

Canadian Ornamental Plant Foundation
Fondation canadienne des plantes ornementales
975 McKeown Ave, 5A - # 218, North Bay, Ontario P1B 9P2 Canada
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GROWER MEMBER AGREEMENT

(Disponible en français aussi)

THIS AGREEMENT made in duplicate and made effective the 1st day of January, 2006.

Between: _____ operating as
(Corporate name if incorporated)

(Company name)

at the following location(s)

(Show addresses of all growing locations)

(hereinafter referred to as “**Grower**”),

OF THE FIRST PART

- and -

CANADIAN ORNAMENTAL PLANT FOUNDATION,

a corporation without share capital, incorporated pursuant to the laws of Canada, having its head office in the City of North Bay,
in the District of Nipissing, in the Province of Ontario

(Hereinafter referred to as “**COPF**”)

OF THE SECOND PART

WHEREAS certain plant varieties have been and continue to be registered with COPF as COPF Registered Plant Varieties by or through authorized agents or representatives of the owners, holders or originators of the plant varieties who are also members of COPF as Breeders;

AND WHEREAS each of the Breeders, so long as they remain members of COPF, may have agreed to supply plant materials corresponding to the COPF Registered Plant Varieties as registered by them (hereinafter referred to as the “Breeder Plant Materials”) to certain growers who are also members of COPF, and in furtherance thereof and pursuant to member agreements COPF has with each Breeder, have also constituted and appointed COPF as the Breeders’ propagation rights manager and/or agent regarding the commercial use or exploitation of any and all Plant Breeder Materials supplied by the Breeder to a grower who is also a member of COPF.

NOW WITNESSETH that in furtherance of the foregoing and in consideration of the terms, conditions and undertakings as hereinafter set forth, Grower and COPF agree one with the other as follows:

1.0 MEMBERSHIP

- 1.1 Upon countersignature of this Grower Member Agreement by a duly authorized signing officer of COPF, Grower shall be deemed to be a member of COPF in that capacity. Grower agrees to abide by the existing by-laws of COPF and such further by-laws as may be from time to time adopted or amended by COPF, together with the terms of this Grower Member Agreement.
- 1.2 In the event of any conflict between the terms of this Grower Member Agreement and the existing or future by-laws of COPF, the provisions of the said by-laws take precedence and prevail.

2.0 MEMBERSHIP DUES

- 2.1 Grower undertakes and agrees to pay COPF an annual membership fee in an amount as from time to time determined by COPF and communicated to all members or potential members of COPF. Annual membership fees shall be due and payable within 45 days after the date of billing by COPF to Grower.

3.0 COPF ADVISORY SERVICES

- 3.1 Both during the term of this agreement and at any time thereafter or following suspension or termination of Grower as provided for in Article 9.0, COPF may divulge and disclose to the Breeder, Grower's member status in COPF and any delinquency by Grower respecting Grower's obligation to adhere to the Plant Breeders' Rights Act and submit timely royalty accounting reports and payments.
- 3.2 COPF, to the extent it is able or entitled to do so, agrees to act as a liaison between Grower and a Breeder, and if agreed to, to act as a facilitator in matters regarding royalty collection or the monetary amount of any alleged royalty amount due a Breeder through COPF by Grower.

4.0 SUPPLY OF PLANT MATERIAL

- 4.1 Grower recognizes that COPF is not involved in the supply, distribution or sale of Breeder Plant Material.

5.0 LABELLING

- 5.1 Grower agrees to comply with any label or label marking requirements, including trade mark identification, for Breeder Plant Material and any other restrictions or limitations regarding its use as may from time to time be agreed to between Breeder and Grower.

6.0 ROYALTY CALCULATION REPORTS BY GROWER AND ROYALTY PAYMENTS STATUS

- 6.1 Grower undertakes and agrees, during the term of this Grower Member Agreement, to furnish COPF, once yearly, or optionally on the written request of COPF, with full and complete sales or successful propagation royalty accounting reports in a manner and in a form as furnished or directed by COPF, or as may otherwise be agreed to between COPF and Grower. The royalty accounting report shall set forth the royalty amount calculation and the total royalty amount payable to COPF. All royalty amounts payable as set forth in the royalty accounting reports are due and payable within 45 days following the date of mailing the reports to COPF, and are

thereafter subject to interest payments thereon at an interest rate as from time to time established by COPF. In the event Grower fails to furnish COPF with royalty accounting reports as herein provided for, COPF may issue an estimated royalty accounting report to Grower with the royalty amount calculation appearing thereon, and subject to any adjustments that COPF and Grower may agree, the royalty shall become due and payable to COPF within 45 days from the date of issuance.

7.0 CHANGE IN ROYALTY

- 7.1** Any changes in the royalty amount as published and established by COPF and applicable to a given COPF Registered Plant Variety may be changed by COPF, but any such change, before coming into force, shall first be the subject of at least six (6) months advance written notice given by COPF to Grower.

8.0 BOOKS, RECORDS AND INSPECTION

- 8.1** Grower undertakes and agrees to keep accurate books and records of all Breeder Plant Material from time to time obtained by Grower from a breeder who is a member of COPF, and to additionally keep accurate books and records of all vegetatively propagated plant material derived from Breeder Plant Material and which is sold, either directly or indirectly, by breeders in order to enable the royalty amount thereon to be calculated and determined. In furtherance of the foregoing COPF, or a duly authorized representative of COPF, shall be entitled, on two days clear notice, and during the normal business hours of Grower, to gain access to Grower's premises for the purpose of reviewing and if necessary making copies of Grower's invoices and propagation records for the purpose of determining or verifying the royalty amounts payable on vegetatively propagated Breeder Plant Material.
- 8.2** If Grower publishes a catalog or price list, Grower agrees to provide COPF with company catalog or price list within 30 days of publication.
- 8.3** Grower agrees that, in the event of reporting discrepancies exceeding 10% of quantities reported, Grower will be responsible for the costs of an on site visit by an auditor(s) to check the amounts reported.

9.0 GROWER MEMBERSHIP SUSPENSION OR TERMINATION FOR CAUSE

- 9.1** Grower understands and agrees that its member status in COPF may be suspended or terminated forthwith upon written notice by COPF, as COPF in its sole discretion may deem appropriate, in any situation where:
- 9.1.1 Grower has not paid its annual membership fee within ninety (90) days following the date of the original dues invoice;
 - 9.1.2 Grower has not paid its royalty payments due and owing to COPF within ninety (90) days following a final written demand for payment of same by COPF to Grower;
 - 9.1.3 Grower refuses COPF or its duly authorized representative access to Grower's premises for the purpose of inspection of production areas and review of Grower's sales and production records.
 - 9.1.4 Grower shall have the right to terminate its membership in COPF at any time upon three (3) months advance written notice to COPF.

10.0 SURVIVORSHIP

10.1 Grower recognizes and agrees that all royalty payments due and owing by Grower to COPF shall survive suspension or termination of Grower, and that COPF shall have the right and authority to assign any and all rights it has or may have had under this Grower Member Agreement to a breeder seeking to recover royalties due and owing on any Breeder Plant Material supplied by Breeder to Grower.

11.0 TERM

11.1 This Grower Member Agreement is for a maximum term of five (5) years from the date first above mentioned, but can be automatically renewed for successive one year terms thereafter provided COPF is in agreement, and provided further Grower pays the then published membership fee applicable to each successive one year extension term.

12.0 PRIOR AGREEMENTS

12.1 This contract and the attached exhibits constitute the entire Agreement between **Grower** and **COPF**. Any prior agreements, promises, negotiations, or representations not expressly set forth in this agreement are of no force and effect. Any amendment to this agreement shall be of no force and effect unless it is in writing and signed by **Grower** and **COPF**. Should any provision(s) of this agreement be determined to be void or unenforceable for any reason, such failure shall not affect the enforceability of the remaining provisions of this agreement.

13.0 ASSIGNMENT

13.1 This Grower Member Agreement cannot be assigned by Grower either in whole or in part, and is binding on the successors and legal representatives of Grower.

14.0 NOTICE

14.1 Any notice required to be given by Grower or COPF in writing shall be addressed as first above specified unless written notice of a change of address is given by one party to the other. Notices may be made or given by way of facsimile transmission.

15.0 GOVERNING LAW

15.1 This Grower Member Agreement shall be governed by and interpreted under the laws of the Province of Ontario, Canada.

GROWER

COPF

Print Name: _____ Print Name: Peggy Walsh Craig

Title: _____ Title: Managing Director

Signature: _____ Signature: _____

Witness: _____ Witness: _____

Date: _____ Date: _____