

10-06-2006



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To the Director of the U.S. Patent and Trademark Office: Please record the attached documents or the **FINANCE SECTION** New Address(es) below

10-2-06

**1. Name of Conveying party(ies):**

Green Thumb Acquisition Corporation

- Individual(a)
- General Partnership
- Corporation-State: Delaware
- Other \_\_\_\_\_
- Association
- Limited Partnership

Citizenship (see guidelines) \_\_\_\_\_

Additional Names of conveying parties attached?  Yes  No

**3. Nature of conveyance/Execution Date(s):**

Execution Date(s) June 16, 2006

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

**2. Name and address of receiving party(ies)**

- Yes
- No

Additional names, addresses, or citizenship attached?

Name: Easy Gardener Products, Inc.

Internal \_\_\_\_\_

Address: \_\_\_\_\_

Street Address: 3022 Franklin Avenue

City: Waco

State: Texas

Country: United States Zip: 76710

- Association
- General Partnership
- Limited Partnership
- Corporation
- 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)

**4. application number(s) or registration number(s) and identification or description of the Trademark.**

A. Trademark Application No.(s)

See Attached Schedule A

B. Trademark Registration No.(s)

See Attached Schedule A

Additional sheet(s) attached?  Yes  No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

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

Name: Matthew Bart

Internal Address: White & Case LLP

Street Address: 1155 Avenue of the Americas

City: New York

State: New York Zip: 10036

Phone Number: 212-819-8923

Fax Number: 212-354-8113

Email Address: mbart@whitecase.com

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

60

**7. Total fee (37 CFR 2.6(b)(6) & 3.41)**

\$1,515

- Authorized to be charged by credit card
- Authorized to be charged to deposit account
- Enclosed

**8. Payment Information:**

- a. Credit Card Last 4 Numbers \_\_\_\_\_  
Expiration Date \_\_\_\_\_
- b. Deposit Account Number \_\_\_\_\_  
Authorized User Name \_\_\_\_\_

**9. Signature:**

Matthew Bart  
Signature

October 2, 2006

Date

10/05/2006 DBYRNE 00000009 3091231

01 Ff:4521  
02 Ff:4522

40.00 00  
1475.00 00  
Matthew Bart  
Name of Person Signing

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

12

Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to:  
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

SCHEDULE A

TRADEMARKS

<u>Trademark Description</u>	<u>Registration No.</u>
Easy Gardener Yard & Garden Bag	3091231
Duckbill knife	3091035
Jobe's	2969910
Green-Again	2953484
Villa Garden Tiles	2780853
English Stone Villa Garden Tiles	2892282
Country Classic Border	2667208
Roma Villagarden tiles	2892032
Whimsical Arch	2664490
Whimsical Loop	2696514
English Stone Finial Villa Garden Tiles	2892283
Adobe Villa Garden Tiles	2898349
Great Results. Less Work.	2359625
Jobe's Weed Control Fabric	2321088
Weed Block	2334841
Easy Gardener	2356107
Easy Gardener	2294225
Tree Gard	2010199
Fabricpegs	1981079
XP-20	1989049
Scatter Cap	1986161
Bio Block	1938066
Stops Weeds For Years	1921278
Emerald Edge	1928560
Tree Stakit	1769537
Bird Block	1804536
Deer Block	1802112
It Works. You Don't.	1768337
Ross	1741296
Fast Start	1671754
Ross	1682545
Gro-Stakes	1664643
Ross Root Feeder	1675783
Ross	1684947
Fabricpegs	1557426
Gro Cover	1475961
Gro-Bags	1447569
Easy Gardener	1445222
Weedblock	1408576
Cloud Cover	1252606
'Tomato Boomers'	1084414

# TRADEMARK APPLICATIONS

<u>Trademark Application Description</u>	<u>U.S. Application No.</u>
Jobs	78891237
Weed Block Ultra	78863045
The Lighting Lawn Edging	78656149
Rootblock	78656318
Illuma-Edge	78656023
Feeds A Little Every Day	78656407
Jobe's Drip Feeder	78656371
Jobe's Hydro-Feeder	78656340
Bio Fabricpegs	78656415
Easy Gardener Gutter Guard	78430052
Easy Gardener Sun Screen Canopy	78430033
Easy Gardener Plant Protection Blanket	78430057
Easy Gardener Plant Protector Bags	78430058
Pro Weedblock	78403938
Easy Gardener Pot Top & Liner	78282234
Easy Gardener Root Feeder	78269589
WeedBlock	78263421
Easy Gardener Christmas Tree Bag	78430067
Easy Gardener Christmas Tree Saver	78430069

## CONTRIBUTION AGREEMENT

This **CONTRIBUTION AGREEMENT** (the "Agreement"), dated as of June 16, 2006 by and between GREEN THUMB ACQUISITION CORPORATION, a Delaware corporation ("Green Thumb"), and EASY GARDENER PRODUCTS, INC, a Delaware corporation and wholly owned subsidiary of Green Thumb ("EG").

### WITNESSETH:

**WHEREAS**, pursuant to that certain Asset Purchase Agreement (the "Purchase Agreement"), dated April 19, 2006, by and among Green Thumb, Easy Gardener Products, Ltd., a Texas limited partnership ("LTD"), Weatherly Consumer Products Group, Inc., a Delaware corporation and wholly owned subsidiary of LTD ("WCPG"), and Weatherly Consumer Products, Inc., a Delaware corporation and wholly owned subsidiary of WCPG ("WCP" and together with LTD and WCPG, the "Asset Sellers"), Green Thumb acquired substantially all of the assets (the "Purchased Assets") of the Asset Sellers including the capital stock of Easy Gardener U.K., a United Kingdom company ("UK"); and

**WHEREAS**, Green Thumb desires to transfer all of the Purchased Assets, except the capital stock of UK (the "Contributed Assets") and all of its liabilities (the "Contributed Liabilities") as of the date hereof, as contributions to capital to EG that qualify as a nonrecognition transactions under Section 351(a) of the Internal Revenue Code of 1986, as amended (the "Contribution"); and

**WHEREAS**, EG has determined that it is in its best interests to accept the assignment of the Contributed Assets and to assume the Contributed Liabilities.

**NOW, THEREFORE**, in consideration of the premises and mutual covenants herein contained, the parties hereby agree as follows:

### ARTICLE I

#### CONTRIBUTION

Effective upon the consummation of the transactions contemplated by the Purchase Agreement, Green Thumb shall contribute, assign, transfer, convey and deliver to EG, and EG shall accept and assume, the Contributed Assets and the Contributed Liabilities, including, without limitation, the intellectual property set forth on Schedule 6.1 hereto (such assets and liabilities are collectively referred to herein as, the "Contributed Property").

### ARTICLE II

#### REPRESENTATIONS AND WARRANTIES OF GREEN THUMB

Green Thumb represents and warrants to EG as follows:

2.1 Organization. Green Thumb is a corporation duly incorporated, validly existing, and in good standing under the laws of the State of Delaware, with full corporate power and authority to carry on the business in which it is engaged.

2.2 Authorization. The transactions contemplated by this Agreement have been duly authorized and approved by the Board of Directors of Green Thumb, and no other corporate act, approval or proceeding on the part of Green Thumb is required to authorize the execution and delivery of this Agreement by Green Thumb or for the consummation of the contemplated transactions. Green Thumb has the full power, right and authority to enter into and perform its obligations under this Agreement. This Agreement constitutes a valid and binding agreement of Green Thumb enforceable in accordance with its terms.

2.3 Title to Contributed Property. Except for liens and encumbrances for taxes not yet due and payable, Green Thumb has good, valid and marketable title to all of the Contributed Property, free and clear of all security interests, mortgages, pledges, liens, restrictions, encumbrances or charges of any kind (collectively, "Liens").

2.4 Condition of Assets. All of the Contributed Property is in good condition and repair, ordinary wear and tear excepted, and conform with all applicable laws, ordinances and regulations of all federal, state and local governmental agencies and authorities where the failure to conform to those laws, ordinances and regulations would have a material adverse effect on the Contributed Property, and Green Thumb has not received notice of any breach or violation of any of those laws, ordinances or regulations.

2.5 Brokers. No broker or finder has been employed by Green Thumb in connection with the negotiations relative to this Agreement. All negotiations relative to this Agreement have been carried on directly by Green Thumb without the intervention of any third party other than legal counsel or accountants for Green Thumb.

### ARTICLE III

#### COVENANTS AND AGREEMENTS OF GREEN THUMB

Green Thumb covenants and agrees with EG as follows:

3.1 Licenses. Green Thumb shall assign, convey and/or transfer to EG each and all of the licenses, permits and operating authorizations necessary to operate the Contributed Property.

3.2 Consents. Green Thumb will use its best efforts to obtain the consents and approvals which are necessary for the valid transfer and assignment of the Contributed Property, including any intangible assets included therein, to EG.

3.3 Further Assurances. Each of Green Thumb and EG, at the closing of the transactions contemplated hereby (the "Closing"), or at any time or times thereafter, upon request of any party hereto, will execute such additional instruments, documents or certificates as either party deems reasonably necessary in order to effect the transactions contemplated hereby.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES OF EG

EG represents and warrants to Green Thumb as follows:

4.1 Organization. EG is a corporation, validly existing, and in good standing under the laws of the State of Delaware, with full power and authority to carry on the business in which it is engaged.

4.2 Authorization. The transactions contemplated by this Agreement have been duly authorized and approved by the Board of Directors of EG, and no other corporate act, approval or proceeding on the part of EG is required to authorize the execution and delivery of this Agreement by EG or for the consummation of the contemplated transactions. EG has the full corporate power, right and authority to enter into and perform its obligations under this Agreement. This Agreement constitutes a valid and binding agreement of EG enforceable in accordance with its terms.

4.3 Brokers. No broker or finder has been employed by EG in connection with the negotiations relative to this Agreement. All negotiations relative to this Agreement have been carried on directly by EG without the intervention of any third party other than legal counsel or accountants for EG.

## ARTICLE V

### DELIVERY OF DOCUMENTS

5.1 Documents Delivered By Green Thumb. Upon the Closing, Green Thumb shall deliver or cause to be delivered to EG the following:

(a) a duly authorized and executed Intellectual Property Assignment Agreement attached hereto as Exhibit 6.1 (the "IP Assignment") and any other instruments of sale, transfer, conveyance, assignment and confirmation as shall be necessary or appropriate to vest in, convey or assign to EG full, complete, good and marketable title to the Contributed Property; and

(b) all books and records of Green Thumb related to the conduct of the Contributed Property.

5.2 Documents Delivered by EG. EG shall deliver or cause to be delivered to Green Thumb the following:

(a) a duly authorized and executed counterpart to the IP Assignment.

**ARTICLE VI**

**MISCELLANEOUS**

6.1 Notices. All notices, requests, consents and other communications hereunder shall be in writing and shall be deemed to have been duly given if (i) sent by registered or certified mail, return receipt requested, with first-class postage fees prepaid, (ii) hand delivered against receipt, (iii) sent via facsimile transmission upon electronic confirmation of receipt thereof during normal business hours, or (iv) if sent by email transmission, in each case, to the applicable party at the address indicated below:

IF TO GREEN THUMB:      Green Thumb Acquisition Corporation  
   C/o H.I.G. Capital, LLC  
   1001 Brickell Bay Drive, Suite 2700  
   Miami, Florida 33131  
   Attention: John Bolduc

IF TO EG:                      Easy Garden Products, Ltd.  
   Green Thumb Acquisition Corporation  
   C/o H.I.G. Capital, LLC  
   1001 Brickell Bay Drive, Suite 2700  
   Miami, Florida 33131  
   Attention: John Bolduc

or to any other address as any party may designate by written notice of the other parties.

6.2 Modification. No amendment or modification to this Agreement shall be binding on any party, unless the amendment or modification is in writing and executed by each party with the same formality as this Agreement.

6.3 Successors. This Agreement shall be binding upon the parties, their heirs, administrators, successors, executors and assigns. The parties agree that they and their respective heirs, executors, successors, administrators and assigns will execute any and all instruments, releases, assignments and consents that may be reasonably required of them to execute the provisions of this Agreement.

6.4 Counterparts. This Agreement may be executed in several counterparts, each of which shall serve as an original for all purposes, but all copies of which shall constitute but one and the same Agreement.

6.5 Headings. All headings set forth in this Agreement are intended for convenience only and shall not control or affect the meaning, construction or effect of this Agreement or of any of its provisions.

6.6 Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the contemplated transactions, and it is agreed that any prior oral or written agreements are null and void.

6.7 Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or enforceable, shall not be affected thereby, and each term or provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

6.8 No Third Party Beneficiary. Nothing expressed or implied in this Agreement is intended, or shall be construed, to confer upon or give any person other than the parties and their respective heirs, personal representatives, legal representatives, successors and assigns, any rights or remedies under or by reason of this Agreement.

6.9 No Waiver. The failure of either party to enforce any provision of this Agreement or exercise any right granted hereby shall not be construed to be a waiver of such provision or right nor shall it affect the validity of this Agreement or any part hereof or limit in any way the right of either party subsequently to enforce any such provision or exercise such right in accordance with its terms.

6.10 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware, without regard to its conflicts of laws principles.

6.11 Schedules, Exhibits, Sections and Articles. All exhibits or schedules attached to this Agreement shall be deemed part of this Agreement and incorporated into this Agreement, as if fully contained in it. All references in this Agreement to an exhibit, section, article or schedule shall mean an exhibit, section, article or schedule to this Agreement (unless otherwise indicated). All references in this Agreement to this Agreement shall include all of the exhibits or schedules attached to this Agreement.

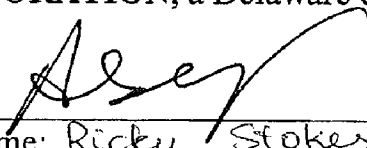
6.12 Waiver of Jury Trial. EACH OF THE PARTIES HERETO KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY SCHEDULE OR EXHIBIT HERETO, OR ANY COURSE OF CONDUCT, COURSE OF DEALING OR STATEMENTS (WHETHER VERBAL OR WRITTEN) RELATING TO THE FOREGOING. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES HERETO TO ENTER INTO THIS AGREEMENT.

\* \* \* \* \*

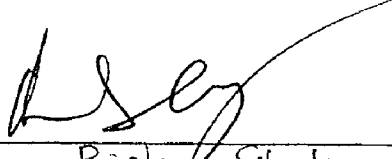


IN WITNESS WHEREOF, each of the undersigned parties has caused this Agreement to be executed and delivered by their duly authorized representatives as of date above written.

**GREEN THUMB ACQUISITION CORPORATION**, a Delaware corporation

By:   
Name: Ricky Stokes  
Title: Vice President

**EASY GARDENER PRODUCTS, INC.**  
a Delaware corporation

By:   
Name: Ricky Stokes  
Title: Vice President

INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT

This **TRADEMARK ASSIGNMENT AGREEMENT** (the "Agreement"), dated as of June 16, 2006, by and between GREEN THUMB ACQUISITION CORPORATION., a Delaware corporation (the "Assignor"), and EASY GARDENER PRODUCTS, INC., a Delaware corporation (the "Assignee"). The Assignor and the Assignee are sometimes referred to hereunder collectively as the "Parties".

WITNESSETH:

**WHEREAS**, contemporaneously with the execution and delivery of this Agreement, the Assignor and the Assignee have entered into a Contribution Agreement (the "Contribution Agreement"), pursuant to which the Assignor will contribute substantially all of its assets and all of its liabilities to the Assignee; and

**WHEREAS**, the Assignor presently owns or controls certain (i) trademarks, trademark registrations, and trademark applications set forth in the attached Schedule A hereto (the "Trademarks"), (ii) copyrights and/or copyright applications set forth on Schedule B hereto (the "Copyrights"), (iii) patents or patent applications set forth on Schedule C hereto (the "Patents"), and (iv) intellectual property license agreements set forth on Schedule D hereto (the "License Agreements"), and together with the Trademarks, Copyrights and Patents, the "Properties"),

**WHEREAS**, as contemplated by the Contribution Agreement, the Assignor desires to transfer, assign, convey, deliver and vest all of its interests and rights in the Properties for all countries, jurisdictions and political entities of the world, to and in Assignee.

**NOW, THEREFORE**, in consideration of the promises and for other good and valid consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. Assignment. Assignor does hereby assign, convey, transfer and deliver to Assignee, its successors, legal representatives, assigns and nominees, Assignor's entire right, title and interest in, to and under the Properties, together with the goodwill of the business symbolized by the Properties and all income, royalties and damages now and hereafter due and/or payable to the Assignor, for all countries, jurisdictions and political entities of the world, along with the right to sue for past, present and future infringements, in and to all the Properties, and corresponding counterpart foreign trademark and service mark rights with respect to which, and to the extent to which, the Assignor now has or hereafter acquires the right to so assign, convey, transfer and deliver.

2. Authorization. Assignor does hereby authorize and request of the Commissioner of the United States Patent and Trademark Office, and any official of any country or countries foreign to the United States, whose duty is to issue trademark and service mark rights or other evidence or forms of intellectual or industrial property protection on applications as aforesaid, to

issue the same to the Assignee, its successors, legal representatives and assigns, in accordance with the terms of this instrument.

3. Covenants of Assignor. Assignor covenants and agrees that the Assignor has full rights to convey the entire interest herein assigned, and that the Assignor has not executed, and will not execute, any agreement in conflict herewith. Assignor further covenants and agrees that the Assignor will communicate to the Assignee, its successors, legal representatives and assigns, any facts known to the Assignors respecting the Properties, and testify in any legal proceeding, sign all lawful papers, make all rightful oaths, and generally do everything possible to aid the Assignee, its successors, legal representatives and assigns, to obtain and enforce proper protection for the Properties.


4. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware, without regard to its conflicts of laws principles.

5. Counterparts. This Agreement may be executed in several counterparts, each of which shall serve as an original for all purposes, but all copies of which shall constitute but one and the same Agreement.


\* \* \* \* \*

**IN WITNESS WHEREOF**, the Parties have caused this Assignment to be duly executed and delivered by their authorized representatives as of the date first above written.

GREEN THUMB ACQUISITION  
CORPORATION,  
Assignor

By:   
Name: Ricky Stokes  
Title: Vice President

EASY GARDENER PRODUCTS, INC.  
Assignee

By:   
Name: Ricky Stokes  
Title: Vice President