

1024-01

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10-24-2001

FORM COVER SHEET Patents Only
ONE of THREETo the Honorable Con
Please record the attach. 101884571

Attorney Dkt. No.: 040828-240027

1. Name of conveying party(ies):

Helmsley Barbados Trust

2. Name and address of receiving party(ies):

XL Surfaces Inc.
1751 Richardson, Suite 3147
Montreal, Quebec, Canada H3K 1G6

102401

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

3. Nature of conveyance:

- ☐ Assignment
☐ Merger
☐ Security Agreement
☐ Change of Name
☒ Other - Exclusive License
Execution Date: August 28, 2001

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

4. Application No. 09/445617 and 09/445618

Patent No. 5,356,344 and 5,373,667

If this document is being filed together with a new application, the execution date of the application is: Additional numbers attached? Yes ☐ No ☒

4 DE

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

CUSTOMER NO. 00826
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000

6. Total number of applications and patents involved:

Two (2) applications and Two (2) Patents

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7. Total fee (37 CFR 3.41) \$160.00

- ☒ Enclosed
☐ Authorized to be charged to deposit account

8. Deposit account number: 16-0605

DO NOT USE THIS SPACE

9. Statement and signature: *To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.*

Name of Person Signing: Edward M. Prince

Oct 24, 2001

Date

Reg. No. 22,429

Total number of pages including cover sheet, attachments, and document: 13

CLT01/4502871v2

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PATENT
REEL: 012263 FRAME: 0424

EXCLUSIVE LICENSE AGREEMENT

EFFECTIVE AS AUGUST 28TH, 2001

BETWEEN :

HELMSLEY BARBADOS TRUST, a trust duly created under the *Laws of Barbados*, having its address at 2002, Worthy Down, Graeme Hall, Christ Church, Barbados, W.I., represented by Mr. Andrew Murray who declares being authorized to sign the present document;

(Hereinafter referred to as the "Licensor")

AND :

XL SURFACES INC., a company duly created under the *Canada Business Corporations Act.*, having its office at 1751, Richardson, suite 3147, at Montreal, province of Quebec, H3K 1G6, represented by Mr. Seymour Tomarin and Mr. Alain Lemieux who declare being authorized to sign the present document;

(Hereinafter referred to as the "Licensee")

RECITALS

- A. Licensor has the right to grant licenses under the letters patent and the patent applications (and any patents that may issue there from) which are described in Schedule A attached to and made a part of this Agreement. Said patents and patent applications (all of which are collectively referred to herein as the "Patent Rights").
- B. Licensor wishes to have the inventions covered by the Patent Rights utilized and commercialized world-wide for turf products for field.
- C. Licensee desires to obtain, and Licensor desires to grant, an exclusive license world-wide for turf products for field under the Patent Rights upon the terms and conditions set forth in this Agreement.

PATENT

REEL: 012263 FRAME: 0425

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the agreements contained herein, and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. EXCLUSIVE WORLDWIDE LICENSE

- 1.1 The Licensor hereby grants to Licensee, and Licensee hereby accepts from Licensor, upon the terms and conditions specified herein, the exclusive worldwide right and non-transferrable license to practice the inventions covered by the Patent Rights world-wide in the manufacture, use, marketing, sale and installation of the Product only for synthetic turf products for field. Licensee agrees to use its best efforts and invest a reasonable and fair amount in its Corporation to develop and promote the sale of the licensed products in the territories covered by this Agreement.
- 1.2 The Licensee agrees that the product will be manufactured, treated and installed according to the specifications given by the Licensor and will meet its quality standards.
- 1.3 The Licensee agrees to buy the components mentioned in Schedule B only from XL Surfaces International and for the price mentioned in Schedule B, except when agreed from both parties upon time to time according to the market condition.

2. ROYALTIES

- 2.1 Amount. For the rights and privileges granted under this license, Licensee will pay to Licensor during the term of this Agreement and subject to the other terms and conditions of this Agreement, a royalty equal to THREE AND A HALF PERCENT (3.5%) on Sales excluding installation fees.
- 2.2 Records. Licensee shall keep full, true and accurate books of account containing all particulars which may be necessary to show the amount payable as royalties to Licensor. Such books of account shall be kept at the Licensee's principal place of business. Such books and the supporting data shall be open during normal business hours at reasonable times for one year following the end of the calendar year to which they pertain, to the inspection of an independent certified public accountant retained by Licensor for the purpose of verifying Licensee's royalty statements, or Licensee's compliance in other respects with this license. Only one such inspection shall be made in any calendar year.

2.3 Reports: Payment of Royalties. Subject to 2.1, Licensee, within 75 days after the last day of each month, shall deliver to Licensor a true and accurate report, giving such particulars of the business conducted by Licensee during that month under this license as are pertinent to an accounting for royalty under this license. Each report shall include the following:

2.3.1 every month, Sales excluding installation fees of the Product

2.3.2 deductions, stating the basis for each deduction claimed; and

2.3.3 the royalty due Licensor less any amount recouped or deducted from the royalty otherwise payable. Simultaneously with the delivery of each such report, Licensee shall pay Licensor the royalty due for the period covered by such report. If no royalties are due, it shall be so reported.

2.4 Effect of Termination. Upon any termination of this Agreement, Licensee shall be relieved of all duties and obligations hereunder except to pay to Licensor all royalties accrued and unpaid up to that time and royalties on products produced and not sold or installed under this license prior to termination becoming effective, *provided, however*, that royalties on products not yet sold or installed as of the termination date shall not be payable by Licensor until such time as the products are in fact sold or installed. The treatment of royalty payments in the event of termination or partial termination due to litigation involving the Patent Rights is covered under Section 8 below.

3. TERM

The term of this Agreement shall be to the end of the respective terms for which the Patent Rights (and any additional patents covered hereby) were issued, unless terminated earlier as provided hereafter in this Agreement.

4. WARRANTIES OF LICENSOR

Licensor warrants and represents to Licensee that the following are true and correct:

4.1 Licensor is the owner of the entire right, title and interest in and to the Patent Rights and has the right to grant the license granted under this Agreement;

4.2 Licensor has not at any time prior to the effective date of this Agreement issued any license, grant or other working right to any person or entity under any or all of the Patent Rights;

4.3 There are no claims, actions, suits or proceedings pending or, to Licensor's knowledge, threatened against Licensor or relating to any or all of the claims

contained in the Patent Rights. There are no judgements or tax or other liens outstanding and unsatisfied against Licensor or any of Licensor's assets (including but not limited to the Patent Rights);

- 4.4 Licensor is a trust duly created, validly existing and in good standing under the *Laws of Barbados*. Licensor has the power and authority to own, lease, license, or operate all properties and assets now owned Licensor has heretofore delivered to Licensee complete and correct copies of its organizational documents, as amended and in effect on the effective date of this Agreement.

The foregoing warranties and representations shall survive the execution of this Agreement.

5. INDEMNITY

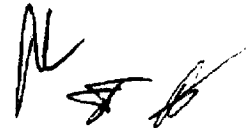
Licensor shall indemnify Licensee against all damages, costs and expenses (including reasonable attorney's fees and costs) which may result from infringement actions brought against Licensee on account of the manufacture, use, marketing, sale and installation of products containing the patented improvements covered by this Agreement, provided that such suit is based on the licensed inventions. This indemnity shall survive any termination of this Agreement. In such case, the Licensor should have the exclusive right to appoint the attorney.

6. INFRINGEMENT

Subject to the right of the Licensee in this section, in case of any infringement, the Licensor should defend the Patent. In the event that Licensee becomes aware of any infringement of any Patent Rights under which it is licensed or agreed to be licensed hereunder by Licensor, Licensee shall notify Licensor and shall be entitled by itself to take proceedings in the name of and with the approval of Licensor to restrain any such infringement at Licensee's own expense and for its own benefit as regards any damages and costs recovered. However, if the Licensee's legal cost in such case exceed any amount received as damages or otherwise, any excess will be recouped against further royalties. Licensor shall be entitled to be represented at such proceedings by its own counsel at Licensor's own expense. Licensee however, shall have no obligation whatsoever to Licensor, except upon official request of the Licensor, to bring any such proceedings.

7. USE OF LICENSOR'S NAME

Licensee shall, in connection with its activities under this License, use the name "XL Surfaces" or its equivalent, XLTURF or other trade name, trademark or service mark of Licensor with is prior written consent.



Licensors agree to allow Licensee to use the name "XL Surfaces" in various documents or lists for the purpose of informing third parties that Licensee is authorized to use "XL Surfaces" for purpose of manufacture, sale and commercialize products covered by the Patent Rights.

8. TERMINATION

- 8.1 If Licensee becomes bankrupt or insolvent or if Licensee's business is placed in the hands of a receiver, assignee or trustee, whether by Licensee's voluntary act or not, the license granted under this Agreement shall immediately terminate;
- 8.2 Upon any material breach or default by Licensee under this Agreement, including but not limited to, the non payment of royalties (where payable) for 3 months consecutive periods unless explained and detailed in the report or the non production of the said report, Licensors may terminate the license granted hereunder by giving written notice to Licensee of such default under the notice provisions of Section 13 below. Such notice shall become effective at the end of twenty business days from the giving of such notice, unless during such period Licensee cures any such breach or default.

9. EFFECT OF PATENT LITIGATION

If any claim or claims of the Patent Rights is held invalid, or the scope of such claim or claims is limited or defined by any judicial decree, order or judgement final beyond further right of appeal, no royalties shall thereafter be paid by Licensee with respect to the claim or claims held invalid, and the limitation or definition placed upon the claim or claims shall thereafter be followed in determining whether or not royalties are payable on products sold by Licensee and for all other purposes of this Agreement. Royalties which are terminated in accordance with this Section shall include all subject royalties accrued and unpaid as of the date of such final decree, order or judgement, and also all subject royalties on products manufactured but not sold as of such date. However, Licensors shall not be required to reimburse Licensee for the license issue fee or any royalties paid under this Agreement previous to the date of such final decree, order or judgement.

10. SCOPE OF PATENT RIGHTS

Licensors represent that it intends to file patent applications corresponding or regarding improvement to the U.S. patents covered by this Agreement. All such patent applications and patents shall be filed in the name and be the property of Licensors and shall be included in the Patent Rights covered by this Agreement and licensed to Licensee on the same terms and conditions.

11. KNOW-HOW COMMITMENT AND RE-ENGINEERING

- 11.1 Licensor shall from time to time, and to the extent it is reasonably necessary for the performance of this Agreement, furnish to Licensee at its manufacturing facility all information and specifications required as to design, engineering, manufacturing, and other operations, processes, or experience incidental to the manufacture of the products licensed under this Agreement.
- 11.2 Any improvement or new Patent developed by the Licensee regarding the Product, shall be assigned and transferred to the Licensor. In consideration of this transfer the Licensor will grant an exclusive License for the world that will be deemed to be included in the License granted by this Agreement.

Furthermore, any improvement or development of new Patent regarding the Product by the Licensor will be deemed to be included in this License without any further royalties or fees.

12. ASSIGNMENT; SUBLICENSE; SALE OF SHARES;

- 12.1 The license granted under this Agreement may be assigned or sublicensed by Licensee with the prior written consent and authorization of the Licensor. The Licensee may, without the payment of an additional license issue fee; sublicense any firm or corporation directly or indirectly controlled by, controlling, or under common control with Licensee, to practice any or all of the inventions covered by the Patent Rights in the manufacture, use, marketing, sale and installation of synthetic turf and of small-size and artificial large-size golf and other sporting facilities, to the same extent Licensee is permitted under this Agreement; and *provided further, that* upon prior written notice, this Agreement may be assigned by Licensee to the corporate successor to its entire business, in the manufacture of products under the license granted hereunder. Each such notice shall be accompanied by an acceptance in writing of the terms of this Agreement executed on behalf of the entity referred to in the notice. The licensor consents that any assignment or sublicense shall be conditional upon the licensor receiving full disclosure of the terms of such assignment or sublicense so that the licensor can satisfy itself that it will receive the full royalty fee to which it is entitled.
- 12.2 Any sales of shares of the capital stock of the Licensee by any of its shareholders shall be approved by the Licensor, and the approval should not be unreasonably withheld. In case of the control of Licensee would be modified, the Licensor will have the absolute right to renegotiate the terms and conditions of this Agreement. The actual shareholding of the Licensee is in the essence of this License Agreement.

13. NOTICES

Any offer, acceptance, rejection, notice, consent, request, authorization, permission, direction or other instrument required or permitted to be given hereunder shall be in writing and given by delivery or sent by fax or similar telecommunications device and addressed:

If addressed to the Licensee:

XL SURFACES INC.
1751, Richardson, suite 3147
Montreal (Quebec) H3K 1G6

Attention: Seymour Tomarin or Alain Lemieux

If addressed to Licensor:

HELMSLEY BARBADOS TRUST
2002, Worthy Down
Graeme Hall, Christ Church
Barbados, W.I.,

Attention: Andrew David Murray

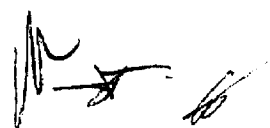
or such other address or telephone number as the party to whom such notice or other communication is to be given shall have specified in writing to the other party pursuant to this Section. Any notice or communication given under this Section shall be deemed to have been given as of the date it was so placed in the hands of any express courier service, or faxed, or as of the date of delivery in person.

14. ALL PARTIES REPRESENTED BY COUNSEL

All parties have retained their own respective independent legal counsel for representation in connection with this Agreement; and the parties knowingly and voluntarily, of their own free will and without any duress, accept all of the terms of this Agreement and sign the same as their own free act.

15. CORPORATE AUTHORITY

The warrant parties represent that they have taken all necessary corporate actions to authorize the execution, delivery and performance of this Agreement and the transactions contemplated thereby, and that the respective representative executing this Agreement on their behalf is duly authorized to act in such capacity. Licensor further warrants and represents that the execution, delivery and performance of this Agreement and the



transactions contemplated thereby have been duly authorized and approved by Licensor's Board of Directors and by Licensor's shareholders.

16. LEGAL REPRESENTATION; UNDERSTANDING OF AGREEMENT

In entering into this Agreement, the parties represent that they have relied upon the legal advice of their own respective attorneys, who are the attorneys of their own choice. The parties further represent that the terms of this Agreement have been completely read and explained to them by their respective attorney and that such terms are fully understood and voluntarily accepted by said parties.

17. ATTORNEY'S FEES AND OTHER COSTS

The parties shall bear all of their own attorney's fees, costs and other expenses incurred or arising in connection with the negotiation, review and execution of this Agreement and attached exhibit. If a party to this Agreement should file suit as a result of or in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and expenses from the other party.

18. BINDING AGREEMENT

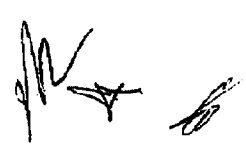
This Agreement shall be binding upon, and inure to the benefit of, the undersigned parties and their respective officers, directors, shareholders, employees, agents, attorneys, independent contractors, successors and assigns.

19. ENTIRE AGREEMENT; AMENDMENT

This Agreement and the attached exhibit contain the entire agreement of the parties with respect to the subject matter of this Agreement and supersede all prior agreements or understandings, written or oral, between the parties with respect thereto. Any waiver of any term or condition of this Agreement, or any amendment, modification or supplementation of this Agreement shall be effective only if it is in writing and signed by all of the parties.

20. SEVERABILITY

If a court of competent jurisdiction finds that any part of this Agreement is invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and the remaining provisions of this Agreement shall not, at the election of the party for whose benefit the provision exists, be in any way impaired.



PATENT

REEL: 012263 FRAME: 0432

21. HEADINGS

The headings used in this Agreement are for convenience of reference only and shall not be used in construing the provisions of the Agreement.

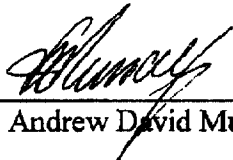
22. GOVERNING LAW

This Agreement shall be governed by and interpreted in accordance with the laws in force in the Province of Quebec, except that no doctrine of choice of law shall be used to apply the laws of any other state or jurisdiction.

23. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument.

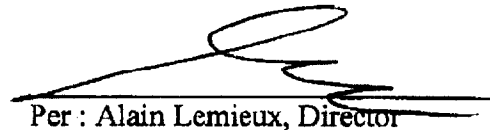
EXECUTED on the respective dates appearing under the parties' signatures below and effective as of the date upon which all of the parties have signed this Agreement.

LICENSOR**HELMSLEY BARBADOS TRUST**

Per : Andrew David Murray, Trustee

LICENSEE**XL SURFACES INC.**

Per : Seymour Tomarin, Director



Per : Alain Lemieux, Director

SCHEDULE A

<i>Applicant</i>	<i>Application Number</i>
Canadian Applications	
Helmsley Barbados Trust	PCT/CA01/00035
Helmsley Barbados Trust	CA2294071
Helmsley Barbados Trust	CA2294096
U.S. Applications	
Helmsley Barbados Trust	U.S. 09/445617
Helmsley Barbados Trust	U.S. 09/445618
U.S. Patents	
Helmsley Barbados Trust	U.S. 5,356,344
Helmsley Barbados Trust	U.S. 5, 373,667

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