

**DETAIL OF TRADEMARK REGISTRATION NUMBERS CONTAINED IN
SCHEDULE A**

Registration No.

2706527
2710868
2708810
1388479
1367992
1696360
1731436
1889413
1697880
2715562
2709179
2710871
2708812
2710872
2708811
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1367994
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2708806
1112857
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1112858
1419389
1696358
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1696364
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1854793
1694706
1754587
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2708809
1386990
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1367990
1056687
1112856
1369366
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**DETAIL OF TRADEMARK REGISTRATION NUMBERS CONTAINED IN
SCHEDULE A**

Registration No.

1683475
2708808
1696359
2708807
1367993
2710870
1390156
1168604
2710869
1367995
1773798
1407877
1386989

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Trademark Security Agreement

THIS TRADEMARK SECURITY AGREEMENT, dated as of February 13, 2004, between JAMES ZAMPINI (the "Debtor"), and FIFTH THIRD BANK, an Ohio banking corporation (the "Secured Party").

Debtor and Secured Party hereby agree as follows:

1. **Definitions; Interpretation.**

a. **Certain Defined Terms.** As used in this Agreement, the following terms shall have the following meanings:

"Collateral" has the meaning set forth in §2.

"Guaranty" means that certain Guaranty dated as of the date hereof from the Debtor in favor of the Secured Party, pursuant to which Debtor has guaranteed all of the obligations of Lake County Nursery, Inc., an Ohio corporation ("Borrower") to the Secured Party, including, without limitation those incurred under or in connection with the Loan Agreement dated as of the date hereof between the Borrower and Secured Party (the "Loan Agreement").

"PTO" means the United States Patent and Trademark Office.

"UCC" means the Uniform Commercial Code as in effect in the State of Ohio.

b. **Terms Defined in UCC.** Where applicable in the context of this Agreement and except as otherwise defined herein, terms used in this Agreement shall have the meanings assigned to them in the UCC.

c. **Construction.** In this Agreement, the following rules of construction and interpretation shall be applicable: (i) no reference to "proceeds" in this Agreement authorizes any sale, transfer, or other disposition of any Collateral by Debtor; (ii) "includes" and "including" are not limiting; (iii) "or" is not exclusive; and (iv) "all" includes "any" and "any" includes "all." To the extent not inconsistent with the foregoing, the rules of construction and interpretation applicable to the Loan Agreement shall also be applicable to this Agreement and are incorporated herein by this reference.

2. **Security Interest.**

a. **Grant of Security Interest.** As security for the payment and performance of the Obligations (which as used herein, shall have the same meaning as set forth in the Guaranty), Debtor hereby grants to Secured Party a security interest in and mortgage upon, all of Debtor's right, title and interest in, to and under the following property, in each case whether

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now or hereafter existing or arising or in which Debtor now has or hereafter owns, acquires or develops an interest and wherever located (collectively, the "Collateral"):

i. all state (including common law) and federal trademarks, service marks and trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, together with and including all licenses therefor held by Debtor (as licensor or licensee) and any income and royalties with respect to such licenses, and together with all registrations and recordings thereof and all applications filed or to be filed in connection therewith (excluding each application to register any trademark, service mark, or other mark prior to the filing under applicable law of a verified statement of use (or the equivalent) for such trademark, service mark or other mark to the extent the creation of a security interest therein or the grant of a mortgage thereon would void or invalidate such trademark, service mark or other mark), and all extensions or renewals of the foregoing, including, without limitation, any of the foregoing identified on Schedule A hereto (as the same may be amended, modified or supplemented from time to time), and the right (but not the obligation) to register claims under any state or federal trademark law or regulation and to apply for, renew and extend any of the same, to sue or bring opposition or cancellation proceedings in Debtor's name or in the name of the Secured Party for past, present or future infringement or unconsented use thereof, and all rights arising therefrom throughout the world;

ii. the entire goodwill of or associated with the business now or hereafter conducted by Debtor connected with and symbolized by any of the aforementioned properties and assets;

iii. all general intangibles and all intangible intellectual or other similar property of Debtor of any kind or nature, associated with or arising out of any of the aforementioned properties and assets and not otherwise described above; and

iv. all proceeds of any and all of the foregoing Collateral (including license royalties, rights to payment, accounts and proceeds of infringement suits) and, to the extent not otherwise included, all payments under insurance (whether or not Secured Party is the loss payee thereof) or any indemnity, warranty or guaranty payable by reason of loss or damage to or otherwise with respect to the foregoing Collateral.

b. **Continuing Security Interest.** Debtor agrees that this Agreement shall create a continuing security interest in the Collateral which shall remain in effect until terminated in accordance with §12.

3. **Representations and Warranties.** Debtor represents and warrants to Secured Party that: (a) a true and correct list of all of the existing Collateral consisting of trademarks, trademark registrations or trademark applications owned or used by Debtor is set forth in Schedule A; (b) each of the trademarks listed in Schedule A is subsisting and has not been judged invalid or unenforceable, in whole or in part, and to Debtor's knowledge, each of such trademarks is valid and enforceable; (c) Debtor has rights in and good and defensible title to the Collateral and the sole and exclusive owner thereof, free and clear of any security interests or

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encumbrances; (d) no material infringement or unauthorized use presently is being made of any of the Collateral by any third party and the past, present and contemplated future use of the Collateral by Debtor has not, does not and will not infringe upon or violate any right, privilege or license agreement of or with any third party or give such third party any right to terminate any such license agreement; (e) Debtor has the unqualified right, power and authority to pledge and to grant to Secured Party security interests in the Collateral pursuant to this Agreement, without the consent or approval of any third party; (f) Debtor has granted a royalty-free license to Borrower, to use the Collateral in connection with the Borrower's business and has granted no other license to use the Collateral; (g) the Borrower is not in default in any of its obligations with respect to its license of the Collateral; (h) Debtor's legal name is James W. Zampini; and (i) the Debtor's permanent residence is in the State of Ohio.

4. **Covenant.** Debtor covenants that so long as this Agreement shall be in effect, Debtor shall comply, in all material respects, with all applicable statutory and regulatory requirements in connection with any and all of the Collateral, and take such measures that, in Debtor's reasonable business judgment, may be necessary to preserve, protect and maintain the Collateral and all of Debtor's rights therein. Debtor further covenants not to terminate or amend the terms of the license of the Collateral to the Borrower without providing the Secured Party with advance written notice. The Debtor will not change his permanent residence from the State of Ohio without providing the Secured Party with thirty (30) days advance written notice.

5. **Further Acts.** On a continuing basis, Debtor shall make, execute, acknowledge and deliver, and file and record in the proper filing and recording places, all such instruments and documents, and take all such action as may be necessary or advisable or may be requested by Secured Party to carry out the intent and purposes of this Agreement, or for assuring, confirming or protecting the grant or perfection of the security interest granted or purported to be granted hereby, to ensure Debtor's compliance with this Agreement or to enable Secured Party to exercise and enforce its rights and remedies hereunder with respect to the Collateral, including any documents for filing with the PTO or any applicable state office. Secured Party may record this Agreement, an abstract thereof, or any other document describing Secured Party's interest in the Collateral with the PTO, at the expense of Debtor. In addition, Debtor authorizes Secured Party to file financing statements describing the Collateral in any UCC filing office deemed appropriate by Secured Party. If the Debtor shall at any time hold or acquire a commercial tort claim arising with respect to the Collateral, the Debtor shall immediately notify Secured Party in a writing signed by the Debtor of the brief details thereof and grant to the Secured Party in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance satisfactory to the Secured Party. If Debtor refuses to execute and deliver, or fails timely to execute and deliver, any of the documents it is requested to execute and deliver by Secured Party in accordance with the foregoing, Secured Party shall have the right, in the name of Debtor, or in the name of Secured Party or otherwise, without notice to or assent by Debtor, and Debtor hereby irrevocably constitutes and appoints Secured Party (and any of Secured Party's officers or employees or agents designated by Secured Party) as Debtor's true and lawful attorney-in-fact with full power and authority, (i) to sign the name of Debtor on all or any of such documents or instruments and perform all other acts that Secured Party deems necessary or advisable in order to perfect or continue the perfection of, maintain the priority or enforceability of or provide notice of the

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security interest in the Collateral held by Secured Party, and (ii) to execute any and all other documents and instruments, and to perform any and all acts and things for and on behalf of Debtor, which Secured Party may reasonably deem necessary or advisable to maintain, preserve and protect the Collateral and to accomplish the purposes of this Agreement, including (A) upon the occurrence of any Event of Default, to defend, settle, adjust or institute any action, suit or proceeding with respect to the Collateral, (B) upon the occurrence of any Event of Default, to assert or retain any rights under any license agreement for any of the Trademark Collateral, including any rights of Debtor arising under Section 365(n) of the United States Bankruptcy Code 11 U.S.C. §101 et seq., as amended, and (C) upon the occurrence of any Event of Default, to execute any and all applications, documents, papers and instruments for Secured Party to use the Collateral, to grant or issue any exclusive or non-exclusive license with respect to any Collateral, and to assign, convey or otherwise transfer title in or dispose of the Collateral. The power of attorney set forth in this Section 5, being coupled with an interest, is irrevocable so long as this Agreement shall not have terminated in accordance with Section 12.

6. Authorization to Supplement. If Debtor shall obtain rights to any new trademarks, the provisions of this Agreement shall automatically apply thereto. Debtor shall give prompt notice in writing to Secured Party with respect to any such new trademarks or renewal or extension of any trademark registration. Without limiting Debtor's obligations under this §6, Debtor authorizes Secured Party to modify this Agreement by amending Schedule A to include any such new trademark rights. Notwithstanding the foregoing, no failure to so modify this Agreement or amend Schedule A shall in any way affect, invalidate or detract from Secured Party's continuing security interest in all Collateral, whether or not listed on Schedule A.

7. Events of Default/Remedies. The occurrence of any of the following events shall constitute an Event of Default hereunder: (a) the occurrence of an Event of Default under the Loan Agreement or any other Loan Document (as defined in the Loan Agreement); (b) any representation or warranty made by Debtor hereunder shall prove to be incorrect in any material respect; or (c) a breach of any covenant hereunder by Debtor that is not cured within thirty (30) days after written notice thereof from Secured Party. Upon the occurrence of an Event of Default, the Secured Party shall have all rights and remedies available to it under the Loan Agreement and Security Agreement and applicable law (which rights and remedies are cumulative) with respect to the security interests in any of the Collateral. Debtor agrees that such rights and remedies include the right of the Secured Party to sell or otherwise dispose of the Collateral pursuant to the UCC. Debtor hereby agrees that Secured Party shall at all times have such royalty-free licenses, to the extent permitted by law, for any Collateral that is reasonably necessary to permit the exercise of any of Secured Party's rights or remedies upon or after the occurrence of an Event of Default with respect to (among other things) any tangible asset of Borrower in which Secured Party has a security interest, including Secured Party's right to sell inventory of the Borrower. In addition to and without limiting any of the foregoing, upon the occurrence and during the continuance of an Event of Default, Secured Party shall have the right, but shall in no way be obligated to, bring suit or take such other action as Secured Party deems necessary or advisable, in the name of Debtor or Secured Party, to enforce or protect any of the Collateral (including, without limitation, asserting any rights under any license agreement for any of the Collateral), in which event Debtor shall, at the request of Secured Party, do any and all lawful acts and execute any and all documents required by Secured Party in aid of such

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enforcement. To the extent that Secured Party shall elect not to bring suit to enforce such Collateral, Debtor, in the exercise of its reasonable business judgment, agrees to use all reasonable measures and its diligent efforts, whether by action, suit, proceeding or otherwise, to prevent the infringement, misappropriation or violation thereof by others and for that purpose agrees diligently to maintain any action, suit or proceeding against any third party necessary to prevent such infringement, misappropriation or violation.

8. **Binding Effect.** This Agreement shall be binding upon, inure to the benefit of and be enforceable by Debtor, Secured Party and their respective successors and assigns. Debtor may not assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties hereunder without Secured Party's prior written consent.

9. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the law of the State of Ohio (without reference to that state's conflicts of law principals), except as required by mandatory provisions of law or to the extent the validity, perfection or priority of the security interests hereunder, or the remedies hereunder, in respect of any Collateral are governed by the law of a jurisdiction other than Ohio.

10. **Entire Agreement; Amendment.** This Agreement together with the Schedule hereto contains the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior drafts and communications relating to such subject matter. Neither this Agreement nor any provision hereof may be modified, amended or waived except by the written agreement of the parties. Notwithstanding the foregoing, Secured Party unilaterally may re-execute this Agreement or modify, amend or supplement the Schedules hereto as provided in §6 hereof.

11. **Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement. Delivery of an executed counterpart of this Agreement by facsimile shall be equally as effective as delivery of a manually executed counterpart. Any party hereto delivering a counterpart of this Agreement by facsimile shall also deliver a manually executed counterpart, but the failure to so deliver a manually executed counterpart shall not affect the validity, enforceability, or binding effect hereof.

12. **Termination.** Upon the termination of the Security Agreement, the security interests created by this Agreement shall terminate and Secured Party (at Debtor's expense) shall promptly execute and deliver to Debtor such documents and instruments reasonably requested by Debtor as shall be necessary to evidence termination of all such security interests given by Debtor to Secured Party hereunder, including cancellation of this Agreement by written notice from Secured Party to the PTO.

13. **No Inconsistent Requirements.** Debtor acknowledges that this Agreement and the other documents, agreements and instruments entered into or executed in connection herewith may contain covenants and other terms and provisions variously stated regarding the

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same or similar matters, and Debtor agrees that all such covenants, terms and conditions are cumulative and all shall be performed and satisfied in accordance with their respective terms.

14. **Severability.** If one or more provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect in any jurisdiction or with respect to any party, such invalidity, illegality or unenforceability in such jurisdiction or with respect to such party shall, to the fullest extent permitted by applicable law, not invalidate or render illegal or unenforceable any such provision in any other jurisdiction or with respect to any other party, or any other provisions of this Agreement.

15. **Notices.** All notices hereunder shall be in writing and shall be sent in accordance with the Loan Agreement.

16. **Waiver of Jury Trial.** SECURED PARTY AND DEBTOR KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONJUNCTION WITH THIS AGREEMENT, AND ANY OTHER AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above written.


James Zampini

FIFTH THIRD BANK

By: 