

Canadian Ornamental Plant Foundation

975 McKeown Ave, 5A - # 218, North Bay, Ontario P1B 9P2 Canada
Telephone (705)495-2563 - Facsimile (705)495-1449 - Toll Free in Canada 1(800) 265-1629
e-mail: info@copf.org - [website: www.copf.org](http://www.copf.org)

BREEDER MEMBER AGREEMENT

(Disponible en français aussi)

This agreement made in duplicate and made effective the 1st day of January, 2006.

Between: _____

(hereinafter referred to as “Breeder”)

Canadian Ornamental Plant Foundation

and 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 FIRST PART

OF THE SECOND PART

WHEREAS Breeder is the owner, holder or authorized agent or representative for at least one of the following categories, namely: (A) plant breeder’s rights in plant varieties which are registered under the Plant Breeders Rights Act of Canada (the “Act”) and/or which are registered in another country of the Union which is referred to in the Act, (B) proprietary rights in plant varieties identified by trade-mark and /or restrictions on propagation, and (C) the originator of a plant variety as more particularly set forth in Schedule “A” attached, and which are hereinafter individually and collectively referred to as the “Breeder Registrations”.

AND WHEREAS COPF provides and supervises an administration system between breeders and growers who are members of COPF, for the purpose of assisting the funding of new plant development, some of which are cultivars, and such administration system includes, but is not limited to the collection of royalties by COPF on behalf of breeders respecting growers’ use of propagation material as supplied by breeders or their agents or distributors to growers.

AND WHEREAS Breeder is desirous of becoming a member of COPF or maintaining its membership in COPF for the purpose of, inter alia, enabling COPF to collect royalties on propagation material and/or to monitor propagation of Breeder Registrations and wherein the propagation material is subject to one or more of the Breeder Registrations.

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

1.0 MEMBERSHIP

1.1 Upon countersignature of this Breeder Member Agreement by a duly authorized signing officer of COPF, Breeder shall be deemed to be a member of COPF in that capacity and the Breeder Registrations shall be deemed to have been registered with COPF. Breeder agrees to abide by the existing by-laws of COPF and such further by-laws as may from time to time be adapted or amended by COPF, together with the terms of this Breeder Member Agreement.

1.2 In the event of any conflict between the terms of this Breeder Member Agreement and the existing or future by-laws of COPF, the provisions of the said by-laws shall take precedence and prevail.

2.0 MEMBERSHIP DUES

2.1 Breeder of COPF undertakes and agrees to pay to COPF an annual membership fee in an amount as from time to time determined by COPF and communicated to all breeders who are members or potential members of COPF. Annual membership fees shall be due payable within 30 days after the date of billing to Breeder by COPF.

3.0 BREEDER REGISTRATIONS

3.1 Breeder represents and warrants that it is the owner, holder or authorized agent or representative of the

owner or holder of all the Breeder Registrations as set forth in Schedule "A" attached, that each one of the Breeder Registrations identified in Schedule "A" is correctly and fully identified under the proper Category headings as set out in Schedule "A" and that as such, Breeder is entitled and authorized to enter into this Breeder Member Agreement with COPF

- 3.2** Future or new plant varieties may be registered by Breeder with COPF, upon written request to COPF, under any one of the Category A, B or C headings, and upon such registration by COPF shall be deemed to be included in the said Breeder Registrations as if same were initially set forth in Schedule "A" attached, and against which all of the terms of this Breeder Member Agreement apply.
- 3.3** The Breeder Registrations as set forth in Schedule "A" or future plant varieties which are designated as such under paragraph 3.2 above shall be registered by COPF in a list of COPF Registered Plant Varieties which list will include the Breeder Registrations and breeder registrations of other breeders who are also members of COPF
- 3.4** Any plant variety which is included in Category A of the Breeder Registrations shall automatically no longer be included in the Category A listing of the Breeder Registrations following the last expiry date of any registration therefor made under the Act or made in another country of the Union referred to in the Act (hereinafter referred to as an "Expired Registration"). Any Expired Registration may be re-registered with COPF only upon written request by Breeder as if it were a new or future plant variety as set forth in paragraph 3.2 above but then only as a Category B or Category C Plant variety as specified in writing by the Breeder.
- 3.5** Breeder shall be responsible for advising COPF of a change in Category of any Breeder Registration.

4.0 COPF ADVISORY SERVICES

- 4.1** COPF undertakes and agrees to maintain all Categories of Breeder Registrations on the list of COPF Registered Plant Varieties.
- 4.2** Breeder agrees to furnish COPF at the time of Breeder Registration with literature, photographs and the like as same applies to plant cultivars which are the subject of Breeder Registrations and which are listed as COPF Registered Plant Varieties. In furtherance of this, Breeder authorizes COPF to reproduce, publish and distribute such material as from time to time is supplied to COPF by Breeder.
- 4.3** COPF shall have the right to exclude from the list of COPF Registered Plant Varieties any of the Breeder Registrations in the event Breeder is no longer a member of COPF.
- 4.4** COPF agrees to inform Breeder upon request, as to a grower member's status in COPF.

5.0 APPOINTMENT OF COPF

- 5.1** Breeder appoints
 does not appoint

COPF as its exclusive royalty administration and receiving agent for all royalty administration and accounting and royalty amounts due or owing the Breeder as a result of the supply or sale by Breeder or its authorized representative of propagation material subject of the Breeder Registrations and forming part of COPF Registered Plant Varieties, to growers who are members of COPF. COPF shall not be liable to Breeder to make good on any uncollected royalties due Breeder from existing or former growers who are or were members of COPF.

- 5.2** COPF and Breeder recognize and agree that but for COPF's responsibility regarding the administration and receiving of royalties from growers who are compliant members of COPF as herein provided, COPF is in no way involved in the Breeder's supply, distribution or sale of propagation material to growers, and which shall be the subject of separate agreements between Breeder and growers.
- 5.3** No rights, as agent or otherwise, are conferred on COPF in respect of any breeder rights included in the Breeder Registrations, and it shall be Breeder's sole responsibility to enforce such rights against any third person, including growers who are members of COPF and who have not paid COPF, on behalf of Breeder, any royalty payments otherwise due.

6.0 BREEDER OBLIGATIONS

- 6.1 If Breeder agrees to supply propagation material of Breeder Registrations to growers without first verifying growers' status with COPF and notifying COPF, COPF shall be under no obligation to monitor or recover royalties on behalf of Breeder from said growers.
- 6.2 Breeder shall periodically advise COPF, of any supply, distribution or sale of propagation material for the purpose of enabling COPF to monitor grower's use thereof. Breeder further agrees to provide COPF with a listing, in respect of plant material which has been supplied by Breeder to any grower in every twelve (12) month period.
- 6.3 At the time of distribution, supply or sale of propagation material subject of the Breeder Registrations by Breeder or Breeder's authorized representative to a grower, Breeder agrees to advise grower that COPF will be responsible for the administration of and the receiving of royalties, except as specified herein.

7.0 ROYALTY COLLECTION AND ADMINISTRATION

- 7.1 COPF agrees to use its best efforts to recover royalties due on the use of plant propagation material covered by the Breeder Registrations as supplied by Breeder to a grower who is a member of COPF, and which shall be based on sales and royalty reports as received from growers.
- 7.2 Unless otherwise agreed by COPF and Breeder, COPF shall charge Breeder a Twelve to Fifteen percent (12 - 15%) administration fee and shall retain this amount for its own account based on royalties actually collected by COPF on behalf of Breeder. This administration fee as charged Breeder by COPF may be changed from time to time during the term of this Breeder Member Agreement, only on written agreement between COPF and Breeder.
- 7.3 Breeder and COPF further agree that the royalty rate for each of the Breeder Registrations as set forth in Schedule "A" attached may be changed upon mutual agreement by Breeder and COPF. However, any such change as herein contemplated must be made at least one year in advance prior to such change coming into force as Breeder and COPF both recognize and understand that any such change must be communicated by COPF to its members who are growers.

8.0 PAYMENT OF ROYALTIES TO BREEDER

- 8.1 That portion of the royalties received by COPF on behalf of Breeder from growers who are members of COPF, excluding COPF's administration fee and any interest accrued on royalties held in trust, shall be paid by COPF to Breeder no later than January 31, April 30, July 31 and October 31 during each calendar year with respect to royalties actually collected by COPF up to the previous quarter. COPF shall not be obligated to pay Breeder any amount on royalties not collected by COPF, and COPF shall not be entitled to charge Breeder any administration fee on royalties not collected.
- 8.2 Notwithstanding anything to the contrary as may be contained in this Breeder Member Agreement, in a situation where either a grower who is a member of COPF remits or pays royalties direct to Breeder or Breeder propagates its own plant material which is the subject of one or more Breeder Registrations, then in any such situation, Breeder agrees to report such activity to COPF and at the same time remit to COPF an amount equivalent to COPF's administration fee normally charged by COPF on royalty payments actually received by it on behalf of Breeder.
- 8.3 Each payment made by COPF to Breeder shall be accompanied by a statement specifying the period covered, and for each plant variety included in the Breeder Registrations and which is also included in the listing of COPF Registered Plant Varieties, the total reported sales or propagation applicable thereto, and the royalty amount due and payable thereon less COPF's administration fee.
- 8.4 In the event of non-payment of royalties by a grower who is a member of COPF, COPF and Breeder agree that Breeder shall alone be responsible for instituting any legal proceedings in order to recover royalty amounts due and owing or to restrain any continued unauthorized use of the Breeder Registrations. To this end, COPF agrees to render such reasonable assistance that Breeder may, from time to time, require in order to obtain recovery of the royalty amounts due and payable. In furtherance thereof, and to the extent necessary, COPF agrees with Breeder to assign such rights COPF may have with Grower under a Grower Member Agreement, and as may be necessary for Breeder to enforce royalty collection.

9.0 INDEMNIFICATION

Breeder undertakes and agrees to indemnify and save COPF harmless against any and all third party claims made against COPF respecting COPF's administration and royalty receiving agency activities performed by it on behalf of Breeder.

10.0 BREEDER MEMBERSHIP SUSPENSION OR TERMINATION

- 10.1** Breeder as a member of COPF understands and agrees that its membership 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:
- (a) Breeder has not paid its annual membership fee or administration fee as provided for in paragraphs 8.1 and 8.2 within thirty (30) days following a final demand for payment of same;
 - (b) COPF or Breeder commits an act of bankruptcy within the meaning of the Bankruptcy Act, R.S.C. 1985;
- 10.2** If any breach or default in respect of any of the terms of this Breeder Member Agreement by either of the parties shall occur, the other of said parties shall have the right to give notice in writing specifying in detail the nature of such a breach or default and if the alleged breach or default has, in fact, occurred and is not cured within 90 days of the mailing of the notice, the other party shall have the right to terminate this agreement at the end of the calendar year in which the 90 day period expired.
- 10.3** In the event Breeder has its membership in COPF suspended or terminated as set forth above or in the event this agreement is terminated as set forth in paragraph 9.2 above, COPF shall have the right to publish and circulate the fact to its membership that the Breeder's membership has been suspended or terminated, as the case may be.
- 10.4** COPF recognizes and agrees that all royalty payments due and owing Breeder by COPF respecting royalties paid to COPF while Breeder was a member of COPF shall survive any membership suspension or termination.

11.0 TERM

- 11.1** This Breeder Member Agreement is for a maximum term of three (3) 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, Breeder pays the then published membership fee applicable to breeders for each successive one year extension of term.

12.0 PRIOR AGREEMENTS

- 12.1** This contract and the attached exhibits constitute the entire Agreement between **Breeder** 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 **Breeder** 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 ASSIGNMENTS

- 13.1** In the event Breeder as owner or holder of the Breeder Registrations which are also listed with COPF as COPF Registered Plant Varieties transfers any interest in the said Breeder Registrations to a third party, the terms and conditions of this Breeder Member Agreement shall apply to such third party as if the third party was an original signatory hereto until Breeder is suspended or terminated by COPF under article 10.0 or as COPF and Breeder may otherwise agree, or until the said third party enters into a similar Breeder Member Agreement with COPF respecting all or any of the Breeder Registrations, whichever event shall first occur.
- 13.2** This Breeder Member Agreement shall not be assigned by COPF without first obtaining Breeder's advance written permission to do so.

16.0 NOTICE

- 16.1** Any notice required to be given by Breeder or COPF in writing shall be addressed as first above specified unless written notice in a change of address is given by one party to the other. Notices may be made or given by way of facsimile transmission and shall be deemed to have been received on the date of facsimile transmission.

15.0 GOVERNING LAW

