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RECORDATION 102068129
TRADEMARKS ONLY

U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

Form PTO-1594
(Rev. 03/01)
OMB No. 0651-0027 (exp. 5/31/2002)

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):
Monrovia Nursery Company

4-15-02

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

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

2. Name and address of receiving party(ies)
Name: Proven Winners North America LLC
Internal 1566 La Pradera Dr., Ste. 5
Address: _____
Street Address: Campbell, CA 95008
City: _____ State: _____ Zip: _____

Individual(s) citizenship _____
 Association _____
 General Partnership _____
 Limited Partnership _____
 Corporation-State California LLC
 Other _____

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

3. Nature of conveyance:
 Assignment Merger
 Security Agreement Change of Name
 Other Non-exclusive license
 Execution Date: March 1, 2002

4. Application number(s) or registration number(s):
 A. Trademark Application No.(s)
 76/202956

B. Trademark Registration No.(s)

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:
 Name: Nicholas Staddon
 Internal Address: Monrovia Nursery Company

 Street Address: 18331 East Foothill Blvd.

 City: Azusa State: CA Zip: 91741

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41).....\$40.00
 Enclosed
 Authorized to be charged to deposit account

8. Deposit account number:

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

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.

Gilbert N Resendez Gilbert N Resendez 3-15-02
~~Nicholas Staddon~~ Signature Date
 Name of Person Signing

Total number of pages including cover sheet, attachments, and document: 7

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

RECORDATION ATTACHMENT SHEET

Redlands Nursery Pty. Ltd.
905 - 907 German Church Road
Redland Bay
Queensland 4165
Australia

Corporation-State: Australia

TRADEMARK LICENSE AGREEMENT

SUNDAZE

THIS AGREEMENT ("Agreement"), made and effective this 1st day of March 2002 by and between Monrovia Nursery Company, a California corporation, with its principal place of business at 18331 E Foothill Blvd, Azusa California 91702-2638 ("Licensor"), and Redlands Nurseries Pty Ltd, ("Redlands") an Australian corporation, with its principal place of business at 905-907 German Church Road, Redland Bay, Queensland 4165, Australia, and Redlands' authorized U.S. distributor, Proven Winners North America, LLC, ("Proven Winners") a California limited liability company, with its principal place of business at 1566 La Pradera Drive, Suite 5, Campbell, California 95008 (collectively "Licensees").

WHEREAS, Licensees heretofore have used the trademark SUNDAZE ("the Mark") in connection with living plant cultivars and ornamental plants, namely *Bracteantha bracteata*;

WHEREAS, by virtue of the Assignment attached hereto as Exhibit A which is being concurrently executed herewith by Licensee Redlands, Licensor has acquired from Licensee Redlands the Mark and the goodwill of the business symbolized thereby, including United States Trademark Application No. 76/202,956 filed January 31, 2001.

WHEREAS, Licensees wish to continue exclusively using the Mark with living plant cultivars and ornamental plants and Licensor is willing to permit such exclusive use of the Mark by Licensees on the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises hereinafter set forth, the parties agree as follows:

1. **Grant.**

(a) Licensor agrees to and does hereby grant to Licensees for a license fee of \$200 per year, payable on the anniversary of the effective date of this Agreement, an exclusive license to use the Mark as a trademark for living plant cultivars and ornamental plants, namely *Bracteantha bracteata* (the "Goods") in the United States. The Goods shall be understood not to include plant varieties other than *Bracteantha bracteata*, meaning that Licensee shall not offer under the Mark cultivars or ornamental plants other than this type.

(b) Licensee shall not use the Mark on or in connection with goods outside the scope of the Goods identified herein unless otherwise agreed to in writing and subject to all of the terms and conditions hereof. Licensee shall not use any marks similar to the Mark, such as SUNNY DAZE, but rather, shall only use the exact word mark SUNDAZE, unless otherwise agreed to in writing and

subject to all of the terms and conditions hereof.

(c) During the term of this Agreement and thereafter, Licensee shall not contest or otherwise challenge or attack Licensor's rights in the Mark or the validity of the license granted.

2. **Territory.** The territory to which this Agreement applies is limited to the United States.

3. **Quality.** Licensee shall maintain the same or better standards of quality for the Goods as those established and in effect as of this date.

4. **Quality Control.** Licensee agrees to allow Licensor's authorized agents, no more than once during any twelve (12) month period, the right to request to receive no more than twelve (12) specimens of the Goods under the Mark for the purposes of ensuring that the quality standards of Paragraph 3 above are being complied with and maintained.

5. **Term and Termination**

(a) Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall be for ten (10) years from the effective date of the Agreement and shall be automatically renewed for additional consecutive ten (10) year terms upon the terms and conditions contained herein, unless voluntarily terminated by Licensee by notifying Licensor in writing of its intent to cease use of the Mark.

(b) In the event that Licensee fails to perform any of its obligations hereunder, Licensor may give to Licensee written notice of termination. Said notice of termination shall specify the obligation which Licensee failed to perform. If failure to perform is not cured within thirty (30) days of receipt of said notice or substantial steps are not being taken by Licensee to consummate performance, this Agreement shall be terminated upon expiration of such thirty (30) days. Except as provided herein, if failure to perform is not fully cured within ninety (90) days of receipt of said notice, this Agreement shall be terminated upon expiration of such ninety (90) days.

(c) Upon expiration or termination of this Agreement for any reason whatsoever, all rights granted hereunder shall automatically revert to Licensor and Licensee shall cease and desist, thereafter, from all use of the Mark in any way. Unless the Agreement is terminated for cause relating to irreparable injury to Licensor or the Mark, upon termination Licensee shall be entitled to an orderly phase out of their uses of the Mark over a term not to exceed one hundred eighty (180) days.

6. **Right of First Refusal.** Licensee shall have a right of first refusal to purchase the Mark from Licensor should Licensor decide to divest itself of its rights in the Mark.

7. **Infringement.** Licensor shall have the right and authority to police and prosecute infringements of the Mark by third parties which it, in its sole discretion, deems appropriate.

Licensors shall bear all costs and expenses and receive all awards and recoveries with respect to such action. Licensee shall notify Licensor in writing of any third party infringements of the Mark that come to the attention of Licensee. If Licensor does not elect to take any legal action within forty five (45) days of notice of the alleged infringement, then Licensee may take such legal action at its own cost and expense, and in any such event, Licensor shall take any and all steps that are necessary or desirable to permit Licensee to do so. The party that takes action shall be entitled to receive all awards and recoveries with respect to such action. The parties agree to cooperate fully with each other in the prosecution of any infringement action and/or claim.

8. **Licensors Rights in SUNNY DAZE Mark.** Nothing in this exclusive license agreement shall be understood to limit Licensor's rights to use the mark SUNNY DAZE on any goods other than the Goods herein specified-- Bracteantha bracteata living plant cultivars and ornamental plants. However, this exclusive license agreement shall be understood to prevent Licensor from using the Mark, as well as the mark SUNNY DAZE, on the Goods herein specified-- Bracteantha bracteata living plant cultivars and ornamental plants.

9. **Licensee Proven Winners Ability to Use the Mark; Ability of Other U.S. Distributors to Use the Mark.** Licensee Proven Winners shall be allowed to use the Mark on the Goods so long as the Goods are obtained from Licensee Redlands. No entity other than Licensees shall be allowed to distribute the Goods under the Mark unless otherwise agreed to in writing and subject to all of the terms and conditions hereof.

10. **Successors and Assigns; Assignment.** Rights under this Agreement are assignable by either Licensor or Licensee Redlands upon receipt of written permission by either party from the other. Rights of Proven Winners under this Agreement are only assignable by receipt of written permission from both Licensor and Licensee Redlands. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

11. **No Joint Venture.** This Agreement creates no agency relationship between the parties hereto, and nothing herein contained shall be construed to place the parties in the relationship of partners or joint venturers, and neither party shall have power to obligate or bind the other in any manner whatsoever. However, Licensee shall be considered a "related company" within the meaning of 15 U.S.C. §1127 for the purposes of establishing trademark rights in the Mark based on Licensee's use thereof, and Licensee's use of the Mark shall inure to the benefit of Licensor.

12. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement should be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

13. **Trademark Registration Renewal** - All costs and fees related to the preparation and filing of any documents necessary to maintain the validity of the registration which may issue against U.S.

Trademark Serial No. 76/202,956 shall be borne by Licensees for so long as Licensees wish such application and registration to be maintained. If they wish, Licensees may allow such registration to become abandoned without giving up their rights under the License Agreement.

14. **Governing Law.** This Agreement shall be governed by and construed according to the laws of the State of California without regard to conflict of laws principles.

15. **Authority.** The parties respectively represent and warrant that they are under no legal impediment which would prevent their signing this Agreement or consummating the same. The individual signing this Agreement on behalf of the parties represent and warrant that they are authorized and have the power to bind the parties.

By their execution below, the parties hereto have agreed to all of the terms and conditions of this License Agreement.

MONROVIA NURSERY COMPANY

By: *Ellis N. Bandy*

Title: *Executive Vice President*

Dated: *3-15-'02*

REDLANDS NURSERIES PTY LTD

By: *Erinlyn Weidner*

Title: *Agent*

Dated: *03-25-02*

PROVEN WINNERS NORTH AMERICA, LLC

By: *James Grant*

Title: *EXEC. DIRECTOR*

Dated: *3.22.02*

EXHIBIT A

ASSIGNMENT OF TRADEMARK APPLICATION

WHEREAS, Redlands Nurseries Pty Ltd, an Australian corporation, with its principal place of business at 905-907 German Church Road, Suite 590, Redland Bay, Queensland 4165, Australia ("Assignor"), adopted, used and is using the following mark which is the subject of a pending application in the United States Patent and Trademark Office:

<u>Trademark</u>	<u>Serial No.</u>	<u>App. Date</u>
SUNDAZE	76/202,956	January 31, 2001

WHEREAS, Monrovia Nursery Company, a California corporation, with its principal place of business at 18331 E Foothill Blvd, Azusa California 91702-2638 ("Assignee"), is desirous of acquiring said mark and the pending application thereof ;

Now, therefore, for good and valuable consideration, receipt of which is hereby acknowledged, said Assignor did assign unto said Assignee on March 1, 2002, all right, title and interest in and to the said marks, together with the goodwill of the business symbolized by the marks and the above identified registrations thereof.

Dated: 03-25-02

Redlands Nurseries Pty Ltd

By *Emily Weir*

Name:

Title: *agent, Redlands nursery*