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U.S. Patent & TMO/TM Mail Rpt Dt #70



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### RECORDATION FORM COVER SHEET TRADEMARKS ONLY

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TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

#### Submission Type

- New
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Document ID #
- Correction of PTO Error  
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#### Conveyance Type

- Assignment  License
- Security Agreement  Nunc Pro Tunc Assignment
- Merger  Effective Date  
Month Day Year
- Change of Name
- Other

#### Conveying Party

Mark if additional names of conveying parties attached

Execution Date  
Month Day Year

Name

Formerly

- Individual  General Partnership  Limited Partnership  Corporation  Association
- Other

Citizenship/State of Incorporation/Organization

#### Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

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  - Other
- If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

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Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Pages**

Enter the total number of pages of the attached conveyance document including any attachments. #

**Trademark Application Number(s) or Registration Number(s)**

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

**Number of Properties**

Enter the total number of properties involved. #

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41): \$

Method of Payment: Enclosed  Deposit Account

Deposit Account  
(Enter for payment by deposit account or if additional fees can be charged to the account.)  
Deposit Account Number: #

Authorization to charge additional fees: Yes  No

**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. Charges to deposit account are authorized, as indicated herein.

Name of Person Signing

Signature

Date Signed



07-26-2000

U.S. Patent & TMO/c/TM Mail Rpt/Dt. #70

AGREEMENT OF SALE

THIS AGREEMENT, made and entered into as of the 30th day of June, 2000, by and between Alpine Gem Flower Shippers, Inc., a Montana corporation, wholly owned by U.S.A. Floral Products, Inc. a Delaware corporation, hereinafter called Seller, and Alpine Flower Growers, Inc., a Montana corporation, hereinafter called Buyer.

WHEREAS, the Seller owns the assets that are subject to liabilities and desires to sell the assets and transfer the liabilities to Buyer, except as otherwise stated, and the Buyer desires to purchase the assets and is willing to assume the liabilities from the Seller, upon the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants, conditions and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

WITNESSETH

1. Agreement to Sell. Seller in consideration of the payments, covenants, and agreements to be made and performed on the part of Buyer, as hereinafter set forth, agrees to sell and convey unto Buyer, free and clear from all liens and encumbrances except as herein specified, all of the assets of the business of Seller, whose business operations are based in Thompson Falls, Montana, and Watsonville, California:

- a. **Equipment.** All operating equipment utilized in connection with the business of Seller including the packing and shipping equipment.
- b. **Office Assets.** All office furniture, fixtures, equipment including computers and software, and supplies of the business of Seller.
- c. **Vehicles.** The four (4) vehicles owned by Seller, being a GMC van, a Ford van, and two Isuzu vans.
- d. **Inventory.** The existing inventory of the business.

- e. Receivables. All of the accounts receivable of Seller as of the opening of business on the date of Closing of this Agreement.
- f. Names. All registered trade names, trademarks, or other proprietary rights in the name Alpine Gem or any derivatives thereof, along with all rights to the business name Alpine Gem Flower Shippers in any and all states.
- g. Leases. The interest of Seller in the lease concerning the Thompson Falls business location, which is currently a month-to-month lease. The Watsonville lease has expired and assets on that property will have to be immediately removed.
- h. All Other Property. All other tangible and intangible property of Seller including rights to telephone numbers, facsimile numbers, addresses, goodwill, customer and supplier agreements, customer and supplier names and lists, prepaid insurance and other accounts, trade organization affiliations, and all other tangible and intangible property utilized in connection with the business of Seller.

The above are collectively referred to as the "Acquired Assets."

Notwithstanding the above, the Acquired Assets shall not include, (i) any Cash in excess of the amount referred to in Section 2c of this Agreement, or (ii) any of the rights of the Seller under this Agreement or under any side agreement between the Seller on the one hand and the Buyer on the other hand entered into on or after the date of this Agreement.

2. Agreement to Buy; Manner of Payment; Assumption of Liabilities. Buyer

agrees to purchase the Acquired Assets, to pay Seller for the purchase, and to assume liabilities as follows:

- a. Buyer shall pay Seller the sum of One Million Dollars (\$1,000,000.00) in cash payable via wire transfer to an account designated by Seller.
- b. In addition to the above payment, Buyer expressly assumes and agrees to become responsible for the following Assumed Liabilities:

All liabilities and obligations of the Seller (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due), including:

- (1) All liabilities of the Seller for unpaid state and municipal taxes with respect to periods prior to the Closing;

- (2) All liabilities and obligations of the Seller under its Employee Benefit Plans, including without limitation its 401(k) Plan, and Health and Welfare Plans;
- (3) All liabilities and obligations of the Seller under agreements, contracts, leases, licenses, and other arrangements;
- (4) All liabilities and obligations of or relating to the Seller with respect to environmental matters, including without limitation those arising under Environmental, Health, and Safety Requirements;
- (5) All obligations of the Seller to indemnify any person (whether such indemnification is for judgments, damages, penalties, fines, costs, amounts paid in settlement, losses, expenses, or otherwise and whether such indemnification is pursuant to any statute, charter document, bylaw, agreement, or otherwise);
- (6) All other liabilities and obligations of the Seller set forth in the Seller's most recent balance sheet dated May 31, 2000;
- (7) All obligations of Seller to furnish goods, services and other benefits to another party after Closing or to pay for goods, services and other benefits to another party after Closing;
- (8) All unfunded payroll tax liabilities and deferred compensation plans and other employee benefits, including accrued vacation;
- (9) The routine interest expense and management fees payable to U.S.A. Floral Products, Inc., the parent company of Seller through May 31, 2000; and
- (10) All other ordinary business expenses incurred by Seller prior to Closing.

PROVIDED HOWEVER, that the Assumed Liabilities shall not include:

- (a) Any liability or obligation due Bankers Trust Company, as Arranger and Administrative Agent, in connection with the Credit Agreement dated as of October 16, 1997, and Amended and Restated as of October 2, 1998;
- (b) Any and all amounts that may be due to or paid through U.S.A. Floral Products, Inc., the parent company of Seller [excepting amounts payable under subparagraph 2b(9)];
- (c) Any federal and state income or income related taxes owed or accrued in connection with the business through the time of

Closing or any taxes owed as a result of the transfer of the Acquired Assets; and

(d) Any and all liabilities or obligations covered by insurance of Company.

c. Buyer has coordinated matters with personnel of Seller to assure the LaSalle bank account has sufficient funds to cover checks drawn on that account as identified by Seller's personnel at Thompson Falls. Checks drawn since June 19, 2000, are identified in Exhibit A hereto. Funds remaining in bank accounts after these checks clear shall remain Seller's property.

3. Possession. Possession of the assets and property of the business involved shall be delivered concurrently with Closing. All subsequent profits or losses from Buyer's operation of its business shall accrue for the benefit or detriment of Buyer.

4. Leases and Assignment. The Thompson Falls business is currently operated on leased premises. The term of the lease has expired and it continues as a month-to-month lease. The interest of Seller in that lease is hereby assigned to Buyer. The Watsonville business is also operated on leased premises. That lease has expired and Buyer must promptly remove properties from those premises.

5. Bill of Sale. This instrument shall be deemed a Bill of Sale transferring title to the property and assets to Buyer. Additional transfer documents shall be prepared transferring the trademark, trade names, titles, specific assets and properties as may be required to provide appropriate public record and notice of the transfer of interest. The parties shall cooperate in good faith using best efforts to complete and submit for filing or recording such documents within four (4) weeks of the date of Closing.

6. Covenants of Buyer. Buyer covenants, warrants, and agrees as follows:

a. Authority. Buyer is a corporation duly organized, validly existing and in good standing under the laws of Montana, and John Q. Graham, Jr., as President of the Buyer corporation has the full legal right, power and authority to enter into this Agreement on behalf of corporation.

- b. **Inspection.** Buyer acknowledges having inspected the property and assets of the business and accepts them in their current condition. Buyer further acknowledges that Seller has made no warranty or representation, expressed or implied, at law or at equity, with respect to the Acquired Assets or Assumed Liabilities or operations, including without limitation, merchantability or fitness for any particular purpose, and any and all representations and warranties are expressly disclaimed. Further, Buyer acknowledges that it is purchasing the Acquired Assets on an "as-is" or "where-is" basis.
- c. **Records.** Buyer shall cooperate with Seller to provide such portions of business records as may be reasonably required by Seller for taxes, legal proceedings, or other appropriate legal and business matters.

7. Covenants of Seller. Seller covenants, warrants, and agrees as follows:

- a. **Authority.** Seller is a corporation duly organized, validly existing and in good standing under the laws of Montana, and the officers executing this instrument have the full legal right, power and authority to enter into this Agreement on behalf of corporation.
- b. **Bankers Trust.** Within four (4) weeks of Closing, Bankers Trust Company, as Collateral Agent shall provide a full and total release of its interest in the assets being sold hereunder. A commitment to release shall be provided Buyer at Closing.
- c. **Title.** Seller has title to and is lawfully in possession of all property transferred, subject only to exceptions herein noted.
- d. **Encumbrances.** To the best of Seller's knowledge, there are no judgments, liens, encumbrances or proceedings pending in any court of record against Seller and the Acquired Assets herein concerned, subject only to exceptions herein noted. The corporate financial statements include all liabilities and commitments known to officers and personnel of Seller and its parent company; this covenant does not extend to information of officers and employees who have physically worked at the business locations in Thompson Falls and Watsonville.
- e. **Information.** The parties acknowledge that a substantial portion of the consideration for this Agreement is the purchase of numbers, addresses, goodwill, customer and supplier names and lists, and similar properties. Seller for itself and its parent company agrees that such items of Seller shall not otherwise be sold or distributed to others, or transferred or utilized by affiliate entities. Buyer specifically acknowledges that it is not the exclusive purchaser or seller of many of these customers and suppliers, and further acknowledges that affiliates of Seller may deal with some of these same entities currently.
- f. **Financial Position.** Seller is financially solvent and is not involved in or threatened with insolvency, bankruptcy, or other creditor proceedings.

8. Closing. This transaction shall be closed as of 5:00 p.m., June 30, 2000, notwithstanding that additional time may be required for final documentation.

9. Names. As part of this transaction Seller is transferring to Buyer all of its rights in the name Alpine Gem or any derivative or similar names utilized. In furtherance thereof, the following action shall be taken:

- a. The registered trademark, along with any other registrations of such name, shall be transferred to Buyer by registering, filing or taking other appropriate action.
- b. Seller shall take steps required to release the name of Alpine Gem Flower Shippers, Inc. by terminating the corporation, changing the name, or taking other action. Such steps shall be completed no later than July 31, 2000, and the steps shall be coordinated with Buyer so that Buyer can obtain an assumed business name of the key words.

10. Good Faith. The parties agree to cooperate in good faith in furtherance of this Agreement, and to execute such additional documents as are necessary or appropriate in furtherance of its intent.

11. Miscellaneous. The parties hereto mutually agree to the following:

- a. Enforcement. In the event any action is brought to enforce the provisions of this Agreement, the prevailing party shall be entitled to costs of suit and any appeal thereon, including reasonable attorneys fees.
- b. Governing Law. This Agreement shall be governed by and interpreted under the laws of Montana. In the event any action is required hereunder, venue shall be in Sanders County, Montana.
- c. Notice. Any notice required or provided for hereunder shall be given by overnight mail by recognized commercial carrier. A concurrent notice shall be sent by facsimile as follows:

(1) To Buyer: John Q. Graham, Jr., President  
Alpine Flower Growers, Inc.  
280 Childs Rd.  
Trout Creek, MT 59874

Facsimile (406)827-3851



With a copy to: Alexander A. George  
George Law Offices  
210 N. Higgins Ave., Ste. 234  
Missoula, MT 59802

Facsimile (406)721-4211

(2) To Seller: Dwight L. Ferguson, President  
U.S.A. Floral Products, Inc.  
1025 Thomas Jefferson St. N.W., Ste. 300 East  
Washington, D.C. 20007

Facsimile (202)333-5795

With a copy to: Julie Waters, General Counsel  
U.S.A. Floral Products, Inc.  
1025 Thomas Jefferson St. N.W., Ste. 300 East  
Washington, D.C. 20007

Facsimile (202)333-5794

- d. Parties. This Agreement shall be binding upon the parties hereto, their representatives, successors, and assigns.
- e. Complete Agreement. This Agreement contains the entire understanding of the parties and supersedes all prior agreements. No modification hereof shall be effective unless it is in writing and signed by all parties hereto.
- f. Definitions. Unless the express language of this Agreement indicates otherwise, the use of singular and plural words, present and future tense, and masculine, feminine, and neuter gender shall be deemed interchangeable.
- g. Waiver. The failure of either party to insist in any one or more instances upon strict performance of any covenants or provisions of this Agreement shall not be construed as a waiver or relinquishment for the future of such covenant or provision with respect to a subsequent breach.
- h. Cumulative Remedies. Each and every one of the rights, remedies and benefits of this Agreement shall be cumulative and shall not be exclusive of any other rights, remedies or benefits either provided in this Agreement or allowed by law.
- i. Timeliness. Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

SELLER:

BUYER:

Alpine Gem Flower Shippers, Inc.

Alpine Flower Growers, Inc.

By \_\_\_\_\_  
Its \_\_\_\_\_

By *John A. Graham*  
President *John A. GRAMAM*

\* \* \*

The undersigned, being the sole owner of Seller, hereby consents to the foregoing agreement, and further agrees to take action that may be required of it to allow compliance by Seller. The undersigned specifically acknowledges paragraphs 2c, 7b and 9.

U.S.A. Floral Products, Inc.

By *MW Stronfield*  
Its *C.E.O*