise.

**6. Collection of Accounts Receivable Subsequent to Closing.** From and after the date hereof, Creditor shall have the right and authority to collect for the account of Debtor, but for the exclusive benefit of Creditor, all accounts and notes receivable and other items which shall be transferred to Creditor, as provided herein, and to indorse with the name of Debtor checks received on account of such receivables or other items. Nothing herein to the contrary notwithstanding, Debtor shall act as agent for Creditor for the limited purpose of collecting all accounts and notes receivable for the benefit of Creditor. At and after the date hereof, Debtor shall transfer and deliver to Creditor any cash or other property that Debtor may receive in respect of such accounts receivable or other items.

7. **Debtor's Representations.** Debtor represents and warrants to Creditor as follows:

- A. **Organization and Standing.** Debtor is duly organized, validly existing, and in good standing under the laws of the State of Minnesota as a limited liability company. Neither the business activities nor the ownership or leasing of property by Debtor requires it to be qualified in any other jurisdiction.
- B. **Taxes.** Debtor has duly filed or properly extended the filing dates for all required federal, state, county, and local tax reports and returns, and such reports and returns are true and correct to the best of Debtor's knowledge. Debtor will file all such reports and returns when due in the future, and will provide copies of such reports and returns to Creditor.
- C. **Absence of Certain Changes.** Except as set forth in any of the Exhibits, Debtor has not: (1) incurred any liability (absolute or contingent), except current liabilities incurred in the ordinary course of business and liabilities under instruments which are listed and described in the Exhibits annexed hereto; (2) discharged or satisfied any lien or encumbrance, or paid any liability (absolute or contingent), other than current liabilities shown on the balance sheet of Debtor as and at May 1, 2006, and current liabilities incurred since the date of such balance sheet in the ordinary course of business; (3) subjected any of its assets to any lien or other encumbrance, except financing in the ordinary course of business; (4) sold or transferred any of its tangible assets or canceled any debts or claims, except in each case in the ordinary course of business; without Creditor's specific knowledge and consent.
- D. **Employment Agreements, Pension, Profit Sharing, and Other Obligations.** Except for the items described or listed in **Exhibit E** hereto, Debtor is not a party to any written or oral (1) agreement for the employment of any officer or employee, (2) pension, profit sharing, retirement, bonus, insurance, or similar obligation with respect to its employees or others, (3) contract with any labor union, (4) agency or advertising contract which is not terminable on 30 days' (or less) notice, or (5) contract or agreement of any other nature with any person, firm, or corporation, whether or not such obligations are of a legally binding nature or in the nature of informal understandings, other than the contracts and agreements made in the ordinary course of business which terminate or are terminable at will without penalty by Debtor on or before the date hereof.



- E. Litigation.** There are no actions, suits, or proceedings pending or, to the knowledge of Debtor, threatened against, by, or affecting Debtor in any court or before any governmental agency, domestic or foreign, except as set forth in **Exhibit F** annexed hereto. Debtor is not subject to any order, writ, injunction, or decree of any court or agency which would prevent the sale of all or any part of Debtor's assets, or has created or would create any lien thereon or would affect or interfere with Debtor's use thereof or rights therein.
- F. Compliance with Laws.** Debtor, to the best of its knowledge, has complied with all laws, regulations, and orders applicable to its business including but not limited to applicable environmental laws and regulations. Except as noted on **Exhibit G**, annexed hereto, the execution and carrying out of this agreement and compliance with the provisions hereof by Debtor will not violate any provision of law applicable to Debtor and will not conflict with, or result in a breach of, any term, condition, or provision of or constitute a default under Debtor's organizational documents, or any indenture, mortgage, security interest, agreement, or other instrument to which Debtor is a party or by which it may be bound, nor result in the creation of any lien, charge, or encumbrance upon any of Debtor's properties or assets.
- G. Contracts.** Annexed hereto as **Exhibit H** is a complete and correct list and summary description of all material contracts and agreements, oral or written, to which Debtor is a party at the date hereof, other than those described in other Exhibits and other than arrangements made in the ordinary course of business which terminate or are terminable at will by Debtor on or before the Transfer Time.
- H. Financial Statements.** All of the financial statements of Debtor, if any, heretofore furnished to Creditor by Debtor are accurate and complete in all material respects and fairly present the financial condition and the results of operations of Debtor for the periods covered thereby and as of the relevant dates thereof. Debtor has no knowledge of any material liabilities of any nature not disclosed to the Creditor.

**8. Creditor's Representations.** Creditor represents and warrants to Debtor as follows:

- A. Organization and Standing.** Creditor is an adult resident of the State of Wisconsin.
- B. Compliance with Laws.** Neither the execution and delivery of this Agreement, nor the consummation of the transactions herein contemplated, nor the fulfillment of or compliance with the terms, provisions, and conditions hereof will conflict with, or result in a

breach of any term, provision, or condition of Creditor's [Certificate of Incorporation] or Bylaws or of any instrument to which Creditor is a party or by which it may be bound, or constitute (with the giving of notice, or the passage of time, or both) a default under any such instrument.

**9. Debtor's Renunciation of Notice; Creditor's Notice to Secured Parties.**

- A. Pursuant to the provisions of Wis. Stat. § 409.624, Debtor and Guarantors hereby acknowledge that this Agreement is one freely and voluntarily entered into and authenticated after default.
- B. Pursuant to the provisions of Wis. Stat. § 409.624, Debtor and Guarantors hereby waive any rights of notice of mandatory disposition and/or redemption any of them may have with respect to the Surrendered Collateral.

**10. Access to Books, Records, Etc.** From and after the execution of this Agreement, Debtor shall afford to the officers and accredited representatives of Creditor free access to the offices, books, and records of Debtor in order that Creditor may have full opportunity to make such investigation as it desires of the affairs of Debtor.

**11. Conditions Precedent to Consummation of Transaction by Creditor.** The obligations of Creditor are, at its option, subject to the condition that the representations and warranties made by Debtor herein shall be correct, as of the date hereof. Creditor shall be deemed to have relied on each and every such representation and warranty made hereunder by Debtor.

**12. Deliveries to be Made at the Closing.** The following payments and deliveries shall be made at the Transfer Time:

- A. Debtor shall pay to the Creditor an amount equal to Debtor's cash on hand.
- B. Debtor shall deliver the documents required under Paragraph 3 hereof.
- C. In addition to the foregoing payments, the parties shall deliver such other closing documents as shall be reasonably required in order to carry out the terms of this Agreement.

**13. Liquidation Services.**

- A. Upon the surrender hereunder, Debtor shall act as liquidating agent for Creditor. As liquidating agent, Debtor will take such actions as necessary to wind up the operation of the business that is the subject of the Jennico Surrender, assemble Collateral, convert Collateral into

finished goods as may be agreed between Creditor and Debtor, arrange for the sale of Collateral, act to collect accounts receivable, and perform such other duties as agreed between the parties. Debtor agrees to perform such services for a period of six months or such lesser amount of time specified by Creditor ("Performance Period") from the date of surrender hereunder.

- B. Debtor shall be compensated for such services at the rate of \$15,000 per month. Upon the exercise of this Agreement, Debtor shall be entitled to such compensation commencing with the Initial Closing Date (as defined in the Pinnacle Loan Documents) and continuing for the Performance Period.

**14. Releases.** Except for the covenants, agreements, representations, and warranties made herein by the parties and in the assignments and documents to be delivered at the Transfer Time, none of which are hereby released, Debtor and Guarantor each hereby release Creditor, its affiliates, and their respective officers, directors, and employees of and from all claims, demands, and liabilities of any kind or nature from the beginning of the world to the date hereof.

**15. Debtor's Indemnification to Creditor.** Debtor shall be liable to Creditor for any damage or loss arising out of the breach of any representation or warranty or agreement made by it in or pursuant to this Agreement, and, in addition to the provisions of Paragraph 2 hereof, shall indemnify Creditor against:

- A. Any liability Creditor may legally incur for taxes arising out of the failure of Debtor to pay the correct amount of its taxes payable, or Debtor's failure to timely pay such taxes or file proper returns;
- B. Any other liability of Debtor to a third party that such third party may attempt to collect from Creditor; and
- C. Nothing herein or in this Agreement shall be interpreted as a guaranty or assurance by Debtor or any Guarantor as to the collectibility of any of the Accounts Receivable of Debtor included in the Surrendered Collateral.

**16. Miscellaneous Provisions.**

**A. Survival of Representations.** All representations and warranties of the parties hereunder shall survive the execution of this Agreement. All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the successors and assigns of Debtor and Creditor.

**B. Nonperformance of Conditions - Termination.** If either party to this Agreement shall be unable to perform any of the agreements, covenants, or conditions which are of material significance required to be performed or fulfilled by such party, the other party, at its option, may terminate this Agreement by notice given to such defaulting party, and in the event of such termination both parties shall be released from any further obligation or liability hereunder. Nothing herein shall however, affect the validity of the voluntary surrender of the Surrendered Collateral to Creditor.

**C. Notices.** All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered or mailed, first class, postage prepaid:

If to Debtor: Pinnacle Labs LLC  
134 Columbia Court  
Chaska, MN 55318

with copies to: Johnson, Killen & Seiler, P.A.  
800 Wells Fargo Center  
230 West Superior Street  
Duluth, MN 55802

If to Creditor : Douglas A. Larson  
Larson Enterprises  
P.O. Box 636  
Menomonie, WI 54751

with copies to: James D. Sweet  
Murphy Desmond SC  
PO Box 2038  
Madison, WI 53701-2038

- D. Entire Agreement - Alteration or Amendment.** This Agreement embodies the entire agreement between the parties and may not be altered or amended except by a writing signed by the parties.
- E. Captions.** The captions are for convenience of the parties only and shall not control or affect the meaning or construction of any provision of this Agreement.
- F. Counterparts; Facsimile.** This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same instrument. Execution of this Agreement by facsimile signature shall be binding on the party transmitting its signature by such method, and shall be deemed to have the same force and effect as an original signature.
- G. Non-waiver.** No delay or failure by a party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.
- H. Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Wisconsin.
- I. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors, and assigns.

WITNESS the due execution hereof as of the day and year first above-written.


**Debtor:**

PINNACLE LABS LLC

By: 

Its: 

**Creditor:**

  
Douglas A. Larson

**LIST OF EXHIBITS**

- A. Loan Documents
- B. Surrendered Collateral
- C. Excluded Collateral
- D. Assumed Liabilities
- E. Employment Agreements
- F. Litigation
- G. Compliance with Law
- H. Contracts



Exhibit B: Loan A Note

See Attached Business Note (\$2,500,000)



Exhibit C: Loan B Note

See Attached Business Note (\$500,000.00)

Exhibit D: Loan C

See Attached Revolving Credit Agreement

Exhibit E: Permitted Exceptions

1. Promissory Note to Royal Credit Union ("RCU") dated May \_\_\_\_, 2006, in the original principal amount of \$1,500,000.00 together with a Selective Business Security Agreement granting RCU a security interest in the machinery and equipment of the Borrower and proceeds therefrom. Such security interest may be superior to the interest of Lender.
2. In the event the Borrower notifies the Lender of the intention of Borrower to complete the purchase and retain the assets of Jennico 2, Inc. and proceeds to the Final Closing Date, then a Permitted Exception shall include a secured asset-based revolving line of credit in an amount not to exceed \$3,000,000.00 from a lender to be determined and identified to Lender.

Exhibit F: Pre-Closing Cash Infusion

Exhibit G: SRA (Appreciation) Agreement

See Attached Agreement

EXHIBIT G

Closing Cost Promissory Note (Loan D)