

TRADEMARK ASSIGNMENT

Electronic Version v1.1  
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SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
ZZ Acquisitions LLC		11/10/2011	LIMITED LIABILITY COMPANY: DELAWARE

RECEIVING PARTY DATA

Name:	Novalis LLC
Street Address:	90 Salmon Brook Street
City:	Granby
State/Country:	CONNECTICUT
Postal Code:	06035
Entity Type:	LIMITED LIABILITY COMPANY: CONNECTICUT

PROPERTY NUMBERS Total: 30

Property Type	Number	Word Mark
Registration Number:	3652740	HISTORIC BOTANICAL COLLECTION
Registration Number:	3785184	FIZZ
Registration Number:	3726343	THE GREENER THINGS IN LIFE
Registration Number:	3726323	PLANTS THAT WORK IN THE KITCHEN
Registration Number:	3822527	CANDY STORE
Registration Number:	3707531	CHINESE BUTTERFLY
Registration Number:	3242332	PLANTS THAT WORK BRING ON THE HEAT
Registration Number:	3247238	PLANTS THAT WORK
Registration Number:	3247243	TWICE AS NICE
Registration Number:	3556599	PLANTS THAT WORK IN NOOKS & CRANNIES
Registration Number:	3547649	REGALINA
Registration Number:	3544147	PLANTS THAT WORK GARDEN SENSATIONS
Registration Number:	3531889	BABYBINI
Registration Number:	3528528	GOLDEN TOUCH

**TRADEMARK**

Registration Number:	3517570	PLANTS THAT WORK BY COLOR
Registration Number:	3517567	CLOUD DANCER
Registration Number:	3517566	FIRE DANCER
Registration Number:	3517563	BEDAZZLE
Registration Number:	3517562	BREEZEE
Registration Number:	3517561	SUMMER RADIANCE
Registration Number:	3513813	MYSTICAL
Registration Number:	3513632	ARCELIA
Registration Number:	3513631	OOPS-A-DAISY
Registration Number:	3513630	KAROO
Registration Number:	3513629	DORIS DAISY
Registration Number:	2989864	SHADY LADY
Registration Number:	2727680	TWICE AS NICE
Registration Number:	2666410	PICK UP AND GROW.
Registration Number:	2500930	PLANTS THAT WORK
Registration Number:	2445607	PLANTS THAT WORK

**CORRESPONDENCE DATA**

Fax Number: 8602406150

*Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.*

Phone: 860-240-6029

Email: rzitzelsberger@murthalaw.com

Correspondent Name: H. Kennedy Hudner

Address Line 1: CityPlace 1, 185 Asylum St.

Address Line 2: 30th Flr

Address Line 4: Hartford, CONNECTICUT 06103

ATTORNEY DOCKET NUMBER:	NOVALIS 1-30
NAME OF SUBMITTER:	H. Kennedy Hudner
Signature:	/H. Kennedy Hudner/
Date:	07/30/2012

**Total Attachments: 9**

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TRADEMARK AND URL ASSIGNMENT

This Trademark and URL Assignment (this "Assignment") is made effective as of the 10<sup>th</sup> day of November, 2011, by and between ZZ Acquisitions, LLC, a Delaware limited liability company ("Assignor"), and Novalis, LLC, a Connecticut limited liability company ("Assignee").

RECITALS

WHEREAS, as set forth on Exhibit A, attached hereto and incorporated herein by reference, Assignor holds certain rights and interests in and to the trademarks to the extent described therein (the "Marks");

WHEREAS, as set forth on Exhibit B, attached hereto and incorporated herein by reference, Assignor holds certain rights and interests in and to the uniform resource locators to the extent described therein (the "URLs");

WHEREAS, Assignor now wishes to assign the Marks and URLs to Assignee, and Assignee is desirous of acquiring the Marks from Assignor;

NOW, THEREFORE, in consideration of payment to Assignor simultaneously with the effectiveness of this Assignment of [REDACTED] (\$ [REDACTED]) (the "Purchase Price") and further in consideration of the premises set forth above and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

1. **Assignment.** Assignor, without any representation or warranty either express or implied, does hereby quitclaim, and assign unto Assignee and its successors, assigns and legal

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representatives, Assignor's entire right, title and interest in and throughout the world, if any, in and to the Marks (including any common law rights that may exist and are associated therewith) and the URLs, together with the goodwill, if any, of the business symbolized thereby and appurtenant thereto, the same to be held and enjoyed by Assignee, its successors, permitted assigns or legal representatives, together with income, royalties, damages or payments due on or after the date hereof, including, without limitation, all claims for damages or payments by reason of infringement or unauthorized use of the Marks and the URLs, along with the right to sue for past infringements and collect same for Assignee's sole use and enjoyment.

2. **Authorization.** Assignor does hereby authorize the Director of the United States Patent & Trademark Office, and the empowered official of any U.S. State, or any country or countries foreign to the United States whose duty it is to record trademark registrations, applications and title thereto, to record the Marks and title thereto as the property of Assignee, its successors, assigns or legal representatives in accordance with the terms of this instrument. Assignor does hereby authorize, with respect to the URLs, each domain registrar whose duty it is to record uniform resource locator registrations, applications and title thereto, to record the URLs and title thereto as the property of Assignee, its successors, assigns or legal representatives in accordance with the terms of this instrument. All transfer or similar fees with respect to the transfer of the Marks and the URL's in the United States shall be divided equally between Assignor and Assignee. Assignee will be responsible in the first instance for paying the fees, but then shall invoice Assignor for fifty percent (50%) of the fee amounts actually paid by Assignee to perfect the assignment and transfers. Assignor shall reimburse the 50% amount to Assignee within thirty (30) days following receipt of the invoice.

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3. **Further Assurances.** The Assignor and Assignee do hereby agree to perform, execute and/or deliver or cause to be performed, executed and/or delivered any and all such further agreements and assurances as any of the parties hereto may reasonably require to consummate the transactions contemplated hereunder. In the event that there are any filing fees charged by any United States or federal or state government agency in order to consummate the transaction, the filing fees shall be split equally between Assignor and Assignee as set forth in Section 2, above.

4. **Covenants.**

a. From and after the date hereof, Assignor and its affiliates shall not register any trademarks, trade names, service marks or other similar intellectual property rights, whether such registration is in a local, state, federal or foreign jurisdiction, that are substantially similar to (x) the Marks and/or (y) the following additional trademarks, whether such Marks and additional trademarks are currently registered in any jurisdiction or not:

i. "Plants That Work For the Planet"; and

ii. "Experience the Splendor".

b. For purposes of clarity, no fees or other dues, charges or expenses are owed from Assignee to Assignor or Assignor to Assignee with respect to any of the Marks or URL's regardless of whether they were owned at any time by Carolina Nurseries, Inc. ("Carolina"), Novalis, LLC, a South Carolina limited liability company ("Novalis"), and/or Novalis Management Company, a South Carolina

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corporation ("**NMC**") now held by Assignor and its affiliates, except for (i) Purchase Price paid by Assignee to Assignor for the Marks, the URLs, and those certain digital assets as set forth on the Bill of Sale dated the date hereof from Assignor to Assignee (collectively, the "**Assets**"), and (ii) for the government imposed assignment/transfer fees to be divided equally between the parties as set forth in Sections 2 and 3, above.

5. **No Third Party Beneficiaries and Limitations.** Nothing in this Assignment will be construed as giving any Person, other than the parties hereto and their successors and permitted assigns, any right, remedy or claim under or in respect of this Assignment or any provision hereof. Additionally, and notwithstanding any provision of this Assignment to the contrary, under no circumstances will either party be entitled to indirect, incidental, consequential, punitive damages, or multiple damages against the other party. In the event of a dispute between the parties, neither party shall be entitled to damages in excess of the amount of the Purchase Price. Further, in the event of a dispute, each party shall bear its own attorney's fees and neither party shall be entitled to an award of attorney's fees by the applicable tribunal.

6. **Governing Law; Submission to Jurisdiction.** This Assignment shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Delaware. Any legal suit, action or proceeding arising out of or based upon this Assignment or the transactions contemplated hereby shall be exclusively instituted in the federal courts of the United States or the

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courts of the State of Delaware, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or any proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

7. **Headings.** The headings in this Assignment are included for convenience of reference only and shall not in any way affect the meaning or interpretation of this Assignment.

8. **Entire Agreement.** This Assignment constitutes the sole and entire agreement of the parties to this Assignment with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, representations and warranties and agreements, both written and oral, with respect to such subject matter.

9. **Successors and Assigns.** This Assignment shall be binding upon and shall inure to the benefit of the parties and their respective heirs (as applicable), legal representatives, and permitted successors and assigns.

10. **Counterparts.** This Assignment may be executed in any number of counterparts, each of which shall be an original, but all of which together shall comprise one and the same instrument. Delivery of a copy of this Assignment or such other document bearing an original signature by facsimile transmission, by electronic mail in "portable document format" (".pdf") form, or by any



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other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.

[Signature Page Follows]

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IN WITNESS WHEREOF, this Assignment has been executed in duplicate on behalf of the parties by their duly authorized representatives as of the date first written above:

ASSIGNOR

ZZ ACQUISITIONS, LLC

By: 

Name: Jay Tiedeman

Title: EVA + COO

ASSIGNEE

NOVALIS, LLC

By: 

Name: GREG Schaan

Title: Member - Novalus LLC

EXHIBIT A

Marks

<u>Trademark</u>	<u>Serial/Registration Number</u>	<u>Registration Date</u>
Historic Botanical Collection	3652740	07/07/09
Fizz	3785184	05/04/10
The Greener Things in Life	3726343	12/15/09
Plants that Work in the Kitchen	3726323	12/15/09
Candy Store	3822527	07/20/10
Chinese Butterfly	3707531	11/10/09
Plants that Work Bring on the Heat	3242332	05/15/07
Plants that Work	3247238	05/29/07
Twice as Nice	3247243	05/29/07
Plants that Work in Nooks & Crannies	3556599	01/06/09
Regalina	3547649	12/16/08
Plants that Work Garden Sensations	3544147	12/09/08
Babybini	3531889	11/11/08
Golden Touch	3528528	11/04/08
Plants that Work by Color	3517570	10/14/08
Cloud Dancer	3517567	10/14/08
Firedancer	3517566	10/14/08

<u>Trademark</u>	<u>Serial/Registration Number</u>	<u>Registration Date</u>
Bedazzle	3517563	10/14/08
Breezee	3517562	10/14/08
Summer Radiance	3517561	10/14/08
Mystical	3513813	10/07/08
Arcelia	3513632	10/07/08
Oops-A-Daisy	3513631	10/07/08
Karoo	3513630	10/07/08
Doris Daisy	3513629	10/07/08
Shady Lady	2989864	08/30/05
Twice as Nice	2727680	06/17/03
Pick Up and Grow	2666410	12/24/02
Plants that Work	2500930	10/23/01
Plants that Work	2445607	04/24/01