



**LUCY™ BRAND**  
 HOWELL APPLE VARIETY (USPP APPLIED FOR)



**U.S. PLANT PATENT AND TRADEMARK LICENSE (“License”)**

**1. This royalty bearing License No. \_\_\_\_\_ is granted, effective this \_\_\_\_\_ to the below identified Grower only for use with the Howell Cultivar trees planted at the following orchard location in the United States (“Licensed Trees”):**

Grower: \_\_\_\_\_; Tree Count: 0; Location: \* \_\_\_\_\_; Parcel Number \* \_\_\_\_\_.

**2. Brandt’s Fruit Trees 1, Inc. (Brandt’s) is the owner in the United States of the LUCY™ trademark and has granted Proprietary Variety Management (PVM) the exclusive right to use the LUCY™ trademark in the U.S. with the Howell variety. PVM is the exclusive master licensee in the U.S. of all rights under the applied for plant patent (the USPPAF) protecting the Howell cultivar. Brandt’s Fruit Trees, LLC (BFT) has been granted the propagation rights in the United States from PVM and grants to Grower a non-exclusive license to grow and harvest apples from the Licensed Trees (“Licensed Apples”) and to market and sell the Licensed Apples only in the Direct Market Grower segment that includes local farmer’s markets in Grower’s community, subject to the requirement that Grower must use the LUCY™ trademarks with all Licensed Apples that are produced by Grower that meet a minimum of U.S. Fancy grade standards. Grower’s use of the LUCY™ trademark, and the “Lucy Logo,” must be in the following formats, and Grower must obtain written permission for any other formats:**

LUCY™ Brand  
 LUCY™ Brand Howell cv. \_\_\_\_\_ or  
 LUCY™ Brand Howell variety \_\_\_\_\_



**3. Grower agrees that this License is contingent upon payment in full of the tree price and all royalties due for this License, including a two part royalty comprising a tree royalty and a continuing fruit production royalty. The tree royalty is a one-time payment that Grower pays directly to the licensed nursery that sold Grower the Licensed Trees. Grower will pay the continuing fruit production royalty directly to BFT. The fruit production royalty begins in third year after Grower has purchased the Licensed Trees, and is one dollar (\$1.00 USD) per tree per year, to be paid on or before November 1 of each year for all Licensed Trees. BFT can adjust the fruit production royalty once every seven years, but not in excess of the total accumulated changes over those seven years in the U.S. Consumer Price Index, as reported by the U.S. Bureau of Labor Statistics, or other equivalent unit or entity.**

**4. PVM will verify compliance with this License. Grower agrees that BFT and PVM are authorized to: (1) Inspect, map, photograph, and take DNA samples from all orchard properties owned, leased, or controlled by Grower; (2) Inspect any public or private packing, storage, or shipping facilities where Licensed Apples are located; and (3) Obtain, review and copy all public and private phytosanitary and shipping documents (without redactions of any kind) in the possession of any Customs or Agriculture Department government agency of any country or private business that are related to Grower’s apples or other products. BFT and PVM agree that all of Grower’s information will be kept strictly confidential and used solely for the purposes of trademark quality control, verification of compliance with this License, and enforcement of legal rights, and pursuant to Court orders.**

**5. This License does not authorize the import or export of any Howell apples, or the use of the LUCY™ trademark with the Licensed apples, or any other apples, that are imported or exported to or from the United States. Grower must enter into a separate royalty bearing plant patent/trademark license to use the LUCY™ trademarks with Howell apples that are imported or exported to or from the United States. Brandt’s retains all right, title or interest in the LUCY™ trademark, and Grower receives no rights thereto other than the limited non-exclusive rights granted by this License. Grower will not attack Brandt’s title or ownership of the LUCY™ trademarks, and will not attack the validity of this License. Grower must always act in good faith to support and improve the strength and commercial value of the LUCY™ trademark, including complying with reasonable requests from Brandt’s in that regard. Grower must not infringe, or induce or contribute to any third party’s infringement, of the LUCY™ trademarks or the Howell variety plant patents rights. Grower must not propagate any trees of the Howell variety, and must take all reasonable precautions to ensure that no third party obtains budwood or other propagatable materials from Grower’s Licensed Trees. Grower must not assign or transfer any rights under this License, except when Grower’s interest in the land upon which the Licensed Trees are planted is transferred to a Subsequent Purchaser. Upon any such transfer of interest in the land, Grower must provide an original of this License to the Subsequent Purchaser, who must then contact Brandt’s within thirty (30) days to obtain a new license issued in their own name.**

**6. Any failure by Grower, or any Subsequent Purchaser, to strictly and timely comply with any requirement, prohibition, or condition of this License shall immediately terminate this License, without notice, and all Licensed Trees and Licensed Apples will immediately become infringing trees and infringing apples, subjecting the Grower, and/or subsequent purchaser, to monetary damages, injunctive relief, and destruction of trees, apples, and packaging materials under U.S. patent and trademark laws. This License is governed by the laws of the State of Washington and the U.S., and all parties consent to the personal jurisdiction and venue of the U.S. District Court for the Eastern District of Washington and/or the Yakima County Superior Court.**

Brandt's Fruit Trees 1, Inc. (BFT) Brandt's Fruit Trees, Inc. (Brandt's)  By: _____ Lynnell Brandt, President	Proprietary Variety Management, LLC (PVM)  By: _____ Kevin Brandt, Vice-President	_____  By: _____ * _____ [Name], * _____ [Title]
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