

Prepared By:

DUANE O. DAVISON, ESQ.

CONTRACT FOR SALE OF REAL ESTATE

This Contract for Sale (herein "Contract") is made on
, 2003 (date by which all parties have executed the contract)

BETWEEN

F & F Nurseries, Inc., a corporation of
The State of New Jersey

whose address is 23 Roberts Road, Holmdel, NJ 07733

herein "Seller",

AND

TOWNSHIP OF HOLMDEL

whose address is 4 Crawfords Corner Road, Holmdel, NJ 07733

herein "Buyer" or "Township"

The words "Buyer" and "Seller" include all Buyers and all Sellers listed above.

1. **Purchase Agreement.** The Seller agrees to sell and the Buyer agrees to buy the Property (hereafter defined) described in this Contract.

2. **Property.** The property to be sold consists of: (a) the land and all the buildings, other improvements and fixtures on the land; (b) all of the Seller's rights relating to the land except as described in paragraphs 8 and 9; (c) all personal property specifically included in this contract. The real property to be sold is commonly known as: 23 Roberts Road, Township of Holmdel, County of Monmouth, and State of New Jersey. It is shown on the Holmdel Township municipal tax map as Block 20, Lots 4 and 4Q. This property is more fully described in the attached Exhibit A (herein the "Property")

3. **Purchase Price.** The Purchase Price is \$7,000,000.00

4. **Payment of Purchase Price.** The Buyer will pay the purchase price (subject to adjustment at closing) as follows:

Upon the closing of title by certified, bank cashier's
check or attorney trust account - \$4,000,000.00

Purchase Money Mortgage as specified in 3,000,000.00
Paragraph 5.

5. **Purchase Money Mortgage.** The Seller shall take back a purchase money mortgage (herein "Mortgage") at time of closing for \$3,000,000.00, payable in equal monthly payments of \$50,000.00, for 5 years unless earlier paid in full as determined in Paragraph 7 below. At the request of the

Township, Seller has agreed to no payment of interest, for which the Township made concessions as to the amount paid at closing and as to the size of the Farm Area (hereafter defined in Paragraph 8).

6. Anticipated Funding for the Purchase. a. Seller understands that it is the intention of the Buyer to make application for funding, for all or a portion of the purchase, from the following sources:

1. New Jersey State Agriculture Development Committee (herein "SADC").
2. New Jersey Green Acres Program (herein "Green Acres").

(herein collectively "Funding")

b. It is anticipated that certain of the Funding will be received at Closing Date by the Buyer and that the Buyer shall utilize those funds to offset a portion of the \$4,000,000.00 Purchase Price paid on Closing Date (hereafter defined in Paragraph 11). It is further anticipated that the remainder of the Funding will be received over several years (herein "Periodic Receipt of Partial Funding"). Disposition of such Periodic Receipt of Partial Funding is set forth in paragraph 7. Buyer agrees to copy Seller on all submissions made after the effective date of this Contract to SADC and Green Acres for Funding for the purchase of the Property, as well as all correspondence received from SADC and Green Acres relating to such Funding. Further, Buyer will advise both SADC and Green Acres that it grants permission to each to copy Sellers on all correspondence and to answer any inquiries of Seller as to the status of such funding. The obligations and requirements of this subparagraph on the part of the Buyer will survive the closing of title.

c. Buyer's obligation under this contract is specifically contingent upon neither SADC nor Green Acres having an objection to any provisions of this Contract, which objection results in the purchase of this Property, as provided in this Contract, being ineligible for Funding (herein "Disqualifying Objection"). Buyer agrees to immediately submit the executed Contract to SADC and Green Acres to determine if there is any Disqualifying Objection. If either SADC or Green Acres advises as to a Disqualifying Objection, the parties agree to modify the Contract to eliminate the Disqualifying Objection unless doing so alters what is deemed an essential term (herein "Essential Term") in the reasonable judgment of any party. If so deemed, any party may declare the Contract null and void with no further obligation upon any party (herein "Voiding the Contract"); however, the Buyer may waive the Voiding the Contract because of the Disqualifying Objection and may proceed to purchase the Property without altering any Essential Term and without regard to the Funding. Seller understands that Buyer cannot control the timing of the review of the Contract by SADC or Green Acres. However, if within 90 days of the date of this Contract, SADC and Green Acres have not advised that there are no Disqualifying Objections, Seller has the option of Voiding the Contract, unless Buyer advises that it will waive review and approval by SADC and Green Acres and proceed with the purchase of the Property pursuant to the terms of the Contract.

7. **Prepayment of Mortgage.** Buyer may choose at any time to prepay the Mortgage. However, Seller may require prepayment of a portion of the Mortgage upon occurrence of an event described immediately hereafter. To the extent the amount received by the Buyer as a Periodic Receipt of Partial Funding exceeds the sum of all payments made to that date on the Mortgage to the Seller by the Buyer (herein "Cumulative Mortgage Payments"), such excess (herein "Excess") shall be paid to Seller. Monthly Mortgage payments shall not be affected by the payment to the Seller of any Excess; however, the amount of such Excess shall be added to all monthly Mortgage payments, as well as all other payments made by the Buyer to the Seller in satisfaction of the Mortgage, if any, in calculating future Cumulative Mortgage Payments.

8. **Seller's Reservation of Right to Farm Portion of Property.** It is agreed that serving as a portion of the consideration for the sale of this Property there is reserved to the Seller for a period of ten (10) years from the Closing Date (herein "Farming Period") the right and obligation to maintain and continue his nursery operation only, including the conducting of all its current activities and operations as existed prior to the within contract. (herein "Farming Right"), on a portion of the Property consisting of 38+/- acres, the description of which is attached hereto as Exhibit "B" and depicted on Exhibit "C" attached hereto (herein "Farm Area"). The Farming Right shall be subject to the following terms and conditions (herein "Conditions"):

- a. The Farming Right shall terminate upon any of the following:
 1. Ten (10) years from the Closing Date.
 2. Cessation of Seller's exercise of his Farming Right.
 3. Violation of any Condition(s) or Rules and Regulations (hereafter defined in subparagraph b.) which continues for thirty (30) days or more cumulatively after Seller has received written notice from Buyer setting forth, with specificity, the manner in which it is alleged Seller has violated one or more Conditions or Rules and Regulations.
- b. It shall be the obligation of the Seller to maintain, in good condition, the Farm Area including all buildings, grounds and other improvements; and to comply with all rules and regulations attached hereto as Exhibit "D" (herein "Rules and Regulations").
- c. Upon termination of Seller's Farming Right pursuant to a. above, or expiration of the Farming Period, Seller shall vacate and turn over the Property to the Township in good condition. Any nursery stock or other property left on the Property, at the option of the

Buyer, shall become its property. Nothing herein shall require the Buyer to accept such property and it may, at its option, require the Seller to remove same, or may have same removed, the expense of which shall be the obligation of the Seller. All farm fields shall be graded to a reasonably level condition and seeded with perennial grasses or cover crop to facilitate future maintenance by the Buyer, or others, and to prevent erosion of the ground. (herein "Ground Restoration") Specifically, the parties agree that Ground Restoration will be cover crop (such as, wheat, rye, etc.) in the Farming Area and perennial grass in the Remainder Area.

d. The within paragraph will survive the closing of title.

9. **Removal of Nursery Stock From Remainder Farm Area.** The Property of approximately 93(±) acres, consists of:

- a. Environmentally sensitive areas, including woodlands and wetlands, along the Ramanessin Brook that is not used for farm purposes, comprising approximately twenty (25) acres.
- b. Area of good farming soils comprising approximately 38+/- acres (herein "Agricultural Area"). Of the Agricultural Area, pursuant to Paragraph 8, Seller shall be given the right to maintain his nursery operation on the Farm Area, all as more specifically described and regulated by Paragraph 8. On the remainder of the Agricultural Area, i.e. the Agricultural Area less the Farm Area, (herein "Remainder Area"), the Seller may continue to maintain existing nursery stock subject to all Conditions and Rules and Regulations, as well as the following additional agreements, requirements and understandings:
 - (1) No additional nursery stock shall be planted in the Remainder Area on or after October 1, 2003.
 - (2.) Consistent with the Conditions and Rules and Regulations, Seller may undertake to maintain and/or harvest such nursery stock for a period of time as described in the following sentence. Within eighteen (18) months from the date of this Contract, Seller shall have removed all nursery stock from the Remainder Area and shall have completed Ground Restoration. Any nursery stock not removed within the aforementioned time period shall become property of the Buyer, or at the Buyer's discretion, shall be removed at

the Seller's expense, such expense to be deducted from the Mortgage amount.

10. **Size of Property.** Seller represents that the Property consists of at least 93 acres. If an accurate survey of the Property shall demonstrate that the Property is smaller in size, Buyer may Void the Contract, except Seller shall reimburse to Buyer the cost of the survey in return for Buyer assigning any right or interest in the survey to Seller; or, Buyer may, at its option, agree to go forward with the Contract, but with a pro rata reduction of the payment at Closing Date (hereafter defined) and Mortgage, such pro rata reduction to be calculated based upon the relationship that 93 acres bears to the actual size of the Property.

11. **Time and Place of Closing.** The closing date cannot be made final at this time. The Buyer and Seller agree to make January, 2004 the estimated date for the closing (herein "Closing Date"). Both parties will fully cooperate so the closing can take place on or about the estimated date. The closing will be at the law offices of Lomurro, Davison, Eastman & Munoz, P.A. Closing of title will be, however, within thirty (30) days of the Buyer's receiving notification from SADC and Green Acres that there is no Disqualifying Objection, or if there is, and the Buyer has waived same and elected to proceed to closing. The parties further agree that, if the aforesaid thirty (30) day period ends between January 15, 2004 and February 16, 2004, then in that event the closing of title will take place no later than February 23, 2004. The Closing Date shall be adjusted if required or permitted by another provision of this Contract.

12. **Marketable Title.** In the event that Seller is unable to convey marketable and/or insurable title as provided herein, and Buyer is unwilling to accept such title as Seller may be able to convey, then Buyer's sole remedy shall be to Void the Contract, together with the reasonable cost of search and survey fees, if any.

13. **Transfer of Ownership.** At the closing, the Seller will transfer ownership of the property to the Buyer, subject to the Farming Right and Seller's right to remove nursery stock as set forth in Paragraph 9. This transfer will be free of all claims and rights of others. The Seller will give the Buyer a properly executed deed and an adequate affidavit of title.

14. **Type of Deed.** The Seller agrees to provide and the Buyer agrees to accept a deed known as a Bargain and Sale Deed with Covenants Against Grantor's Acts.

15. **Personal Property and Fixtures.** Many items of property become so attached to a building or other real property that they become a part of it. These items are called fixtures. They include such items as fireplaces, patios and built-in shelving. All Fixtures are **INCLUDED** in the property to be conveyed to the Buyer, unless they are listed below as being **EXCLUDED**. Items excluded are: Temporary greenhouses.

16. **Physical Condition of Property.** The property is being sold "AS IS". The Seller does not make any claims or promises about the condition or value of any of the Property

included in this sale. The Buyer has inspected the property and relies on this inspection and any rights, which may be provided for elsewhere in this Contract. The Seller agrees to maintain the grounds, buildings and improvements, in its current condition, subject to ordinary wear and tear.

17. **Termite Inspection.** The Buyer shall have the right to have an inspection of the Property by a qualified expert to determine the presence of termites or other wood destroying insects or organisms and/or damage caused by such insects or organisms. If the Buyer chooses to have this inspection, the inspection must be completed and the Seller notified of the results within forty five (45) days of full execution of this Contract by all parties. The cost of inspection will be paid for by the Buyer. The Seller's responsibilities to cure infestation and/or damages, shall be limited to \$5,000.00. In the event the cost of treatment and/or repairs exceeds \$5,000.00, either party shall have the option of paying the excess. If the cost of said extermination and/or repair exceeds \$5,000.00, and neither party agrees to pay the overage, Buyer may cancel this contract whereupon the deposit shall be returned to the Buyer and there shall be no further liability to either party.

18. **Radon Inspection.** The Buyer may, at its own expense, have a radon test performed at the Property. If the Buyer chooses to have this test done, same must be completed and the Seller notified of the results within forty five (45) days of the effective date of this Contract. In the event the test reveals a radon level greater than 4.0 picocuries per litre, then the Seller shall have the option of undertaking remediation to reduce the radon level below the above-prescribed limits on a permanent basis. If Seller does not agree to remedy said radon level, either party may cancel this contract and there shall be no further liability to either party.

19. **Property Lines.** The Seller states that all buildings, driveways and other improvements on the Property are within its boundary lines. Also, no improvements on adjoining properties extend across the boundary lines of this Property.

20. **Quality of Title.** This sale will be subject to easements and restrictions of record, if any. Generally, an easement is a right of a person other than the owner of property to use a portion of the property for a special purpose. A restriction is a recorded limitation in the manner in which a property owner may use his property. The Buyer does not have to complete the purchase if any easement or restriction would substantially interfere with the use of the property or would render title unmarketable. Title to the property shall be marketable and insurable at regular rates by any reputable title insurance company licensed to do business in the State of New Jersey and shall be a valid title of record, subject only to the claims and rights described in this paragraph and/or as provided elsewhere in this Contract.

A. Seller shall cause conveyance of marketable title of record to Buyer such as will be insurable at regular rates by a reputable title insurance company ("Title Company") of Buyer's choice, licensed to transact business in New Jersey.

- B. Buyer shall at its sole cost and expense cause title to the Property to be examined by a reputable title company authorized to issue title policies in the State of New Jersey within 30 days hereof. Buyer shall deliver a copy of the report on title prepared for Buyer by the Title Company ("Title Report"), together with written notice of any encumbrance, interest or question of title ("Title Question") disclosed by the Title Report or otherwise known to Buyer which Buyer believes are not required to take title "subject to". Moreover, a Title Question will not be considered a title defect if same can be removed by payment of part of the proceeds of sale under the contract or this Agreement is satisfaction of the Title Question.
- C. If at Closing, Seller is unable to cause conveyance of title, as herein required, Buyer may terminate this Contract, in which event, excluding Seller's willful default for no reason, Seller's sole and exclusive liability shall be limited to the return of the deposit monies, and the rights and the obligations of the parties shall cease. Buyer may accept such title as the Seller may be able to convey without reduction of or any credit against the Purchase Price without further liability on the part of the Seller.

21. **Risk of Loss.** The risk of loss or damage to the Property by fire or otherwise until delivery of the deed is assumed by the Seller. If the cost of repair of the damage is in excess of twenty-five (25%) percent of the purchase price, the Buyer shall have the option to void this Contract. In case the Property shall suffer injury beyond the ordinary wear and tear, the Seller shall repair same before the date set for delivery of deed. If Seller is unable to repair same or refuses to make repairs, the Buyer may cancel the contract and there shall be no further liability to either party.

22. **Adjustments at Closing.** The Buyer and Seller agree to adjust the real estate taxes as of the Closing Date. It is not anticipated that there will be any other adjustments because of the Farming Right reserved by Seller. The Buyer and Seller may require that any person with a claim or right affecting the Property be paid off from the proceeds of this sale.

23. **Possession.** At closing the Buyer will be given possession of the Property except as to the Farming Right and Seller's right of nursery stock removal provided by Paragraph 9 reserved by Seller. No tenant will have any right to the Property.

24. **Right of Entry.** Seller shall permit Buyer and its agents and consultants access to the Property from time to time during the term of the Contract for the purpose of preparing surveys and undertaking engineering, environmental, soils, wetlands and other similar tests and studies, provided Buyer promptly repairs any damage to the Property caused by such entry and restores the Property to the condition that existed prior to such entry. Buyer shall hold and save Seller harmless from and against any and all loss, cost, damage, injury or expense arising out of or in any way related to the acts or omissions of Buyer, its agents and consultants, relating to any such entry, and such obligation shall survive the termination of this Contract.

25. **Hazardous Substances.** In the event that prior to the Closing Date, including but not limited to the time before the date of this Contract, there is a spill, discharge, release, deposit or emplacement of any substance, chemical or waste that is listed as hazardous, toxic or dangerous under any applicable federal, state, county or local statute, rule, regulation, ordinance or order (herein "Hazardous Substance") on the Property which results in contamination of the Property, provided such condition was not caused by Buyer, its agents, servants or contractors, Seller shall at Seller's option, either void this Contract or perform all remedial activity, including the installation of monitoring equipment, necessary to remediate any such Hazardous Substance and, if necessary, the Closing Date shall be adjourned for a reasonable period to permit Seller to complete such activities, provided, that Buyer shall have the right to terminate this Contract if it determines, in its sole discretion, that the nature and extent of the contamination or the time to remediate are unacceptable. If the Seller elects to void the Contract pursuant to the immediately preceding sentence, Buyer may waive remediation in which case Seller shall be obligated to proceed to closing. In the event Buyer, its agents, servants or contractors, causes the spill, discharge, release, deposit or emplacement of any Hazardous Substances on the Property, Buyer shall perform all remedial activity at its sole cost and expense and there shall be no adjournment of the Closing Date. Such payment by Buyer shall not constitute any waiver of any other right of Buyer or of any responsibility or liability of Seller under this paragraph. In the event this Contract is terminated by either party pursuant to this paragraph, except as provided herein, this Contract and all rights and obligations of the parties hereunder shall be null and void. Copies of all environmental reports and audits conducted by Buyer shall promptly be furnished to Seller.

26. **Payment of Taxes and Impositions.** Seller will pay and discharge, or cause to be paid and discharged, before they become delinquent, all real estate taxes, assessments and water and sewer charges levied upon or assessed against the Property. Nothing herein shall require Seller to pay any such assessments levied or assessed against any portion of the Property after the conveyance of same to Buyer.

27. No Liens or Encumbrances. Seller agrees that it will not create or suffer or permit to be created, and that it will promptly remove or discharge, any and all liens or encumbrances, including but not limited to liens and notices filed pursuant to the New Jersey Construction Lien Law, N.J.S.A. 2A: 44A-1, against the Property existing prior to or arising subsequent to the date of this Contract.

28. Seller's Representations and Warranties. As an inducement to Buyer to enter into this Contract, Seller represents and warrants to Buyer that:

(a) Seller is a corporation duly organized in good standing and validly existing under the laws of the State of New Jersey and has the power and authority to enter into the Contract and to consummate the transaction herein contemplated. The execution and delivery hereof and the performance by Seller of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or other instrument to which Seller is a party or by which it or the Property is bound except as detailed in Paragraph 48 below;

(b) the execution, delivery and performance of this Contract by Seller and the consummation of the transaction contemplated hereby in the manner contemplated herein will not violate any provision of any laws, statutes, codes, ordinances, orders, regulations and requirements of all federal, state, county and municipal governments, departments, boards, authorities, agencies, officials and officers (herein "Legal Requirement") to which Seller or the Property is subject, or violate any judgment, order, writ, injunction or decree of any court applicable to Seller or the Property;

(c) this Contract is the legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally;

(d) no consent, authorization, license, permit, registration or approval of, or exemption or other action by, any governmental or public body, commission or authority is required in connection with the execution, delivery and performance by Seller of this Contract;

(e) there are no proceedings at law or in equity before any court, grand jury, administrative agency or other investigative body, or governmental department, commission, board, agency, bureau or instrumentality of any kind pending or, to the best of Seller's knowledge, threatened, against or affecting Seller or the Property that (i) involve the validity or enforceability of this Contract or any other instrument or document to be delivered by Seller pursuant hereto, (ii) enjoin or prevent or threaten to enjoin or prevent the performance of Seller's obligations hereunder or (iii) relate specifically to the Property or the title thereto;

(f) there are no existing or pending contracts of sale, options to purchase or rights of first refusal or first offer with respect to the Property, or any part thereof, recorded or unrecorded, except as detailed in Paragraph 48 below and there are no tenancies relating to the Property;

(g) All agricultural chemicals used by Seller are those approved by the New Jersey Department of Environmental Protection ("DEP") for such use, have been properly applied by licensed applicators, properly stored and there has been no spillage or improper disposal of such agricultural chemicals which has not been properly remediated by Seller. There have been and currently are no Hazardous Substances (other than DEP approved agricultural chemicals which may be hazardous and toxic but not illegal), within the meaning of the Industrial Site Recovery Act of the State of New Jersey N.J.S.A. 13:1k-6 et. seq., as amended (herein "ISRA") or the New Jersey Spill Compensation and Control Act, on, in or beneath the Property, including underground tanks; no landfill has ever been operated on the Property or on any property adjoining the Property and no portion of the Property has been used to refine, produce, store, handle, transfer, process, generate or transport any Hazardous Substances in violation of any applicable law, regulation or ordinance; Seller has not utilized the Property for any industrial establishment as contemplated by any state or federal environmental clean-up responsibility act or similar law, nor have any toxic waste or hazardous material been stored or dumped upon the Property by Seller; the Property has not been utilized by Seller as a dump or storage facility; to the best of Seller's knowledge, Seller has not received notice of any kind relating to or in connection with the presence of Hazardous Substances or waste on the Property in violation of any applicable law, regulation or ordinance from DEP, the United States Environmental Protection Agency or any other local, county, state or federal department or agency.

(h) Seller is not in the hands of a receiver nor is an application for the appointment of a receiver pending; Seller has not made an assignment for the benefit of creditors, nor has Seller filed, or had filed against it, any petition in bankruptcy;

29. Survival of Seller's Representations and Warranties.

The representations and warranties contained in Paragraph 28 are true, accurate and complete and not misleading in any material respect as of the date hereof and shall be deemed to be repeated at and as of the Closing Date, and shall be true, accurate and complete and not misleading in any material respect as of the such date, except for acts or omissions expressly permitted by other provisions of this Contract.

30. Buyer's Representations and Warranties. As an inducement to Seller to enter into this Contract, Buyer represents and warrants that:

(a) Buyer is a municipal corporation of the State of New Jersey, and has the power and authority to enter into this Contract and to consummate the transactions herein contemplated, and the execution and delivery hereof and the performance by Buyer of its obligations hereunder will not violate or constitute an event of default under the terms

or provisions of any agreement, document or other instrument to which Buyer is a party or by which it is bound;

(b) the execution, delivery and performance of this Contract by Buyer and the consummation of the transactions contemplated hereby in the manner contemplated herein will not violate any provisions of any "Legal Requirement" to which Buyer is subject, or violate any judgment, order, writ, injunction or decree of any court applicable to Buyer; and

(c) no consent, authorization, license, permit, registration or approval of, or exemption or other action by any governmental or public body, commission or authority is required in connection with the execution and delivery by Buyer of this Contract.

31. **Survival of Buyer's Representations and Warranties.**

The representations and warranties contained in Paragraph 30 are true, accurate and complete and not misleading in any material respect as of the date hereof and shall be deemed to be repeated at and as of the Closing Date and shall be true, accurate and complete and not misleading in any material respect as of such date.

32. **Deliveries by Seller.** On the Closing Date, Seller shall deliver to Buyer the following:

(a) duly executed Deed of Bargain and Sale with Covenant Against Grantor's Acts in proper statutory form for recordation;

(b) duly executed Affidavit of Title in form reasonably acceptable to Buyer's attorney and title insurer.

(c) duly executed FIRPTA Affidavit of Seller.

(d) original tax bill;

(e) a certificate executed by the Seller to the effect that the representations and warranties of Seller set forth in Paragraph 28 are true, accurate and complete on and as of the Closing Date and are not misleading in any material respect on and as of such date; and

(f) such other documents and instruments as Buyer or its Title Insurer may reasonably request in order to perfect title in Buyer or otherwise to carry out the purposes of this Contract; and

(g) Certificate(s) of Insurance as detailed in Exhibit D, Paragraph 19

33. **Deliveries by Buyer.** On the Closing Date, Buyer shall pay to Seller the Purchase Price determined in accordance with Paragraph 4 and shall deliver to Seller the following:

(a) a duly executed certificate by Buyer to the effect that the representations and warranties of Buyer set forth in Paragraph 30 are true, accurate and complete on and as of the Closing Date and are not misleading in any material respect; and

(b) duly executed Purchase Money Mortgage as provided in Paragraph 5. The note and mortgage being taken back by the Seller will be on Allstate Forms 2004 and 204 which will be drawn by the Buyer's attorney for review by the Seller's attorney. Default clauses will provide for thirty (30) days to cure.

34. **Deliveries By Both Parties.** On the Closing Date, the Seller and Buyer shall execute and deliver a Form 1099. Counsel for Buyer shall be instructed to file the Form 1099 with the Internal Revenue Service. With the proceeds paid on the Closing Date allocated as provided in paragraph 48 hereinafter.

35. **Default by Seller.** Buyer may terminate this Contract by notice to Seller at any time prior to the Closing Date in the event of a material default by Seller under this Contract (which remains uncured for thirty (30) days after Buyer's notice to Seller thereof, except if that date falls on a Saturday, Sunday or holiday, in which case the time will expire on the next business day, unless such default cannot be cured by the payment of money and cannot with due diligence be wholly cured within such thirty (30) day period, in which case Seller shall have such longer period as shall be necessary to cure the default and prosecutes such cure to completion with due diligence and advises Buyer of the actions which Seller is taking and the progress being made) or a material breach of any representation or warranty by Seller expressly set forth in this Contract.

36. **Remedies.**

By Seller. If Buyer fulfills its obligations hereunder, but Seller defaults under this Contract beyond any applicable cure period, or materially breaches any representation or warranty contained herein, Buyer shall be entitled, as its sole and exclusive remedies, either (i) to specific performance and any costs, including reasonable attorneys' fees incurred in pursuing an action for specific performance, or (ii) to terminate this Contract whereupon this Contract shall terminate and the parties (including H.A. as defined in paragraph 48 hereinafter) hereto shall be relieved of any further liability to each other, it being expressly understood that such remedies shall be the sole and exclusive rights and remedies of Buyer, and constitutes fair and reasonable remedies for the damage sustained by Buyer by reason of Seller's breach of this Contract. Notwithstanding the foregoing, if the Buyer terminated this Contract, the rights, terms and obligations of the Contract for Sale of Real Estate, dated August 15, 2001 between H.A., and the Seller (hereinafter "H.A. Contract"), shall remain in full force and effect, and the H.A. Contract shall survive the termination of this instant Contract.

37. **Brokerage Commission and Finder's Fee.** The parties agree that they have dealt with no real estate broker, investment banker, person, firm or entity who would, by reason of such dealings be able to claim a real estate brokerage, business opportunity brokerage or finder's fee as the procuring cause of this transaction. Each of the parties (including H.A. as defined in paragraph 48 hereafter) agrees to indemnify the other and hold the other harmless of and from any and all loss, cost, damage, injury or expense arising out of, or in any way related to, assertions, by any other person, firm or entity, of a claim to real estate brokerage, business opportunity brokerage

or finder's fee based on alleged contacts between the claiming party and the indemnifying party which have resulted in allegedly providing a broker or finder with the right to claim such commission or finder's fee. The within language will survive closing of title.

38. **Notices**. All notices or other communications required or permitted to be given hereunder shall be given in writing and delivered personally or mailed, by certified or registered mail, postage prepaid, or by a reputable priority delivery service such as Federal Express, addressed as follows:

To Seller:

F & F Nurseries, Inc.

ATTN: John Flemer
23 Roberts Road
Holmdel, NJ 07733

with copies to:

Mark F. Saker, Esq.
Cerrato, Saker and Wilder
819 Route 33
Freehold, NJ 07728

To Buyer:

Township of Holmdel
P.O. Box 410
Holmdel, NJ 07733
ATTN: Christopher Schultz,
Township Administrator

with copies to:

Duane O. Davison, Esq.
Lomurro, Davison, Eastman & Munoz, P.A.
100 Willowbrook Road, Bldg. 1
Freehold, NJ 07728

The foregoing addresses may be changed or supplemented by written notice given as above provided. Any such notice sent by mail shall be deemed to have been received by the addressee on the third business day after posting in the United States mail, or, if by a priority delivery service, on the first business day after transmittal, or, if delivered personally, on the date of such delivery.

39. **Attorneys' Fees**. In the event any action or proceeding is commenced to obtain a declaration of rights hereunder, to enforce any provision hereof, or to seek rescission of this Contract for default contemplated herein, whether legal or equitable, the prevailing party in such action shall be entitled to recover its reasonable attorneys' fees in addition to all other relief to which it may be entitled therein. All indemnities provided for herein shall include, without limitation, the obligation to pay costs of defense in the form of court costs and attorneys' and paralegal fees and disbursements.

40. **Successors No Assignment.** The terms, covenants and conditions herein contained shall be binding upon and inure to the benefit of the successors of the parties hereto. This Contract may not be assigned.

41. **Governing Law.** This Contract shall be governed by, construed and enforced in accordance with the laws of the State of New Jersey. All law suits shall be filed in the courts of the State of New Jersey.

42. **Incorporation of Prior Agreements.** This Contract contains the entire understanding of the parties hereto with respect to the subject matter hereof, and no prior or other written or oral agreement or undertaking pertaining to any such matter shall be effective for any purpose.

43. **Modification of Contract.** This Contract may not be amended or modified, nor may any obligation hereunder be waived orally, and no such amendment, modification or waiver shall be effective for any purpose unless it is in writing and signed by the party against whom enforcement thereof is sought.

44. **Further Assurances.** After the Closing Date, Seller shall execute, acknowledge and deliver, for no further consideration, all such assignments, transfers, consents and other documents as Buyer may reasonably request to vest in Buyer, and protect Buyer's right, title and interest in the Property as provided for by this Contract.

45. **Interpretation.** This Contract shall be construed reasonably to carry out its intent without presumption against or in favor of either party. If any provision hereof shall be declared invalid by any court or in any administrative proceedings, then the provisions of this Contract shall be construed in such manner so as to preserve the validity hereof and the substance of the transaction herein contemplated to the extent possible. The captions and paragraph headings are provided for purposes of convenience of reference only and are not intended to limit, define the scope of, or aid in interpretation of any of the provisions hereof.

46. **Counterparts.** This Contract may be executed and delivered in several counterparts, each of which, when so executed and delivered, shall constitute an original, fully enforceable counterpart for all purposes.

47. **Force Majeure.** In the event either party is prevented from fulfilling any of its obligations in this Contract, by reason beyond the reasonable control of such party, including but not limited to an Act of God, extraordinary weather, building or other governmental moratorium or if either party is in litigation or under threat of litigation bearing upon the purposes of this Contract, then the time of such performance by either party, including the time for payment of any sums due hereunder, shall be extended by a time equal to the amount of such delay, provided that neither party shall be entitled to claim such delay unless it has notified the other party in writing of such delay and the cause thereof.

48. **Existing Contract with Holmdel Associates, L.L.C.** Seller has an existing conditional contract of sale with Holmdel Associates, L.L.C. (herein "H.A.") under which H.A. would seek development approval to subdivide and develop the Property for

residential purposes. H.A., whose representatives have been included in the negotiations between Buyer and Seller, has agreed, that in return for the payment of \$1,000,000 from the \$4,000,000.00 to be paid to Seller on Closing Date, it will execute a release of Seller from all duties and obligations under their contract and will seek no further remuneration of any kind from any person or entity in connection with the Property. H.A. understands and agrees that the \$1,000,000 payment provided for herein is contingent upon Buyer and Seller successfully concluding the within Contract and transfer of title to Buyer as provided for by this Contract. After the Closing Date, H.A. agrees to execute, acknowledge and deliver, for no further consideration, all such assignments, releases, transfers, consents, and other documents as Buyer or Seller may reasonably request to vest in Buyer, and protect Buyer's right, title and interest in the Property as provided for by this Contract.

SIGNED AND AGREED TO BY:

Attest: (Affix Seal)

F & F Nurseries, Inc.

Secretary

JOHN FLEMER, President

DATED:

ATTEST: (AFFIX SEAL)

TOWNSHIP OF HOLMDEL (BUYER)

MAUREEN SHEPHERD,
Township Clerk

LARRY FINK, Mayor

DATED:

As to Paragraphs 36, 37 & 48:

Witnesses:

Holmdel Associates, L.L.C.

By _____
Vincent Russo, Managing
Member

DATED:

EXHIBIT "D"

RULES AND REGULATIONS OF FARMING RIGHT

1. **Buffer to be Maintained.** All fields in the Farm Area shall have a 5 foot wide buffer area from the outermost edge of the property line, inward, and around the Farm Area. The buffer area shall be kept unplowed and left in its natural state. Said buffer area shall be free of crops and maintained by the Seller, with all weeds and grass being mowed, all fallen trees or branches removed from the area, as the case may be. The 5 foot buffer area shall not be farmed or otherwise improved in any manner by the Seller.

2. **Limitation to Nursery Use.** The Seller specifically agrees that the Farm Area will be used for the growing of nursery stock in a manner consistent with Seller's use of the Property prior to and up to the date of the Contract and will not be devoted to any other uses without the express approval of the Township.

3. **Repairs and Care.** The Seller shall take good care of the Property and shall, at the Seller's own cost and expense, make all repairs for normal maintenance to the Farm Area, and Remainder Area (so long as he has use of the Remainder Area). At the end or other expiration of the Farming Right, Seller shall undertake Ground Restoration and shall deliver up the Farm Area in good order and condition, wear and tear from a reasonable use thereof, and damage by the elements not resulting from the neglect or fault of the Seller, excepted. The Seller shall keep and maintain the same free from debris, trash, refuse, snow and ice.

The Seller shall have the non-exclusive right to use existing field roads for access to the Property. The Seller shall have the responsibility to keep said roads open and to maintain and keep them in repair. Any and all alterations to the said roads by the Seller must first be approved by the Township.

4. **Compliance With Laws, Etc.** The Seller shall promptly comply with all laws, rules, regulations, requirements and directives of the Federal, State and Public Authorities and of all their departments, bureaus and subdivisions, applicable to and affecting the said Property, their use and occupancy, for the correction, prevention and abatement of nuisances, violations or other grievances in, upon or connected with the said Property, during the Farming Period; and shall promptly comply with all orders, regulations and requirements and directives of the Board of Fire Underwriters or similar authority and of any insurance companies which have issued or are about to issue policies of insurance covering the said Property and its contents, for the prevention of fire or other casualty, damage or injury, at the Seller's own cost and expense for those times he would be responsible pursuant to the Farming Right.

5. **Assignment.** The Seller shall not assign, mortgage or hypothecate, nor sublet or sublease the Farm Area or any part thereof without the prior written consent of the Township which shall not be unreasonably withheld; nor occupy or use it or any part thereof, nor permit or suffer the same to be occupied or used for any purposes other than as herein limited, nor for any

purpose deemed unlawful, disreputable, or extra hazardous, on account of fire or other casualty. The Seller is prohibited from granting any authority, permission, or license to any individual or group to use the property in any way, without the prior written consent of the Township which shall not be unreasonably withheld.

6. **Alterations-Improvements.** No alterations, additions or improvements shall be made without the written consent of the Township. If written consent is given, all such alterations, additions or improvements and systems, when made, installed in or attached to the Property, shall belong to and become the property of the Township and shall be surrendered with the Property and as part thereof upon the expiration or sooner termination of The Farming Right, without hindrance, molestation or injury.

7. **Inspection and Repair.** The Seller agrees that the Township and the Township's agents, employees or other representatives, shall have the right to enter into and upon the Farm Area or any part thereof, at all reasonable hours, for the purpose of examining the same or making such repairs or alterations therein as may be necessary for the safety and preservation thereof. This clause shall not be a covenant by the Township nor be construed to create an obligation on the part of the Township to make such inspection or repairs.

8. **Right To Exhibit.** During the last twelve (12) months of the Farming Period, the Seller agrees to permit the Township and the Township's agents, employees or other representatives to show the Property to persons wishing to rent it or a portion of it.

9. **Utilities.** The Seller shall pay when due all the rents or charges for water or other utilities used by the Seller, which are or may be assessed or imposed upon the Farm Area or which are or may be charged to the Township by the suppliers thereof during the term hereof, and if not paid, such rents or charges shall be credited against a Mortgage Payment or collected directly from Seller, at Township's option.

10. **Removal of Seller's Property.** Any equipment, fixtures, goods or other property of the Seller, not removed by the Seller upon the termination of the Farming Right, or upon any quitting, vacating or abandonment of the Farm Area by the Seller, or upon the Seller's eviction, shall be considered as abandoned and the Township shall have the right, without any notice to the Seller, to keep or to sell or otherwise dispose of the same, at the expense of the Seller, and shall not be accountable to the Seller for any part of the proceeds of such sale, if any.

11. **Reimbursement of Township.** If the Seller shall fail or refuse to comply with and perform any Conditions and or any of these Rules and Regulations, the Township may, if the Township so elects, carry out and perform such Conditions or cause compliances with the Rules and Regulations, at the cost and expense of the Seller, and the such cost and expense shall be payable by the Seller on demand or at the option of the Township, shall be credited against a Mortgage Payment. This remedy shall be in addition to such other remedies the Township may have by reason of the breach by the Seller of any of the

Conditions or Rules and Regulations.

12. **Intent To Preserve Farmland.** The Seller acknowledges that the intention of the Township is to effect the preservation of farmlands in the Township and, more specifically, the preservation of the Farm Area as farmland. The Seller shall take no action which would be detrimental in any way to this intent.

13. **Exclusive Use of Premises For Farming.** As outlined in paragraph 2 above, the Farm Area is to be used exclusively for the purpose and activities incidental to that purpose. The Seller shall not permit any recreational use of the Property without prior written permission from Township. Hunting, fishing, trapping and other activities shall be allowed only with prior written permission from the Township. Varmint hunting is prohibited without the express written permission of the Township.

14. **No Retail Sale of Goods of Any Type.** There shall be no retail sale of prepared food, produce or any other similar products on or from the Property. No roadside stands or retail farm markets of any type, temporary or permanent, shall be permitted on the Property. No "pick your own" activity shall be allowed.

15. **Erection of Structures or Additions.** The Seller shall not erect any structures or buildings, temporary or permanent, to be appended to the structures or buildings owned by the Township, nor cause any portable storage sheds to be located on the Property, unless the Seller shall first obtain the prior approval of the Township in writing concerning the location and type of such structures, buildings or additions to be erected.

16. **Fencing.** Any fencing erected on the Farm Area must first be approved by the Township. All fences presently on the Farm Area shall be kept in good condition by the Seller and left in place by the Seller upon termination of the Farming Right. All fencing shall become the property of the Township after installation. Nothing herein is intended to inhibit the Seller's discretion to erect deer control fencing or fencing for snow control purposes.

17. **Signs or Advertisements.** No signs or advertisements of any description shall be permitted to be painted, posted, or affixed to or on any buildings, structures, fences or trees, nor will they be permitted on or about the Property without prior written approval from the Township, except that Seller shall be allowed to place signs prohibiting hunting and/or trespassing on the Farm Area and up to 2 other free standing signs for his purposes, said signs not to exceed a total for both of 16 sq. ft. and said signs must be first approved in writing by the Township. Existing signage, or reasonably equal replacement of same, is hereby approved by the Buyer.

18. **Township Held Harmless.** There shall be no liability upon the Township or its agents arising out of the use of the Property by the Seller or any of the Seller's family, servants, licensees, agents or invitees, and the Seller shall indemnify and hold harmless the Township and its agents from any liability and from all costs and expense of every kind (including counsel fees) to which the Township may be put by reason of any injury

or claim of injury to persons or property resulting or arising from the use by the Seller or any of the Seller's family, servants, licensees, agents or invitees of the Property. Township shall not be responsible and shall be held harmless for loss of any crops, equipment, supplies or materials under any circumstances.

19. **Seller's Insurance and Proof of Insurance.** The Seller shall present a Certificate of Insurance to the Township on Closing Date and periodically thereafter for the following coverages. All expenses for insurance coverage shall be borne by the Seller. Nothing contained in these insurance requirements is to be construed as limiting the extent of the Seller's responsibility for payment of damages resulting from the Seller's operation hereunder.

The Seller shall purchase and maintain insurance with companies, satisfactory to the Township, as follows:

- a. Workers' Compensation and Employer's Liability Insurance covering all of the Seller's employees. This insurance shall comply with the statutory requirements for the State of New Jersey and shall have an Employers' Liability Insurance limit of not less than \$1,000,000.
- b. Farm Insurance issued specifically to farmers and commonly known as "Special Farm Package" in a minimum amount of \$300,000.
- c. Excess Liability Insurance in a minimum amount of \$1,000,000 for each occurrence.
- d. Certificates of the Insurance required above must be filed with the Township on Closing Date. The Township of Holmdel must be named as the additional insured on all Certificates of Insurance. All Certificates of Insurance must provide for thirty (30) days prior written notice to the Township of policy cancellation, non-renewal or material change.
- e. Policies shall remain in force for the entire Farming Period, renewed annually.

20. **Right of Way For Township.** Access by Township's vehicles shall be assured and Seller shall be responsible for continuing vehicle rights of way in and around the Farm Area as the interior field roads now exist.

21. **Storage of Farm Equipment and Supplies.** Equipment not directly related to the farming operations shall not be permitted on the Property without prior written permission from the Township.

22. **Sanitation.** The Seller, at his own expense, shall pick up and store, daily, in covered containers provided by the Seller, all litter and debris that are produced as a result of the farming operations. These containers shall be properly stored and emptied on a reasonably regular schedule, so as not to create a health or litter problem.

23. **Removal of Soil or Trees.** The Seller shall not, during his use of the Property, remove from the Property any earth or soil, nor destroy, cut or remove, nor permit to be destroyed, cut or removed, any timber, trees (other than nursery stock) or firewood standing, lying or growing thereon, without written consent of the Township. Seller's operation of raising and harvesting (balled and burlapped) of nursery stock is hereby consented to by Buyer.

24. **Prevention of Soil Erosion and Protection of Farmland.** The Seller shall maintain and repair any and all soil drainage structures now existing or hereafter placed upon the Farming Area, and to do all things necessary for the purpose of protecting the Farming Area from erosion, inadequate drainage, improper irrigation or drainage of the land. The Seller shall not permit the land to become overgrown with noxious weeds.

25. **Use of Fertilizers, Pesticides, Herbicides and Other Such Chemicals.** The Township encourages the use of Integrated Pest Management techniques. Fertilizers, pesticides, herbicides or other such chemicals shall be applied only under the supervision and control of the Seller. At all times the /Seller shall maintain a current New Jersey Department of Environmental Protection Certified Applicator Registration licensed person using or applying such chemicals., or Seller shall have an outside contractor who is so licensed. The Seller shall engage in a regular program of fertilization to prevent depletion of the soil. Aerial application of pesticides is prohibited.

26. **Misuse of Fertilizers, Pesticides, Herbicides or Other Chemicals.** Misuse of fertilizers, pesticides, herbicides or other chemicals shall not be tolerated and may be the basis for termination of the Farming Right.

27. **Fire Prevention and Suppression.** The Seller assumes all responsibility for carrying on at his own cost and expense all fire prevention and suppression work necessary or required to protect the foliage, trees, buildings and structures on the Farming Area to the same extent as if the land was owned by the Seller.

28. **Waiver.** The waiver at any time by Township of any of the Rules and Regulations shall extend to the particular case only, and for the particular time and in the particular manner specified, and such waiver shall not be construed or understood as waiving any further or other rights of any character whatever.