

RE

03-14-2003

cket No.: 05900001AA

U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark Office



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Tab settings

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):  
**Select Release, LLC**

Additional names(s) of conveying party(ies)  Yes  No

3. Nature of conveyance:

- Assignment  Merger
- Security Agreement  Change of Name
- Other

Execution Date: **January 7, 2000**

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

Name: **Select Release Holdings, LLC**

Internal Address:

Street Address: **15310 Fox Briar Lane**

City: **Midlothian** State: **Va** ZIP: **23112**

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

4. Application number(s) or patent numbers(s):

If this document is being filed together with a new application, the execution date of the application is:

A. Patent Application No.(s)

**6,482,517 Issued on  
November 19, 2002**

B. Patent No.(s)

Additional numbers attached?  Yes  No

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

Name: **Ruth Tyler-Cross**

Internal Address: **Whitham, Curtis & Christofferson, PC**



**30743**

PATENT TRADEMARK OFFICE

Street Address: **11491 Sunset Hills Road, Suite 340**

City: **Reston** State: **VA** ZIP: **20190**

6. Total number of applications and patents involved: **1**

7. Total fee (37 CFR 3.41):.....\$ **40.00**

Enclosed - Any excess or insufficiency should be credited or debited to deposit account

Authorized to be charged to deposit account

8. Deposit account number:

**50-2041**

(Attach duplicate copy of this page if paying by deposit account)

03/13/2003 DBYRNE 00000109 6482517

DO NOT USE THIS SPACE

9. Statement and signature. 40.00 DP

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.

**Ruth Tyler-Cross Reg No. 45,922**

Name of Person Signing

Signature

**March 7, 2003**

Date

**8**

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

## AGREEMENT

THIS AGREEMENT, made effective as of this 7th day of January, 2000 ("Effective Date"), by and between Select Release, LLC, a Virginia limited liability company ("Select Release"), and Select Release Holdings, LLC, a Virginia limited liability company ("Holdings"). In exchange for the covenants made herein and for other good and valuable consideration, the receipt and sufficiency of which each party acknowledges, Holdings and Select Release agree as follows:

### I. DEFINITIONS

1.1 "Patents" – The term "Patents" shall mean U.S. provisional patent application Serial No. 60/058,309, PCT Patent Application Serial No. PCT/US98/18639, U.S. patent application Serial No. 09/297,997, and all patents and patent applications corresponding thereto, including but not limited to the national applications in the following jurisdictions: Australia, Brazil, Canada, People's Republic of China, Czech Republic, European Community, Hungary, India, Israel, Japan, Republic of Korea, Malaysia, Mexico, New Zealand, Poland, Singapore, Turkey and the United States.

1.2 "Technical Information" – The term "Technical Information" shall mean all trade secret subject matter and confidential information of Select Release, including all information relating to coated particles comprising a core and an exterior coating with the core comprising a matrix consisting essentially of at least one nanostructured liquid phase or at least one nanostructured liquid crystalline phase or a combination thereof that is owned by Select Release or as to which Select Release has the right to license or sublicense. The Technical Information includes the subject matter of the above-reference patent applications until issued or published.

1.3 "Select Release Trademarks" means all trade names, trademarks, service marks, logos, trade dress, and combinations marks, whether registered or not, which are owned by Select Release or in which Select Release holds any licensable ownership interest, including but not necessarily limited to the mark SELECT RELEASE and variations thereof used by Select Release, as well as any associated registrations or applications for registrations in any jurisdiction, and all of the goodwill associated with the business conducted under and symbolized by the Select Release Trademarks.

1.4 The "Intellectual Property" means all intellectual property interests owned or held by Select Release, including the Patents, the Technical Information, the Select Release Trademarks, as well as any other copyright or other intellectual property interests owned by Select Release.

1.4 "Perry's License" means that agreement entered into by and between Select Release and Perry's Majestic Beer, Inc. ("Perry's") dated December 5, 1998 pursuant to which Select Release granted a limited license to Perry's to use the Technology and Licensed Trademarks, as defined therein, exclusively within the Territory, the Exclusive Field and with the Products SR as defined therein.

## 2. ASSIGNMENTS

2.1 Select Release hereby assigns to Holdings, and Holdings hereby accepts assignment of the entire right, title and interest in and to the Intellectual Property, including the following:

- 2.1.1 Select Release hereby assigns to Holdings, and Holdings hereby accepts assignment of the entire right, title and interest in the invention described in Patents, including any divisions, continuations, continuations in part, and substitutes thereof and in and to any and all Letters Patent of the United States of America, and countries foreign thereto, which may be granted or have been granted for said invention, and in and to any and all reissues and reexaminations thereof, and in and to any and all priority rights, Convention Rights, and other benefits accruing or to accrue to Select Release, LLC, with respect to the filing of applications for patents or securing of patents in the United States and countries foreign thereto, unto Holdings, subject only to the license back granted under paragraph 4.1.1 of this Agreement Holdings shall be solely responsible for prosecuting and maintaining the Patents in its reasonable business judgment.
- 2.1.2 Select Release hereby assigns to Holdings, and Holdings hereby accepts assignment of the entire right, title and interest in the Technical Information, subject only to the license back granted under paragraph 4.1.2 of this Agreement.
- 2.1.3 Select Release hereby assigns to Holdings, and Holdings hereby accepts assignment of the entire right, title and interest in and to the Select Release Trademarks, including all associated registrations and applications for registration, and all of the goodwill of the business conducted by Select release, subject only to the license back granted in paragraph 4.1.3 of this Agreement.

2.2 The assignments in the foregoing paragraph 2.1 include assignment of all rights to assert causes of action with respect to misappropriation or infringement of the assigned properties prior to the Effective Date, and all associated rights of recovery.

## 3. RIGHTS TO PROSECUTE, ENFORCE AND DEFEND

3.1 Holdings hereby agrees that, upon this assignment, it shall assume the right and responsibility to prosecute and maintain the Patents, as well as to obtain and maintain registrations of the Select Release Trademarks.. As the assignee of the Intellectual Property, Holdings may exercise this right in its discretion and business judgment, including but not limited to delegating or transferring such responsibilities to counsel or

other third parties of its choice. However, Holdings acknowledges that Select Release may retain certain rights or obligations under the Perry's License to (a) prosecute and maintain the Patents; (b) register and maintain the Select Release Trademarks; (c) defend the Patents and Select Release Trademarks in litigation in the Territory; and (d) enforce the Patents and Select Release Trademarks in the Territory. Holdings and Select Release agree that Select Release does not assign and that Holdings does not assume any of Select Release's obligations under the Perry's License, but further agree that this Agreement is not intended to deprive Select Release of its ability to fulfill its contractual obligations under the Perry's License. Accordingly, Holdings agrees to:

- 3.1.1 promptly inform Select Release of any material decisions not to prosecute, register or maintain the Patents or Select Release Trademarks in the United States or Canada;
- 3.1.2 permit Select Release to assume responsibility, at its own expense, for the prosecution, registration or maintenance of the Patents or Select Release Trademarks in the United States and Canada, including but not limited to granting limited powers of attorney, but only upon such consultation with Holdings or its designees as they may request and only as is strictly required for Select Release to fulfill its contractual obligations under the Perry's License;
- 3.1.3. promptly notify Select Release and send to Select Release copies of all papers that have been served with respect to any action brought or threatened to be brought in the United State or Canada against Perry's or its lawful successor-in-interest because of use by Perry's or its lawful successor-in-interest of the Intellectual Property within the scope of the license in the Perry's License;
- 3.1.4 permit Select Release to assume responsibility itself or to authorize Perry's or its lawful successor-in-interest to assume responsibility for the defense of any action against Perry's or its successor-in-interest because of the latter's use of the Intellectual Property within the scope of the license in the Perry's License, and also to provide reasonable cooperation to Select Release, but only as is strictly necessary for Select Release to fulfill its contractual obligations under the Perry's License;
- 3.1.5. promptly notify Select Release of its knowledge of any third party infringement or threatened infringement of the Patents or of the Select Release Trademarks within the scope of the license grant and the Exclusive Field in the Perry's Agreement, in either case within the United States and Canada;
- 3.1.4 permit Select Release to assume responsibility itself, or to authorize Perry's or its lawful successor-in-interest to assume responsibility for bringing suit in Holdings' name or in the name of Select Release or

Perry's (or its lawful successor-in-interest) as necessary, to restrain infringement as described in paragraph 3.1.3 and to recover profits and damages, but only as is strictly necessary for Select Release to fulfill its contractual obligations under the Perry's License; and

- 3.1.5 require any designee or assignee of Holdings that acquires responsibility to prosecute, register, maintain, enforce or defend the Patents or the Select Release Trademarks to similarly notify Holdings and permit Holdings (and, as allowed by this paragraph 3, Select Release and Perry's or its lawful successor-in interest) to prosecute, register, maintain, enforce or defend as is strictly necessary for Select Release to fulfill its contractual obligations under the Perry's License.

3.2 Holdings and its designees and assignees, if any, assume no obligation or responsibility to pay legal fees for or to otherwise compensate Select Release or Perry's or its lawful successor-in-interest for any such fees or expenses either may incur should either assume a right pursuant to this paragraph 3 or, in the case of Perry's or its lawful successor-in-interest, the Perry's License, to prosecute, register, maintain, enforce or defend the Patents or the Select Release Trademarks.

#### 4. LICENSE

4.1 Holdings hereby grants to Select Release a limited, fully-paid-up license (including the right to sublicense) the Intellectual Property solely for use and exploitation as is strictly necessary for Select Release to fulfill its contractual obligations under the Perry's License, and for no other uses or purposes. This license back includes the following:

- 4.1.1 Holdings hereby grants a fully paid-up license (including the right to sublicense) to Select Release under Patents of those rights (including the right to sublicense) as is strictly necessary for Select Release to perform its contractual obligations under and pursuant to the Perry's License.
- 4.1.2 Holdings hereby grants a fully paid-up license (including the right to sublicense) under Technical Information of those rights as is strictly necessary for Select Release to perform its contractual obligations under and pursuant to the Perry's License.
- 4.1.3 Holdings hereby grants to Select Release a fully paid-up license (including the right to sublicense) to use the Select Release Trademarks and authorize the use of the Select Release Trademarks to the extent strictly necessary for Select Release to perform its contractual obligations under and pursuant to the Perry's License. All use of the Select Release Trademarks shall at all times be subject to such quality control and form of use requirements as Holdings may prescribe from time to time, and Select Release agrees to provide Holdings with samples and access to products

sold under the Select Release Trademarks as well as samples of packaging, labeling and other presentations of the Select Release Trademarks for purposes of ensuring compliance with such quality control and form of use requirements. Select Release shall be responsible for ensuring compliance with such requirements by Perry's or its lawful successor-in-interest or their sublicensees as well as for demonstrating such compliance to Holdings.

4.2. The foregoing licenses back to Select Release grant only such rights to exploit the Patents and the Technical Information as is strictly necessary for Select Release to fulfill its contractual obligations under the Perry's License, and no other rights. Holdings retains all rights not expressly granted, and Select Release shall make no other use or exploitation of the Patents or the Technical Information other than as is authorized herein.

## 5. COMPENSATION

5.1 As partial consideration for the assignment set forth in paragraph 2, Holdings agrees to pay fully or arrange for full payment of all patent prosecution costs incurred on or before the Effective Date as well as legal fees and disbursements incurred by Select Release to date, including with respect to all of Select Release's and Holdings' dealings, with the law firm LeClair Ryan, A Professional Corporation, on or before the Effective Date.

## 6. TERMINATION

6.1 In the event that the Perry's License terminates, expires, or otherwise ceases to be in effect, the license back in paragraph 3 and the obligations assumed by Holdings in paragraph 2 shall expire automatically.

## 7. GENERAL TERMS.

7.1 This Agreement is the entire agreement between the parties relating to the subject matter of this Agreement, and it supersedes all prior agreements, representations and understandings of any type relating to the subject matter of this Agreement. This Agreement can be amended only by a written instrument executed by duly authorized representatives of each party.

7.2 Select Release may not assign or transfer this Agreement or any of its rights under this Agreement without the express prior written agreement of Holdings. In addition, Select Release may not sublicense the limited rights acquired by the license back in this Agreement to any entity other than the lawful successors-in-interest to Perry's rights under the Perry's License.

7.3 Should any provision of this Agreement be finally determined by a court of competent jurisdiction to be invalid, illegal, unenforceable or otherwise contrary to law or

equity, the parties agree that this Agreement shall be reformed automatically to the extent necessary to cure, or as need be, delete such offending provision, and that the remainder of this Agreement that can be give effect without the benefit of such modified or deleted provisions shall be given effect.

7.4 A waiver by either party of a breach of any term or condition of this Agreement shall not be deemed or construed to be a waiver of any subsequent breach of the same or any other term or condition contained herein. All remedies, either under this Agreement or by law or otherwise afforded to any party hereto, shall be cumulative and not alternative.

7.5 This Agreement shall be governed and construed in accordance with the substantive law of the Commonwealth of Virginia, without regard to its choice of law rules.

7.6 The headings in this Agreement are included for ease of reference only and shall not in any way affect the construction or terms of this Agreement.

7.7 This Agreement is entered into by and between the parties alone, and is for the benefit of the parties alone. There are no third party beneficiaries to this Agreement, and no third party shall have any right to sue or recover by reason of any breach of this Agreement.

7.8 The parties are separate entities, and nothing in this agreement shall create or be construed as creating a relationship of agency, partnership, joint venture, employer/employee or the like between the parties. Select Release has no authority to enter into a contract or make any representation or warranty on behalf of Holdings.

7.9 Any notice required to be given under this Agreement shall be in writing and sent by hand, by first class mail, by confirmed facsimile transmission, by confirmed electronic mail message, or by express courier and addresses to the parties as follows:

If to Holdings:

Select Release Holdings, L.L.C.  
15310 Fox Briar Lane  
Midlothian, Virginia 23112  
Attention: Manager

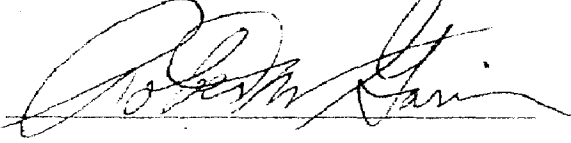
And If to Select Release:

Select Release, L.L.C.  
15310 Fox Briar Lane  
Midlothian, Virginia 23112  
Attention: Manager

or such other names, addresses or numbers as a party may specify by proper notice. All notices shall be deemed to be effective on the date of transmission or delivery.

IN WITNESS WHEREOF, the parties so agree by their duly authorized representatives.

SELECT RELEASE, LLC



Its: AN AUTHORIZED REPRESENTATIVE  
OF FOX BRIAR, LLC

SELECT RELEASE HOLDINGS, LLC



Its: AN AUTHORIZED REPRESENTATIVE  
OF FOX BRIAR, LLC

Acknowledgement:

Commonwealth of Virginia )  
 ) ss:  
City/County of Richmond )

On this 7<sup>th</sup> day of January, 2000, before me appeared ROBERT W. GARRISON, to me known and known to me to be the person who executed the foregoing instrument on behalf of Select Release, L.L.C., and he acknowledged the same to be done as a free act, on behalf of and with the authority of Select Release, L.L.C.

Sarah K. Runnels  
Notary Public  
SARAH K. RUNNELS My Commission expires 6/30/03

Acknowledgement:

Commonwealth of Virginia )  
 ) ss:  
City/County of Richmond )

On this 7<sup>th</sup> day of January, 2000, before me appeared ROBERT W. GARRISON, to me known and known to me to be the person who executed the foregoing instrument on behalf of Select Release Holdings, L.L.C., and he acknowledged the same to be done as a free act, on behalf of and with the authority of Select Release Holdings, L.L.C.

Sarah K. Runnels  
Notary Public  
SARAH K. RUNNELS My Commission expires 6/30/03