

2 SF 3

UNOFFICIAL COPY

Store #141, #167
Cook County, IL

95120505

Instrument of Acknowledgment of
Resignation of Bank of New
England Trust Co. as Florida
Trustee and Appointment of The
Bank of New York as Florida
Trustee

among

FRANK'S NURSERY & CRAFTS, INC.
W.T. CUNNINGHAM

and

THE BANK OF NEW YORK

Dated as of January 27, 1995

DEPT-01 RECORDING 649.00
TRAN 6810 02/01/95 15:54:00
LC *-95-120505
COOK COUNTY RECORDER

This instrument drafted by and
when recorded return to:

Mildred Quinones, Esq.
Emmet, Marvin & Martin
120 Broadway
New York, NY 10271

Mildred Quinones
Mildred Quinones

PLEASE RETURN TO: RONALD L. OTTO
TICOR TITLE INSURANCE COMPANY
203 NORTH LASALLE, SUITE 1400
CHICAGO, IL 60601-1297
RE: 316172

Box 15

95120505

49/2/95

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

**INSTRUMENT OF ACKNOWLEDGMENT OF RESIGNATION
OF BANK OF NEW ENGLAND AS FLORIDA TRUSTEE AND
APPOINTMENT OF THE BANK OF NEW YORK AS FLORIDA TRUSTEE**

This INSTRUMENT OF ACKNOWLEDGMENT AND APPOINTMENT dated January 27, 1995 (this "Instrument") among FRANK'S NURSERY & CRAFTS, INC., a Michigan corporation (the "Company"), The Bank of New York as the new Florida Trustee (the "Florida Trustee"), W.T. CUNNINGHAM, as the Individual Trustee ("Cunningham") and THE BANK OF NEW YORK, a New York banking corporation as Trustee (the "Trustee").

W I T N E S S E T H :

WHEREAS, the Trustee entered into an Instrument of Removal, Appointment and Acceptance dated as of January 31, 1991 assigning the rights, duties and obligations of an Indenture of Mortgage, Deed of Trust and Security Agreement, dated as of September 1, 1988 (the "Indenture") recorded in: Florida, Illinois, Kentucky, Michigan, Pennsylvania, Minnesota, Missouri, Ohio, Connecticut, Massachusetts, New Jersey and New York, with respect to the properties described in Exhibit A attached hereto, pursuant to which the Company has issued its Adjustable Rate First Mortgage Notes Due December 31, 1995 in the initial aggregate principal amount of \$61,000,000 (the "Securities");

9510560

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

WHEREAS, the Bank of New England Trust Company (the "Retiring Florida Trustee") had been acting as Florida Trustee, and on January 6, 1991 the Federal Deposit Insurance Company declared the Bank of New England incapable to act as a fiduciary under the Indenture;

WHEREAS, as of January 6, 1991 the Bank of New England was effectively discharged from its duties as Florida Trustee under the Indenture;

WHEREAS, pursuant to and in accordance with Section 7.6(3) of the Indenture, the Trustee and the Company may, by written instrument, acknowledge the resignation of the Florida Trustee;

WHEREAS, the Trustee pursuant to and in accordance with Section 7.6(a) and in the exercise of good judgment, wishes to appoint a new Florida Trustee;

WHEREAS, the Trustee is qualified and eligible to act as the Florida Trustee under the Indenture;

WHEREAS, pursuant to Section 7.6, the Trustee may succeed the Retiring Florida Trustee under the Indenture;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

WHEREAS, the Trustee desires to accept, pursuant to Section 7.6 of the Indenture, the appointment as Florida Trustee under the Indenture;

WHEREAS, the Company desires that resignation of the Retiring Florida Trustee be acknowledged and accepted and that the new Florida Trustee be appointed under the Indenture, and the new Florida Trustee is willing and able to serve in such capacities,

NOW, THEREFORE, in consideration of the premises contained herein, the parties hereto agree as follows:

1. The Company hereby acknowledges the resignation and the incapability of the Retiring Florida Trustee and the appointment of Trustee as the new Florida Trustee under the Indenture, subject to all the trusts, conditions and provisions of the Indenture, to fill the vacancy created by the resignation of the Retiring Florida Trustee, such resignation and appointment to be effective as of the date hereof.

2. The Trustee represents that it is qualified and eligible to act as Trustee under the Indenture.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

3. The Trustee hereby accepts appointment as the Florida Trustee under the Indenture, subject to all the trusts, conditions and provisions of the Indenture, and accepts, upon the trusts expressed in the Indenture, all the rights, powers, duties and trusts of the Retiring Trustee as Trustee under and pursuant to the Indenture and agrees to be bound by all the terms of the Indenture, such acceptance and agreement to be effective as of the close of business on the date hereof.

4. It is understood and agreed that this Instrument does not constitute a waiver by any of the parties hereto of any obligation or liability which the Retiring Florida Trustee may have incurred in connection with its serving as Florida Trustee under the Indenture or an assumption by the new Florida Trustee of any liability of the Retiring Florida Trustee arising out of a breach by the Retiring Florida Trustee prior to the effective date of its removal under the Indenture.

5. This Instrument shall be governed by and construed in accordance with the laws of the State of New York.

9537503

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

6. This Instrument may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

7. All capitalized terms used herein without definition shall have the meaning ascribed to them in the Indenture.

Property of Cook County Clerk's Office

83110503

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have caused this Instrument to be duly executed, and their respective corporate seals to be hereunto affixed and attested, as of the day and year first above written.

WITNESS: FRANK'S NURSERY & CRAFTS, INC.

By: [Signature]
Name: Cindy D. Fazio
Title:

By: [Signature]
Name: James K. Simpson
Title: Vice President

(SEAL) By: [Signature]
ATTEST: Eric J. Mikesell
Assistant Treasurer

By: [Signature]
Name: Rita Irvin
Title:

By: [Signature]
Name: Mark A. Grobbel
Title: Assistant Secretary

WITNESS: THE BANK OF NEW YORK,
as Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

(SEAL)
ATTEST:

By: _____
Name:
Title:

By: _____
Name:
Title:

WITNESS:

By: _____
Name:
Title:

W.T. CUNNINGHAM,
as Individual Trustee

By: _____
Name:
Title:

Property of Cook County Clerk's Office

6303136

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have caused this Instrument to be duly executed, and their respective corporate seals to be hereunto affixed and attested, as of the day and year first above written.

WITNESS:

FRANK'S NURSERY & CRAFTS, INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

(SEAL)
ATTEST:

By: _____
Name:
Title:

By: _____
Name:
Title:

WITNESS:

THE BANK OF NEW YORK,
as Trustee

By: _____
Name: Vivian D'Amico
Title: Assistant Vice President

By: _____
Name: ROBERT F. McINTYRE
Title: Assistant Vice President

(SEAL)
ATTEST:

By: Alfia Monastera
Name: ALFIA MONASTRA
Title: ASSISTANT TREASURER

By: Marie E. Trimboli
Name: MARIE E. TRIMBOLI
Title: Assistant Treasurer

WITNESS:

By: _____
Name: Vivian D'Amico
Title: Assistant Vice President

W. P. CUNNINGHAM,
as Individual Trustee

By: Alfia Monastera
Name: ALFIA MONASTRA
Title: ASSISTANT TREASURER

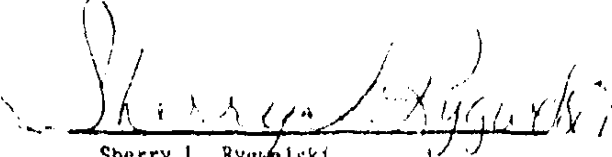
9830006

UNOFFICIAL COPY

Property of Cook County Clerk's Office

STATE OF MICHIGAN)
) ss.:
COUNTY OF WAYNE)

The foregoing instrument was acknowledged before me this
27th day of January, 1995 by James R. Simpson, Eric J. Mikesell
and Mark A. Grubel, Vice President, ^{Assistant Treasurer}~~Vice President~~ and
Assistant Secretary, respectively, of Frank's Nursery &
Crafts, Inc., a Michigan corporation, on behalf of the
corporation.


Sherry L. Rygwelski
Notary Public

My commission expires:

[Faded rectangular stamp area]

Property of Cook County Clerk's Office

9916509

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

The foregoing instrument was acknowledged before me this 27th day of January, 1995 by Robert F. McIntyre, Assistant Vice President of The Bank of New York, on behalf of The Bank of New York.

Karen Kattan

Notary Public

My commission expires:

KAREN KATTAN
Notary Public, State of New York
No. 01KA4994374
Qualified in New York County
Commission Expires April 8, 1998

Property of Cook County Clerk's Office

STAT 0500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

The foregoing instrument was acknowledged before me this
27th day of January, 1995 by William T. Cunningham.

Karen Kallan

Notary Public

My commission expires:

KAREN KALLAN
Notary Public, State of New York
No. 01KA4914174
Qualified in New York County
Commission Expires April 1997

Property of Cook County Clerk's Office

95405605

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

The foregoing instrument was acknowledged before me this
27th day of January, 1995 by Marie F. Trimboli, Assistant
Treasurer of The Bank of New York, on behalf of The Bank of
New York.

Notary Public

My commission expires:

KAREN KATLAN
Notary Public, State of New York
No. 01KA4894374
Qualified in New York County
Commission Expires April 6, 1996

Property of Cook County Clerk's Office

95140305

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

PARCEL 1:

That part of the North East 1/4 of Section 28, Township 38 North, Range 13 East of the Third Principal Meridian, lying South East of the center of State Road, West of the West line of the East 57 feet of the aforesaid North East 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 North East 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) in Cook County, Illinois.

PARCEL 2:

Easement for the benefit of Parcel 1 as created by Trustee's Deed, recorded December 6, 1979 as Document 25,270,447, amended by the First Amendment to Easement recorded August 15, 1988 as Document 88,368,844 and re-recorded October 4, 1988 as Document 88,455,718, for ingress and egress over and upon the following described land, to wit:

That part of the Northeast Quarter 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 Quarter 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 Quarter 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 Quarter 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 Quarter 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 Quarter 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 and

#141

Cook County, IL

05050505

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A - CONTINUED

Easement Agreement dated December 20, 1965; thence South 66 Degrees 15 Minutes 17 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 of 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.

Permanent Tax Number: 19-28-202-014

Volume: 189

Property of Cook County Clerk's Office

95163808

#141
Cook County, IL

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

Lot 1 in Owners Resubdivision of the Easterly 52.62 feet of Lot 5, the Southeasterly 381.45 feet of Lot 8 as measured along Irving Park Road, and all of Lots 2, 3, 4 and 9 in Section 32, Township 41 North, Range 10, East of the Third Principle Meridian, in Cook County, Illinois.

P.T.U.: 07-32-107-016

Property of Cook County Clerk's Office

#107
Cook County, IL

9516505

UNOFFICIAL COPY

Property of Cook County Clerk's Office