



Date:

Government & Public Garden Membership Application and License Agreement to PROPAGATE and SELL Plant Select® Licensed Plants.

Please complete and sign the following Government & Public Garden Propagator Membership Application and License Agreement in order to be a fully authorized propagator of Plant Select® licensed plants.

Company Name _____

Contact Person _____

Mailing address _____

Phone: _____ **FAX:** _____

Email: _____

Website: _____

Date: _____

The Membership Application and License Agreement taken together constitute the complete agreement between Plant Select® and the Licensee.

Membership Application to PROPAGATE and SELL Plant Select® Licensed Plants (This application is for use ONLY with License Agreement)

Company Name

Date

By: _____

Print Name and Title

Signature

Company applies for Membership in Plant Select® to propagate and sell Plant Select® Licensed Plants in accordance with the policies of Plant Select® and the terms of the following License Agreement. Execution on the signature page by Company shall constitute a signed application for Membership and agreement to the terms of the License Agreement by Company. Execution on the signature page by Plant Select® shall constitute acceptance of Company as a Member of Plant Select® and agreement to the terms of the License Agreement by Plant Select®.

Government & Public Garden Propagator Membership Fee is \$200.00 per year, and is valid for up to one year, renewable on July 1.

Network Propagator members receive exclusive access to propagation protocols, and marketing and propagation committee meetings and minutes. Propagator members will also be listed on www.plantselect.org and will receive marketing materials, including brochures and signs.

IMPORTANT NOTE: Only propagator members with a fully authorized “License Agreement to Propagate and Sell Plant Select® Licensed Plants” and paid, current membership are licensed to propagate and sell Plant Select® trademarked and patented plants.

Additional Retail membership (complimentary)

Check here if your company is also a retail or wholesale seller of Plant Select® licensed plants, and to be listed as a retail or wholesale source on www.plantselect.org.

Instructions

Please sign two copies of this Membership Application and License Agreement, and remit with \$200.00 annual membership fee (payable to Plant Select®) to:

Plant Select®
c/o Colorado State University
1173 Campus Delivery
Fort Collins, CO 80523

License Agreement to PROPAGATE and SELL Plant Select® Licensed Plants

This License Agreement is made between Plant Select®, a Colorado non-profit corporation, and XXXXXXXXXXXXXXXXXXXXXXXX hereinafter called "Licensee."

Recitals

A. Plant Select® owns proprietary rights to the trademarked and patented plants listed on attached Exhibit A.1, called the "Licensed Plants" in this Agreement.

B. Licensee wishes to propagate, grow, sell and distribute the Licensed Plants in the United States and Canada under and subject to Plant Select® proprietary rights and further subject to the terms and conditions of this Agreement.

C. In order to qualify for licensure under this Agreement, Licensee will pay an annual Membership Fee, as described in the Membership Application Form. The Membership Application Form will be updated annually.

NOW THEREFORE, in consideration of the mutual covenants herein contained, it is agreed by the parties as follows:

1. **Grant of License.** Subject to the terms of this Agreement, Plant Select® hereby grants to Licensee the non-exclusive, non-divisible, non-transferable and non-assignable license only (A) to propagate, grow, sell and distribute in the United States and Canada the Licensed Plants set forth on Exhibit A.1, and (B) to use the trademarks, copyrights, and patents of Plant Select® in connection with the propagation, growing, sale, and distribution of the Licensed Plants and for no other purpose. Plant Select® will annually update Exhibit A.1 and Exhibit A.2. The new Exhibit A.1 will be applicable to any renewal or extension of this Agreement, unless this Agreement is terminated, or an updated Exhibit A.1 is issued.

2. **Standards.** The Licensed Plants shall be propagated and grown in strict accordance with formulas, standards, specifications and instructions established by the American Standard for Nursery Stock ANSI Z 60.1 (2004). In addition, Licensee will carry out its activities relating to the Licensed Plants in accordance with additional rules, if any, established by Plant Select® and provided to Licensee by Plant Select® in writing, with respect to the Licensed Plants.

3. **Term.** This Agreement shall automatically renew one year from the date this Agreement is signed by both parties, unless terminated by either party by ninety (90) days' written notice to the other, provided that:

The license granted hereunder shall terminate with respect to a specific Licensed Plant upon the expiration of the proprietary rights of Plant Select® to such plant; and

The Licensee shall continue to be obligated to Plant Select® for the payment of all royalties and marketing fees required hereunder for all Licensed Plants propagated or grown prior to the termination date of this Agreement but sold and distributed by the Licensee following the said termination date.

4. **Marketing & Labeling.** All printed and electronic materials, including catalogs and websites, prepared and used by Licensee in connection with the propagation, advertising, distribution and sales of the Licensed Plants shall identify the proprietary rights of Plant Select®. Such printed material must bear the Plant Select® name and/or logo, and the materials shall be subject to prior written approval of Plant Select®.

Licensee shall attach to all Licensed Plants to be distributed and sold hereunder tags/labels identifying the proprietary rights of Plant Select[®]. Licensee may provide its own tags, but in such event the tags shall be subject to the prior written approval of Plant Select[®]. All tags must bear the official Plant Select[®] name and logo.

Plant Select[®] shall be entitled to charge Licensee a fee for any materials provided by Plant Select[®] to Licensee at Licensee's request.

5. **Identification of Proprietary Rights.** Plant Select[®] proprietary rights that are shown on all printed material, including catalogues, prepared and utilized by Licensee in connection with the advertising, distribution and sale of the Licensed Plants shall appear as:

- (a) License Trademark: TRADE NAME[™]
- (b) Registered Trademark: TRADE NAME[®]
- (c) If Patent Pending: A patent covering this variety of ____ has been applied for.
-or-
If Issued Patent: This variety of ____ is patented. Patent # _____. Asexual reproduction of this plant is prohibited.

6. **Royalty/Marketing Fee.** As compensation for the license granted hereunder, and other information and services made available by Plant Select[®] to Licensee hereunder, Licensee agrees to pay a royalty/marketing fee to Plant Select[®] for each Licensed Plant as listed on Exhibit A.1 and sold by Licensee during the term of this Agreement. Royalties will be collected July of each year unless other arrangements are made.

Licensee shall pay stated fees based on annual sales of Licensed Plants (see fees listed on Exhibit A.1). This requirement is for all licensed plants sold with official Plant Select[®] tags purchased through Master Tag, self-printed tags, or tags supplied through another vendor.

Licensed Plants shall be deemed sold when billed out; if Licensed Plants are not billed out, they shall be considered sold when delivered or when paid for, whichever occurs first. Royalties and marketing fees paid on Licensed Plants that are returned by customers may be credited against future royalty/marketing fee payments; provided that a royalty/marketing fee shall be paid on any returned Licensed Plant that is later sold. No royalty/marketing fee need be paid on Licensed Plants furnished to customers without charge to replace returned Licensed Plants on which royalties/marketing fees have been previously paid, provided no credit is taken against royalty or marketing fee payments for such returned Licensed Plants.

Plant Select[®] reserves the right to amend the amount of a royalty or marketing fee by giving written notice. The notice will be given by Plant Select[®] delivering a revised Exhibit A.1 to Licensee containing the amended royalty/marketing fee rate. The revised rate would be applied to Licensed Plants sold from the crops of Licensed Plants propagated after written notice is given. Licensee shall be deemed to have accepted the terms of a revised Exhibit A.1 if Licensee propagates any Licensed Plants after the notice is received by Licensee.

7. **Records and Payment of Royalty/Marketing Fees.** Within thirty (30) days after each July 1 that occurs while this Agreement is in effect, or within thirty (30) days following the termination of this Agreement, Licensee shall furnish to Plant Select[®] a written statement of inventory (if requested

by Plant Select®) and sales of Licensed Plants through each June 30. The statement shall be certified to its correctness by the Financial Officer of Licensee and shall be accompanied by any previously unpaid license fee.

Upon termination of the Agreement, Licensee shall pay Plant Select® all royalties and marketing fees due and payable up to the effective date of the termination.

For all plants that Plant Select® pays originator fees, Licensee grants permission to share member reported quantities with originators as part of the Plant Select® annual statement to its originators.

All records and premises maintained by Licensee with respect to this Agreement, including Licensed Plants on the premises, shall be allowed unannounced visitation for inspection at all reasonable times by Plant Select® and/or its subcontractor, Royalty Administration International® (R.A.I.).

Licensee is required to submit annual reports to R.A.I. for all plants listed on Exhibit A.2. on all wholesale contractor sales (not small retail customer sales) information including: purchasing company name with physical address, size, and quantity of plants sold to purchaser. R.A.I. and Plant Select® maintain confidentiality of all reports.

8. **Default/Termination.** If Licensee fails to account for or to pay to Plant Select® any of the royalties and/or marketing fees that become due, or if Licensee defaults in the performance of its obligations under this Agreement, Plant Select® shall have the right to terminate this Agreement, and all proprietary rights licensed hereunder, on sixty (60) days written notice to Licensee; provided, however, if Licensee cures the default to the satisfaction of Plant Select® within said sixty (60) day period, this Agreement will not be terminated.

9. **Acknowledgement of Proprietary Rights.** Licensee acknowledges Plant Select® proprietary rights hereunder, and that certain proprietary rights are trade secrets of Plant Select®. Licensee agrees not to do, or to suffer to be done, any act or thing which would impair the proprietary rights and trade secrets of Plant Select®. Licensee agrees to protect the intellectual property, proprietary rights, and trade secrets of Plant Select® in the same manner and with the same degree of diligence with which Licensee would protect its own intellectual property rights, proprietary rights, and trade secrets. It is understood that Licensee, including any parent or subsidiary of Licensee, shall not acquire, nor shall claim, any title or right that is adverse to the proprietary rights of Plant Select® by reason of the license granted to the Licensee hereunder.

Further, Licensee agrees that all results/outcomes from any manipulation of licensed plants, including without limitation, mutagenic, tissue culture, molecular or cellular techniques, conducted during the term of this Agreement must be reported to Plant Select® in writing and shall be owned exclusively, and without question, by Plant Select®. All results/outcomes from such manipulations shall be maintained by the Licensee until instructions for handling are received from Plant Select®.

Plants sent to Licensees labeled or designated as trial plants are not to be sold nor their genetics used for hybridization in any way without prior written consent from Plant Select®.

Additionally, Licensee agrees that all selections conducted upon the licensed plants are and shall be the sole property of Plant Select®.

Licensee shall not have the right to sublicense or otherwise use or transfer any rights of Licensee to any Licensed Plant, unless specific arrangements are made in writing with Plant Select®.

10. **Governing Law.** This Agreement has been entered into the State of Colorado and shall be governed by and construed in accordance with the laws of the State of Colorado.

11. **Notices.** Any notice required or permitted to be given by either party to the other is given in accordance with this Agreement if it is in writing and mailed to either Plant Select® or Licensee by certified mail addressed to the intended recipient at its address contained in this Agreement or to such other address as the recipient may furnish to the other party for purposes of receiving notices under this Agreement.

12. **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties with respect to its subject matter and supersedes any prior Agreement, written or oral, between Plant Select® and Licensee. No amendment or modification of this Agreement shall be made except in writing, signed by both of the parties, except with respect to Exhibit A.1 which can be modified as provided in this Agreement.

13. **Binding Effect.** This Agreement may not be assigned by Licensee without the prior written consent of Plant Select®. Plant Select® may withhold its consent for any or no reason. This Agreement shall be binding upon the respective parties, their successors, and permitted assigns.

AGREED

LICENSEE:

PLANT SELECT®

(Company Name)

By: _____
Ross Shrigley, Executive Director

By: _____

Date
c/o Colorado State University
1173 Campus Delivery
Fort Collins, CO 80523-1173

Print Name and Title

Signature

Contact Person (if different):

e-mail: ross.shrigley@plantselect.org
Telephone: 970-481-3429

Date