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PREPARED BY + MAILED:
PROSKAUER ROSE LLP
Counsel for the Debtor
and the Debtor-in-Possession
1585 Broadway
New York, New York 10036
(212) 969-4018
Alan B. Hyman (AH-6655)
Jeffrey W. Levitan (JL-6155)



Doc#: 0524544004 Fee: \$130.50
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 09/02/2005 09:34 AM Pg: 1 of 54

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re:

FRANK'S NURSERY & CRAFTS, INC.,

Debtor.

(Chapter 11)

Case No. 04-15826 (PCB)

ORDER AUTHORIZING AND APPROVING SALE OF THE DEBTOR'S INTERESTS IN CERTAIN REAL PROPERTY FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES AND GRANTING RELATED RELIEF (STORE NO. 141)

UPON the motion dated November 4, 2004 (the "Motion")¹ of Frank's Nursery & Crafts, Inc. a debtor and debtor-in- possession ("Franks" or the "Debtor"), pursuant to Section 363 of Title 11, United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code") and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") (1) establishing procedures in connection with the sale of the Debtor's interests in owned real property free and clear of all liens, claims and encumbrances, (2) authorizing and approving the sale of such real property and (3) granting related relief; and it appearing that due notice of the Motion and all matters in connection therewith was given; and such notice being good and sufficient; the Debtor

¹ Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion.



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having determined to sell the real property (the "Property") described in the real estate sales contract annexed hereto as Exhibit A (the "Sales Contract"); and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED, that

A. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This proceeding is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are Section 363 and 1146 of the Bankruptcy Code and Rules 2002 and 6004 of the Bankruptcy Rules.

B. Due notice of this Order, the proposed sale of the Property pursuant to the Sales Contract and the Motion has been given to all parties entitled thereto, as evidenced by the affidavits of service filed with the Court; and the Debtor has complied with all of the procedures for notice of the Motion as approved by the Court. Such notice constitutes appropriate and adequate notice to all parties-in-interest under the circumstances and complies with the applicable provisions of the Bankruptcy Code and of the Bankruptcy Rules. No other or further notice of the Motion or the entry of this Order is necessary.

C. The Debtor and/or Keen Realty, LLC ("Keen"), the Debtor's real estate consultant, have marketed the Property and conducted the sales process in compliance with the Bidding Procedures Order.

D. Creditors, parties-in-interest and other entities have been afforded a reasonable opportunity to bid on the Property.



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- E. A reasonable opportunity to object or be heard regarding the relief requested in the Motion has been afforded to all interested persons and entities.
- F. No objections were filed with this Court or received by the Debtor with respect to the Motion or the proposed sale of the Property pursuant to the Sales Contract.
- G. The Debtor has demonstrated both (1) good, sufficient, and sound business purpose and justification and (2) compelling circumstances for the sale pursuant to Section 363(b) of the Bankruptcy Code prior to, and outside of, a plan. The sale of the Property outside of a plan of reorganization pursuant to the Sales Contract is reasonable and appropriate under the circumstances and does not impermissibly dictate the terms of a plan of reorganization.
- H. The transactions contemplated by the Motion, as approved and implemented by this Order, are in compliance with and satisfy all applicable provisions of the Bankruptcy Code including, without limitation, Sections 363(b), (f), and (o). The terms and conditions of the sale of the Property and the other transactions approved by this Order and contemplated by the Sales Contract are fair and reasonable.
- I. The sale of the Property to the Purchaser (as defined in the Sales Contract), or to the Purchaser's designated assignee, for the consideration set forth in the Sales Contract is in the best interest of the Debtor's estate, its creditors, and all parties-in-interest. The total consideration to be received by the Debtor pursuant to the Sales Contract is fair and reasonable.
- J. The Sales Contract was negotiated, proposed and entered into by the parties in good faith, from arm's length bargaining positions and without collusion. Neither the Debtor nor the Purchaser engaged in any conduct that would prevent the application of Section



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363(m) of the Bankruptcy Code or cause the application of Section 363(n) of the Bankruptcy Code to the sale of the Property. Consequently, the Purchaser is a good faith purchaser under Section 363(m) of the Bankruptcy Code and, as such, is entitled to the protections afforded thereby. In the absence of a stay pending appeal, if any, the Purchaser, or its designated assignee, will be acting in good faith within the meaning of Section 363(m) of the Bankruptcy Code in closing the transactions contemplated by the Sales Contract pursuant to this Order at any time after the entry of this Order.

K. The consideration provided for the Property pursuant to the Sales Contract (1) is fair and reasonable, (2) is the highest and best offer for the Property, (3) will provide a greater recovery for the Debtor's creditors than would be provided by any other practical available alternative and (4) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

L. The Purchaser provided a \$95,000 deposit (the "Deposit") in accordance with the Sales Contract.

M. The Debtor has full corporate power and authority to execute the Sales Contract, any related agreement and all other documents contemplated by or necessary to be executed in connection with, the Sales Contract and the sale, transfer and conveyance of the Property by the Debtor has been duly and validly authorized by all necessary corporate power and authority necessary to consummate the transactions contemplated by the Sales Contract. No consents or approvals, other than this Order and those as may be expressly provided for in the Sales Contract, are required for the Debtor to consummate such transactions.



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N. Except with respect to Keen, no agent, broker, person or firm acting or purporting to act on behalf of either the Debtor or the Purchaser is or will be entitled to any commission, broker's fee or finder's fee from any of the parties to the Sales Contract or any other person respecting the sale of the Property.

O. The Sale of the Property must be approved and consummated promptly in order to preserve the value of the Property. There is a need to consummate the Sales Contract as rapidly as possible, due to the burden of substantial maintenance expenses being imposed upon the Debtor's estate. Accordingly, there is cause to lift the stays of execution of this Order contemplated by Bankruptcy Rules 6004(g) and 6006(d).

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT

1. The Motion be, and it hereby is, granted.
2. The findings of fact and conclusions of law stated herein shall constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any finding of fact later shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law later shall be determined to be a finding of fact, it shall be so deemed.
3. All objections to the Motion or the relief requested therein, if any, that have not been withdrawn, waived or settled, and all reservations of rights included in such objections, are hereby overruled on the merits with prejudice.
4. The Sales Contract and each of its terms and conditions are approved in their entirety. The sale of the Property to the Purchaser, or its designated assignee, is hereby authorized under Sections 363(b) and (f) of the Bankruptcy Code. The Debtor is hereby



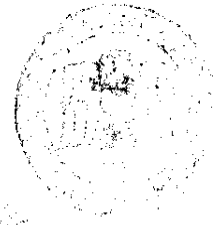
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authorized to execute, deliver, implement and fully perform the Sales Contract, together with all additional instruments and documents which may be reasonably necessary, convenient or desirable to implement the terms of the Sales Contract, and to take all further actions as may be necessary or appropriate to perform the obligations, and effectuate the transactions contemplated by the Sales Contract.

5. Pursuant to Sections 363(b), (e) and (f)(1), (2), (3) and/or (5) of the Bankruptcy Code, on the closing of the sale of the Property, the Property and all of the Debtor's right, title and interest therein shall be transferred to the Purchaser, or its designated assignee, in accordance with the Sales Contract and shall be free and clear of all liens, claims, interests and encumbrances of any kind or nature whatsoever. All such liens, claims, interests and encumbrances will be released, terminated and discharged as to the Property, and all such liens, claims, interests and encumbrances shall attach to the proceeds of the sale of the Property in the order of their priority, with the same validity, force and effect which they now have against the Property.

6. In satisfaction of any liens, claims or encumbrances of Kimco Realty Corp., Kimco Securities Corp. or Kimco Capital Corp. (collectively, "Kimco") on the Property, Kimco shall receive payment upon the closing of the sale of the Property of an amount to be specified in a payoff letter based on the closing settlement statement for the Property immediately prior to closing.

7. All persons and entities holding liens, claims, interests or encumbrances of any kind or nature whatsoever with respect to the Property are hereby forever barred and permanently enjoined from asserting such liens, claims, interests and/or encumbrances of any kind or nature whatsoever against the Property, the Purchaser, the Purchaser's designated

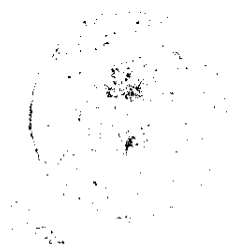


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assignee, or the Purchaser's or its assignee's successors, assigns or affiliates. All persons and entities holding liens, claims, interests or encumbrances of any kind or nature whatsoever with respect to the Property are hereby directed to execute and deliver all additional instruments and documents which the Purchaser or its designated assignee may deem reasonably necessary, convenient or desirable to evidence the sale of the Property free and clear of all liens, claims, interests and encumbrances including, without limitation, termination statements on form UCC-3 and other releases of liens and satisfactions of mortgages.

8. Neither the Debtor nor the Purchaser (or its designated assignee) shall be required to execute or file releases, termination statements, assignments, consents or other instruments in order to effectuate, consummate and implement the foregoing provisions hereof; provided, however, that this decretal paragraph shall not (a) excuse such parties from performing any and all of their respective obligations under the Sales Contract and any other documents contemplated to be executed in connection therewith or (b) excuse any person or entity from complying with any of the provisions of this Order.

9. If any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens* or other documents or agreements evidencing interests with respect to the Debtor or the Property shall not have delivered to the Debtor prior to the closing of the sale, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all interests which the person or entity has with respect to the Property or otherwise, then (a) the Debtor is hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Property and (b) the Purchaser (or its designated assignee) and/or the Debtor are hereby authorized to file, register, or otherwise record a certified copy of this Order, which,



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once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all liens, claims, interests, obligations, rights and/or encumbrances of any kind or nature whatsoever in, against or with respect to the Property.

10. This Order shall be binding upon all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Property. This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, and local governmental agency, department, or office. Each and every federal, state, and local governmental agency or department or office is hereby directed to accept this Order and any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Sale Contract.

11. The failure to specifically include any particular provision of the Sales Contract or the related agreements in this Order will not diminish the effectiveness of such provision, it being the intent of this Court that the Sales Contract and related agreements and transactions contemplated thereby are authorized and approved in their entirety.

12. This Court hereby retains jurisdiction to enforce and implement the terms and provisions of the Sales Contract and enforce the provisions of this Order and resolve any disputes related thereto.

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13. As provided by Bankruptcy Rule 7062, and notwithstanding Bankruptcy Rules 6004(g) and 6006(d), this Order shall not be automatically stayed, but shall be effective and enforceable immediately upon the signing of this Order.

14. The transactions contemplated by the Sales Contract are undertaken by the Purchaser in good faith, as that term is used in Section 363(m) of the Bankruptcy Code. Accordingly any reversal or modification on appeal of the authorization provided herein to consummate the sale of the Property shall not affect the validity of the sale of the Property to the Purchaser, unless such authorization is duly stayed pending such appeal. The Purchaser (or its designated assignee) is a purchaser in good faith of the Property and is entitled to all of the protections afforded by Section 363(m) of the Bankruptcy Code.

15. The provisions of this Order are non-severable and mutually dependent.

16. The Sales Contract and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court, and the Purchaser's interest in the Sales Contract may be assigned to Purchaser's designated assignee.

Dated: July 21, 2005
New York, New York

/s/ Prudence Carter Beatty
The Honorable Prudence Carter Beatty
United States Bankruptcy Judge

WHEN RECORDED RETURN TO:
LANDAMERICA - NCS
1050 Wilshire Dr., Ste. 310
Troy, MI 48084
Case No. 04-097180

I hereby attest and certify on 8/2/05
that this document is a full, true and correct
copy of the original filed on the court's
electronic case filing system.

Clerk, US Bankruptcy Court, SDNY

By: [Signature] Deputy Clerk



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EXHIBIT A

REAL ESTATE SALES CONTRACT

Property of Cook County Clerk's Office



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REAL ESTATE SALES CONTRACT

THIS REAL ESTATE SALES CONTRACT ("Contract" or "Agreement"), made this Day of June, 2005, by and among Frank's Nursery & Crafts, Inc., as debtor-in possession ("Seller"), and Michael R. Fumo or assigns ("Purchaser"), and the Escrow Agent specified on the last page of this Contract ("Escrow Agent").

1. AGREEMENT TO PURCHASE. In consideration of the mutual covenants herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller, pursuant to the terms and conditions hereinafter set forth, the land described on Exhibit "A" attached hereto (the "Land") and incorporated herein by reference on which Seller operates a "Facility" (hereinafter defined), all buildings and improvements situated thereon (the "Improvements"), machinery, equipment and fixtures owned by Seller located in or on the land and used in connection with the Facility (the "Personal Property"). (the Land, Improvements, Facility, Personal Property and Inventory shall hereinafter be collectively referred to as the "Property") but excluding that certain property described on Exhibit "B" attached hereto (the "Excluded Property"). If Purchaser is one or more individuals, Purchaser represents that Purchaser is at least 18 years old and is legally able to enter into this Contract and be bound by it. If Purchaser is not an individual (but is a partnership, corporation or other entity), Purchaser represents that execution, delivery and performance of this contract are within Purchaser's power and have been duly authorized by all necessary and proper action. Seller represents that, subject to approval of the Bankruptcy Court, the execution, delivery and performance of this contract are within

1.



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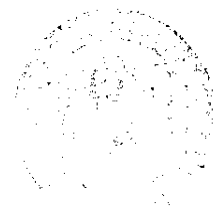
Seller's power and have been duly authorized by all necessary and proper action.

"Facility" means the retail building situated on the Land.

2. DUE DILIGENCE TERMINATION. (a) A due diligence period is hereby established for Purchaser's investigation, at its sole cost and expense, of those matters relating solely to the environmental condition of the Property, which due diligence period shall begin on the date hereof and shall end at 5:00 p.m. on the date that is thirty (30) days after the date hereof (the "Due Diligence Period").

(b) If Purchaser determines in good faith that as a result of the investigation of the environmental condition of the Property it shall have conducted during the Due Diligence Period or as a result of any matter shown on ALTA survey produced by Chicagoland Survey Co dated November 25, 1995, updated on September 15, 2004 and updated on December 10, 2004 as survey number 60-86 having been delivered to the Purchaser by Seller, there is a defect in the Property that will materially adversely affect the use of the Property as intended by Purchaser, Purchaser may terminate this Agreement by written notice given to Seller on or before the end of the Due Diligence Period. Upon such termination, Purchaser shall turn over to Seller all of the environmental and/or survey documentation upon which it is relying to satisfy its termination under this Section 2. Upon such termination, (i) Purchaser shall be entitled to the return of the Deposit, and (ii) except as otherwise expressly provided in this Agreement as to the survival of any provisions after the termination hereof, this Agreement and all the rights and obligations of the respective parties hereunder shall be null and void.

(c) If Purchaser does not give to Seller such written notice of termination before the end of the Due Diligence Period, Purchaser shall be conclusively deemed to have waived



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its right of termination under this Section, and this Agreement shall continue in full force and effect.

Time shall be OF THE ESSENCE with respect to the expiration of the Due Diligence Period at 5:00 p.m. on the date that is thirty (30) days after the date hereof, and with respect to the requirement that such notice of termination (if any) be given by such time.

3 PURCHASE PRICE. The purchase price for the Property which shall be paid for as provided in Section 17) below is Nine Hundred Fifty Thousand Dollars (\$950,000.00) (The Purchase Price), payable as follows:

(a) \$95,000.00 representing the initial earnest money deposit (the "Deposit") and being equal to ten percent (10%) of the Purchase Price, shall be delivered by Purchaser to Escrow Agent simultaneously with the execution of this Contract. This payment is being made by a certified or cashier's check in the amount of the Deposit made payable on its face to Escrow Agent. Escrow Agent shall deposit the Deposit in a non-interest bearing account and, except as otherwise set forth herein, shall pay the Deposit to the order of Seller at Closing to be credited against the Purchase Price.

(b) The balance of the Purchase Price, \$855,000.00 more or less shall be paid by Purchaser directly to the order of Seller by wire transfer, certified or bank check at Closing, subject to the credits, adjustments and prorations as hereinafter provided. This Contract is not contingent upon Purchaser's ability to obtain financing, and in no event is this



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Contract subject to Purchaser obtaining financing from any third party. Except as otherwise specified in Section 2 above, this Contract is not contingent upon Purchaser's due diligence.

4. CLOSING. The Closing shall take place in the office of Escrow Agent at the location specified on the last page of this Contract, or at such other place within the state where the Property or Escrow Agent is located, as designated by the Escrow Agent, in its sole discretion, on a date specified by Seller which shall be no later than the tenth (10th) business day after entry of the order (the "Approval Order") of the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") presiding over Seller's chapter 11 case (captioned In re Frank's Nursery & Crafts, Inc. (the "Chapter 11 Case")) authorizing and approving the sale and conveyance of the Property free and clear of all liens, claims and encumbrances (except Permitted Exceptions) pursuant to and in accordance with section 363(b) and (f) of title 11 of the United States Code (the "Bankruptcy Code"), subject in any event to Permitted Exceptions, if any.

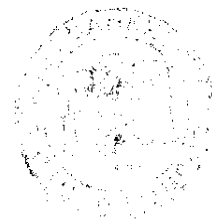
- (b) At Closing, Seller shall deliver to Purchaser:
- (i) a Deed in the form attached hereto as Exhibit "C" (the "Deed") which shall convey title to the Property in accordance with Section 9 hereof;
 - (ii) a bill of sale covering the Personal Property and Inventory (if any) in the form attached hereto as Exhibit "D";
 - (iii) a certified copy of the Approval Order.

Notwithstanding the foregoing, no right, title or interest in the Excluded Property is being sold or will be transferred by Seller to Purchaser under this Contract.



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6. TAXES AND ADJUSTMENTS. (a) The following items shall be adjusted and apportioned between Seller and Purchaser as of 11:59 p.m. on the day before the date of Closing: Ad valorem property taxes, water, sewer, vault charges and other utility charges and any other charges for municipal services, the value of fuel stored on the Property, rents, license fees, concession fees and security deposits, if any. If the exact amount of ad valorem taxes for the year in which the Closing occurs is not known at Closing, the proration of the taxes for the year in which the Closing occurs will be based on the prior year's taxes and shall be conclusive, with no subsequent adjustment. In the event that Purchaser elects to file any tax appeals with respect to the Property subsequent to the Closing Date for the current year and/or any prior years,
- The parties agree that all refunds, credits, attorneys fees and disbursements from any newly filed tax appeals for the current year and/or any past years, will be retained as the property of Purchaser. Seller does hereby assign all right title and interest to any refunds recovered for current and prior years to Purchaser herein or assigns. The Seller does agree, if requested by Purchaser to submit copies of the checks seller paid for the periods requested. The provisions of this Section shall survive the Closing hereunder.
- (b) intentionally omitted.
- (c) Seller and Purchaser shall each notify all utility providers servicing the Property that as of the Closing Date, all bills for such services prior to closing date shall be sent to Seller. Seller shall be responsible for the payment of all such utility costs for the period of time prior to the Closing Date and shall be entitled to obtain the refund of any utility deposits or escrows established or maintained by Seller prior to Closing.



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6. CLOSING COSTS. At Closing, Purchaser shall pay the premium for the owner's policy of title insurance in accordance with Section 8 below all transfer, stamp, local tax attributable to the transfer of the Property to Purchaser by Seller and all recording fees for recording the Deed. All other expenses incurred by Seller or Purchaser with respect to the consummation of the transaction contemplated by this Contract, are to be borne and paid exclusively by the party incurring same.

7. DISCLAIMER OF WARRANTIES: "AS-IS" CONVEYANCE.

(a) PURCHASER WARRANTS AND ACKNOWLEDGES TO AND

AGREES WITH SELLER THAT PURCHASER IS PURCHASING THE PROPERTY IN AN "AS IS" CONDITION WITH ALL FAULTS AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES, REPRESENTATIONS OR GUARANTEES, EITHER EXPRESS OR IMPLIED, OF ANY KIND, NATURE OF OR ON BEHALF OF SELLER. Purchaser acknowledges that Purchaser has not relied, and is not relying, upon any information, document, sales brochure, due diligence/property information package or other literature, map or sketch, projection, pro forma statement, representation, guarantee or warranty (whether express or implied, or oral or written, material or immaterial) that may have been given by or made by or on behalf of or omitted by the Seller, its agents, representatives, consultants and/or attorneys with respect to (i) the quality, nature, adequacy or physical condition of the Property including, but not limited to, the structural elements, foundation, slab, roof, appurtenances, access, landscaping, parking facilities or the electrical, mechanical, HVAC, refrigeration systems, plumbing, sewage or utility systems, facilities or appliances or underground pipes or tanks at the Property, if any; (ii) the quality, nature, adequacy or physical condition of soils, surface waters, wells or ground water at the Property; (iii) the existence, quality, nature, adequacy or physical condition of any utilities serving the

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Property; (iv) the development potential of the Property, its habitability, merchantability or fitness, suitability or adequacy of the Property for any particular purpose; (v) the zoning or other legal status of the Property, including but not limited to, condemnation or threat of condemnation; (vi) the Property's or its operation's compliance with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions or restrictions of any governmental or quasi governmental entity; (vii) the Property's or its operation's compliance with any applicable labor laws or building codes concerning labor and materials used or incorporated into the Property or any other labor or materials relating in any way to the Property; or (viii) the condition of title to the Property or the nature, status and extent of any right of way, lease, right of redemption, possession, lien, encumbrance, license, reservation, covenant, condition, restriction or any other matter affecting title to the Property. Purchaser shall accept title subject to all notices of violations of law of governmental ordinances, orders or requirements issued on or prior to the Closing Date.

(b) PURCHASER ACKNOWLEDGES TO, AND AGREES WITH, SELLER THAT WITH RESPECT TO THE PROPERTY, SELLER HAS NOT AND DOES NOT AND WILL NOT MAKE ANY WARRANTIES OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF CONDITION, MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR USE OR WITH RESPECT TO THE VALUE, PROFITABILITY OR MARKETABILITY OF THE PROPERTY OR WITH RESPECT TO COMPLIANCE OF THE PROPERTY WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAW, RULE, REGULATION, ORDER OR REQUIREMENT INCLUDING, BUT NOT LIMITED TO, THOSE PERTAINING TO THE



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HANDLING, GENERATING, TREATING, STORING OR DISPOSING OF ANY HAZARDOUS WASTE OR SUBSTANCE.

(c) Purchaser acknowledges that it is Purchaser's responsibility to make such legal, factual and other inquiries and investigations as Purchaser deems necessary, desirable or appropriate with respect to the Property. Such inquiries and investigations may include, but shall not be limited to, any leases and contracts, pertaining to the Property, the physical components of all portions of the Property, the condition of the Property, the existence of any wood destroying organisms on the Property, such state of facts as an accurate survey and inspection would show, the present and future zoning ordinances, resolutions and regulations of the municipality, county and state where the Property is located and the value and marketability of the Property.

(d) Without in any way limiting the generality of the preceding subparagraphs (a) through (c), Purchaser specifically acknowledges and agrees that Purchaser hereby waives, releases and forever discharges any claim it has, might have in the future, had or may have against the Seller and/or Seller's agents with respect to the condition of the Property, either patent or latent, Purchaser's ability or inability to obtain or maintain building permits, either temporary or final certificates of occupancy or other licenses for the use or operation of the Property, and/or certificates of compliance for the Property, the actual or potential income or profits derived or to be derived from the Property, the compliance with any environmental protection, pollution or land use laws, rules, regulations or requirements and any other state of facts which exist with respect to the Property.



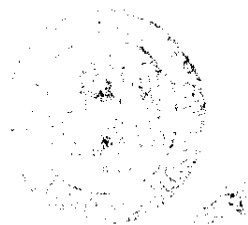
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(e) Purchaser does hereby release, and forever discharge Seller, its employees, representatives, agents, sub-agents, successors, assigns and attorneys from any and all claims for damages and other causes of action at law or equity for injury, destruction, loss or damage of any kind or character, to the person or property of Purchaser and Purchaser's employees, agents and representatives arising out of or in any way relating to any of the foregoing matters referred to in this Section 7.

(f) Seller shall not be obligated to pay any sums or perform any work to any portion of the Property including, but not limited to, any work which may now or hereafter be required to cause the Property to be in compliance with the requirements of the Americans with Disabilities Act or any other laws.

(g) The provisions of this Section 7 shall survive Closing or any termination of this Contract.

8. PROPERTY INSPECTION If Purchaser desires to inspect, examine or survey the Property after the date hereof, Purchaser may do so until Closing, at Purchaser's risk. Inspection will be at Seller's discretion and must be scheduled in advance with Seller. It is specifically understood that Purchaser will not have access to any time to said Property except at the convenience of the Seller and in the company of a representative of Seller. Purchaser agrees to indemnify, defend and hold Seller harmless from any and against any loss, cost, claim, damage or expense, including reasonable attorneys' fees, court costs and disbursements incurred, directly or indirectly, by Seller or to the Property as a result of Purchaser's inspection, examination or survey of the Property, either prior to, on, or after the date hereof. The provisions of this Section 8 shall survive Closing or any termination of this Contract.



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9. TITLE. (a) Seller agrees to convey and Purchaser agrees to accept such title to the Property as is insurable by the title company identified on Exhibit "E" attached hereto (or if no such Exhibit is attached, then the title company shall be Land America, Troy, Michigan, or its affiliate (in any event, the "Title Company") as set forth in the title commitment attached hereto as Exhibit "E" (the "Commitment"); if any, on its standard form and at standard rates, subject to

- (i) all standard exclusions and printed exceptions set forth in the standard form of owner's policy of title insurance, (ii) encroachments and all other matters that would be disclosed by a current and accurate survey of the Property; (iii) all laws, rules and ordinances of any Federal, state or local agency, bureau, department or commission having jurisdiction affecting the Property and liens, fines or penalties arising therefrom; (iv) violations of laws, ordinances or requirements of any Federal state or local agency and liens, fines or penalties arising therefrom; (v) liens for taxes and assessments not yet due and payable, and the lien for any other assessments; (vi) easements for public utilities affecting the Property; (vii) all recorded easements, covenants, restrictions, encumbrances, agreements and rights-of-way affecting the Property and any obligations arising therefrom; (viii) any applicable zoning ordinances, other land use laws and regulations, together with taxes for the current year; (ix) the matters and exceptions to title set forth on Exhibit "E" attached hereto, if any such exhibit is attached hereto (x) Seller agrees that Seller will not hereafter voluntarily encumber the Property without Purchaser's consent, consent not to be unreasonably withheld;

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- (iii) (xi) leases, licenses, concessions and other rights of tenants or other persons in possession; (xii) deleted; (xiii) any matters which are waived by
- (iv) Purchaser.
- (v) The foregoing matters referred to or described in parts (i) through (xiii) are herein referred to as the "Permitted Exceptions". While Purchaser may elect to use any title company it chooses, Seller has only agreed to deliver such title as the Title Company will insure in accordance with the Commitment and subject to Permitted Exceptions and other matters set forth in this Contract. Seller is not obligated to remove any Permitted Exceptions. If Purchaser uses another title commitment and/or another title insurer, Purchaser shall deliver a copy of such

other title commitment to Seller no later than two (2) days from the date of this Contract, such date being TIME OF THE ESSENCE. If such other title commitment is not delivered by such date, Purchaser shall be required to use the Commitment and obtain its title insurance from the Title Company. Should Purchaser elect to use a title company other than the Title Company or not purchase title insurance, Purchaser shall reimburse Seller at Closing for the cost of the Commitment prepared by the Title Company including, without limitation, any title commitment charges, search fees, copy fees, and/or cancellation charges.

Notwithstanding anything to the contrary contained herein, Seller shall not be required to provide any Commitment and Purchaser's obligations under this Contract shall not be affected thereby.



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- (b) If Seller is unable or unwilling to convey title to the Property in accordance with the preceding subsection (a), or to arrange for the Title Company to insure over the material exceptions which are not Permitted Exceptions to an extent which is commonly and
- (c) customarily acceptable to prudent purchasers and lenders,

Purchaser may either waive such exceptions or give written notice to Seller and Escrow Agent, within seven days of the date of the Contract of such defect in title, whereupon Seller may, at its option, attempt to cure such defect prior to the Closing or decline to cure such defect. If Seller is unable or unwilling to cure or to obtain affirmative title coverage on or before the Closing Date any defect as to which Purchaser has notified Seller as hereinabove provided, and if Purchaser does not waive such defect, this Contract shall be terminated without liability to either party and the Deposit shall be returned to Purchaser. Notwithstanding the foregoing, Seller shall have the right, at its sole election, to extend the Closing Date by not more than thirty (30) days to attempt to cure any defect in title objected to by Purchaser in accordance with this Section 9(b). Seller shall give Purchaser five (5) days prior notice of the new Closing Date.

(c) At the sole option of Seller, Seller may use any portion of the cash balance of the Purchase Price on the Closing Date to pay or discharge any liens or encumbrances that are not Permitted Exceptions. As an alternative, Seller may deposit sufficient monies with the Title Company acceptable to and required by it to assure their discharge, but only if the Title Company will insure Purchaser's title to the Property clear of such matters or insure against their enforcement out of the Property.



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Upon notice (by telephone or otherwise) given not less than two (2) business days before the Closing Date, Purchaser shall provide separate certified or official bank checks requested to assist in clearing up these matters.

10. ASSESSMENTS. If as of the date hereof, the Property or any part thereof, shall be or shall have been affected by an assessment or assessments for improvements, then Purchaser shall be responsible for payment of any such assessments against the Property and such assessments shall be paid by Purchaser as they become due. The provisions of this Section 10 shall be without prejudice to Purchaser's right to protest or contest any such assessment, and shall survive Closing.

11. CONDITIONS PRECEDENT TO PURCHASER'S AND SELLER'S

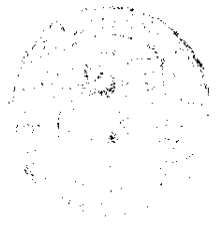
OBLIGATIONS TO CLOSE. (a) Purchaser's obligation to consummate the Closing hereunder

is conditioned upon satisfaction of the following conditions at or prior to Closing:

- (ii) Seller shall have delivered the documents required pursuant to Section 4 above;
 - (iii) The Title Company shall have delivered to Purchaser its Commitment to issue a title policy in an amount at least equal to the Purchase Price (exclusive of the Inventory Price described in Section 17 below) insuring Purchaser's title to the Property subject only to the Permitted Exceptions and any other matters waived by Purchaser; and
 - (iv) the Approval Order shall have been entered by the Bankruptcy Court.
- (b) Seller's obligation to consummate the Closing hereunder is conditioned upon

satisfaction of the following conditions at or prior to Closing:

- (i) Purchaser shall have had made the deliveries required pursuant to Section 3 hereof,



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- (ii) Purchaser shall not have failed to perform or comply in any material respect with
- any of its agreements, conditions or obligations in the manner and by the dates set forth herein and all of Purchaser's representations and warranties shall have been true and correct in all material respects as of the date made;
- (iii) the Approval Order shall have been entered by the Bankruptcy Court; and
- (iv) The Escrow Agent shall have delivered the Deposit to Seller.
- (c) In the event that any of the above conditions are not satisfied at or prior to

Closing, the party to this Contract whose obligations are conditioned upon the satisfaction of such conditions may terminate this Contract by notice delivered to the other party at or prior to Closing, provided however, if the failure to satisfy such condition is due to the default of the party required to satisfy same, the other party may pursue its remedies under Section 12 hereof. If this Contract is so terminated by either party pursuant to a right expressly given to it hereunder (and not by the default of the other party) then this Contract shall be deemed and be canceled, the Deposit shall be promptly returned to Purchaser and the parties shall have no further obligations under this Contract except for those which are expressly stated to survive the termination thereof.

12. DEFAULT. (a) Seller shall be in default hereunder if following notice to Seller, Seller shall fail to comply with or perform in the manner required in this Contract in any material respect any covenant, agreement or obligation on its part to be complied with or performed and such failure shall continue unremedied for fifteen (15) days after notice thereof from Purchaser.

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Except as hereinafter specifically provided to the contrary, if Seller shall be in default hereunder, Purchaser (in lieu of prosecuting an action for damages or

proceeding with any other legal course of conduct, the right to bring such actions or proceedings being expressly and voluntarily waived by Purchaser, to the extent legally permissible, following and upon advice of its counsel) shall have the right to promptly receive a return of the Deposit. Upon such return and delivery, this Contract shall terminate and neither party hereto shall have any further obligations under this Contract other than those which are expressly stated to survive the termination thereof.

(b) Purchaser shall be in default hereunder if Purchaser shall fail to comply with or perform within the time limits and in the manner required in this Contract (or in any other contract or agreement between Purchaser and Seller or any affiliate of Seller) in any material respect any covenant, agreement or obligation on its part to be complied with or performed and any conditions to the performance by Purchaser of its obligations hereunder have been satisfied. In the event of a default by Purchaser hereunder, Seller may terminate this Contract by notice to Purchaser at or prior to the Closing, in which event Seller shall be entitled to receive the Deposit as liquidated damages in full satisfaction of any claims against Purchaser hereunder. It is understood and agreed that in the event the Closing shall occur, the foregoing sentence shall not be deemed to limit any claims or remedies that Seller may have against Purchaser based on Purchaser's failure to comply with any post-Closing obligation or any instrument delivered at Closing.

(c) As an inducement to Seller to enter into this Contract, Purchaser agrees that notwithstanding anything to the contrary expressly or by implication provided in this Contract, (i) TIME SHALL BE OF THE ESSENCE with respect to the performance by Purchaser of its



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obligations under this Contract by the dates and within the time periods set forth in this Contract, (ii) the failure of Purchaser to perform its obligations under this Contract by the dates and within the time periods set forth in this Contract shall be a material default under this Contract, and (iii) Purchaser shall not be entitled to any adjournment(s) of the times or dates by which Purchaser is required to perform its obligations under this Contract; except that Purchaser may request one or more adjournments of the Closing Date, provided that the aggregate period of time the Closing may be adjourned by reason thereof shall not exceed two (2) business days.

13. BUILDING AND ZONING LAWS. Seller makes no representation about the zoning of the Property or its legal uses. Seller makes no representation about whether the Property has a certificate of occupancy. In some jurisdictions a certificate of occupancy or other certificates (e.g., lead paint certification, smoke detector affidavit, etc.) may also be required upon the transfer of title to the Property. If any such certificates or certifications are required to be obtained in order for the Property to be transferred to Purchaser by Seller, Purchaser shall obtain such certificates prior to Closing at Purchaser's sole cost and expense and provide evidence reasonably satisfactory to Seller at Closing that such certificates have been obtained. If any violations at the Property should be required to be corrected by the municipality or other work performed at the Property in order to obtain a certificate permitting the transfer of the Property, Purchaser shall correct and/or perform same at Purchaser's sole cost and expense. Purchaser shall indemnify, defend and hold Seller harmless from and against all fines, penalties, costs, expense, claims and liabilities arising out of or relating to Purchaser's failure to timely obtain any such certificate if one is required, and this indemnity shall survive the Closing.

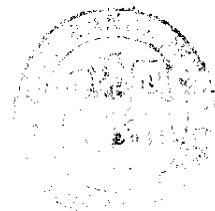


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14. CASUALTY AND CONDEMNATION. (a) The risk of loss to the Property from fire or other casualty shall belong to Purchaser. In the event of such loss or damage, Seller shall assign to Purchaser all proceeds due under the insurance policies carried by Seller, if any, and shall give Purchaser a credit, at Closing, in the amount of the deductible under any such policy. Nothing herein contained shall obligate Seller to maintain insurance coverage.

(b) If a material portion of the Property is taken by condemnation or eminent domain prior to Closing, Purchaser or Seller shall have the right to terminate this Contract by notice to the other given within five (5) days after notice of the condemnation or taking. As used herein, the term "material portion" shall mean a portion of the Property that is such that Purchaser would be unable to continue the use of the Property as it is presently utilized. If neither party elects to terminate as aforesaid, the Closing shall occur without abatement of the Purchase Price and Purchaser shall be entitled to receive any award payable by the condemning authority.

15. BROKERAGE. Purchaser represents to Seller that it has not dealt with any broker or finder in connection with this Contract or the transactions contemplated hereby other than _____ ("Purchaser's Broker"). Purchaser acknowledges that Seller has retained Keen Realty, LLC ("Seller's Broker") as its broker and Seller shall pay the commissions due Seller's Broker. Purchaser acknowledges that if Purchaser uses a Purchaser's Broker, Purchaser shall pay all the commission fees and charges charged by the Purchaser's Broker. Purchaser shall indemnify Seller and hold Seller harmless from any claim, loss, liability,



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damage, cost or expense (including, without limitation, reasonable attorneys' fees, disbursements and court costs) paid or incurred by Seller by reason of any claim to any broker's commission, finder's fee or other fee in connection with this Contract or the transaction contemplated hereby, unless such claim is due solely to the acts of Seller. The parties' obligations under this Section 15 shall survive the termination of this Contract.

16. BANKRUPTCY MATTERS. Seller and Purchaser acknowledge that, under the Bankruptcy Code, sale of the Property is, and the respective obligations of Seller and Purchaser under this Contract are, subject to approval of the Bankruptcy Court. Seller and Purchaser acknowledge that to obtain such approval the Seller must demonstrate that it has taken reasonable steps to obtain the highest and best price possible for the Property, including, but not limited to, giving notice of the transaction contemplated by this Contract to creditors and other interested parties as ordered by the Bankruptcy Court, providing information about the Property to responsible bidders, entertaining higher and better offers from responsible bidders and, if necessary, conducting an auction.

17. MANNER OF PAYMENT. All checks to be delivered by or on behalf of Purchaser to Seller at Closing shall be drawn on a federal or state chartered bank or savings and loan association, and shall be unendorsed, good certified checks of the Purchaser, or bank or teller's checks without restrictions, payable to the direct order of Seller or such person(s) or entity(s) as Seller may direct; provided, however, that upon at least two (2) days prior notice from Seller, Purchaser shall pay such balance at Closing by wire transfer of funds pursuant to instructions given by Seller. Notwithstanding the foregoing, the net amount of Closing Adjustments, if due to Seller, up to \$1,000, may be paid by Purchaser's ordinary check, subject to collection.

18.

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18. NOTICES. All notices under this Contract shall be deemed delivered when personally delivered or mailed postage prepaid, certified or registered mail, return receipt requested, or when delivered by a nationally recognized overnight counter service to the addresses set forth next to the signature of each party below. A copy of all notices given

hereunder shall also be delivered to Escrow Agent and to Proskauer Rose LLP, 1585 Broadway, New York, New York 10036 Attention: Jeffrey Levitan, Esq.

19. W/IVER. No failure or delay on the part of Seller in exercising any right of Seller, and no action on the part of Seller or any course of dealing or partial performance shall be deemed a waiver of a right of Seller set forth herein or a modification of any terms set forth herein.

20. ENTIRE AGREEMENT; AMENDMENT. This written Contract and Exhibits attached hereto constitute the entire and complete agreement between the parties hereto and supersede any prior oral or written agreements between the parties with respect to the Property. This Contract may not be amended, altered, modified or discharged, nor may any provision of this Contract be waived, except by an instrument in writing signed by Purchaser and an appropriate officer of Seller (and by Escrow Agent to the extent such modification, amendment or waiver would alter the duties or obligations of Escrow Agent hereunder).

21. HEADINGS. The paragraphs or section headings herein are for convenience of reference only and shall not be deemed to vary the content of this Contract or the covenants, agreements, representations and warranties herein set forth or limit the provisions or scope thereof.



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22. SEVERABILITY. The invalidity of any provision of this Contract shall not affect the validity or enforceability of any other provision set forth herein.

23. ASSIGNMENT. Purchaser may not assign this Contract or Purchaser's rights hereunder without the prior written consent of Seller, which consent may be given or withheld in Seller's sole discretion.

24. COUNTERPART EXECUTION. This Contract may be executed in several counterparts each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument. A fully executed facsimile copy of this Agreement shall be treated as an original.

25. BINDING EFFECT. This Contract shall be binding upon and inure to the benefit of the parties hereto, and their respective successors, personal representatives, legal representatives, heirs and permitted assigns.

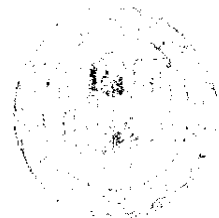
26. GOVERNING LAW. This Contract and the rights and obligations hereunder and the provisions hereof shall be governed by and construed in accordance with the federal law of the United States of America and in the absence of controlling federal law, in accordance with the laws of the state wherein the Property is located. All disputes arising out of or related to this Contract, including, without limitation, any dispute relating to the interpretation, meaning or effect of any provision hereof, will be resolved in the Bankruptcy Court and the parties hereto each submit to the exclusive jurisdiction of the Bankruptcy Court for the purposes of adjudicating any such dispute, to the extent the jurisdiction of the Bankruptcy Court is available.



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27. ESCROW AGENT. (a) The Deposit shall be held by Escrow Agent, in escrow, on the terms hereinafter set forth. Escrow Agent shall deposit all the monies in a non-interest bearing account in a bank located in the state where the Property is located or where the Escrow Agent is located, at the discretion of the Escrow Agent, provided, however, that in the event the Deposit has not been released or applied towards the Purchase Price as of the Closing Date, pursuant to this Contract, the Deposit shall be moved to an interest bearing account, with the interest to be paid to the party ultimately entitled to the Deposit, provided the parties each provide a completed and executed Internal Revenue Service Form W-9 to the Escrow Agent.

(b) If any check delivered by Purchaser is not paid, Escrow Agent shall immediately deliver any monies held to Seller and the escrow shall terminate. At Closing, Escrow Agent shall deliver the escrowed monies to Seller and the escrow shall terminate. Escrow Agent shall make disbursements as instructed by written instructions signed by both Seller and Purchaser directing Escrow Agent to disburse funds. Purchaser and Seller may deliver joint instructions to Escrow Agent or may deliver separate instructions directing identical actions by the Escrow Agent. Seller or Purchaser may give Escrow Agent instructions, as to the disbursement of funds (with a copy of such notice given simultaneously to the other party), in which event, Escrow Agent shall have the right to disburse the Deposit in accordance with the instructions received by it, provided that, within three (3) days thereafter, Escrow Agent shall not have received a notice from the party that had not given such instructions, disputing Escrow Agent's proposed disbursement of funds. In the event that, within such 3-day period, Escrow Agent shall receive a notice disputing the disbursement of the deposit in accordance with the original instructions received by Escrow Agent, Escrow Agent shall not follow any disbursement instructions except in accordance



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with subsequent joint instructions from Seller or Purchaser or separate instructions from Seller and Purchaser directing identical actions by Escrow Agent, but shall proceed under this Section 27 as if no such instructions had been given.

(c) The funds received by Escrow Agent in accordance with these escrow provisions are sometimes referred to as the "Escrowed Property." The Escrow Agent shall not be under any duty to give the Escrowed Property any greater degree of care than it gives its own similar property and shall not be required to invest any funds. Notwithstanding anything in these escrow provisions to the contrary, in the event Escrow Agent determines that there is a dispute concerning the disbursement or distribution of any Escrowed Property prior to its disbursement

or distribution, Escrow Agent may elect to (1) make such disbursement or distribution as Escrow Agent believes in good faith complies with the terms of these escrow provisions; or (2) continue to hold the Escrowed Property and disburse or distribute it when Escrow Agent either receives a written notice signed by the parties directing disposition of the Escrowed Property or a final, non-appealable judgment or order of a court of competent jurisdiction; or (3) interplead the other parties to these escrow provisions and take such other actions as may comply with law, including, without limitation, delivery of the Escrowed Property into court or as directed by a court.

(d) Except with respect to claims based upon willful misconduct that are successfully asserted against the Escrow Agent, the parties hereto shall jointly defend (by attorneys selected by the Escrow Agent), indemnify and hold harmless the Escrow Agent (and any successor) and its partners, members, employees and agents from and against



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any and all losses, liabilities, claims, actions, judgments, damages and expenses arising out of or in connection with its acceptance of, or the performance of its duties and obligations under, these escrow provisions as well as the reasonable costs and expenses of defending against any claim or liability arising out of or relating to these escrow provisions. This indemnity includes, without limitation, disbursements and reasonable attorneys' fees either paid to attorneys or representing the fair value of legal services rendered by the Escrow Agent to itself solely in connection with such dispute or litigation. Without intending to limit any of the foregoing, Seller shall pay Escrow Agent's fees for its services as such taken by it or omitted to be taken by it hereunder, except in the case of its willful misconduct, nor shall it be liable for the default or misconduct of any employee, agent or attorney appointed

(e) The Escrow Agent shall not be liable for any error of judgment, or any action by it who shall have been selected with reasonable care. The Escrow Agent shall be entitled to consult with counsel of its choosing (which may include its own members and employees) and shall not be liable for any action taken, suffered or omitted by it in good faith and in accordance with the advice of such counsel.



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(f) The parties acknowledge that Escrow Agent is merely a stakeholder and has no interest in the Escrowed Property. Upon delivery of the Escrowed Property into court or as a court shall direct, Escrow Agent shall be fully released from all liability and obligations with respect to the Escrowed Property.

(g) Escrow Agent shall be entitled to represent a party in any lawsuit. The parties acknowledge that the Escrow Agent may have acted and may continue to act as attorney for one of the parties, and nothing in these escrow provisions shall be construed to prohibit the Escrow Agent from continuing to so act in the future. This includes, without limitation, acting in any suit, action, or proceeding brought by a party to recover any Escrowed Property or any other matter affecting either party. To the extent there is any conflict of interest between the parties or between Escrow Agent and one party and/or the other, the conflict is waived.

(h) The Escrow Agent shall be entitled to rely upon any order, judgment, certification, demand, notice, instrument or other writing delivered to it hereunder without being required to determine the authenticity or the correctness of any fact stated therein or the propriety or validity thereof (including, without limitation, the validity of any service). The Escrow Agent may act in reliance upon any instrument or signature believed by it in good faith to be genuine (including, without limitation, a photocopy or facsimile thereof) and may assume, if in good faith, that any person purporting to give notice or receipt or advice or make any statement or execute any document in connection with the provisions hereof has been duly authorized to do so.

(i) (1) Escrow Agent, and any successor escrowee, may resign on seven days written notice to the other parties.



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Within the seven day period, the other parties shall designate a successor escrowee and notify Escrow Agent of the designated successor. If they fail to do so by the end of the seven day period, Escrow Agent may designate a nationally recognized title insurance company, bank or trust company as the successor escrowee, or Escrow Agent may deposit the Escrowed Property with the court or as a court may direct, or Escrow Agent may continue to hold the Escrowed Property as custodian in accordance with part (ii) below. The parties agree that they will be jointly and severally liable to pay any fees charged by any title insurance company, bank or trust company to act as successor escrowee, and between themselves, the parties agree to each pay one-half the fees of any such successor escrowee. If Escrow Agent designates a title insurance company, bank or trust company as successor escrowee, the parties shall agree to any standard escrow provisions the title insurance company, bank or trust company customarily requires, and if there is any conflict between the escrow provisions in these escrow provisions and the additional provisions required by the title insurance company, bank or trust company, the additional provisions shall prevail. If a successor escrowee is designated in accordance with this subsection to Escrow Agent's satisfaction, Escrow Agent shall deliver the Escrowed Property to the successor escrowee. Notwithstanding anything in these escrow provisions to the contrary, on notice to the parties, Escrow Agent may take any other steps as Escrow Agent, in its sole discretion, may elect to terminate its duties as Escrow Agent pursuant to these escrow provisions.

(2) From the effective date of Escrow Agent's resignation through the date of delivery of the Escrowed Property to a successor escrowee or to the court or at the court's direction: (i) Escrow Agent shall retain the Escrowed Property as custodian unless otherwise jointly directed in writing by the parties; and (ii) all of the terms of the Escrow Agreement, other than Escrow Agent's obligation to deliver the Escrowed Property shall continue to apply.



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(j) The parties acknowledge that the Escrow Agent is acting solely as a stakeholder at their request, for their convenience, and as an accommodation. The Escrow Agent shall not be deemed to be the agent of either of the parties for the purposes of the escrow, and Escrow Agent shall not be liable to either of the parties for any act or omission, error of judgment, or mistake on its part unless taken in bad faith and in willful disregard of these escrow provisions. In the absence of manifest error, Escrow Agent's disposition of the Escrowed Property shall be presumed in compliance with these escrow provisions.

(k) Escrow Agent shall not be bound or in any way affected by any modification or cancellation of the escrow provisions of this Agreement unless the modification shall be satisfactory to Escrow Agent and approved by Escrow Agent in writing. Except as otherwise provided herein, the escrow provisions may be canceled, modified or amended only by a written instrument executed by the parties and Escrow Agent. The duties and obligations of the Escrow Agent shall be determined solely by the express provisions of these escrow provisions and the Escrow Agent shall not be liable except for the performance of such duties and obligations as are specifically set forth in these escrow provisions. No implied duties or obligations shall be read into this Agreement against the Escrow Agent. These escrow provisions are binding on the parties and the Escrow Agent, and their respective heirs, successors, administrators and assigns. The Escrow Agent shall not be in any way affected by any fact or circumstance affecting or alleged to affect rights or liabilities hereunder unless notice of the same is delivered to the Escrow Agent in writing signed by the proper parties to the Escrow Agent's satisfaction.



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Escrow Agent is holding the Deposit and will hold the Deposit in escrow pursuant to the provisions hereof.

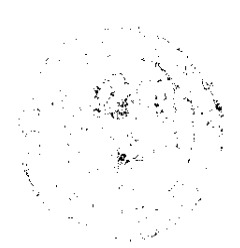
(m) If Escrow Agent is a title insurance company, bank or trust company, the parties agree to execute any additional escrow provisions customarily required by the title insurance company, bank or trust company.

28. NO RECORDATION. In no event shall Purchaser record this Contract or any Memorandum hereof and any such recordation or attempted recordation shall constitute a breach of this Contract by Purchaser.

29. POSSESSION. Possession will be delivered to Purchaser by delivery of the Deed at Closing, subject, however, to the provisions of this Contract.

30. SURVIVAL. (a) Except as otherwise expressly provided in this Contract, no representations, warranties, covenants or other obligations of Seller set forth in this Contract shall survive Closing or termination of this Contract, and no action based thereon shall be commenced after Closing or termination of this Contract.

(b) The delivery of the Deed by Seller, and the acceptance thereof by Purchaser, shall be deemed the full performance and discharge of every obligation on the part of Seller to be performed hereunder, except those obligations of Seller which are expressly stated in this Contract to survive the Closing.



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IN WITNESS WHEREOF, the parties hereto have duly executed this Contract, as of the day and year first above written.

ADDRESS: FRANK'S NURSERY & CRAFTS, INC.

By:

Name:

Title:

PURCHASER:

Name: Michael R. Fumo or assigns

Tax Identification No. 341 22 9975

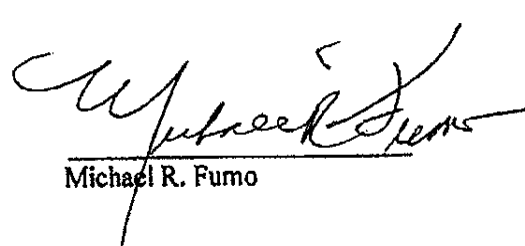
ADDRESS: 1031 North Clark Street
Chicago Illinois 60610

Telephone No: 312 751 1235

NAME OF PURCHASER'S ATTORNEY: Michael R. Fumo

ADDRESS: 1031 North Clark Street Chicago, Illinois 60610

TELEPHONE NO: 312 751 1235

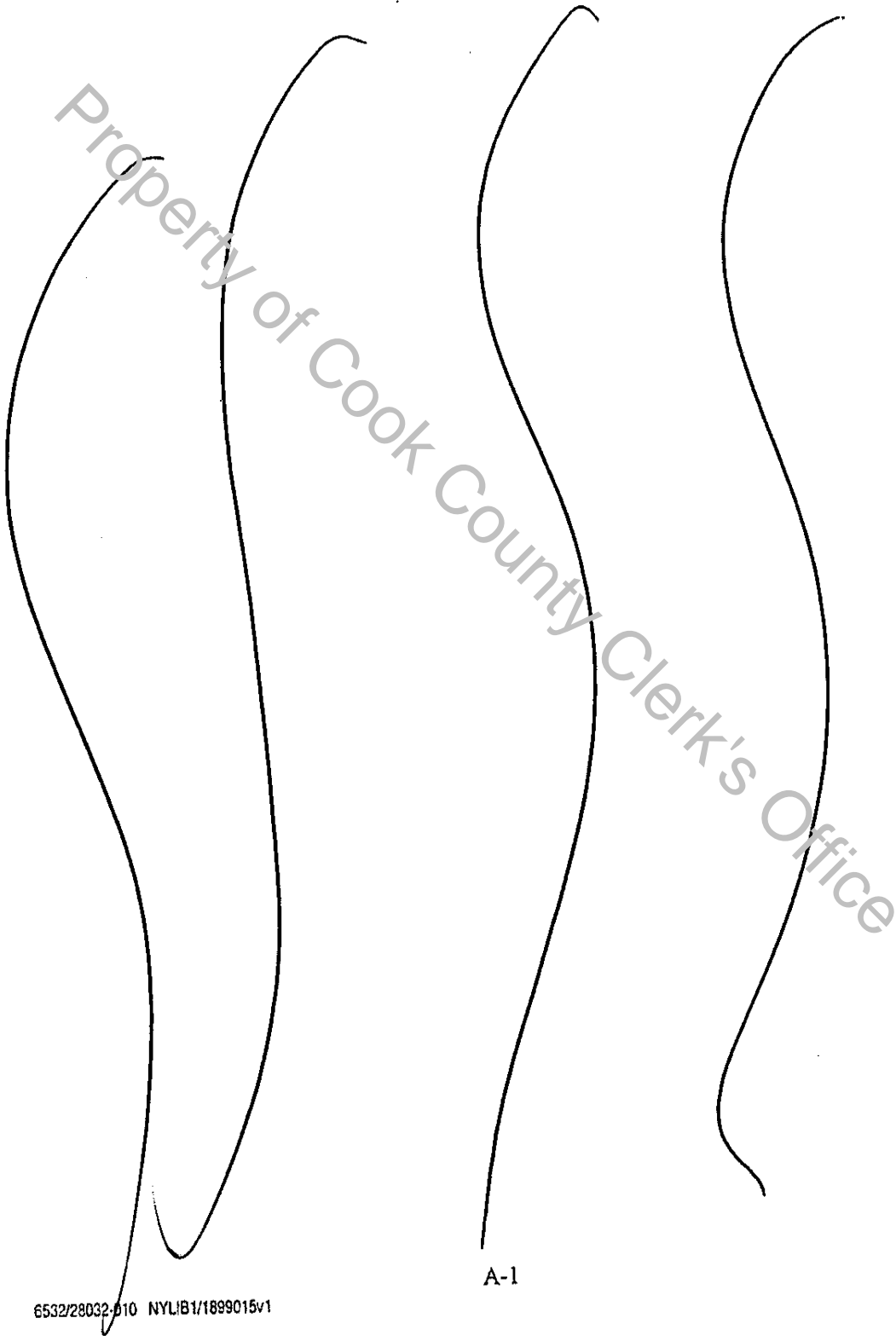

Michael R. Fumo



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Exhibit A

Land



6532/28032.010 NYLIB1/1899015v1

A-1



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File No: 10516302

COMMITMENT FOR TITLE INSURANCE**SCHEDULE A**

1. Effective Date: September 15, 2004 at 8:00 a.m.
2. Policy or Policies to be issued: POLICY AMOUNT
 - (a) ALTA OWNER'S POLICY \$TBD
Proposed Insured: TBD
 - (b) ALTA LOAN POLICY \$TBD
Proposed Insured: TBD
3. The estate or interest in the land described or referred to in the Commitment and covered herein is Fee Simple.
4. Title to the Fee Simple estate or interest in said land is at the effective date hereof vested in :

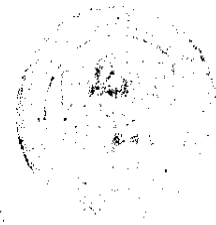
Frank's Nursery & Crafts, Inc., a Delaware corporation, successor in interest to Frank's Nursery & Crafts, Inc., a Michigan corporation
5. The land referred to in the Commitment is described as follows:

LEGAL DESCRIPTION:**PARCEL 1:**

THAT PART OF THE NORTHEAST 1/4 OF SECTION 28, TOWNSHIP 36 NORTH RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTHEAST OF THE CENTER OF STATE ROAD WEST OF THE WEST LINE OF THE EAST 57 FEET OF THE AFORESAID NORTHEAST 1/4 OF SECTION 28 AND SOUTH OF A LINE DRAWN AT RIGHT ANGLES THROUGH A POINT ON THE WEST LINE OF SAID EAST 57 FEET WHICH IS 300 FEET NORTH OF THE SOUTH LINE OF THE NORTHEAST 1/4 OF SAID SECTION 28 (EXCEPT THE WESTERLY 60 FEET OF THE TRACT DESCRIBED BEING A PART OF STATE ROAD AND ALSO EXCEPTING THEREFROM THE EASTERLY 475 FEET AS MEASURED ALONG THE NORTH AND SOUTH LINES THEREOF); EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY TRUSTEE'S DEED FROM LASALLE NATIONAL BANK, A NATIONAL BANKING ASSOCIATION AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 1, 1972 AND KNOWN AS TRUST NUMBER 44261 TO PLYWOOD MINNESOTA MIDWESTERN, INC. DATED NOVEMBER 14, 1979 AND RECORDED



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DECEMBER 6, 1979 AS DOCUMENT 25270445 AND AS AMENDED BY DOCUMENT 88368844 AND RE-RECORDED AS DOCUMENT 88455718 FOR ALL LAWFUL PURPOSES OF INGRESS AND EGRESS OVER AND UPON THE FOLLOWING DESCRIBED LAND, TO WIT:

THAT PART OF THE NORTHEAST 1/4 OF SECTION 28, TOWNSHIP 38 NORTH, RANGE 13 OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON A LINE DRAWN AT RIGHT ANGLES TO THE WEST LINE OF THE EAST 57.00 FEET OF SAID NORTHEAST 1/4 THROUGH A POINT 300.00 FEET NORTH (AS MEASURED ALONG THE SAID WEST LINE OF THE EAST 57.00 FEET) OF THE SOUTH LINE OF THE NORTHEAST 1/4 OF SAID SECTION 28, SAID POINT OF BEGINNING BEING 475.00 FEET WEST (AS MEASURED ALONG SAID RIGHT ANGLE LINE) OF THE SAID WEST LINE OF THE EAST 57.00 FEET THEREOF:

THENCE SOUTH 0 DEGREES 00 MINUTES 00 SECONDS WEST (AT RIGHT ANGLE TO LAST DESCRIBED RIGHT ANGLE LINE) 24.00 FEET TO A POINT; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS EAST (24.00 FEET SOUTH OF AND PARALLEL WITH THE FIRST DESCRIBED RIGHT ANGLE LINE) A DISTANCE OF 429.58 FEET TO A POINT ON THE WESTERLY LINE OF AN EASEMENT DATED DECEMBER 20, 1965; THENCE NORTH 66 DEGREES 15 MINUTES 00 SECONDS WEST ALONG SAID WESTERLY LINE OF EASEMENT A DISTANCE OF 59.62 FEET TO A POINT ON THE FIRST DESCRIBED RIGHT ANGLE LINE; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, ALONG SAID RIGHT ANGLE LINE 375.00 FEET TO THE POINT OF BEGINNING OF LAND HEREIN DESCRIBED;

ALSO:

THAT PART OF THE NORTHEAST 1/4 OF SECTION 28, TOWNSHIP 38 NORTH RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON A DRAWN AT RIGHT ANGLES TO THE WEST LINE OF THE EAST 57.00 FEET OF SAID NORTHEAST 1/4 THROUGH A POINT 300.00 FEET NORTH (AS MEASURED ALONG THE SAID WEST LINE OF THE EAST 57.00 FEET) OF THE SOUTH LINE OF THE NORTHEAST 1/4 OF SAID SECTION 28; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, ALONG SAID RIGHT ANGLE LINE A DISTANCE OF 100.00 FEET TO A POINT ON THE WESTERLY LINE OF AN EASEMENT AGREEMENT DATED DECEMBER 20, 1965; THENCE SOUTH 66 DEGREES 15 MINUTES 47 SECONDS EAST ALONG SAID WESTERLY LINE OF EASEMENT A DISTANCE OF 71.00 FEET TO CURVED LINE CONVEX NORTHERLY HAVING A RADIUS OF 49.42 FEET, A DISTANCE 38.89 FEET (THE CHORD OF SAID CURVE BEARING SOUTH 67 DEGREES 27 MINUTES 30 SECONDS EAST) TO A POINT ON THE WEST LINE OF THE EAST 57.00 FEET, AFORESAID; THENCE NORTH 0 DEGREES 00 MINUTES 00 SECONDS EAST ALONG SAID WEST LINE OF THE EAST 57.00 FEET, A DISTANCE OF 43.11 FEET TO THE POINT OF BEGINNING. ALL IN COOK COUNTY, ILLINOIS.



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Exhibit B

Excluded Personal Property

1. Cash and cash equivalents.
2. Accounts receivable owned by Seller for the sale of services completed prior to Closing.
3. Such Inventory as is withdrawn by Seller pursuant to Section 16 of this Contract.
4. All leased equipment, machinery and personalty.
5. All intellectual property of Seller.
6. All funds, accounts, instruments, documents, general intangibles (including trademarks, trade names, and symbols used in connection therewith) arising from or by virtue of any transactions related to the Property that occurred or arose before the Closing.
7. Monetary deposits, that Seller has been required to give to any public or private utility with respect to utility services furnished to the Property.
8. All lettering on signs located on the Property that refer to "Frank's Nursery" or otherwise refer to intellectual property of the Seller, and Purchaser hereby agrees that the same shall be removed by Purchaser at Purchaser's cost within thirty (30) days of Closing. If Purchaser has not removed such lettering within thirty (30) days after Closing, Seller may, but shall not be required to, cause such lettering to be removed at Purchaser's cost and expense, which Purchaser shall promptly pay to Seller upon Purchaser's receipt of a statement therefor. If Purchaser does not pay such statement within ten (10) days after the date such statement is sent to Purchaser, the amount set forth on such statement shall bear interest at the rate of twelve percent (12%) per annum from the date of such statement until paid in full. This obligation shall survive the Closing.



UNOFFICIAL COPY**Exhibit C****DEED**

THIS INDENTURE, made the day of _____, 2001 BY AND BETWEEN
 _____, the party of the first part, and
 _____, the party of the second part.

WITNESSETH, that the party of the first part, in consideration of One Dollar (\$1.00) paid by the party of the second part, does hereby remise, release and quitclaim unto the party of the second part the heirs or successors and assigns of the party of the second part forever,

ALL right, title and interest of the party of the first part in and to that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being more particularly described on Exhibit A annexed hereto and made a part hereof.

TOGETHER, with all right, title and interest, if any, of the party of the first part in and to any streets and road abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; **TO HAVE AND TO HOLD** the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

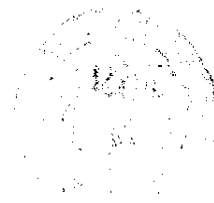
The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:	[GRANTOR]
	By: _____
Witness	Name: _____
	Title: _____

[Appropriate state form of acknowledgement to be attached]

[Deed to be modified at closing to conform to state law requirements for quitclaim deeds]



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Exhibit D**Bill of Sale****BILL OF SALE**

_____, a _____, having an office at _____
 ("Seller"), in consideration of Ten Dollars (\$10.00) and other good and valuable consideration
 paid to Seller by _____, a _____ having an address at _____
 ("Purchaser"), the receipt and sufficiency of which are hereby acknowledged, hereby sells,
 conveys, assigns, transfers, delivers and sets over to Purchaser all of the right, title and interest of
 Seller in and to all Personal Property, but excluding the Excluded Property (as such terms are
 defined in that certain Real Estate Sales Contract (the "Real Estate Contract") dated as of
 _____, 2001 by and between Seller and Purchaser).

TO HAVE AND TO HOLD unto Purchaser and its successors and assigns to its and their
 own use and benefit forever.

The transfer provided for herein is made by Seller "As Is" and without recourse and
 without any expressed or implied representation or warranty whatsoever.

	[_____]
	By: _____
	Name: _____
	Title: _____
Dated: As of _____, 2001	

D-1



UNOFFICIAL COPY

Exhibit E

Title Commitment

Property of Cook County Clerk's Office



UNOFFICIAL COPY

COMMITMENT FOR TITLE INSURANCE

Issued by **Commonwealth Land Title Insurance Company**



Commonwealth Land Title Insurance Company is a member of the LandAmerica family of title insurance underwriters.

Commonwealth Land Title Insurance Company, a Pennsylvania corporation, herein called the Company, for a valuable consideration, hereby commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the proposed insured named in Schedule A, as owner or mortgagee of the estate or interest covered hereby in the land described or referred to in Schedule A, upon payment of the premiums and charges therefor; all subject to the provisions of Schedules A and B and to the Conditions and Stipulations hereof.

This Commitment shall be effective only when the identity of the proposed insured and the amount of the policy or policies committed for have been inserted in Schedule A hereof by the Company, either at the time of the issuance of this Commitment or by subsequent endorsement.

This Commitment is preliminary to the issuance of such policy or policies of title insurance and all liability and obligations hereunder shall cease and terminate 120 days after the effective date hereof or when the policy or policies committed for shall be issued, whichever first occurs, provided that the failure to issue such policy or policies is not the fault of the Company. This Commitment shall not be valid or binding until countersigned by an authorized officer or agent.

IN WITNESS WHEREOF, COMMONWEALTH LAND TITLE INSURANCE COMPANY has caused its corporate name and seal to be hereunto affixed by its duly authorized officers, the Commitment to become valid when countersigned by an authorized officer or agent of the Company.

Attest:

Secretary



COMMONWEALTH LAND TITLE INSURANCE COMPANY
Madame L. Chandler

By:

President

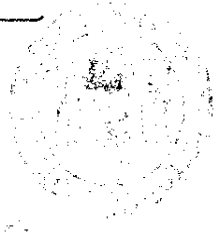
Conditions and Stipulations

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed insured has or acquires actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed insured and such parties included under the definition of insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions, the Conditions and Stipulations, and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. Any action or actions or rights of action that the proposed insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.

LANDAMERICA CASE NO. 04-097180
 Bedford Park, Cook County, IL
 Frank's Nursery & Crafts, Inc. (STORE #141)

PA 3
ALTA Commitment - 1966
Cover Page
Form 1004-8

ORIGINAL



UNOFFICIAL COPY

File No: 10516302

COMMITMENT FOR TITLE INSURANCE**SCHEDULE A**

1. Effective Date: September 15, 2004 at 8:00 a.m.
2. Policy or Policies to be issued: POLICY AMOUNT
 - (a) ALTA OWNER'S POLICY \$TBD
Proposed Insured: TBD
 - (b) ALTA LOAN POLICY \$TBD
Proposed Insured: TBD
3. The estate or interest in the land described or referred to in the Commitment and covered herein is Fee Simple.
4. Title to the Fee Simple estate or interest in said land is at the effective date hereof vested in :

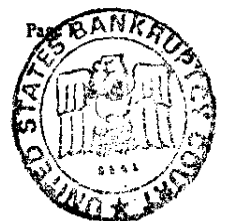
Frank's Nursery & Crafts, Inc., a Delaware corporation, successor in interest to Frank's Nursery & Crafts, Inc., a Michigan corporation
5. The land referred to in the Commitment is described as follows.

LEGAL DESCRIPTION:**PARCEL 1:**

THAT PART OF THE NORTHEAST 1/4 OF SECTION 28, TOWNSHIP 33 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTHEAST OF THE CENTER OF STATE ROAD WEST OF THE WEST LINE OF THE EAST 57 FEET OF THE AFORESAID NORTHEAST 1/4 OF SECTION 28 AND SOUTH OF A LINE DRAWN AT RIGHT ANGLES THROUGH A POINT ON THE WEST LINE OF SAID EAST 57 FEET WHICH IS 300 FEET NORTH OF THE SOUTH LINE OF THE NORTHEAST 1/4 OF SAID SECTION 28 (EXCEPT THE WESTERLY 50 FEET OF THE TRACT DESCRIBED BEING A PART OF STATE ROAD AND ALSO EXCEPTING THEREFROM THE EASTERLY 475 FEET AS MEASURED ALONG THE NORTH AND SOUTH LINES THEREOF); EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY TRUSTEE'S DEED FROM LASALLE NATIONAL BANK, A NATIONAL BANKING ASSOCIATION AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 1, 1972 AND KNOWN AS TRUST NUMBER 44261 TO PLYWOOD MINNESOTA MIDWESTERN, INC. DATED NOVEMBER 14, 1979 AND RECORDED



UNOFFICIAL COPY

DECEMBER 6, 1979 AS DOCUMENT 25270445 AND AS AMENDED BY DOCUMENT 88368844 AND RE-RECORDED AS DOCUMENT 88455718 FOR ALL LAWFUL PURPOSES OF INGRESS AND EGRESS OVER AND UPON THE FOLLOWING DESCRIBED LAND, TO WIT:

THAT PART OF THE NORTHEAST 1/4 OF SECTION 28, TOWNSHIP 38 NORTH, RANGE 13 OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON A LINE DRAWN AT RIGHT ANGLES TO THE WEST LINE OF THE EAST 57.00 FEET OF SAID NORTHEAST 1/4 THROUGH A POINT 300.00 FEET NORTH (AS MEASURED ALONG THE SAID WEST LINE OF THE EAST 57.00 FEET) OF THE SOUTH LINE OF THE NORTHEAST 1/4 OF SAID SECTION 28, SAID POINT OF BEGINNING BEING 475.00 FEET WEST (AS MEASURED ALONG SAID RIGHT ANGLE LINE) OF THE SAID WEST LINE OF THE EAST 57.00 FEET THEREOF:

THENCE SOUTH 0 DEGREES 00 MINUTES 00 SECONDS WEST (AT RIGHT ANGLE TO LAST DESCRIBED RIGHT ANGLE LINE) 24.00 FEET TO A POINT; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS EAST (24.00 FEET SOUTH OF AND PARALLEL WITH THE FIRST DESCRIBED RIGHT ANGLE LINE) A DISTANCE OF 429.58 FEET TO A POINT ON THE WESTERLY LINE OF AN EASEMENT DATED DECEMBER 20, 1965; THENCE NORTH 66 DEGREES 15 MINUTES 47 SECONDS WEST ALONG SAID WESTERLY LINE OF EASEMENT A DISTANCE OF 59.62 FEET TO A POINT ON THE FIRST DESCRIBED RIGHT ANGLE LINE; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, ALONG SAID RIGHT ANGLE LINE 375.00 FEET TO THE POINT OF BEGINNING OF LAND HEREIN DESCRIBED;

ALSO:

THAT PART OF THE NORTHEAST 1/4 OF SECTION 28, TOWNSHIP 38 NORTH RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON A LINE DRAWN AT RIGHT ANGLES TO THE WEST LINE OF THE EAST 57.00 FEET OF SAID NORTHEAST 1/4 THROUGH A POINT 300.00 FEET NORTH (AS MEASURED ALONG THE SAID WEST LINE OF THE EAST 57.00 FEET) OF THE SOUTH LINE OF THE NORTHEAST 1/4 OF SAID SECTION 28; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, ALONG SAID RIGHT ANGLE LINE A DISTANCE OF 100.00 FEET TO A POINT ON THE WESTERLY LINE OF AN EASEMENT AGREEMENT DATED DECEMBER 20, 1965; THENCE SOUTH 66 DEGREES 15 MINUTES 47 SECONDS EAST ALONG SAID WESTERLY LINE OF EASEMENT A DISTANCE OF 71.00 FEET TO CURVED LINE CONVEX NORTHEASTLY HAVING A RADIUS OF 49.42 FEET, A DISTANCE 38.89 FEET (THE CHORD OF SAID CURVE BEARING SOUTH 67 DEGREES 27 MINUTES 30 SECONDS EAST) TO A POINT ON THE WEST LINE OF THE EAST 57.00 FEET, AFORESAID; THENCE NORTH 0 DEGREES 00 MINUTES 00 SECONDS EAST ALONG SAID WEST LINE OF THE EAST 57.00 FEET, A DISTANCE OF 43.11 FEET TO THE POINT OF BEGINNING. ALL IN COOK COUNTY, ILLINOIS.



UNOFFICIAL COPY

No: 10516302

SCHEDULE B

GENERAL EXCEPTIONS

Schedule B of the policy or policies to be insured will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

GENERAL EXCEPTIONS:

- A. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
- B. Intentionally Deleted.
- C. Intentionally Deleted.
- D. Any ALTA Owner's Policy issued pursuant hereto will contain the following General Exceptions unless the property qualifies for removal of said items and the Company is provided with the information required for the satisfactory disposition as required in C above.
 - (1) Rights or claims of parties in possession not shown by the public records.
 - (2) Encroachments, overlaps, boundary line disputes and any matters which would be disclosed by an accurate survey and inspection of the land.
 - (3) Easements, or claims of easements, not shown by the public records.
 - (4) Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
 - (5) Taxes or special assessments which are not shown as existing liens by the public records.

SPECIAL EXCEPTIONS

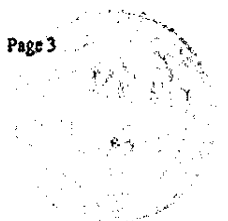
The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

1. General taxes for the year(s) 2004 and subsequent years.
Permanent Tax / Assessor Parcel Number(s): 19-28-202-014

NOTE: The amount of the 2003 first installment taxes is \$58,584.49 and is paid.

NOTE: The 2003 final installment taxes is due on or before November 15, 2004.

NOTE: Taxes for the year(s) 2004 are not yet due and payable.



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2. Mortgage, Open-End Mortgage, Deed of Trust, Assignment of Leases and Rents, Security Agreement and Financing Statement from Frank's Nursery and Crafts, Inc., a Delaware corporation (successor-in-interest through a series of mergers, to Frank's Nursery and Crafts, Inc., a Michigan corporation), to Kimco Capital Corp., a Delaware corporation, to secure an indebtedness of \$ 30,000,000.00, , dated May 20, 2002 and recorded May 31, 2002 as Document Number 0020613481; as amended by First Amendment to Mortgage recorded as Document Number 00302290027; as further amended by Second Amendment to Mortgage recorded as Document 0402217177; as further amended by Third Amendment to Mortgage recorded as Document Number 0405013104 as further amended by Fourth Amendment to Mortgage recorded as Document Number 0421812120.
3. Security interest of KIMCO Capital Corporation, secured party, in certain described parcels on the land, as disclosed by Financing Statement executed by Frank's Nursery & Crafts, Inc., debtor, May 31, 2002 as Document Number 0020613482; as amended by Amendment filed February 19, 2003 as Document 0030229028.
4. Easement for Ingress and egress for the benefit of property East and adjoining the land granted in Deed to any LaSalle National Bank, a National Banking Association, as Trustee under Trust Agreement dated August 1, 1972 and known as Trust Number 44261 to Plywood Minnesota Midwestern, Inc., dated November 14, 1979 and recorded as Document 25270445 and as amended by Document 88368844 and rerecorded as Document 88455718 and amended by Document 95120506 over the North 50 Feet of the land.

(Affects Parcel 1)
5. Easement over the Northerly 15 Feet of Parcel 2 granted by the Mid-City National Bank of Chicago, a National Banking Association, as Trustee under Trust Agreement dated July 1, 1980 and known as Trust Number 1523 to the Village of Bedford Park by Instrument dated March 24, 1981 and recorded June 12, 1981 as Document 25903149 for water main purposes and the terms and provisions contained therein.
6. Terms, provisions and conditions as set forth in the instrument(s) creating the easement described and referred to herein as Parcel 2.
7. Rights of adjoining owner or owners to the concurrent use of the easement described and referred to herein as Parcel 2.
8. Nothing contained herein should be construed as insuring the exact location or dimensions of the easement described as Parcel 2 of Schedule A.
9. Rights of way for drainage ditches, tiles, feeders and laterals, if any.
10. Rights of the public, the State of Illinois and the municipality in and to that part of the land, if any, taken or used for road purposes.

The following exceptions 11 through 15 were raised pursuant to previous title evidence and the Company does not have a copy of this survey in its file. Upon review of a new ALTA survey, certified to the Company, this exception will be amended and/or deleted.)

11. Unrecorded common driveway agreement by and between Clearing Industrial District, Inc., and Great Lakes Express Company, Inc., dated December 20, 1965 as disclosed by the



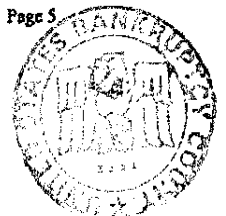
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survey made by Earl M. Smith and Associates, dated June 2, 1981 Survey No. 16495 and survey dated July 27, 1979 as No. 16451.

12. Traffic Signal and Traffic Signal Vault situated near the Northeasterly corner of the land as disclosed by the survey made by Earl M. Smith and Associates, dated June 2, 1981 Survey No. 16495 and survey dated July 27, 1979 as No. 16451.

(Affects Parcel 2)

13. Possible water main easement to the Village of Bedford Park over the North 15 feet of Parcel 1 as disclosed by survey of Greely-Howard-Norlin and Smith dated September 6, 1998, Survey Number 23073.
14. Common asphalt paved area lying partly on Parcel 1 and partly on adjoining land to the South and the right, if any, of the adjoining owner to the use thereof, as disclosed by survey of Greely-Howard-Norlin and Smith dated September 6, 1998, Survey Number 23073.
15. Unrecorded Easement for underground Ameritech line commencing from property to the South and running North into land, then running Easterly along the South line of the premises through the East property line into property East and adjoining, as shown on survey by Chicagoland Survey Co., dated November 25, 1996, Survey Number 60-86.
16. NOTE: The property tax/parcel duplicate/key number and the property address must appear on all documents that are submitted for recording or filing.
17. NOTE: In order to delete general exception D2 of Schedule B, we must be furnished for our examination a current, accurate ALTA survey of the premises, certified to this Company. This Commitment is issued subject to such additional exceptions or such amendments as we may deem necessary upon our receipt and examination of said survey.
18. NOTE: In order to delete general exception D3 of Schedule B, we must be furnished for our examination current information in writing ("utility letters") from all public and quasi-public utilities serving the subject premises and adjoining lands and from the municipality establishing to our satisfaction the existence or non-existence of their lines, facilities or equipment within, across, over, upon, and along the subject premises. This Commitment is issued subject to such additional exceptions or such amendments as we may deem necessary when this information is furnished.
19. NOTE: In order to delete general exception D4 of Schedule B, we must be furnished fully executed "ALTA Policy Statement" (Form 12-1-31), or approved substitute, covering the date of closing executed by party in title, and beneficiaries, and purchaser(s) and all other parties having an interest in the land. Any additional matters disclosed by such ALTA Policy Statement, or approved substitute, will be added to Schedule B as additional exceptions as deemed necessary.
20. NOTE: In order to delete general exception D1 of Schedule B, we must be furnished information in writing as to parties currently in possession and as to existing leases; and this Commitment is issued subject to such additional



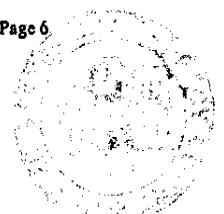
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exceptions or such amendments as we may deem necessary when this information is furnished to us.

21. If new construction has taken place on the subject property within the past six months, we should be furnished evidence of payment in full of the cost of furnishing the labor and materials for this construction.
22. **NOTE FOR INFORMATION:** The coverage afforded by this Commitment and any Policy issued pursuant hereto shall not commence prior to the date on which all charges properly billed by the Company have been fully paid.

END OF SCHEDULE B

Property of Cook County Clerk's Office

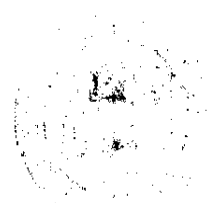


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10/04

**ADDENDUM TO SCHEDULE B, SECTION 1, REQUIREMENTS
OF THE TITLE COMMITMENT FOR AN OWNER'S POLICY
PREPARED FOR PROPERTY VESTED IN THE NAME OF
FRANK'S NURSERY & CRAFTS, INC.**

- A. Record with the County Recorder an Order of the United States Bankruptcy Court in the matter of the Estate of Frank's Nursery & Crafts, Inc., a Delaware corporation, a Chapter 11 debtor, in the matter of United States Bankruptcy Court, Southern District of New York, Case No. 04-15826, authorizing the conveyance to proposed purchaser.
- B. Deed from Frank's Nursery & Crafts, Inc., a Delaware corporation, a Debtor in Possession, a Chapter 11 debtor, in the matter of United States Bankruptcy Court, Southern District of New York, Case No. 04-15826, to proposed purchaser, upon filing Notice of Intent to Sell/Motion to Sell without objection having been made by creditors.



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COMMITMENT FOR TITLE INSURANCE

American Land Title Association (1966)

Issued by
**Commonwealth Land
Title Insurance Company**

Commonwealth Land Title Insurance Company
is a member of the LandAmerica family of title insurance
underwriters.



LandAmerica Financial Group, Inc.
101 Gateway Centre Parkway
Richmond, Virginia 23235-5153
Telephone, toll free: 800-446-7086
www.landam.com

WHEN RECORDED RETURN TO:
LANDAMERICA - NCS
1050 Wilshire Dr., Ste. 310
Troy, MI 48084
Case No. 04097180

