

10-21-2002



102255681

N1190-025, N1190-026, N1190-027

RF 5/3102 RE

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

1. Name of conveying party(ies):  
 IBJ Schroder Bank & Trust Company

10-16-02

Individual  Association  
 General Partnership  Limited Partnership  
 Corporation-State  
 Other Banking Corporation - New York  
 Additional name(s) of conveying party(ies) attached?  Yes  No

2. Name and address of receiving party(ies):  
 Name Sunseeds Company  
 Internal Address: \_\_\_\_\_  
 Street Address: 18640 Sutter Boulevard  
 \_\_\_\_\_  
 City Morgan Hill  
 State CA ZIP 95038

3. Name of Conveyance:  
 Assignment  Merger  
 Security Agreement  Change of Name  
 Other Release of Collateral and Confirmatory Supplement to Release (w/attachments)  
 Execution Date: October 20, 1997

Individual (s) citizenship \_\_\_\_\_  
 Association \_\_\_\_\_  
 General Partnership \_\_\_\_\_  
 Limited Partnership \_\_\_\_\_  
 Corporate-State Delaware  
 Other \_\_\_\_\_  
 If assignee is not domiciled in the United States, a domestic representative designation is attached:  
 Yes  No  
 Additional name(s) & addresses(es) attached?  
 Yes  No

4. Application number(s) or registration number(s):  
 A. Trademark Application No.(s) B. Trademark Registration No.(s)  
 1,178,391 1,396,044 1,403,363  
 Additional numbers attached?  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:  
 Name: Robert J. Jondle  
 Internal Address: Rothwell, Figg, Ernst & Manbeck  
 Street Address: 1425 K Street, N.W. S. 800  
 City: Washington  
 State: D.C. Zip 20005

6. Total number of applications and registrations involved: 3  
 7. Total fee (37 CFR 3.41): . . . \$ 90.00  
 Enclosed  
 Authorized to be charged to deposit account  
 8. Deposit account number: \_\_\_\_\_

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.*  
Nancy T. Morris, Reg. No. 42,017 Nancy T. Morris May 1, 2002  
 Name of Person Signing Signature Date  
 Total number of pages including cover sheet, attachments and documents: 8



RELEASE

THIS RELEASE dated October \_\_, 1997 is executed by IBJ Schroder Bank & Trust Company ("IBJ") in favor of Sunseeds Company ("Borrower") and Sunseed Corporation ("Co-Borrower").

RECITALS

WHEREAS, pursuant to that certain Second Amended and Restated Credit Agreement, dated as of June 28, 1996, among Borrower, Co-Borrower, certain Lenders and IBJ (the "Credit Agreement"), Borrower and Co-Borrower granted to IBJ, as agent, a security interest in the Collateral (as defined in the Credit Agreement); and

WHEREAS, in connection with that certain Stock Purchase Agreement, dated as of September 15, 1997, by and among Nunza B.V., Co-Borrower and the stockholders of Co-Borrower (the "Stock Purchase Agreement"), all amounts outstanding under the Credit Agreement shall be repaid to IBJ at the closing of the transactions contemplated by the Stock Purchase Agreement.

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, IBJ hereby agrees as follows:

1. All terms used in Article 9 of the Uniform Commercial Code of New York are used herein as therein defined.

2. IBJ hereby expressly terminates, relinquishes, releases, discharges and renders ineffective any and all security interests, liens, mortgages and encumbrances that it now has or hereafter acquires in all or any portion of the Collateral, including, without limitation, all rights, powers and interests with respect thereto derived from or arising under the Credit Agreement or any filings pertaining thereto.

3. IBJ hereby agrees to execute and deliver such other documents as are reasonably required by Borrower and Co-Borrower to carry out the intent of this Release, including the execution and filing of Uniform Commercial Code termination statements.

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4. In case any provision or obligation under this Release shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

5. This Release shall be binding upon and inure to the benefit of the successors and assigns of IBJ and Borrower and Co-Borrower, respectively, for the uses and purposes set forth and referred to above, and shall be effective immediately upon execution by IBJ and delivery to Borrower and Co-Borrower.

6. This Release shall be governed by and construed in accordance with the laws of the State of New York without giving effect to the principles of conflicts of laws thereof.

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IN WITNESS WHEREOF, IBJ has executed and delivered this Release as of the date first above written.

IBJ SCHRODER BANK & TRUST  
COMPANY

By: MARK H. MINTER  
Name: MARK H. MINTER  
Title: DIRECTOR

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0114499.01-4251a

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TRADEMARK

REEL: 002601 FRAME: 0506

Credit Agreement (pages 6 - 7)

Definition of "Collateral" (referred to in Recitals of Release)

**"Change of Control"** means, at any time, (a) with respect to the Borrower, that (i) the Co-Borrower ceases to own all of the issued and outstanding capital stock of the Borrower or (ii) the Co-Borrower otherwise ceases to possess the power to direct the management and policies of the Borrower, or (b) with respect to the Co-Borrower, at (i) any Person (other than KSUN and its Affiliates) becomes a beneficial owner of shares having more than 49% of the voting power of the capital stock of the Co-Borrower, or (ii) KSUN ceases to have the power and right to elect a majority of the Board of Directors of the Co-Borrower, or KSUN, through its election of such Board of Directors, otherwise ceases to possess the power to direct the management and policies of the Co-Borrower, or (c) with respect to KSUN, that principals of Kohlberg cease to constitute, directly or indirectly, all of the general partners of KSUN.

**"Closing Date"** means the date on or before July 31, 1996 on which the conditions set forth in Sections 4.3 are met and this Agreement becomes effective.

**"Co-Borrower"** means Sunseed Corporation, a Delaware corporation.

**"COBRA"** means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

**"Code"** means the Internal Revenue Code of 1986, as amended, or any successor statute.

**"Collateral"** means all **"Collateral"** referred to in the Collateral Documents and all other property that is subject to any lien in favor of the Agent for the ratable benefit of the Lenders.

**"Collateral Assignment"** means the Collateral Assignment dated as of March 31, 1994 by the Borrower in favor of the Agent on behalf of the Lenders, as amended and restated as of March 14, 1995, and as amended as of the date hereof pursuant to the Collateral Assignment Amendment, and as it may be further amended, restated, supplemented or otherwise modified from time to time.

**"Collateral Assignment Amendment"** means the Amendment to Collateral Assignment, dated as of the Closing Date, substantially in the form of Exhibit I hereto.

**"Collateral Documents"** means the Security Agreement, the Pledge Agreements, each Mortgage, the Deposit Account Security Agreement, the Collateral Assignment, the Patent Collateral Assignment, the PVPC Collateral Assignment and the Trademark Collateral Assignment, the South America Guaranty, the Cannon & Roth Guaranty and the Cannon & Roth Security Agreement, and all other deeds of trust, mortgages, security agreements, pledge agreements, assignments, instruments or documents (including, without limitation, UCC financing statements, fixture filings or similar documents required in order to perfect the Liens created by the Collateral Documents) delivered by either of the Borrowers or any of their Subsidiaries pursuant to the Existing Credit Agreement, this Agreement or any

other Loan Document in order to grant Liens in real, personal or mixed property of such Person to the Agent on behalf of the Lenders.

**"Collateral Document Amendments"** means, collectively, the Parent Pledge Agreement Amendment, the Security Agreement Amendment, the Mortgage Amendments, the Deposit Account Security Agreement Amendment, the Collateral Assignment Amendment, the Patent Collateral Assignment Amendment, the Trademark Collateral Assignment Amendment, the PVPC Collateral Assignment Amendment, the Borrower Pledge Agreement Amendment, the South America Guaranty Amendment, the Cannon & Roth Guaranty Amendment, the Cannon & Roth Pledge Agreement Amendment and the Cannon & Roth Security Agreement Amendment.

**"Commercial Letter of Credit"** means any letter of credit or similar instrument issued for the purpose of providing the primary payment mechanism in connection with the purchase of any materials, goods or services by the Borrower in the ordinary course of business of the Borrower.

**"Commitment"** means the sum of the Term Loan Commitments and Revolving Credit Commitment.

**"Compliance Certificate"** means a certificate, substantially in the form of Exhibit J hereto, delivered by the chief financial officer or the chief accounting officer of the Borrower pursuant to Section 6.1(e).

**"Consolidated Current Assets"** means, at any date, the consolidated current assets of the Borrower and its Subsidiaries determined as of such date in conformity with GAAP.

**"Consolidated Current Liabilities"** means, at any date, (i) the consolidated current liabilities of the Borrower and its Subsidiaries, plus (ii) the current liabilities of any Person (other than the Borrower or a Subsidiary) that are Contingent Liabilities of the Borrower or a Subsidiary, all determined as of such date and in conformity with GAAP, but excluding in each case any underlying liabilities of the Borrower under a Letter of Credit

**"Consolidated Funded and Committed Debt"** means, at any date, all Debt of the Borrower and its Subsidiaries as of such date described in clauses (i), (iii) and (iv) of the definition of "Debt" plus (without duplication) the amount of the Revolving Credit Commitment, determined on a consolidated basis in accordance with GAAP.

**"Consolidated Interest Expense"** means, for any period, total interest expense (including that portion attributable to Capital Leases in accordance with GAAP and capitalized interest) of the Borrower and its Subsidiaries on a consolidated basis with respect to all outstanding Debt of the Borrower and its Subsidiaries, including, without limitation, all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptances financing and net costs under Interest Rate Agreements.

**SCHEDULE I**

**COLLATERAL ASSIGNMENT - TRADEMARKS**

**TRADEMARKS**

| <b>Trademark</b>   | <b>Goods</b>  | <b>Registration Number</b> |
|--|---|----------------------------|
| Gold Rush  | Sweet Corn Seed                                       | 0614618                    |
| Sweet Gene Hybrid (Stylized)   | Hybrid Seed Corn                                      | 1116701                    |
| Keystone   | Vegetable, Garden, Flower, Farm, Field and Lawn Seeds | 0674015                    |
| Sun Seeds and Design (Sun offset to left; current letterhead design) | Vegetable Seeds                                       | 1178391                    |
| Sunseeds   | Vegetable Seeds                                       | 1396044                    |
| Sunseeds and Design (Sun in Center)                                  | Vegetable Seeds                                       | 1403363                    |
| ENPRO  | Encrusted seeds for vegetables                        | 1727950                    |
| Sweetie  | Hybrid sweet corn for planting                        | 1722269                    |