



**CERTIFICATION MARK RETAIL LICENSE AGREEMENT
GROWN IN COLORADO®**

This Certification Mark License Agreement ("Agreement") is made between the Colorado Nursery & Greenhouse Association, a not-for-profit corporation, organized under the laws of the State of Colorado, with its principal place of business at 959 S. Kipling Parkway, Suite 200, Lakewood, Colorado 80226 ("Licensor") and

_____ with a principal place of business at
_____ ("Licensee").

Whereas, Licensor is the owner of the federally registered certification mark GROWN IN COLORADO ® and design, Registration Number 1,887,655, (Certification Mark) and has developed a Certification Program relating to the use of the Certification Mark, including Plant Usage Standards, Graphic Standards, and Usage Options;

Whereas, Licensee is eligible to apply for a license to participate in the Certification Program by virtue of being a dues paying member in good standing of the Colorado Nursery & Greenhouse Association;

Whereas, Licensee desires to use the Certification Mark at its principal place of business in usages permitted under the provisions of the Certification Program and this Agreement; and

Whereas, licensor is prepared to grant to Licensee the non-exclusive right to use the Certification Mark subject to compliance by Licensee with the terms and conditions of this Agreement and the Certification Program.

In consideration of the facts set forth above and the mutual commitments, promises and obligations set forth in this Agreement, Licensor and Licensee agree as follows:

1. GRANT OF RIGHT TO USE CERTIFICATION MARK: Licensor grants to Licensee the nonexclusive right and license to use the Certification Mark in connection with the sale and marketing of Colorado-grown plants, at all times in accordance with the Certification Program set forth in this Agreement. Licensee accepts the grant of the License subject to the terms and conditions set forth in this Agreement. Licensee shall not use the Certification Mark in any other form in connection with any other business or product without the prior written consent of Licensor. This Agreement grants no right with respect to any other program, mark, trade name, label, or logo of Licensor.

2. FEE FOR PROGRAM PARTICIPATION: As a member of CNGA, the Licensee is able to use the mark at no additional cost.

3. PROGRAM STANDARDS: Licensee has the right to use the Certification Mark only on plants that comply with the following Plant Usage Standards:

(a) PLANT USAGE STANDARDS: Licensee has the right to use the Certification Mark in connection with the retail sale of edibles, annuals, perennials, shrubs, and trees that are grown in Colorado in compliance with the standards of Licensor's GROWN IN COLORADO® Program by suppliers who are licensed under Licensor's GROWN IN COLORADO® Program. Compliant plants that are grown from seed must be sown and grown in Colorado. Compliant plants from un-rooted, calloused or bare root that do not require upshifting must be established and well rooted as evidenced by the soil ball remaining intact when removed from its container. Compliant plants from plug or liner must have been shifted up at least one container size and are established and exhibit a well-rooted condition as evidenced by the soil ball remaining intact when removed from its container or burlap as defined in the Colorado Nursery Act. The finished compliant plant must be grown in Colorado to the point of being ready for sale.

(b) REPORTS AND RECORDS: Licensee will exercise prior diligence when acquiring plant material for retail sale under the Program, to ensure that the supplier is licensed under the Program and that the plant material was grown in accordance with the usage standards. Licensee will maintain records of purchases and sources under the Program. In the month of Licensee's annual renewal, Licensee will submit a report covering the prior twelve months, listing purchase volume by source and listing retail sales volume. At reasonable times and intervals, Licensor may audit the Licensee's records to check accuracy of the report for compliance with the Program.



4. MARK USAGE: Licensee has the right to use the Certification Mark only in a manner approved under this Agreement.

(a) RIGHT TO DISPLAY MARK ON BANNER: Entering into this Agreement with payment of the annual license fee entitles Licensee to use the mark on a Banner displayed at Licensee's principal place of business. Within the annual license fee, Licensor will supply to Licensee an approved Banner for Licensee's use.

(b) MARK USAGE OPTIONS: Licensor further grants to Licensee the right to elect among options for expanded use of the Certification Mark. Licensee's election of options is binding within each Agreement and will not be modified during the term of the Agreement. Changes during the term can be implemented by entering into a new annual Agreement, with new option selections and with submission of a new annual license fee. All Certification Mark application choices require adherence to the Plant Usage Standards, Graphic Standards, and Mark Usage Options of this Agreement.

(1) **ONLINE:** Use of the Certification Mark on Licensee's website, electronic communications, online advertising, social media, and any other online communication.

(2) **PRINT:** Use of the Certification Mark on stationary, invoices, business cards, plant catalogues, brochures, bench cards, checks, shipping boxes, vans, trucks, newspaper and magazine ads, and any other print application.

(3) **APPAREL:** Use of the Certification Mark on any clothing item that is worn by employees of the Licensee. **Apparel items may not be sold as a product.**

(c) GRAPHICS STANDARDS: The Certification Mark must be placed in ways approved in the attached Graphic Standards -- incorporated by reference herein -- that define the primary and secondary color pallet, typeface, clear-space, and application. The Certification Mark may only be used as provided and no modifications are permitted.

5. SAMPLES OF USAGE: Before Licensee commences any use or new use of the Certification Mark, it shall send a sample of the proposed use to Licensor so that Licensor can determine whether the mark is being used in a manner that complies with this Agreement. Upon request, Licensee shall provide Licensor with copies of representative advertising and promotional materials displaying acceptable uses of the Certification Mark. Any future advertisement with the same content thereafter will be deemed approved.

6. POSITIVE USAGE: Licensee shall display the Certification Mark only in a positive manner. Licensee will not use the Certification Mark in any way that disparages the Colorado Nursery & Greenhouse Association or its services, or in any manner that would diminish or otherwise damage the Colorado Nursery & Greenhouse Association's goodwill, including, but not limited to, uses that could be deemed obscene, pornographic, violent or otherwise in poor taste or unlawful, or which purpose is to encourage unlawful activities.

7. NON-EXCLUSIVE AND NON-ASSIGNABLE LICENSE: The License granted to Licensee is non-exclusive. Licensor reserves the right to grant the same license to others, in Licensor's sole discretion. This Agreement is not assignable and Licensee shall have no right to grant sublicenses hereunder. Any attempt to assign or grant sublicenses will be a violation of this Agreement. Licensee may not prepare plant material bearing the Certification Mark for another commercial party unless that party has a valid license to use Licensor's Certification Mark or Licensor has authorized such use.

8. LICENSOR'S EXCLUSIVE OWNERSHIP: Licensee acknowledges Licensor's ownership of the Certification Mark and agrees that it will do nothing inconsistent with such ownership. Licensee agrees that nothing in this Agreement shall give Licensee any right, title or interest in the Certification Mark other than the right to use the Certification Mark in accordance with this Agreement. Licensee agrees not to use the Certification Mark, with or without other words, as part of its trade name, without the prior consent of Licensor.

9. INDEMNITY: Licensor assumes no liability to Licensee or to third parties with respect to characteristics of the goods sold by Licensee under the Certification Mark, for failure of such goods to conform to the standards applicable to such



goods. Licensee will indemnify and hold harmless the Licensor, its members and its and their respective officers, directors and agents from and against losses arising from or in connection with the sale or use of goods of the Licensee earning the Certification Mark.

10. MISUSE BY OTHERS: Licensee agrees to use best efforts to provide to Licensor the name and address of any entity, whether it be a Licensee or non-Licensee, that engages in apparent misuse of the Certification Mark or any mark confusingly similar thereto, in apparent fraudulent designation of sponsorship or approval by the Colorado Nursery & Greenhouse Association, in apparent use of the Certification Mark by any non-Licensee and/or the apparent use of the Certification Mark by any entity in any manner not in compliance with the Program, whenever and wherever Licensee reasonably believes that such activity is being carried on. This duty is also applicable to Licensee itself.

11. SALE OF BUSINESS: Prior to the sale or transfer of Licensee's business or of substantially all of the assets of Licensee's business, Licensee shall notify Licensor of the proposed transfer and pay all fees due through anticipated date of closing. Licensee's participation in the Program and License under this Agreement shall be deemed to expire on date of closing. Accordingly, on or before closing date, Licensee shall act in accordance with Section 13, EFFECT OF TERMINATION. Provided, however, that in lieu of destroying plant marking, print and apparel materials, Licensee may transfer such materials to the new owner, if and only if the new owner has acquired an appropriate new license under the Program, including appropriate license options, from Licensor prior to closing date. Licensor will issue no License to another person or entity using the name, location or assets of a business licensed by Licensor until all fees of Licensor, including attorney fees, are paid in full.

12. TERM AND TERMINATION: The term of this Agreement is annual, from _____, 20__ to _____, 20___. The term shall be automatically renewed on an annual basis unless either party gives to the other party a written notice of termination of this Agreement.

Notwithstanding the prior paragraph, the term of this Agreement automatically shall terminate for cause, immediately upon Licensor's giving written notice by mail to Licensee that any of the following breaches has occurred:

- (a) Licensee has willfully or negligently misused the Certification Mark while exercising its rights or obligations under the License;
- (b) Licensee's membership with the Colorado Nursery & Greenhouse Association is not in good standing;

In the event of termination for cause, Licensee will have thirty (30) days to cure. If all such breaches are cured to Licensor's satisfaction within that thirty day period, Licensor shall issue a written notice of satisfaction with cure and resumption of Licensee's participation in the Program.

Upon a breach of this Agreement by Licensee, Licensor shall be entitled to exercise any and all remedies available under law or equity, including, but not limited to, the right to injunctive relief and the right to terminate this Agreement immediately without prejudice to any other available remedies;

13. EFFECT OF TERMINATION: Upon termination or expiration of this Agreement, Licensee will immediately discontinue all use of the Certification Mark and of any name, label, logo or mark confusingly similar to the Certification Mark and destroy any and all of its plant marking, online, print and apparel materials bearing the Certification Mark. Licensee agrees that upon termination or expiration of this Agreement, the Certification Mark and the goodwill connected with that Certification Mark will be and remain the property of Licensor. Licensee is and remains liable for the full cost of all accrued annual license fees and option fees to date of termination.

14. CHOICE OF LAW AND JURISDICTION: This Agreement and all transactions under it shall be governed by U.S. federal law and the laws of the State of Colorado, excluding its choice of law rules. The parties further acknowledge and agree that any non-contractual cause of action that either party may assert, including but not limited to trademark infringement, trademark dilution, passing off, false designation of origin, unfair competition and other non-contractual causes of action, will be governed by U.S. federal law and the law of the State of Colorado.



15. ALTERNATE DISPUTE RESOLUTION: Any dispute or controversy arising out of or relating to this Agreement, its construction or its actual or alleged breach will be decided by mediation. If the mediation does not result in a resolution of such dispute or controversy, it will be finally decided by an appropriate method of alternate dispute resolution, including without limitation, arbitration, conducted in the Denver metro area, Colorado.

The parties agree to exclusively submit any controversy or claim in any way arising from this Agreement or the parties' relationship or intellectual property (including its validity) to binding arbitration in Denver, Colorado, USA by a single intellectual property attorney. The parties agree that such arbitration will be conducted only pursuant to the Patent Arbitration Rules (PAR's) of the American Arbitration Association (AAA) modified for efficiency and to avoid the involvement of the AAA. For further efficiency, selection of the arbitrator will be made promptly by two independent and disinterested attorneys, one of which may be selected by each party. Further, in any arbitration proceeding, each party agrees that the prevailing party may be awarded its share of the arbitrator's fees and costs and its attorney's fees and costs in addition to any appropriate award.

Judgment upon an arbitration award rendered shall be entered in the highest court having jurisdiction, state or federal. The decision of the arbitration must be sanctioned by a court of law having jurisdiction to be binding upon and enforceable by the parties.

The parties stipulate that the District Court for Jefferson County, Colorado, has jurisdiction over State law causes; and the Federal District Court sitting in Denver, Colorado, has jurisdiction over federal law causes and, by ancillary jurisdiction, over accompanying State law causes.

AGREEMENT: The Licensee and Licensor, by the signatures of their duly authorized representative, indicate their acceptance of the terms of participation as indicated in this Agreement.

LICENSEE: _____
Name Title Date

LICENSOR: _____
Name Title Date