

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM432285

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|---|---|-----------------------|-----------------------|
| SUBMISSION TYPE: | NEW ASSIGNMENT | | |
| NATURE OF CONVEYANCE: | SECURITY INTEREST | | |
| CONVEYING PARTY DATA | | | |
| Name | Formerly | Execution Date | Entity Type |
| COLOR SPOT NURSERIES, INC. | | 05/25/2017 | Corporation: DELAWARE |
| RECEIVING PARTY DATA | | | |
| Name: | WELLS FARGO BANK, NATIONAL ASSOCIATION | | |
| Street Address: | 333 South Grand Avenue, 7th Floor | | |
| City: | Los Angeles | | |
| State/Country: | CALIFORNIA | | |
| Postal Code: | 90071 | | |
| Entity Type: | National Banking Association: UNITED STATES | | |
| PROPERTY NUMBERS Total: 2 | | | |
| Property Type | Number | Word Mark | |
| Registration Number: | 3361016 | COLOR SPOT | |
| Registration Number: | 3573901 | COLOR SPOT | |
| CORRESPONDENCE DATA | | | |
| Fax Number: | 8585094010 | | |
| <i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i> | | | |
| Phone: | 858-509-4071 | | |
| Email: | sdipdocket@pillsburylaw.com | | |
| Correspondent Name: | Michelle L. Mehok | | |
| Address Line 1: | 12255 El Camino Real, Suite 300 | | |
| Address Line 4: | San Diego, CALIFORNIA 92130 | | |
| NAME OF SUBMITTER: | Michelle L. Mehok | | |
| SIGNATURE: | /michelle mehok/ | | |
| DATE SIGNED: | 06/22/2017 | | |
| Total Attachments: 14 | | | |
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AMENDED AND RESTATED PATENT, TRADEMARK AND LICENSE MORTGAGE

This AMENDED AND RESTATED PATENT, TRADEMARK AND LICENSE MORTGAGE ("*Mortgage*") is made as of May 25, 2017, by COLOR SPOT NURSERIES, INC., a Delaware corporation, ("*Mortgagor*") in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION as lender ("*Mortgagee*").

WITNESSETH:

WHEREAS, Mortgagor and Hines Growers, Inc. (collectively, the "*Borrowers*") entered into that certain Seventh Amended and Restated Credit Agreement, dated as of May 3, 2013, by and between the Borrowers, as borrowers, and Mortgagee, as lender (as amended, restated, modified or supplemented from time to time, the "*2013 Credit Agreement*"), pursuant to which Mortgagee extended certain financial accommodations to Borrowers;

WHEREAS, in connection with the 2013 Credit Agreement, Borrowers delivered a Security Agreement dated as of May 3, 2013 (as amended, restated, modified or supplemented from time to time, the "*Security Agreement*") in favor of Mortgagee, which provides for the grant by Borrowers to Mortgagee of a security interest in substantially all of the Borrowers' 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, Mortgagor has previously delivered to Mortgagee that certain Amended and Restated Patent, Trademark and License Mortgage, dated as of May 3, 2013 (as amended, modified or supplemented from time to time, the "*A&R Mortgage*"), as security for Mortgagor's obligations arising under the 2013 Credit Agreement;

WHEREAS, Mortgagee and Borrowers amended and restated the 2013 Credit Agreement by way that certain Eighth Amended and Restated Credit Agreement, dated as of December 23, 2014, by and among Borrowers and Mortgagee (as amended, modified or supplemented from time to time, the "*2014 Credit Agreement*"), pursuant to which Mortgagee extended certain financial accommodations to Borrowers;

WHEREAS, Borrowers and Mortgagee entered into a Credit Agreement dated as of February 3, 2017 (as amended, modified or supplemented from time to time, the "*February 2017 Credit Agreement*"), pursuant to which Mortgagee extended credit to the Borrowers;

WHEREAS, Borrowers have requested that Mortgagee (i) amend and restate the 2014 Credit Agreement as set forth in a Ninth Amended and Restated Credit Agreement between Borrowers and Mortgagee dated as of May 25, 2017 (as amended, modified and/or supplemented from time to time, the "*Credit Agreement*"), and (ii) advance funds and extend credit under the Credit Agreement sufficient in amount to satisfy the Borrowers' obligations under the February 2017 Credit Agreement;

WHEREAS, in connection with the execution and delivery of the Credit Agreement, Mortgagor and Mortgagee hereby desire to amend and restate the A&R 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, 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"); *provided however*, no security interest shall be granted or enforced in United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark applications under applicable federal law, together with the goodwill symbolized thereby;

(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.

REDACTED

REDACTED

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.

REDACTED

REDACTED

REDACTED

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 or any other Loan Document 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.

REDACTED

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 the 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, 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 become effective upon the Effective Date, as defined in the Credit Agreement. 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.

REDACTED

REDACTED

REDACTED

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 A&R 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.

[SIGNATURE PAGE FOLLOWS]

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

COLOR SPOT NURSERIES, INC.

By: Rodney Omps
Rodney Omps
Chief Financial Officer,
Vice President and Secretary

Accepted and Agreed as of the day and year first above written.

WELLS FARGO BANK,
NATIONAL ASSOCIATION

By: Jeffrey K. Scott
Jeffrey K. Scott
Senior Vice President

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

4813-1454-3688.v2

TRADEMARK
REEL: 006089 FRAME: 0923

EXHIBIT A**PATENTS**

| Holder | Application No. | Publication Date | Publication No. | Title |
|----------------------------|------------------------|-------------------------|------------------------|---|
| Color Spot Nurseries, Inc. | US12313683 | 2010-04-13 | USPP020926P2 | Crepe myrtle plant named 'Bradberry's Wine' |
| Color Spot Nurseries, Inc. | US09774366 | 2002-07-23 | USPP012800P2 | Antigonon plant named 'Colvey' |
| Color Spot Nurseries, Inc. | US09519865 | 2001-11-06 | USPP012187P2 | Photinia plant named 'Colwillow' |
| Color Spot Nurseries, Inc. | US09129435 | 2000-09-12 | USPP011510P | Photinia plant named 'Colango' |
| Color Spot Nurseries, Inc. | US09129441 | 2000-08-22 | USPP011491P | Photinia plant named 'Colmont' |
| Color Spot Nurseries, Inc. | US09165028 | 2000-07-18 | USPP011453P | Nandina plant named 'Colerno' |
| Color Spot Nurseries, Inc. | US08940111 | 2000-03-07 | USPP011275P | Verbena plant named 'Colkeeter' |
| Color Spot Nurseries, Inc. | US08940113 | 1999-03-30 | USPP010841P | Ruellia plant named 'Colobe Pink' |

EXHIBIT B
TRADEMARKS


| Holder | Mark | Serial No. / Reg. No. |
|----------------------------|---|------------------------------|
| Color Spot Nurseries, Inc. | COLOR SPOT | 3361016 |
| Color Spot Nurseries, Inc. |  | 3573901 |

Exhibit B

4813-1454-3688.v1

TRADEMARK
REEL: 006089 FRAME: 0925

EXHIBIT C

REDACTED

Exhibit C

4813-1454-3688.v2