

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:		NEW ASSIGNMENT	
NATURE OF CONVEYANCE:		LICENSE	
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Monrovia Nursery Company		02/04/2003	CORPORATION: CALIFORNIA
RECEIVING PARTY DATA			
Name:	Proven Winners North America, LLC		
Street Address:	45 North First Street, Suite B		
City:	Campbell		
State/Country:	CALIFORNIA		
Postal Code:	95008		
Entity Type:	LIMITED LIABILITY COMPANY: CALIFORNIA		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Registration Number:	2994035	SUNSATIA	
CORRESPONDENCE DATA			
Fax Number:	(707)255-6876		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
Email:	tmdept@dpfnapa.com		
Correspondent Name:	J. Scott Gerien		
Address Line 1:	809 Coombs Street		
Address Line 4:	Napa, CALIFORNIA 94559		
ATTORNEY DOCKET NUMBER:	PROV1-013		
NAME OF SUBMITTER:	J. Scott Gerien		
Signature:	/J. Scott Gerien/		
Date:	10/03/2005		

CH \$40.00 2994035

Total Attachments: 3

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**TRADEMARK
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TRADEMARK LICENSE AGREEMENT
SUNSATIA

THIS AGREEMENT ("Agreement"), made and effective this ^{4th} ~~12~~ day of ^{February} ~~January~~ 2003 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 Proven Winners North America, LLC, ("Licensee") a California limited liability company, with its principal place of business at 1566 La Pradera Drive, Suite 5, Campbell, California 95008.

WHEREAS, Licensor is the owner of the mark SUNSATIA for live ornamental plants, excluding pepper plants, and is owner of U.S. Trademark Registration No. 2,221,642 for same;

WHEREAS, Licensee wishes to exclusively use the mark SUNSATIA (the "Mark") with living plant cultivars and ornamental plants and Licensor is willing to permit such exclusive use of the Mark by Licensee 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 Licensee for a license fee of \$1,000.00 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 nemesia (the "Goods") in the United States. The Goods shall be understood not to include plant varieties other than nemesia, meaning that Licensee shall not offer under the Mark cultivars or ornamental plants other than this type.

b. In the event that in any year of the Agreement Licensee offers to Licensor the opportunity to exclusively propagate plant varieties to which Licensee possesses the propagation rights, the annual license fee of \$1,000.00 set forth in this Agreement shall be waived for the following license year.

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 for similar plant cultivars and ornamental plants offered by Licensee as of the date of this Agreement, Licensor being aware of such quality standard.

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 sixty (60) 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 sixty (60) 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 its 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. Licensor 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. **Licensor's Rights in SUNSATON Mark.** Nothing in this exclusive license agreement shall be understood to limit Licensor's rights to use the mark SUNSATON on any goods other than the Goods herein specified, namely, nemesia 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 SUNSATON, on the Goods herein specified, namely, nemesia living plant cultivars and ornamental plants.

9. **Successors and Assigns; Assignment.** Rights under this Agreement are assignable by either Licensor or Licensee. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

10. **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.

11. **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.

12. **Trademark Registration And Renewal** - All costs and fees related to the preparation and filing of any documents necessary to obtain registration of the mark SUNSATIA, as well as maintain the validity of the registration which may issue, shall be borne by Licensee for so long as Licensee wishes such application and registration to be maintained. ~~If it wishes, Licensee may allow such application or registration to become abandoned without giving up its rights under the License Agreement.~~

13. **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.

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

MONROVIA NURSERY COMPANY

By: Gilad N. Rosen
Title: Executive Vice President

Dated: 2-4-2003

PROVEN WINNERS NORTH AMERICA, LLC

By: Mark Brown
Title: Exec. Director

Dated: 1-10-03

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