

# Pink Lady® Brand

Barnsby Pink Cultivar (aka PLBARB1 cv.), USPP 21,606

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

### License No.: 99999 - 1549911348

1. This License is granted, effective this \_\_\_\_\_ to the below identified Grower only for use with the Barnsby Pink Cultivar trees planted at the following orchard location in the United States ("Licensed Trees"):

2. Grower: \_\_\_\_\_ Tree Count: \_\_\_\_\_

Location: \_\_\_\_\_ Parcel Number: \_\_\_\_\_

3. Brandt's Fruit Trees, Inc. ("Brandt's") is the owner in the U.S. and Mexico, and the exclusive licensee in Canada, of the PINK LADY® Trademarks, and the exclusive licensee of the Barnsby Pink cultivar plant patent rights for North America. As of the date signed below by Grower, Brandt's grants to Grower a non-exclusive license to grow and harvest apples from the Licensed Trees ("Licensed Apples"), provided that Grower agrees to use the PINK LADY® text trademarks and the "Flowing Heart Logo" shown below (together the "PINK LADY Trademarks") with all Licensed Apples that are produced by Grower that meet at a minimum U.S. Fancy grade standards. Unless Grower obtains written permission for use of other formats, Grower agrees to use the PINK LADY® Trademarks, only in the following formats:

PINK LADY® Brand  
PINK LADY® Brand Barnsby Pink cv.  
PINK LADY® Brand Barnsby Pink variety

and



or



North America

Exports

4. Grower agrees that this License is contingent upon payment in full of the tree price and all royalties due for this License, including a continuing trademark/plant patent royalty for each Licensed Barnsby Pink Cultivar Tree that comprises a one-time tree royalty (specified in the Grower's tree purchase documentation). **Brandt's has designated Pink Lady America to verify compliance with this License.** Grower agrees that third party representatives designated by Pink Lady America 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 Grower's apples are located; and (3) Review and copy all public and private phytosanitary and shipping documents (without redactions of any kind) related to Grower's apples or other products. Brandt's and Pink Lady America agree that all of Grower's information will be kept strictly confidential and used by the designated third party representatives solely for the purposes of trademark and product quality control review, verification of compliance with this License, and enforcement of legal rights. Brandt's and Pink Lady America will not have access to Grower's information except as necessary in legal proceedings and to enforce legal rights.

5. This License does not authorize the use of the PINK LADY® Trademarks with the Licensed Apples, or any other apples, that are imported to or exported from the United States. Grower must enter into a separate royalty bearing trademark license to use the PINK LADY® Trademarks with apples that are imported to or exported from the United States, and all exported apples so licensed must use the "Export" version of the Flowing Heart Logo. Brandt's retains all right, title and interest in the PINK LADY® Trademarks, and Grower receives no rights thereto other than the limited non-exclusive rights granted by this License. All use of the PINK LADY® Trademarks by Licensee will inure to the benefit of Brandt's. Grower will not attack the validity or Brandt's ownership of the PINK LADY® Trademarks, and will not attack the validity of this License. Grower agrees to always act in good faith to support and improve the strength and commercial value of the PINK LADY® Trademarks, including complying with reasonable requests from Brandt's in that regard. Grower agrees not to infringe, or induce or contribute to any third party's infringement, of the PINK LADY® Trademarks or the Barnsby Pink cultivar plant patents. Grower agrees not to propagate any trees of the Barnsby Pink cultivar, and agrees to 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 agrees to provide 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. This License and its terms cannot be modified unless by a writing signed by both parties. Any failure by Grower or any Subsequent Purchaser to strictly and timely comply with any term of this License shall result in immediate termination of 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. Grower agrees that a breach of this License may cause irreparable damage to Brandt's for which recovery of monetary damages would be inadequate and that Brandt's may seek injunctive relief or other equitable relief to protect its rights under this License, in addition to any and all remedies available. Grower agrees that 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.

Pink Lady America, LLC.

Brandt's Fruit Trees, LLC.

Grower:

By: \_\_\_\_\_

Name: \_\_\_\_\_

(Please Print)

By: \_\_\_\_\_

Kevin Brandt, Vice President

By: \_\_\_\_\_

Lynnell Brandt, President

Title: \_\_\_\_\_

(Please Print)