

**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
Fluid Air, Inc.		05/05/2009	CORPORATION: ILLINOIS

**RECEIVING PARTY DATA**

Name:	Michael J. Eber
Street Address:	140 South Dearborn
Internal Address:	Suite 420
City:	Chicago
State/Country:	ILLINOIS
Postal Code:	60603
Entity Type:	INDIVIDUAL: UNITED STATES

**PROPERTY NUMBERS Total: 7**

Property Type	Number	Word Mark
Registration Number:	1828800	FACTROL
Registration Number:	1424582	FLUID AIR
Registration Number:	1946678	GRANUMILL
Registration Number:	2149017	MAGNACOATER
Registration Number:	1765570	MAGNAFLO
Registration Number:	1935606	MAGNALIFT
Registration Number:	2547847	PHARMX

**CORRESPONDENCE DATA**

Fax Number: (312)261-1532  
*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*  
 Phone: (312) 261-2238  
 Email: trademark@pedersenhoupt.com  
 Correspondent Name: Stan Sneeringer  
 Address Line 1: 161 N. Clark Street

OP \$190.00 1828800

Address Line 2: Suite 3100  
Address Line 4: Chicago, ILLINOIS 60601

ATTORNEY DOCKET NUMBER:	200990481
NAME OF SUBMITTER:	Stan Sneeringer
Signature:	/Stan Sneeringer/
Date:	10/08/2009

Total Attachments: 9  
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ACCEPTED  
5/12/09

TRUST AGREEMENT AND ASSIGNMENT  
FOR THE BENEFIT OF CREDITORS OF  
FLUID AIR

THIS TRUST AND AGREEMENT AND ASSIGNMENT FOR THE BENEFIT OF CREDITORS, is made and entered into this 5<sup>th</sup> day of MAY, 2009, by and between Fluid Air, an Illinois Corporation, located at 2550 White Oak Circle, Aurora, Illinois 60502-9678 (hereinafter referred to as "Fluid Air"), and Michael J. Eber of HIGH RIDGE PARTNERS, INC., located at 140 South Dearborn Street, Suite 420, Chicago, Illinois 60603, not individually, but solely as Trustee-Assignee (hereinafter referred to as the "Trustee-Assignee").

WITNESSETH:

WHEREAS, Fluid Air 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 Fluid Air's existing indebtedness to its creditors, the express undertakings of the Trustee-Assignee and the mutual covenants contained herein, it is hereby agreed as follows:

1. Creation and Object of Trust. The name of this Trust shall be the "Fluid Air Trust Agreement" and its object shall be the orderly liquidation of the assets and property of Fluid Air, and the distribution of the proceeds there from to creditors of Fluid Air in accordance with applicable law. Fluid Air hereby nominates and appoints Michael J. Eber of High Ridge Partners, Inc., not individually but solely as Trustee-Assignee, to carry out the purpose of this Trust in accordance with its terms and conditions. The Trustee-Assignee shall have the rights, powers and duties hereinafter set forth, and shall receive reasonable compensation for his services and reimbursement of his expenses, including, but not limited to reimbursement of the fees and costs of his attorneys. The Trustee-Assignee may serve without bond. In the event of death, inability or refusal to act, or the resignation of Michael J. Eber, as Trustee-Assignee, then, in any such event, Patrick D. Cavanaugh (not individually but solely as Trustee-Assignee) 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 Michael J. Eber, as original Trustee-Assignee.

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2. Transfer of Assets. Fluid Air does hereby irrevocably grant, convey, assign, transfer and set over to the Trustee-Assignee, and his Successor Trustee-Assignee, all property and assets of Fluid Air, whatsoever and where so ever situated, which are now, or ever have been, used in connection with the operation of Fluid Air's business. The property and assets transferred shall include, without limitation, if any such assets exist, the right to receive incoming mail, 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, federal and state income tax refunds, and causes of action. Title to the property and assets of Fluid Air 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 borrow money and obtain financial accommodations necessary to fund the operation and liquidation of the assets in the Fluid Air Trust (including the execution of any amendment to the existing Fluid Air loan documents) and pay all necessary administrative expenses related thereto.
- (b) To grant liens and security interests in the Fluid Air assets as may be necessary or appropriate to secure financing for the liquidation of the Fluid Air Trust assets.
- (c) To collect any and all accounts receivable owing to Fluid Air. The Trustee-Assignee shall have the power to endorse Fluid Air's name on checks, drafts, instruments and other items of payment.
- (d) To sell, or otherwise dispose of, if such exists, all inventory of Fluid Air in such manner as the Trustee-Assignee deems appropriate. The Trustee-Assignee shall have the power to complete all work in process and otherwise operate the business of Fluid Air in such manner and for such length of time as the Trustee-Assignee deems appropriate.
- (e) To enter into such agreements as the Trustee-Assignee deems appropriate to facilitate the liquidation of the assets of Fluid Air, including, without limitation, loan agreements, real property use and occupancy agreements or leases and agreements to lease employees of Fluid Air

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- (f) To sell, or otherwise dispose of, if such exists, all real property of Fluid Air in such manner as the Trustee-Assignee deems appropriate. 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.
- (g) To sell, or otherwise dispose of, if such exists, all tangible and intangible personal property of Fluid Air, 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 appropriate. The Trustee-Assignee shall have the power to execute bills of sale and any other documents necessary to convey title to Fluid Air'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.
- (h) To employ attorneys, accountants, consultants and such additional personnel (including, without limitation, other partners and employees of High Ridge Partners, Inc.) to whatever extent may be necessary to handle the administrative details of this Trust.
- (i) To determine and allow creditors' claims against Fluid Air or the Fluid Air Trust for purposes of distribution and to require all of Fluid Air's creditors to whom a balance is now owing to submit verified statements of their accounts on or before a bar date established by Trustee-Assignee..
- (j) To settle any and all claims against or in favor of Fluid Air, 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 Fluid Air.
- (k) To pay the creditors of Fluid Air out of the moneys which shall come into his hands as Trustee-Assignee, 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:
  - (i) 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 incurred.

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- (ii) 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 Fluid Air for such services as shall be rendered in aid of the administration of this Trust and its property.
- (iii) 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.
- (iv) 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.
- (v) Fifth, all other debts owing as of the date of this Trust Agreement and Assignment for Benefit of Creditors that are entitled to priority under applicable law.
- (vi) Sixth, 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.
- (vii) Seventh, 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 by the Trustee-Assignee to Fluid Air's equity security holders in their order of priority.

- (1) 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 Fluid Air and the distribution of the proceeds derived there from to the creditors of Fluid Air.

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 Fluid Air 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 Fluid Air, 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 Fluid Air.

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 debt of Fluid Air or the Trustee-Assignee, but rather is to pay any such debt from the proceeds of the assets and property assigned hereunder. The obligations of the Trustee-Assignee hereunder shall be limited to the performance of the terms and conditions of the Trust Agreement, in good faith and in the exercise of his reasonable business judgment.

8. Representations, Warranties and Covenants of Fluid Air. Fluid Air hereby represents, warrants, and covenants to the Trustee-Assignee as follows:

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

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- (b) Fluid Air, through its officers and directors, shall provide the Trustee-Assignee with such further information regarding the assets and liabilities of Fluid Air as the Trustee-Assignee may request from time to time.
- (c) Fluid Air, 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 Fluid Air's assets and the collection of moneys owing Fluid Air, and in the distribution of said moneys and the proceeds of asset sales to Fluid Air's creditors.
- (d) Fluid Air shall execute and deliver to the Trustee-Assignee any documents or instruments necessary or appropriate for the Trustee-Assignee to perform his duties under this Trust Agreement and Assignment for the Benefit of Creditors.

9. Durable Power of Attorney Fluid Air herewith makes and appoints the Trustee-Assignee as its true and lawful attorney for it and in its name and on its behalf to sign, seal, acknowledge, and deliver, and cause to be recorded, if necessary, all instruments, deeds, bills of sale, conveyances, and other documents of every nature and kind that, in the Trustee-Assignee's sole discretion he deems necessary or advisable to fulfill his duties and responsibilities hereunder. Without limiting the generality of the foregoing, Fluid Air hereby grants to the Trustee-Assignee full power and authority to do and perform all acts and every act and thing whatsoever as fully as Fluid Air might or could do. By these provisions, Fluid Air means and intends to grant to the Trustee-Assignee a durable and sustaining Power of Attorney.

10. 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.

11. Miscellaneous.

- (a) Jurisdiction and Venue. The state and federal courts of the State of Illinois shall have exclusive jurisdiction over the assignment effected hereby, the actions of the Trustee-Assignee in such capacity, and all matters relating to the administration of the Fluid Air Trust, including the determination of any and all controversies arising under or in connection with this Trust Agreement and Assignment for the Benefit of Creditors.



- (b) Construction. Titles, headings, and subheadings used in this Trust Agreement and Assignment for the Benefit of Creditors are solely for ease of reference and shall not affect the construction of this Trust Agreement and Assignment for the Benefit of Creditors.
- (c) Successors and Assigns. All provisions of this Trust Agreement and Assignment for the Benefit of Creditors shall be binding on and in favor of any administrators, successors, heirs, and assigns of the parties hereto.
- (d) Counterparts. This Trust Agreement and Assignment for the Benefit of Creditors may be executed in one or more counterparts, all of which shall be taken together to constitute one and the same instruments.
- (e) Governing Law. This Trust Agreement and Assignment for the Benefit of Creditors and Trustee-Assignee's duties hereunder shall be governed by the laws of the State of Illinois. Fluid Air consents to the jurisdiction of the state and federal courts of Illinois on all matters arising out of or relating to this Trust Agreement and Assignment for the Benefit of Creditors and all claims arising or related to the Fluid Air Trust.
- (f) Integration. This Trust Agreement and Assignment for the Benefit of Creditors constitutes the entire agreement and understanding of the parties with respect of the subject matter of this Trust Agreement and Assignment for the Benefit of Creditors and supersedes any prior agreement or understanding of the parties concerning such subject matter.

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

FLUID AIR

By: *Franklin Pender*

Its PRESIDENT

Attest: \_\_\_\_\_

~~Not a signatory~~  
*[Signature]*

ACCEPTANCE

I, Michael J. Eber, the Trustee-Assignee here in above named, do hereby accept the Trust hereinafter set forth, not individually, but solely as Trustee-Assignee, subject to the conditions set forth above.

*Michael J. Eber*

Michael J. Eber, not individually, but solely as

Trustee-Assignee

At Chicago, Illinois, this 12 day of May 2009

Subscribed and Sworn to

before me 13th day

of May 2009

*Janet M. Dill*  
NOTARY PUBLIC

