

TRADEMARK ASSIGNMENT

Electronic Version v1.1  
 Stylesheet Version v1.1

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	SECURITY INTEREST		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Color Spot Nurseries, Inc.		05/03/2013	CORPORATION: DELAWARE
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Wells Fargo Bank, National Association		
<b>Street Address:</b>	5401 California Avenue, Suite 200		
<b>City:</b>	Bakersfield		
<b>State/Country:</b>	CALIFORNIA		
<b>Postal Code:</b>	93309		
<b>Entity Type:</b>	Banking Association: UNITED STATES		
<b>PROPERTY NUMBERS Total: 4</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
Registration Number:	3324720	COLOR SPOT	
Registration Number:	3573901	COLOR SPOT	
Registration Number:	3179157	GARDEN ACCENTS	
Registration Number:	3361016	COLOR SPOT	
<b>CORRESPONDENCE DATA</b>			
Fax Number:			
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:	510-418-0419		
Email:	landwebe@chapman.com		
Correspondent Name:	Joseph Landweber		
Address Line 1:	595 Market Street, 26th Floor		
Address Line 4:	San Francisco, CALIFORNIA 94105		
<b>NAME OF SUBMITTER:</b>	Joseph Landweber		
Signature:	/Joseph Landweber/		

OP \$115.00 3324720

Date:

12/20/2013

**Total Attachments: 17**

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**AMENDED AND RESTATED PATENT, TRADEMARK AND LICENSE MORTGAGE**

THIS AMENDED AND RESTATED PATENT, TRADEMARK AND LICENSE MORTGAGE (the "*Mortgage*") made as of this 3rd day of May, 2013, by COLOR SPOT NURSERIES, INC., a Delaware corporation ("*Mortgagor*") in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION (as assignee of Bank of America, N.A., as a lender and as agent for the lenders, as assignee of Fleet Capital Corporation, as a lender and as agent for the lenders) (the "*Mortgagee*").

**WITNESSETH:**

WHEREAS, Mortgagor has entered into that certain Sixth Amended and Restated Credit Agreement, dated as of September 30, 2011, by and between Mortgagor, as borrower and Mortgagee, as lender (as amended, restated, modified or supplemented from time to time, the "*Prior Credit Agreement*"), pursuant to which Mortgagee has extended certain financial accommodations to Mortgagor;

WHEREAS, Mortgagor has previously delivered to Mortgagee that certain Patent, Trademark and License Agreement, dated as of October 15, 1998 (the "*Prior Mortgage*"), as security for the obligations arising under the Prior Credit Agreement;

WHEREAS, Mortgagor and Hines Growers, Inc., a Delaware corporation ("*Hines Growers*") together with Mortgagor, each a "*Borrower*", and, collectively, the "*Borrowers*", have requested that Mortgagee amend and restate the Prior Credit Agreement and have entered into that certain Seventh Amended and Restated Credit Agreement, dated as of May 3, 2013, by and among Borrowers and Mortgagee (as amended, restated, modified or supplemented from time to time, the "*Credit Agreement*"), pursuant to which Mortgagee has extended certain financial accommodations to Borrowers;

WHEREAS, pursuant to the terms of that certain Security Agreement dated of even date herewith (as amended, restated modified or supplemented from time to time, the "*Security Agreement*"), by and among Borrowers and Mortgagee, Mortgagor has granted to Mortgagee a security interest in, and Mortgagee has become a secured creditor with respect to, the Collateral specified therein, of a security interest in substantially all of Mortgagor's assets, including, without limitation, the patents, patent applications, trademarks, trademark applications, trade names, service marks, service mark applications, goodwill and certain licenses of Mortgagor;

WHEREAS, in connection with the execution and delivery of the Credit Agreement and the Security Agreement, Mortgagor and Mortgagee hereby desire to amend and restate the Prior Mortgage on the terms set forth herein;

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, Mortgagor agrees as follows:

SECTION 1. CAPITALIZED TERMS.

All terms capitalized but not otherwise defined herein shall have the same meanings herein as in the Credit Agreement, and to the extent not defined therein, such capitalized terms shall have the meaning set forth in the Security Agreement.

SECTION 2. MORTGAGE OF PATENTS, TRADEMARKS AND LICENSES.

To secure the complete and timely satisfaction of all of the Obligations, Mortgagor hereby creates a security interest in, pledges and transfers to Mortgagee, for its benefit and the ratable benefit of the Lenders, as and by way of a mortgage and security interest having priority over all other security interests, all of Mortgagor's right, title and interest in and to all of its now existing and hereafter created or acquired:

(i) patents and patent applications, including, without limitation, the inventions and improvements described and claimed therein, and those patents listed on Exhibit A attached hereto and hereby made a part hereof, and (a) the reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, (b) all income, damages and payments now and hereafter due or payable under or with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing patents and applications, together with the items described in clauses (a)-(d) of this subsection 2(i), are sometimes hereinafter referred to individually as a "Patent" and, collectively, as the "*Patents*");

(ii) trademarks, trademark registrations, trademark applications, trade names and tradestyles, service marks, service mark registrations and service mark registration applications, including, without limitation, the trademarks, trade names, service marks, registrations and applications for registration listed on Exhibit B attached hereto and hereby made a part hereof, and (a) renewals or extensions thereof, (b) all income, damages and payments now and hereafter due or payable with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing trademarks, trade names and tradestyles, service marks and applications and registrations thereof, together with the items described in clauses (a)-(d) of this subsection 2(ii), are sometimes hereinafter referred to individually as a "Trademark", and, collectively, as the "*Trademarks*");

(iii) all license agreements with respect to any of the Patents or the Trademarks or any other patent, trademark, service mark or any registration or application for registration or any other tradename or tradestyle between Mortgagor and any other party, whether Mortgagor is a licensor or licensee under any such license agreement, including, without limitation, the licenses listed on Exhibit C attached hereto and hereby made a part hereof, and excluding all license agreements which, according to their terms, may not be assigned without the prior written consent of the licensors thereto (all of the

foregoing license agreements and Mortgagor's rights thereunder are referred to collectively as the "*Licenses*"); and

(iv) the goodwill of Mortgagor's business connected with and symbolized by the Trademarks.

Upon the occurrence and during the continuance of an Event of Default, Mortgagee shall have the power, to the extent permitted by law, to sell the Patents, Trademarks and Licenses.

### SECTION 3. WARRANTIES, REPRESENTATIONS AND COVENANTS.

Mortgagor warrants and represents to Mortgagee that:

(i) No Patents, Trademarks and Licenses have been adjudged invalid or unenforceable or have been cancelled, in whole or in part, or are not presently subsisting;

(ii) Each of the Patents, Trademarks and Licenses is valid and enforceable;

(iii) Mortgagor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Patents, Trademarks and Licenses (except for Licenses with respect to which Mortgagor is not the exclusive licensee), free and clear of any liens, charges and encumbrances, including, without limitation, licenses, shop rights and covenants by Mortgagor not to sue third persons;

(iv) Mortgagor has adopted, used and is currently using, or has a current bona fide intention to use, all of the Trademarks;

(v) Mortgagor has no notice of any suits or actions commenced or threatened with reference to the Patents, Trademarks or Licenses; and

(vi) Mortgagor has the right to execute and deliver this Mortgage and perform its terms.

### SECTION 4. RESTRICTIONS ON FUTURE AGREEMENTS.

Mortgagor agrees that until the Obligations shall have been satisfied in full (except for contingent indemnification obligations pursuant to Section 8.3 of the Credit Agreement or under the indemnification provisions of the Loan Documents) and the Credit Agreement and the other Loan Documents shall have been terminated, Mortgagor shall not sell or assign its interest in, or grant any license under, the Patents, Trademarks or Licenses, or enter into any other agreement with respect to the Patents, Trademarks or Licenses which is inconsistent with the obligations under this Mortgage, without the prior written consent of Mortgagee, and Mortgagor further agrees that it shall not take any action, or permit any action to be taken by others subject to its control, including licensees, or fail to take any action, which would affect the validity or enforcement of the rights transferred to Mortgagee under this Mortgage.

SECTION 5. NEW PATENTS, TRADEMARKS, AND LICENSES.

Mortgagor represents and warrants that the Patents, Trademarks and Licenses listed on Exhibits A, B and C, respectively, constitute all of the Patents and Trademarks now owned by, and Licenses granted by or to, Mortgagor. If, before the Obligations shall have been satisfied in full or before the Credit Agreement and the other Loan Documents have been terminated, Mortgagor shall (i) obtain rights to any new patentable inventions, Patents, Trademarks or Licenses, or (ii) become entitled to the benefit of any Patents, Trademarks, or Licenses or any improvement on any Patent, the provisions of this Mortgage above shall automatically apply thereto and Mortgagor shall give to Mortgagee prompt written notice thereof. Mortgagor hereby authorizes Mortgagee to modify this Mortgage by amending Exhibits A, B and C, as applicable, to include any such Patents, Trademarks and Licenses.

SECTION 6. ROYALTIES; TERM.

The term of the mortgages granted herein shall extend until the earlier of (i) the expiration of each of the respective Patents, Trademarks and Licenses assigned hereunder, and (ii) the Obligations have been paid in full (except for contingent indemnification obligations pursuant to Section 8.3 of the Credit Agreement or under the indemnification provisions of the Loan Documents) and the Credit Agreement and the other Loan Documents have been terminated. Upon the occurrence and during the continuance of an Event of Default, Mortgagor agrees that the use by Mortgagee of all Patents, Trademarks and Licenses shall be worldwide and without any liability for royalties or other related charges from Mortgagee to Mortgagor.

SECTION 7. GRANT OF LICENSE TO MORTGAGOR.

Unless and until an Event of Default shall have occurred and be continuing, Mortgagee hereby grants to Mortgagor the exclusive, nontransferable right and license to use the Trademarks in the ordinary course of its business, to exercise Mortgagee's rights under the Licenses, and to make, have made, use and sell the inventions disclosed and claimed in the Patents for Mortgagor's own benefit and account and for none other. Mortgagor shall use the Trademarks only on goods of at least as high quality as the goods on which Mortgagor or its predecessor used the goods prior to the date hereof. Mortgagor agrees not to sell or assign its interest in, or grant any sublicense under, the license granted to Mortgagor in this Section 7, without the prior written consent of Mortgagee. From and after the occurrence and during the continuance of an Event of Default, Mortgagor's license with respect to the Patents, Trademarks and Licenses set forth in this Section 7 shall terminate forthwith, and Mortgagee shall have, in addition to all other rights and remedies given it by this Mortgage, those allowed by law and the rights and remedies of a secured party under the UCC (or such other applicable laws) as enacted in any of the jurisdictions in which the Patents, Trademarks or Licenses may be located.

SECTION 8. MORTGAGEE'S RIGHT TO INSPECT.

Mortgagee shall have the right, at any time and from time to time during normal business hours and prior to payment in full of the Obligations (except for contingent indemnification

obligations pursuant to Section 8.3 of the Credit Agreement or under the indemnification provisions of the Loan Documents) and termination of the Credit Agreement and the other Loan Documents, to inspect Mortgagor's premises and to examine Mortgagor's books, records and operations, including, without limitation, Mortgagor's quality control processes. Mortgagor agrees (i) to maintain the quality of any and all products in connection with which the Trademarks are used, consistent with the quality of said products as of the date hereof and (ii) to provide Mortgagee, upon Mortgagee's request from time to time, with a certificate of an officer of Mortgagor certifying Mortgagor's compliance with the foregoing. Upon the occurrence and during the continuance of an Event of Default, Mortgagor agrees that Mortgagee, or a conservator appointed by Mortgagee, shall have the right to establish such additional product quality controls as Mortgagee, or said conservator, in its sole judgment, may deem necessary to assure maintenance of the quality of products sold by Mortgagor under the Trademarks.

SECTION 9. RELEASE OF MORTGAGE.

This Mortgage is made for collateral purposes only. Upon payment in full of the Obligations (except for contingent indemnification obligations pursuant to Section 8.3 of the Credit Agreement or under the indemnification provisions of the Loan Documents) and termination of the Credit Agreement and the other Loan Documents, Mortgagee shall execute and deliver to Mortgagor all deeds, assignments and other instruments, and shall take such other actions, as may be necessary or proper to re-vest in Mortgagor full title to the Patents, Trademarks, and Licenses, subject to any disposition thereof which may have been made by Mortgagee pursuant hereto or pursuant to the Credit Agreement or the Security Agreement.

SECTION 10. EXPENSES.

All expenses incurred in connection with the performance of any of the agreements set forth herein shall be borne by Mortgagor. All fees, costs and expenses, of whatever kind or nature, including attorneys' and paralegals' fees and legal expenses, incurred by Mortgagee in connection with the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise in protecting, maintaining or preserving the Patents, Trademarks and Licenses, or in defending or prosecuting any actions or proceedings arising out of or related to the Patents, Trademarks and Licenses, shall be borne by and paid by Mortgagor on demand by Mortgagee and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the then applicable rate as set forth in the Credit Agreement.

SECTION 11. DUTIES OF MORTGAGOR.

Mortgagor shall have the duty (i) to prosecute diligently any patent, trademark or service mark applications pending as of the date hereof or thereafter until the Obligations (except for contingent indemnification obligations pursuant to Section 8.3 of the Credit Agreement or under the indemnification provisions of the Loan Documents) shall have been paid in full, (ii) to make application on unpatented but patentable inventions and on trademarks and service marks, as

appropriate, which in the reasonable judgment of Mortgagor are required for Mortgagor's business, (iii) to preserve and maintain all rights in the Patents, Trademarks and Licenses, and (iv) to ensure that the Patents, Trademarks and Licenses are and remain enforceable. Any expenses incurred in connection with Mortgagor's obligations under this Section 11 shall be borne by Mortgagor. Mortgagor shall not abandon any right to file a patent, trademark or service mark application, or abandon any pending patent application, or any other Patent, Trademark or License without the written consent of Mortgagee.

SECTION 12. MORTGAGEE'S RIGHT TO SUE.

After the occurrence and during the continuance of an Event of Default, Mortgagee shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Patents, Trademarks and Licenses, and, if Mortgagee shall commence any such suit, Mortgagor shall, at the request of Mortgagee, do any and all lawful acts and execute any and all proper documents required by Mortgagee in aid of such enforcement and Mortgagor shall promptly, upon demand, reimburse and indemnify Mortgagee for all costs and expenses incurred by Mortgagee in the exercise of its rights under this Section 12.

SECTION 13. WAIVERS.

No course of dealing between Mortgagor and Mortgagee, nor any failure to exercise, nor any delay in exercising, on the part of Mortgagee, any right, power or privilege hereunder or under the Credit Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

SECTION 14. SEVERABILITY.

The provisions of this Mortgage are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Mortgage in any jurisdiction.

SECTION 15. MODIFICATION.

This Mortgage cannot be altered, amended or modified in any way, except as specifically provided in Section 5 hereof or by a writing signed by the parties hereto.

SECTION 16. CUMULATIVE REMEDIES; POWER OF ATTORNEY; EFFECT ON CREDIT AGREEMENT.

All of Mortgagee's rights and remedies with respect to the Patents, Trademarks and Licenses, whether established hereby or by the Security Agreement, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Upon the



occurrence and during the continuance of an Event of Default, Mortgagor hereby authorizes Mortgagee to make, constitute and appoint any officer or agent of Mortgagee as Mortgagee may select, in its sole discretion, as Mortgagor's true and lawful attorney-in-fact, with power to (i) endorse Mortgagor's name on all applications, documents, papers and instruments necessary or desirable for Mortgagee in the use of the Patents, Trademarks and Licenses, or (ii) take any other actions with respect to the Patents, Trademarks and Licenses as Mortgagee deems to be in its best interest, or (iii) grant or issue any exclusive or non-exclusive license under the Patents, Trademarks or Licenses to anyone, or (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Patents, Trademarks or Licenses to anyone. Mortgagor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable until the Obligations (except for contingent indemnification obligations pursuant to Section 8.3 of the Credit Agreement) shall have been paid in full and the Loan Agreement, including any amendments thereto, has been terminated. Mortgagor acknowledges and agrees that this Mortgage is not intended to limit or restrict in any way the rights and remedies of Mortgagee under the Credit Agreement or any other Loan Documents but rather is intended to facilitate the exercise of such rights and remedies. Mortgagee shall have, in addition to all other rights and remedies given it by the terms of this Mortgage and the Credit Agreement and any other Loan Document, all rights and remedies allowed by law and the rights and remedies of a secured party under the UCC (or such other applicable law) as enacted in any jurisdiction in which the Patents, Trademarks or Licenses may be located.

**SECTION 17. BINDING EFFECT; BENEFITS.**

This Mortgage shall be binding upon Mortgagor and its respective successors and permitted assigns, and shall inure to the benefit of Mortgagee, its successors, nominees and assigns.

**SECTION 18. GOVERNING LAW.**

THIS MORTGAGE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF CALIFORNIA.

**SECTION 19. ARBITRATION.**

(a) **ARBITRATION.** The parties hereto agree, upon demand by any party, to submit to binding arbitration all claims, disputes and controversies between or among them (and their respective employees, officers, directors, attorneys, and other agents), whether in tort, contract or otherwise in any way arising out of or relating to (i) any credit subject hereto, or any of the Loan Documents, and their negotiation, execution, collateralization, administration, repayment, modification, extension, substitution, formation, inducement, enforcement, default or termination; or (ii) requests for additional credit.

(b) **GOVERNING RULES.** Any arbitration proceeding will (i) proceed in a location in California selected by the AAA; (ii) be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any conflicting choice of law provision in any of the

documents between the parties; and (iii) be conducted by the AAA, or such other administrator as the parties shall mutually agree upon, in accordance with the AAA's commercial dispute resolution procedures, unless the claim or counterclaim is at least One Million Dollars (\$1,000,000) exclusive of claimed interest, arbitration fees and costs in which case the arbitration shall be conducted in accordance with the AAA's optional procedures for large, complex commercial disputes (the commercial dispute resolution procedures or the optional procedures for large, complex commercial disputes to be referred to herein, as applicable, as the "Rules"). If there is any inconsistency between the terms hereof and the Rules, the terms and procedures set forth herein shall control. Any party who fails or refuses to submit to arbitration following a demand by any other party shall bear all costs and expenses incurred by such other party in compelling arbitration of any dispute. Nothing contained herein shall be deemed to be a waiver by any party that is a bank of the protections afforded to it under 12 U.S.C. §91 or any similar applicable state law.

(c) NO WAIVER OF PROVISIONAL REMEDIES, SELF-HELP AND FORECLOSURE. The arbitration requirement does not limit the right of any party to (i) foreclose against real or personal property collateral, (ii) exercise self-help remedies relating to collateral or proceeds of collateral such as setoff or repossession, or (iii) obtain provisional or ancillary remedies such as replevin, injunctive relief, attachment or the appointment of a receiver, before during or after the pendency of any arbitration proceeding. This exclusion does not constitute a waiver of the right or obligation of any party to submit any dispute to arbitration or reference hereunder, including those arising from the exercise of the actions detailed in clauses (i), (ii) and (iii) of this Section.

(d) ARBITRATOR QUALIFICATIONS AND POWERS. Any arbitration proceeding in which the amount in controversy is Five Million Dollars (\$5,000,000) or less will be decided by a single arbitrator selected according to the Rules, and who shall not render an award of greater than Five Million Dollars (\$5,000,000). Any dispute in which the amount in controversy exceeds Five Million Dollars (\$5,000,000) shall be decided by majority vote of a panel of three (3) arbitrators; provided, however, that all three (3) arbitrators must actively participate in all hearings and deliberations. The arbitrator will be a neutral attorney licensed in the State of California or a neutral retired judge of the state or federal judiciary of California, in either case with a minimum of ten (10) years' experience in the substantive law applicable to the subject matter of the dispute to be arbitrated. The arbitrator will determine whether or not an issue is arbitratable and will give effect to the statutes of limitation in determining any claim. In any arbitration proceeding the arbitrator will decide (by documents only or with a hearing at the arbitrator's discretion) any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication. The arbitrator shall resolve all disputes in accordance with the substantive law of California and may grant any remedy or relief that a court of such state could order or grant within the scope hereof and such ancillary relief as is necessary to make effective any award. The arbitrator shall also have the power to award recovery of all costs and fees, to impose sanctions and to take such other action as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the California Rules of Civil Procedure or other applicable law. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy

shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief.

(e) **DISCOVERY.** In any arbitration proceeding, discovery will be permitted in accordance with the Rules. All discovery shall be expressly limited to matters directly relevant to the dispute being arbitrated and must be completed no later than twenty (20) days before the hearing date. Any requests for an extension of the discovery periods, or any discovery disputes, will be subject to final determination by the arbitrator upon a showing that the request for discovery is essential for the party's presentation and that no alternative means for obtaining information is available.

(f) **CLASS PROCEEDINGS AND CONSOLIDATIONS.** No party hereto shall be entitled to join or consolidate disputes by or against others in any arbitration, except parties who have executed any Loan Document, or to include in any arbitration any dispute as a representative or member of a class, or to act in any arbitration in the interest of the general public or in a private attorney general capacity.

(g) **PAYMENT OF ARBITRATION COSTS AND FEES.** The arbitrator shall award all costs and expenses of the arbitration proceeding.

(h) **REAL PROPERTY COLLATERAL; JUDICIAL REFERENCE.** Notwithstanding anything herein to the contrary, no dispute shall be submitted to arbitration if the dispute concerns indebtedness secured directly or indirectly, in whole or in part, by any real property unless (i) the holder of the mortgage, lien or security interest specifically elects in writing to proceed with the arbitration, or (ii) all parties to the arbitration waive any rights or benefits that might accrue to them by virtue of the single action rule statute of California, thereby agreeing that all indebtedness and obligations of the parties, and all mortgages, liens and security interests securing such indebtedness and obligations, shall remain fully valid and enforceable. If any such dispute is not submitted to arbitration, the dispute shall be referred to a referee in accordance with California Code of Civil Procedure Section 638 et seq., and this general reference agreement is intended to be specifically enforceable in accordance with said Section 638. A referee with the qualifications required herein for arbitrators shall be selected pursuant to the AAA's selection procedures. Judgment upon the decision rendered by a referee shall be entered in the court in which such proceeding was commenced in accordance with California Code of Civil Procedure Sections 644 and 645.

(i) **MISCELLANEOUS.** To the maximum extent practicable, the AAA, the arbitrators and the parties shall take all action required to conclude any arbitration proceeding within one hundred eighty (180) days of the filing of the dispute with the AAA. No arbitrator or other party to an arbitration proceeding may disclose the existence, content or results thereof, except for disclosures of information by a party required in the ordinary course of its business or by applicable law or regulation. If more than one agreement for arbitration by or between the parties potentially applies to a dispute, the arbitration provision most directly related to the Loan Documents or the subject matter of the dispute shall control. This arbitration provision shall

survive termination, amendment or expiration of any of the Loan Documents or any relationship between the parties.

(j) **SMALL CLAIMS COURT.** Notwithstanding anything herein to the contrary, each party retains the right to pursue in Small Claims Court any dispute within that court's jurisdiction. Further, this arbitration provision shall apply only to disputes in which either party seeks to recover an amount of money (excluding attorneys' fees and costs) that exceeds the jurisdictional limit of the Small Claims Court.

**SECTION 20. HEADINGS.**

Paragraph headings used herein are for convenience only and shall not modify the provisions which they precede.

**SECTION 21. FURTHER ASSURANCES.**

Mortgagor agrees to execute and deliver such further agreements, instruments and documents, and to perform such further acts, as Mortgagee shall reasonably request from time to time in order to carry out the purpose of this Mortgage and agreements set forth herein.

**SECTION 22. SURVIVAL OF REPRESENTATIONS.**

All representations and warranties of Mortgagor contained in this Mortgage shall survive the execution and delivery of this Mortgage and shall be remade on the date of each borrowing under the Credit Agreement.

**SECTION 23. AMENDMENT AND RESTATEMENT.**

This Mortgage amends and restates the Prior Mortgage in its entirety, effective as of the Effective Date, and is not intended to constitute a novation of the obligations thereunder. Nothing contained herein shall terminate any security interests, guaranties or subordinations in favor of Mortgagee and all such security interests, guaranties and subordinations shall continue in full force and effect. The amendments, restatements and other modifications made hereby and with respect to the other Loan Documents on the Effective Date shall be effective as of the Effective Date.

IN WITNESS WHEREOF, Mortgagor has duly executed this Mortgage in favor of Mortgagee as of the date first written above.

COLOR SPOT NURSERIES, INC.

By Rodney Omps  
Name: Rodney Omps  
Title: Vice President and Chief Financial Officer

AGREED AND ACCEPTED THIS  
\_\_\_\_ day of May, 2013.

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: \_\_\_\_\_  
Name: Don Unruh  
Title: Vice President

SIGNATURE PAGE TO  
AMENDED AND RESTATED PATENT, TRADEMARK AND LICENSE MORTGAGE

TRADEMARK  
REEL: 005179 FRAME: 0239

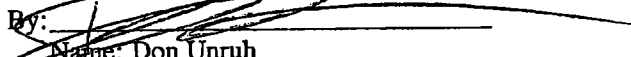
IN WITNESS WHEREOF, Mortgagor has duly executed this Mortgage in favor of Mortgagee as of the date first written above.

COLOR SPOT NURSERIES, INC.

By \_\_\_\_\_  
Name: Rodney Omps  
Title: Vice President and Chief Financial  
Officer

AGREED AND ACCEPTED THIS  
3<sup>rd</sup> day of May, 2013.

WELLS FARGO BANK, NATIONAL ASSOCIATION

By:   
Name: Don Unruh  
Title: Vice President

SIGNATURE PAGE TO  
AMENDED AND RESTATED PATENT, TRADEMARK AND LICENSE MORTGAGE

TRADEMARK  
REEL: 005179 FRAME: 0240

**EXHIBIT A****PATENTS**

<b>Patent</b>	<b>Patent Number</b>	<b>Issue Date</b>	<b>Application Number</b>	<b>Application Date</b>
Antigonon Plant Named 'Colvey'	PP12800	07/23/2002		02/01/2001
Photinia Plant Named 'Colwillow'	PP12187	11/06/2001		03/06/2000
Photinia Plant Named 'Colango'	PP11510	09/12/2000		08/05/1998
Photinia Plant Named 'Colmont'	PP11491	08/22/2000		08/05/1998
Nandina Plant Named 'Colerno'	PP11453	07/18/2000		10/02/1998
Verbana Plant Named 'Colkeeter'	PP11275	03/07/2000		09/29/1997
Ruellia Plant Named 'Colobe Pink'	PP10841	03/30/1999		02/29/1997
Crepe Myrtle Plant Named 'Bradberry's Wine'	PP20926	04/13/2010		11/21/2008

**EXHIBIT B**

**TRADEMARKS**

<b>Trademark</b>	<b>Reg. Number</b>	<b>Reg. Date</b>	<b>Application Number</b>	<b>Application Date</b>
Color Spot	3,324,720	10/30/2007	78/978529	03/24/2004
Color Spot (Mexico)		11/30/2004	862440	09/24/2004
Color Spot (Mexico)		11/30/2004	862439	09/24/2004
Color Spot & Design	3,573,901	02/10/2009	78/392074	03/24/2004
Color Spot & Design (Mexico)		02/22/2005	867671	09/24/2004
Color Spot & Design (Mexico)		05/11/2005	880762	09/24/2004
Garden Accents	3,179,157	12/05/2006	78/172316	10/08/2002
Color Spot	3,361,016	12/25/2007	78/979026	03/28/2004



**EXHIBIT C**

**LICENSES**