

04/28/2014

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TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
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ETAS ID: TM300004

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Nighthawk Systems, Inc.		03/01/2010	CORPORATION: NEVADA
RECEIVING PARTY DATA			
Name:	Dutchess Private Equities Fund, Ltd.		
Street Address:	50 Commonwealth Ave.		
Internal Address:	Suite 2		
City:	Boston		
State/Country:	MASSACHUSETTS		
Postal Code:	02116		
Entity Type:	exempted company: CAYMAN ISLANDS		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Registration Number:	3405426	NIGHTHAWK	
CORRESPONDENCE DATA			
Fax Number:	2108320901		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:	(210)832-0900		
Email:	lwbrowning@kammerbrowning.com		
Correspondent Name:	Linda Browning		
Address Line 1:	7700 Broadway		
Address Line 2:	Suite 202		
Address Line 4:	San Antonio, TEXAS 78209		
ATTORNEY DOCKET NUMBER:	1114.02		
NAME OF SUBMITTER:	Linda W. Browning		
SIGNATURE:	/lwbrowning48685/		
DATE SIGNED:	04/01/2014		
Total Attachments: 2			
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OP \$40.00 3405426

Settlement Agreement

This Settlement Agreement (this "Agreement") is made this 1st day of March, 2010, by and between the following Parties:

H. Douglas Saathoff ("Saathoff") and Nighthawk Systems Inc., a corporation organized under the laws of the State of Nevada ("Nighthawk," who collectively with Saathoff is referred to as the "Nighthawk Parties"); and

Dutchess Private Equities Fund, Ltd., an exempted company organized under the laws of the Cayman Islands ("Dutchess");

The signatories to this Agreement will hereafter be referred to as the "Parties."

This Agreement is made as a compromise among the Parties for the complete and final compromise and settlement of their claims, differences and causes of action with respect to the disputes described below.

PREAMBLE

WHEREAS, Dutchess and Nighthawk had previously entered into various financing and other financial agreements, including: i) promissory notes and debentures in the aggregate original principal face value amount of \$ 9,389,190.00 (the "Notes and Debentures"), ii) a preferred stock agreement dated October 9, 2007 (the "Stock Agreement"), executed by Nighthawk in favor of Dutchess in the amount of \$6,000,000.00 and iii) factoring agreements executed by Nighthawk in favor of Dutchess, in the aggregate principal amount of \$675,000.00 (the "Factoring Agreements") (the Notes and Debentures, the Stock Agreement, and the Factoring Agreements being collectively referred to as the "Obligations"), and

WHEREAS, these Obligations were secured by a Security Agreement dated October 9, 2007, and a IP Security Agreement dated April 3, 2009 (collectively referred to as the "Security Agreements"), and

WHEREAS, on November 24, 2009, Dutchess foreclosed upon substantially all of Nighthawk's assets (the "Foreclosure"), pursuant to the Security Agreement dated October 9, 2007 executed by Nighthawk in favor of Dutchess, and

WHEREAS, the Parties fell into various disagreements with regard to the maturity of the Obligations, payments made by Nighthawk to Dutchess under the terms of the Obligations, Nighthawk's remaining debt and liabilities under the Obligations, and the validity and effect of the Foreclosure (the "Dispute"), and

WHEREAS, Dutchess brought this action against Nighthawk and Saathoff entitled *Dutchess Private Equities Fund, Ltd. v. Nighthawk Systems, Inc., and H. Douglas Saathoff*, Cause Number 2010-CI-00810 in the 224th Judicial District Court of Bexar County, Texas, (the "Action"), and

WHEREAS, Nighthawk has brought counterclaims against Dutchess in the Action, claiming among other things, wrongful foreclosure, fraudulent conveyance and failure of consideration, tortious interference with existing contract and with prospective relations, unjust enrichment, usury, securities fraud, and breach of contract, and

WHEREAS, the Parties to this Agreement desire to avoid the necessity, expense, inconvenience and uncertainty of litigation, and to resolve and settle all claims, differences and causes of action arising out of, or in any way related to the Dispute and the Action;

NOW, THEREFORE, in consideration of the releases and mutual promises contained herein, and other good and valuable consideration exchanged between the Parties, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1.0 SETTLEMENT

1.1 The monetary terms of this settlement are as follows:

1.2 Dutchess has previously delivered the sum of \$115,000.00 to the trust account of Jones & Cannon, P.C. ("J&C"), pursuant to the terms of an escrow agreement signed by Dutchess and J&C. Pursuant to the terms of the escrow agreement, J&C is instructed to deliver these funds to the trust account of Pulman, Cappuccio, Pullen & Benson, LLP ("PCPB") immediately upon receipt of a copy of this Agreement duly signed by all Parties, and all reasonably-necessary ancillary documentation to accomplish the Agreement.

Wiring instructions for PCPB's trust account are as follows:

JP Morgan Chase Bank
San Antonio, Texas
ABA Number: 111000614
Account Number: 125954160265
Swift Code: TCBKUS44TX

1.3 Dutchess has also delivered to J&C's trust account the sum of \$35,000.00. The Nighthawk parties agree to use their best efforts to influence Itron, Inc. to enter into new contracts with Dutchess or its assignee upon terms substantially similar to Itron's present contracts with Nighthawk (the "Itron Agreements").

If Itron consents to an assignment of the Itron Agreements to Dutchess or its assignee, or negotiates an agreement with Dutchess containing terms substantially similar to the Itron Agreements, prior to or within sixty (60) days of the completion and execution of Dutchess' currently contemplated business transaction with AMI Investments, L.L.C. in regards to the assigned assets of Nighthawk (the "AMI Transaction"), then J&C will, as soon as practicable (but no more than 5 business days) after the Itron Agreements are assigned or a new agreement is executed, without further written instruction, disburse the sum of \$35,000.00 (less actual out-of-pocket wiring costs) to Nighthawk.

1.4 In the event that Itron does not consent to an assignment of the Itron Agreements, or a new agreement, as discussed above, prior to or within sixty (60) days of the AMI Transaction, then (i) J&C, without any further instruction, shall return the monies delivered to Dutchess, less only the actual wiring fees charged by its bank; and (ii) J&C shall give notice to Nighthawk.

1.5 Dutchess has previously released any hold placed on Nighthawk's bank accounts with Key Bank and Frost Bank as a result of the Temporary Restraining Order entered on January 19, 2010. Dutchess hereby confirms said release and agrees and warrants that such money, which totaled \$172,005.96 as specifically noted on Exhibit "A" of this Agreement, shall be immediately released to Nighthawk free of any claim by Dutchess.

1.6 The Nighthawk Parties hereby grant and assign to Dutchess or its assignee, and confirm the validity and effectiveness of the Foreclosure as to, all of Nighthawk's right, title, and interest to all of those assets formerly used by Nighthawk in the "power control" division of Nighthawk's business ("Power Control"), with the exception of furniture, fixtures, computer and telephone equipment and the company-owned vehicle in San Antonio. The Power Control assets shall include all personal, intangible, and intellectual property rights (specifically including, but not limited to, websites, website keys, and product source codes), goodwill, Power Control inventory currently in San Antonio, and all rights to the "Nighthawk" name and trademark (collectively referred to as the "Power Control Assets"). Such Power Control Assets foreclosed upon and hereby granted and assigned to Dutchess or its assignee include, but are not limited to, those items more specifically described on Exhibit "B" of this Agreement. The Nighthawk Parties hereby represent to Dutchess that the items described upon Exhibit "B" constitute all of the Power Control Assets formerly used by Nighthawk in Power Control, with

hereof shall be valid unless it is written and signed by the Party against whom the waiver is to be enforced.

10.10 This Agreement shall Be Governed, in All Respects, under the Laws of the State of Texas, irrespective of its choice of law rules. Venue of any dispute with respect to this Agreement shall be in Bexar County, Texas.

10.11 This Agreement shall be effective upon the date of the last signature of any Party hereto.

IN WITNESS HEREOF, the undersigned have executed this Agreement in multiple counterparts.

DUTCHESS PRIVATE EQUITIES FUND, LTD.

By: _____
Michael Novielli, managing director

Date: _____

NIGHTHAWK SYSTEMS, INC.

By: _____
H. Douglas Saathoff, C.E.O

Date: 2/27/10

H. DOUGLAS SAATHOFF

H. Douglas Saathoff, Individually

Date: 2/27/10