

**MAR**



**12-3-98**

**101024980**

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

1. Name of conveying party(ies):

**D&L Grower Supplies, Inc.**  
**33 Hess Road**  
**Leola, PA 17540-0241**

- Individual(s)
- General Partnership
- Corporation-State
- Other
- Association
- Limited Partnership

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

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date: **November 20, 1998**

2. Name and address of receiving party(ies)

Name: **Griffin Greenhouse Supplies, Inc.**

Internal Address:

Street Address: **1619 Main Street**

City: **Tewksbury** State: **MA** ZIP: **01876-0036**

Individual(s) citizenship \_\_\_\_\_

Association \_\_\_\_\_

General Partnership

Limited Partnership

Corporation-State

Other: **Delaware limited liability company**

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
(Designations must be a separate document from assignment)  
Additional name(s) & address(es) attached?  Yes  No

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)  
**2,142,899**

Additional numbers attached?  Yes  No

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

Name: **James W. Westra, Esq.**

Internal Address:

Street Address: **Hutchins, Wheeler & Dittmar**  
**101 Federal Street**

City: **Boston** State: **MA** ZIP: **02110**

6. Total number of applications and registrations involved:.....

**1**

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

Enclosed

Authorized to be charged to deposit account

**40E**

8. Deposit account number:

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

12/04/1998 DNGLIYEN 00000095 2142899

01 FC:481

40.00 DP

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

Richard L. Bay  
Signature  
D&L Grower Supplies, Inc.

11/20/98  
Date

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



Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patents & Trademarks, Box Assignments  
Washington, D.C. 20231

364314-1

## BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT

This Bill of Sale, Assignment and Assumption Agreement (as currently existing and from time to time in effect, this "Agreement") dated as of the 20th day of November, 1998, by and between Griffin Greenhouse Supplies, Inc., a Massachusetts corporation ("Purchaser"), D&L Grower Supplies, Inc., a Pennsylvania corporation ("Seller").

### RECITALS:

WHEREAS, pursuant to a certain Asset Purchase Agreement, dated as of October 27, 1998 (the "Purchase Agreement"), by and between Purchaser, Seller and Daniel Hobson and Richard Berry, the principal stockholders of Seller (collectively, "Principals", and each individually, a "Principal"). Purchaser has agreed to acquire from Seller and Seller has agreed to bargain, sell, assign, transfer and convey to Purchaser all of Seller's right, title and interest in and to the Assets (as hereinafter defined); and

WHEREAS, the parties hereto desire to carry out such transactions by this Agreement and upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, for the consideration set forth in the Purchase Agreement, and in consideration of the premises and mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

#### A. Bill of Sale and Assignment.

(1) Upon the terms and subject to the conditions contained in the Purchase Agreement as of the date hereof, Seller hereby sells, assigns, transfers and conveys to Purchaser, and Purchaser hereby purchases, acquires and accepts from Seller, the Business of Seller as a going concern, including all of Seller's assets of every kind and description, other than those assets included in the Excluded Assets as defined below (the "Assets"). The Assets shall include, without limitation, the following assets and properties:

(a) all assets owned by Seller on the date hereof and reflected on the balance sheet of the Seller dated as of April 30, 1998 (the "Balance Sheet"), with only such changes therein as have occurred in the ordinary course of the Business since the date of such Balance Sheet;

(b) all trade and other accounts receivable and other Indebtedness owing to Seller and including the benefit of all collateral, security, guaranties, and similar undertakings received or held in connection therewith;

- (c) all inventories wherever located;
- (d) all prepaid expenses, deposits and rights to refunds and rebates from customers and suppliers, including prepaid premiums under insurance policies;
- (e) all machinery, equipment, fixtures and furniture;
- (f) all motor vehicles;
- (g) all leased real estate;
- (h) all rights and interests of Seller in and to any Contracts, including contracts for the purchase of materials, supplies and services and the sale of products and services, equipment leases and any other contract of Seller;
- (i) all of Seller's books, records and other data other than those items specified as Excluded Assets;
- (j) all of Seller's goodwill, dealer and customer lists, sales and marketing information, and all know-how, technology, drawings, software and other intangible assets of Seller;
- (k) all of Seller's interest in patents, patent applications, proprietary designs, copyrights, trade names, service marks, trademarks and trademark applications (including, without limitation, the exclusive right to use the name "D&L Grower Supplies," "Your Growth is Our Concern," and all variants thereof), in each case together with the goodwill appurtenant thereto, all federal, state, local and foreign registrations thereof, if applicable, all common law rights thereto, and all claims or causes of action for infringement thereof;
- (l) all permits, licenses, and approvals of all federal, state, local or foreign governmental or regulatory authorities or industrial bodies which are held by Seller, to the extent the same are transferable;
- (m) all rights of Seller to causes of action, lawsuits, judgments, claims and demands of any nature;
- (n) all present and future insurance proceeds which may be payable under the Insurance Policies listed on Schedule 3.16 to the Purchase Agreement; and
- (o) except for Excluded Assets, all other items of property, real or personal, tangible or intangible, including without limitation all securities, corporate names, computer programs, tapes and discs owned by the Seller.

(2) Excluded Assets. The Assets shall not include, and Seller will retain ownership of, the following assets (collectively, the "Excluded Assets"):

- (a) all cash and cash equivalents;
- (b) Seller's minute and stock record books, journals, ledgers and books of original entry;
- (c) those assets of Seller expressly set forth on Exhibit B to the Purchase Agreement; and
- (d) Seller's rights under the Purchase Agreement.

**TO HAVE AND TO HOLD** all of the Assets unto the Purchaser, its successors and assigns, for its own use and behalf forever.

(3) It is the intention of Seller to transfer irrevocably the absolute right, title and interest in and to the Assets to the Purchaser.

**B. Assumption of Seller's Obligations.**

Purchaser does not and shall not assume or agree to assume the liabilities and obligations of Seller of any nature, direct, contingent or otherwise, except (i) the obligations which arise out of the actions of Purchaser from and after the transfer of the Assets to Purchaser, (ii) the accounts payable and accrued expenses of Seller set forth on the April 30, 1998 Balance Sheet and the accounts payable and accrued expenses incurred since April 30, 1998 in the ordinary course of business, and (iii) all liabilities and obligations with respect to the performance under the Contracts assumed by Purchaser from and after the date hereof (all of such assumed liabilities being hereinafter referred to as the "Assumed Liabilities"); Purchaser hereby assumes, and agrees to timely pay, perform and discharge, only the Assumed Liabilities. Without limiting the generality of the foregoing, it is expressly agreed that Purchaser shall not have any liability to, or in respect of, and that Seller shall retain and be exclusively responsible for (i) any employees or Employee Benefit Plans of Seller, except for liabilities and obligations arising solely out of the employment of such persons by Purchaser after the date hereof, and except for liabilities and obligations reflected on the Closing Balance Sheet, (ii) any Taxes of Seller arising or relating to any period on or prior to the date hereof or any activity of Seller prior to or after the date hereof; or (iii) any indebtedness for borrowed money of the Seller.

**C. Further Assurances.** From time to time after the date hereof, at Purchaser's request and without further consideration from Purchaser (other than reimbursement of out-of-pocket expenses), Seller hereby agrees to execute and deliver such other instruments of conveyance and transfer and to take such other action as Purchaser may reasonably require to more effectively convey, transfer to and vest in Purchaser all of the Assets. Without limiting the generality of the foregoing, Seller covenants and agrees that from time to time at the request of Purchaser and

without further consideration, (other than reimbursement of out-of-pocket expenses), Seller will execute, deliver and acknowledge (or cause to be executed, delivered and acknowledged) all such other instruments, documents and agreements and take, do and perform all such other acts as may reasonably be required in order to vest in and confirm to Purchaser the title of Seller to, and their right to use and enjoy, the Assets hereby agreed to be and intended to be conveyed to Purchaser.

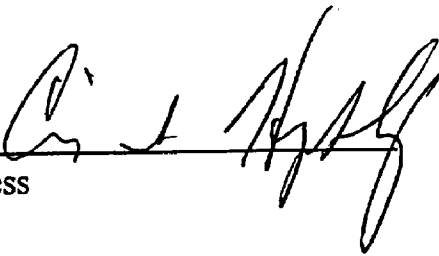
D. Miscellaneous.

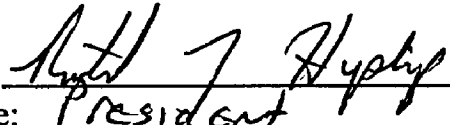
- (1) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.
- (2) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns.
- (3) This Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Massachusetts to the full extent permitted by applicable law, without giving effect to the conflicts of law principles thereof.
- (4) All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Purchase Agreement.
- (5) The use of any singular term shall include the plural and vice versa.
- (6) Nothing contained herein is intended to enlarge or diminish the covenants, representations and warranties regarding the Assets contained in the Purchase Agreement, which representations and warranties shall survive the execution and delivery of this Agreement as set forth in the Purchase Agreement.

**[Remainder of Page Intentionally Left Blank]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as an instrument under seal the day and year first set forth above.

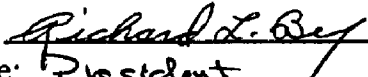
Griffin Greenhouse Supplies, Inc.

  
Witness

By:   
Title: President

D&L Grower Supplies, Inc.

  
Witness

By:   
Title: President

358367-3



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**  
ASSISTANT SECRETARY AND COMMISSIONER  
OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

**DATE: May 20, 1999**

**HUTCHINS, WHEELER & DITTMAR**  
**JAMES W. WESTRA, ESQ.**  
**101 FEDERAL STREET**  
**BOSTON, MA., 02110**

**NOTICE OF COVER LETTER RECEIVED WITHOUT ASSIGNMENT ATTACHED**

Thank you for your request to record a document with the Patent and Trademark Office. However, the attached cover letter was received in the U.S. Patent and Trademark Office, Assignment Branch without an assignment document attached. We are returning the cover letter to you.

Please resubmit the original cover letter along with a legible original assignment, or certified copy. If you have already received your assignment back recorded or wish not to record the assignment at this time please disregard this notice and keep the cover letter for your records. If you have any questions, you may contact the undersigned at (703) 308-9723.

The assignment fees are as follows:

Patent Assignment  
(for each property) \$40.00

Trademark Assignment  
(including one property) \$40.00  
(each additional property) \$25.00

Sincerely,

Pearlene Foster,

Paralegal Specialist