



12190 S. Old Nogales Highway
Tucson, AZ 85756
Phone: 520-722-7770
Fax: 520-746-4977
Mailing Address:
P.O. Box 1100
Sahuarita, AZ 85629

**Self-Propagation Agreement Between
Civano Ornamentals, LLC. and COMPANY NAME HERE**

DATE

This Master License Agreement ("the Agreement") is entered into by and between Civano Ornamentals LLC. ("CO"), P.O. Box 1100 Sahuarita, AZ 85629 USA, and COMPANY NAME HERE ("Licensee"), on the date first set forth above.

CONTENTS

1. Representations
2. Rights Granted to Licensee
3. Territories
4. Special Terms
5. Obligations of CO
6. Propagation, Stock, Private Stock
7. Sports, Essentially Derived Varieties
8. Labels, Variety Descriptions, Trademarks
9. Royalty Obligations: Reporting and Payment
10. Sales of Unrooted Cuttings
11. Inspections and Audits
12. Status (including expiry) of Variety Protection, Removal of Variety from Agreement
13. Duration of License, Termination by Mutual Consent
14. Termination for Breach
15. Dispute Resolution
16. Amendment of License including Royalty Rate

- 17. Confidential Information
- 18. Governing Law, Jurisdiction
- 19. General

1. Representations

1.1 Whereas, CO has entered into long-term contractual relationships with the persons and/or entities named in Appendix A, each of whom has developed or otherwise owns or controls the Variety or Varieties specified in Appendix A ("the Varieties") and claims worldwide exclusive proprietary rights thereto including patent rights, breeder's rights, trade secret rights, trademark rights ("Rights").

1.2 Whereas, CO's contract with each Breeder requires CO to issue licenses for the conduct of variety performance trials and the propagation and commercial dissemination of the Varieties.

1.3 Whereas, Licensee is an experienced commercial grower and desires to enter into this Agreement for the purposes of conducting variety performance trials and in order to be licensed for the propagation and commercial dissemination of the Varieties.

1.4 Whereas, upon executing this Agreement and subsequently, Licensee undertakes to provide to CO the addresses of all locations at which Licensee intends to hold any plants of the Varieties for any purpose described in this Agreement ("Locations".)

1.5 Now therefore for good and valuable consideration, CO and Licensee, also described herein as "Party" or "Parties", enter into this Agreement as of the date first set forth above.

2. Rights Granted to Licensee

2.1 CO grants to Licensee a non-exclusive, indivisible and non-transferable license ("the License") to organize in strict compliance with the terms of this Agreement: a) the propagation of the Varieties, b) the distribution of plants of the Varieties solely within the territories defined in Section 3 following ("Territories").

2.2 The License granted by this Agreement is personal to Licensee, is not assignable without CO's prior written consent, and shall automatically terminate upon an acquisition or change in control of Licensee. Licensee may not, without CO's prior written consent allow any other entity or affiliate to participate in the performance of Licensee's responsibilities or the enjoyment of Licensee's rights under this Agreement.

2.3 Licensee agrees that neither CO nor the Breeders have made any warranty of fitness for purpose of the Varieties and shall not be liable for genetic aberrations or pest or disease infections occurring in production or after. Licensee agrees to defend, indemnify and hold CO and the Breeders harmless against any claims by or on behalf of any of Licensee's customers or transferees of any of the Varieties that any of the Varieties are unfit for any purpose or fail to conform to any particular description.

3. Territories

3.1 Licensee may only offer, sell and deliver plants of each Variety into and within the territories of The United States of America and Canada. For the avoidance of doubt, Licensee expressly agrees that offers or sales or deliveries to a non-specified territory require the prior written approval of CO in all circumstances.

3.2 Licensee shall use reasonable efforts to require its customers to refrain from soliciting or accepting any export orders and to advise CO in the event that unauthorized exports may be occurring.

4. Special Terms

4.1 If the license for any Variety shall be made subject to special license terms ("Special Terms") then the particular Special Terms shall be documented for that Variety in Appendix A.

4.2 Any period of exclusivity specified in Appendix A for the benefit of Licensee shall apply only to exclusivity of sales. Licensee agrees that CO may license others to trial and/or propagate and build up stock of the Variety prior to expiration of Licensee's period of exclusivity.

5. Obligations of CO to Licensee

5.1 CO agrees to use commercially reasonable efforts to support and promote Licensee and Licensee's commercial opportunities including but not limited to the following services:

- To obtain and maintain grants of Plant Patent and Plant Breeders' Rights ("Variety Protection").
- To establish sources of stock, including elite stock according to the industry norms for the Variety.
- To provide technical information for Licensee's Varieties.

- To provide marketing resources including images for royalty-free use by Licensee.

6. Propagation, Stock, Private Stock

6.1 During the term of this Agreement, Licensee may propagate, grow, and sell plants of any of the Varieties which are included in the latest version of Appendix A but always subject to any Special Terms relative to holding or renewal or non-holding of stock as documented for each variety within Appendix A.

6.2 Licensee may only propagate the Varieties at a Licensee Location which has been pre- notified to CO in accordance with the requirements of Section 1.4.

6.3 Licensee is prohibited from establishing stock at a third-party location ("Private Stock") without first obtaining written permission from CO.

6.4 Whilst CO will use reasonable endeavors to establish elite stock source(s) for the Varieties, CO does not guarantee such availability. Terms of supply, including payment, warranties, liability shall be agreed between Licensor and third-party stock supplier.

6.5 CO will expect Licensee to follow industry best practice in working with elite stock according to the norms for each Variety. CO may require Licensee to renew stock of the Varieties in order to maintain their health, vigor and trueness to type. CO may require Licensee to purchase elite plant material from an elite plant producer authorized by CO.

7. Variety Performance Trials

7.1 CO may offer to deliver to Licensee at Licensee's request certain new and unproven Varieties ("Trial Varieties") which Breeder and CO wish to subject to Variety Performance Trials ("Variety Performance Trials").

7.2 Licensee's acceptance of any CO offer of a Trial Variety shall cause that Variety to be immediately subject to all of the terms of this Section 7 until such time as the Trial Variety is added to Appendix A (as a Variety licensed for propagation and distribution) or is removed from Licensee's care and responsibility as further provided herein.

7.3 Licensee understands that its strict adherence to the terms of this Section 7 is necessary to maintain the Breeder's eligibility for Variety Protection. Licensee expressly understands and agrees that a breach of any of the terms in this Section 7 shall be regarded as a breach of this entire Agreement.

7.4 Licensee will not disclose or publish in any manner information relating to the Variety Performance Trials (including the existence of the Trials) or the Trial Varieties to any third party. Licensee will not allow any Trials Variety to be viewed or photographed by any third party without PH's prior permission.

7.5 If Licensee has agreed to CO's or Breeder's fees or charges in connection with providing plants of a Trial Variety, then Licensee must pay as agreed irrespective of the outcome of the Performance Trials.

7.6 Licensee may not send, transfer, sell, or offer to sell any plants or parts of plants to any other person or entity without CO's prior authority.

7.7 From time to time, CO may provide to Licensee a list of Trial Varieties covered by this Agreement which list shall be confirmed or amended by Licensee as a true and correct record at that time.

7.8 Licensee may not destroy plants of Trial Varieties without prior permission from CO. If Licensee or CO wishes to discontinue any Variety Performance Trial, Licensee shall proceed according to CO's instructions which may include certified destruction or transfer to another location. CO agrees to reimburse Licensee for the direct expenses incurred by Licensee in any transfer to another location.

7.9 Licensee agrees to provide timely assistance to CO and to comply with CO's requests for detailed reports and information (including photographs) in connection with Variety Performance Trials.

7.10 Licensee will use best endeavors to ensure that no Trial Variety is exposed to deliberate breeding. Further, any new and distinct Variety which is derived from a Trial Variety, including any naturally occurring mutation ("Derived Variety") will belong to the Breeder that owns the Trials Variety. Licensee hereby assigns to such Breeder all rights that Licensee may otherwise claim in any Derived Variety.

7.11 If CO and Licensee and Breeder all agree that a Derived Variety has profitable commercial potential, then CO will grant to Licensee a license to propagate, grow and sell such Derived Variety subject to the royalty payment terms and conditions of this Agreement.

7.12 Licensee agrees to inform CO without delay if Licensee discovers that any plants of any Trials Variety are missing or lost. If Licensee suspects a case of unauthorized removal including theft, then Licensee will so advise CO and follow CO's reasonable instructions, including reporting to the police authorities, in order that the Breeder's property may be recovered and rights safeguarded.

8. Labels, Variety Descriptions, Trademarks

8.1 Licensee will only describe or promote or sell plants of the Varieties under the Variety names indicated in Appendix A (the "Sole Variety Selling Names")

including the most up-to-date statement, as provided by CO of the status of the Variety's Protection ("Protection Status").

8.2 Any Licensee publication or listing of any Royalty Rate shall be identical to the Royalty Rate specified in Appendix A. Any additional fee imposed on sales of the Varieties (for example, "marketing fee", "label fee") shall be clearly identified as such, as an addition by Licensee and not CO or Breeder.

8.3 Without CO's permission in advance, Licensee may not apply any other name or trademark to the Varieties except that Licensee may use its own "house name or mark" in connection with the promotion of the Varieties or series of Varieties provided that the Sole Variety Selling Name is also presented.

8.4 Licensee will ensure that each plant sold is accompanied by a label including (a) Plant Common Name, (b) Plant Botanical Name, (c) Plant Patent Number (or the letters "PPAF" if patent is in process), and (d) the wording, "Unlicensed Propagation Prohibited". Exceptions as follows in Section 8.5.

8.5 Licensee may transfer its label supply obligations by (a) requiring its customers to supply a compliant label (i.e., label displaying items listed in 8.4) with their sold plants, and (b) taking reasonable steps to correct any customer's violation of the transferred labeling requirement.

8.6 Licensee and Licensee's customers may use existing stock of labels as a Variety's Protection Status changes from "Pending" (or "PPAF") to "Granted".

8.7 Labels may be printed in-house by Licensee or Licensee's customers. Labels may also be obtained through CO label vendor at an additional cost to Licensee or Licensee's customers.

9. Royalty Obligations: Reporting and Payment

9.1 In consideration of the license granted to Licensee under this Agreement, Licensee will pay to CO the applicable royalties ("Royalties") to be calculated based upon Licensee's sale or other transfer to Third Parties of plants of the Varieties, at the Royalty Rate indicated by Appendix A.

9.2 Licensee shall provide a written declaration of the total number of plants of the Varieties sold or otherwise transferred to any Third Party (a "Declaration of Sales") for each reporting period ("Sales Reporting Period"). Sales Reporting Periods shall be semi-annual except that CO may at its sole discretion give not less than three months' notice in writing of amendment to quarterly sales reporting.

9.3 Semi-annual Sales Reporting Periods shall include all sales of the Varieties in each six-month period ending June 30 and December 31.

9.4 Licensee's Declaration of Sales must be made on the form ("Declaration of Sales Form") provided by CO. Each completed Declaration of Sales Form shall be approved and signed by a responsible officer of Licensee.

9.5 Licensee shall use its best efforts to diligently and accurately complete and return each Declaration of Sales Form, even in the event of zero sales. The due date for delivery to CO of a completed and conforming Declaration of Sales Form is 30 days after the last day of each Sales Reporting Period.

9.6 The due date for receipt of all Royalty monies is 30 days after the last day of each Sales Reporting Period. Licensee expressly understands and agrees that any Licensee failure to deliver a properly calculated Royalty payment to CO within 60 days after the last day of each Sales Reporting Period will constitute a material breach of this Agreement and may cause this Agreement to be terminated without notice or cure period.

9.7 Licensee will ensure that each Declaration of Sales and each payment of Royalties will reflect consolidated sales and transfers of plants of the Varieties from all Territories, Licensee divisions and Affiliates.

9.8 In addition to any other remedy available to CO for Licensee's breach of this Agreement, Licensee will be assessed a late payment charge of 1.5% per month (or any part thereof).

10. Sales of Unrooted Cuttings

10.1 Sale or distribution of unrooted cuttings of the Varieties is prohibited unless expressly agreed in advance and documented within Special Terms in Appendix A. For the avoidance of doubt, Licensee may not sell unrooted cuttings of any Variety to any third party, including any other CO Licensee.

10.2 If Licensee receives any request to purchase unrooted cuttings, Licensee agrees to refer such request to CO.

11. Inspections and Audits

11.1 Licensee shall allow and assist CO (or CO's appointed agent) upon reasonable notice to inspect and inventory Licensee's crop and stock of the Varieties at any of Licensee's Locations.

11.2 Licensee shall keep accurate records (together with supporting documentation) of sales and other transfers under this Agreement ("Records") as are appropriate to determine and verify the amount of royalties due to CO. Records shall be retained for at least five (5) years following the end of the reporting period to which they relate.

11.3 Licensee will cooperate with any CO request for additional detail in support of current or previous sales declarations, including provision by mail or e-mail of copies of relevant reports exported from Licensee's accounting software. All sales information and data so provided to CO shall be subject to the audit confidentiality provisions of Section 11.7 below.

11.4 Licensee's Records shall be available during normal business hours for on-site audit by an independent professional accountant engaged by CO ("Auditor") for the purpose of verifying the accuracy of reports and payments hereunder. Licensee agrees that Auditor shall have the right to inspect all of Licensee's books, records, journals and all supporting business records of the transactions identified as relevant to the audit at the sole discretion of the Auditor.

11.5 If any period (which may exceed one year) selected for audit reveals an underpayment of Royalties which is less than five percent (5%) of the full Royalties due for that period then Licensee agrees unconditionally to pay within fourteen (14) days of receipt of CO's invoice for (a) the underreported amount, and (b) all the accrued interest for late payment as provided in Section 9.8.

11.6 If any period (which may exceed one year) selected for audit reveals an underpayment of Royalties which is equal or greater than five percent (5%) of the full Royalties due for that period then Licensee agrees unconditionally to pay (a) CO's cost of audit, (b) the sum of underreported Royalties, and (c) a penalty sum which is equivalent to two times (2x) the sum of underreported Royalties, all within fourteen (14) days of receipt of CO's invoice. In this case, no interest shall be added for late payment.

11.7 Licensee agrees that Auditor may disclose to CO such information which Auditor believes in good faith to be relevant under this Agreement including the resolution of any dispute arising. In receiving information from Auditor, CO shall be bound by the Confidentiality provisions of Section 17.1.

12. Removal of Variety from Agreement

12.1 CO may give notice of intention to delete or phase out a variety ("Deleted Variety") which CO and Breeder consider to be inferior by current standards. Licensee agrees to cease propagation of Deleted Variety in accordance with CO's phase-out plan.

12.2 Licensee may request removal of any or all Varieties from this Agreement by giving written notice to CO. Removal from the Agreement shall take effect upon written confirmation of receipt by CO whereupon:

12.3 Licensee shall be permitted to continue to sell plants on hand provided that Declarations of Sales and payments of Royalties must be made on the Due Dates provided in this Agreement until Licensee concludes sales of the Varieties.

12.4 If requested by CO, Licensee agrees to supply an amount of residual stock to CO at fair market value not exceeding Licensee's latest published pricing.

12.5 CO may notify Licensee of upcoming expiration of grants of Variety Protection. Variety shall remain in Appendix A and Royalties shall continue to be due until the final sale of plants of the Variety which were propagated prior to the effective date of expiration.

12.6 CO may give notice that an application or grant of Variety Protection has been abandoned. Licensee's royalty liability shall cease upon the effective date of such abandonment. Prior payments of Royalties are not refundable in the event of an abandoned application.

13. Duration of Agreement

13.1 Unless terminated for breach as provided in Section 16 following, this Agreement shall endure for as long as any Variety remains in Appendix A.

13.2 The Parties agree that the provisions of Sections 2.3, 9, 11, 13.2, 15, 17, 19 shall survive termination of this Agreement.

14. Termination for Breach

14.1 CO may terminate this Agreement at any time without further notice upon material breach by Licensee in Licensee's Royalty payment obligations (Section 9.6).

14.2 Except for material breach as in Section 16.1 above, either Party seeking to terminate this Agreement for other breach of this Agreement shall give the other Party written notice of the specific facts and grounds constituting breach of Agreement and shall state in its notice the reasonable steps that the other Party must take to cure the breach including the time allowed to cure the breach. If the other Party cures the breach within the stated period of time to the reasonable satisfaction of the Party giving notice, then this Agreement will not be terminated as a result of the notice.

14.3 Where either Party has suffered material and irreparable harm as a result of the other Party's material breach, the terminating Party may terminate the Agreement immediately (without providing any cure period).

15. Dispute Resolution

15.1 Any dispute related to this License Agreement shall be settled in accordance with the procedures specified in this Section.

15.2 First, CO and LICENSEE agree to attempt to settle any controversy arising out of this Agreement through consultation and negotiation in good faith and spirit of mutual cooperation. Any dispute between the parties relating to this Agreement will first be submitted in writing to a senior executive of CO and LICENSEE (the "Dispute Notice"), who will promptly confer in an effort to resolve such dispute. Any agreed decisions of the executives will be final and binding on the parties.

15.3 Second, if the parties are unable to resolve any dispute by consultation and negotiation within thirty (30) days of the date of the Dispute Notice, then either party may initiate mediation upon written notice to the other party demanding mediation (the "Mediation Notice"), whereupon the dispute will be mediated by a mutually acceptable mediator to be chosen within thirty (30) days after the Mediation Notice. The parties will share the costs of the mediator equally.

15.4 Third, if the parties cannot agree upon selection of a mediator within ninety (90) days of the Dispute Notice, the dispute shall be settled by arbitration. Arbitration shall be conducted under the Commercial Arbitration Rules of the American Arbitration Association (the "AAA"). The dispute shall be heard by one arbitrator. The Parties agree that the selection of arbitrator shall be determined at the sole discretion of the AAA. The location and any hearings or arbitration shall be and take place in California. The Parties agree to abide by and perform any award rendered by the arbitrator whose final decision, including any award of fees or expenses shall be enforceable, but not appealable in any court of competent jurisdiction.

15.5 Each party shall continue to perform its undisputed obligations under this Agreement, including payments due, pending final resolution of any dispute arising out of or relating to this Agreement; provided, however that a party may suspend performance during any period in which the other party fails to perform its undisputed obligations.

16. Amendment of License including Royalty Rate

16.1 This Agreement (excluding Appendix A) may be amended only by the express mutual written consent of the Parties, which may be documented in the forms of letters, or other writings that set forth the amendments and which are signed and dated by both Parties.

16.2 The Parties agree that Appendix A may be amended and shall be fully effective within this Agreement by electronic exchange after signatures by both Parties provided that CO shall receive Licensee's signed copy within seven (7) days of issuance by CO.

16.3 Appendix A may be amended from time to time as market conditions and other forces mandate changes in Royalty Rates, as provided in Sections 16.4 through 16.6 following.

16.4 CO may give notice no less than 12 months prior to any Declaration of Sales Due Date, of intention to issue a Revised Appendix A reflecting proposed changes in Royalty Rates ("Royalty Rate Revision") to be effective immediately after the first Declaration of Sales Due Date following the expiration of said period of notice.

16.5 Licensee may reject any proposed Royalty Rate Revision by providing written notice to CO (indicating such rejection) not more than 60 days after receiving the proposed Royalty Rate Revision. Licensee's rejection of a Royalty Rate Revision shall have the effect of removal of the applicable Variety(ies) from this Agreement. Licensee shall be permitted to continue to sell plants on hand provided that Declarations of Sales and payments of Royalties must be made on the Due Dates provided in this Agreement until Licensee concludes sales of the Varieties.

16.6 Unless Licensee rejects a proposed Royalty Rate Revision, the Royalty Rate Revision shall be entered as a Revised Appendix A and shall take effect as noticed.

17. Confidential Information

17.1 In performing this Agreement, each Party will likely have access to proprietary and private or confidential information relating to the other ("Confidential Information"). All Confidential Information will remain forever the exclusive property of its owner, unless and until discoverable within the public domain, and shall be used solely in the performance of this Agreement.

18. Governing Law, Jurisdiction

18.1 This Agreement will be governed by, and construed and enforced in accordance with the laws of the State of Arizona. Jurisdiction and venue for all litigation (including, but not limited to arbitration) will be in the County of Pima, State of Arizona.

19. General

19.1 Licensee understands that CO is not licensed or qualified to provide any legal advice to Licensee.

19.2 Licensee agrees that each Breeder is an express third-party beneficiary of the provisions of this Agreement.

19.3 Licensee agrees that CO will not, in any event, be liable for the acts or omissions of any Breeder.

19.4 This agreement supersedes any prior agreements and undertakings between the Parties hereto and represents the complete agreement of the Parties.

19.5 All notices, requests, communications and demands hereunder must be made in writing and will be deemed to have been duly given if delivered in person or sent by registered or certified mail to the receiving Party's last known address or principal place of Business.

19.6 The failure of either Party to insist upon strict enforcement of any provision of this Agreement will not constitute a waiver of that provision.

19.7 In this Agreement, time is of the essence.

19.8 This Agreement and any amendment of this Agreement may be executed in any number of counterparts, each of which will be deemed an original and all of which will constitute but one and the same instrument.

19.9 In the event that any of the terms of this Agreement are or become illegal or unenforceable, such terms will be considered null and void and will be deemed deleted from this Agreement, and all the remaining terms of this Agreement will remain in full force and effect.

19.10 The relationship created by this Agreement is contractual. No partnership or joint venture exists between the Parties. Each Party is and will remain an independent contractor with respect to the other. Neither Party owes any duties (contractual, fiduciary or otherwise) to the other unless they are prescribed in this Agreement. As separate businesses, each Party is responsible, among other things, for its own expenses, federal, state and local income and other taxes, all applicable insurance coverage(s), and any and all governmental and operating licenses that may be required to perform this Agreement. Except as expressly provided in this Agreement, neither Party will have the authority to obligate, contractually or otherwise, the other, nor will either represent to any other person or entity that it has such authority.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above, at Tucson, Arizona.

By: _____

Print Name: _____

Title: _____

By: _____

Print Name: _____

Title: _____

APPENDIX A

Self-Propagation Agreement between Civano Ornamentals (Owner) and COMPANY NAME HERE (Licensee). This SCHEDULE A supersedes all previously dated Schedule "A's".

Variety Names	Royalty Rate
Special Terms/Comments/Notes	

Owner

Licensee

(Signature)

(Signature)

(Print Name) _____

(Print Name) _____

(Date) _____

(Date) _____

Title: _____

Title: _____