

CONTRACT TO PURCHASE AND SELL REAL ESTATE
(In Use Agricultural Land)

This CONTRACT TO PURCHASE AND SELL REAL ESTATE, referred to in this document as this "Contract," is made and entered into as of the dates set forth below and is effective as of the Effective Date, as defined in Paragraph 10.R. below, by and between:

Martin County, a political subdivision of the State of Florida, which Party is referred to in this Contract as "**Buyer**,"

and

Howe Holdings, Inc., a Florida corporation, which Party is referred to in this Contract as "**Seller**."

Buyer and Seller jointly are referred to in this document as the "**Parties**" and separately may be referred to as a "**Party**."

01. Contract to Purchase and Sell; Lease by Seller.

A. Purchase and Sale - The Property. Upon the terms and conditions set forth in this Contract, Seller hereby agrees to sell to Buyer and Buyer agrees to purchase from Seller:

- 1) Real Property.** That certain improved real estate consisting of 4 contiguous parcels totaling 25 +/- acres which are more particularly described on **Exhibit 1**, all of which are collectively referred to in this Contract as the "**Real Property**."
- 2) Personal Property.** No personal property is included but any structures, fixtures, personal property, and other improvements located on the Real Property as of the Closing shall be included in the sale at no additional cost to Buyer, subject to the provisions in Paragraph 01.D., below.

All of the above included items are collectively referred to in this Contract as the "**Property**."

B. Purchase and Sale - The Option Property.

- 1) Option Real Property.** In addition to the sale and purchase of the Property, Seller gives to Buyer an option to purchase an additional parcel of real estate consisting of 3.12 +/- acres as more particularly described on **Exhibit 2**, which parcel is referred to in this Contract as the "**Option Real Property**."

Buyer shall exercise this option by written notice to Seller no later than the expiration date of the Investigative Period. The Closings of the Real Property and the Option Real Property shall be simultaneous and may be completed as one Closing.

- 2) Personal Property.** No personal property is included but any structures, fixtures, personal property, and other improvements located on the Option Real Property as of the Closing shall be included in the sale at no additional

cost to Buyer.

All of the above included items are collectively referred to in this Contract as the "*Option Property*."

Except as to the Purchase Price, unless and until the Buyer notifies Seller in writing that Seller has elected to not purchase the Option Property, then:

- a) the term "Property" shall include the Property and the Option Property, both as described above and
- b) the term "Real Property" shall include the Real Property and the Option Real Property, both as described above.

C. **Seller's Option to Lease the Real Property.** Seller, through its affiliated corporation, Fernlea Nurseries, Inc., shall have the option to lease the Property back from the Buyer following the Closing upon the terms and conditions set forth in the Lease Agreement attached hereto as **Exhibit 3**, which Lease Agreement is referred to in this Contract as the "*Lease*." Seller shall exercise this option by written notice to the Buyer no later than the expiration date of the Investigative Period.

D. **Removal of Personal Property.** If Seller does not elect to exercise its option to lease the Property as provided below, then, prior to Closing, Seller shall have the right to remove all improvements on the Property desired by Seller, including but not limited to buildings, structures, fixtures and systems, and Seller shall remove all of Seller's personal property, including but not limited to furniture, furnishings, inventory and equipment belonging to Seller. If Seller does elect to exercise its option to lease the Property as provided below, then removal of personal property shall be as stated in the Lease.

E. **Legal Descriptions to be Determined by Surveyor.** The legal descriptions set forth in Exhibits 1 and 2 have not been used to previously convey the Property but have been created for the purpose of this Contract and as such, are not final descriptions which are intended to include all of the land owned by Seller on both the East (the Property) and West (the Option Property) sides of Willoughby Blvd. The descriptions are subject to approval or revision by the Surveyor.

02. **Purchase Price and Payment; Deposits; Consideration.**

A. **Purchase Price - The Property.** The purchase price and consideration for the Property shall be the amount of five million five hundred thousand and no/100 dollars (\$5,500,000.00) U.S., which amount is referred to in this Contract as the "*Purchase Price*."

B. **Purchase Price - The Option Property.** The purchase price and consideration for the Option Property, shall be six hundred eighty six thousand four hundred and no/100 dollars (\$686,400.00) U.S., which amount is referred to in this Contract as the "*Option Purchase Price*."

C. **Deposit.** The deposits required for this Contract shall be \$1,000.00 and shall be payable to and held by Closing Agent and shall be paid within 20 days after the Effective Date. The balance of the Purchase Price shall be paid on the Closing Date, subject to the adjustments and prorations as set forth herein.

03. **Marketable Title; Title and Survey.** Seller shall convey marketable title to the Real Property, by statutory warranty deed free of claims, liens, encroachments, and encumbrances of record or known to Seller; but, subject to real property and non-ad valorem taxes as provided in Paragraph 09.A. below, and subject to those covenants, restrictions and easements of record which have been accepted by Buyer, provided there exists at Closing no violation of the foregoing.

A. Title.

- 1) **Title Insurance.** Buyer may, at Buyer's expense and within the Investigation Period, obtain a title insurance commitment, referred to in this Contract as the "*Commitment*," applicable to the Real Property.
- 2) **Title Defects Based on Commitment.** If the Commitment reveals any matter(s) which render(s) title unmarketable then each such matter shall constitute a title defect and shall be subject to the provisions set forth in Paragraph 04. below and the Closing Date shall be extended accordingly.
- 3) **Commitment Update.** At any time prior to the Closing, Buyer may have the Commitment updated to a more recent certification date. Buyer shall have the right to object to any new matter shown on the updated Commitment that makes the title unmarketable. Buyer shall deliver written notice to Seller of any new title matters that make the title unmarketable and the provisions of Paragraph 04. below shall apply and the Closing Date shall be extended accordingly.

B. Survey.

- 1) **Survey Requirements.** Buyer may, at Buyer's expense and within the Investigation Period, have the Real Property surveyed by a professional land surveyor and mapper or engineer and receive from the surveyor or engineer a drawing of the survey, which drawing is referred to in this Contract as the "*Survey*." The Survey shall:
 - a) be prepared in accordance with ALTA standards;
 - b) be certified to the Buyer, the title insurance company, the title insurance agent, and any other person or entity designated by the Buyer;
 - c) be sufficient for removal of the standard survey exception from the policy of title insurance to be issued pursuant to the Commitment; and
 - d) be in a form and content acceptable to the Buyer and shall show all matters disclosed in the Commitment and which can be located on the Survey.
- 2) **Title Defects Based on Survey.** If the Survey reveals that there are encroachments on the Real Property from the property of another or that the

improvements on the Real Property encroach on the property of another, then such encroachments shall constitute a title defect and shall be subject to the provisions set forth in Paragraph 04. below and the Closing Date shall be extended accordingly.

- 3) **Survey Update.** At any time prior to the Closing, Buyer may have the Survey updated and re-certified in the manner provided above. Buyer shall have the right to object to any new matter shown on the updated survey that constitutes an encroachment as provided in Paragraph 03.B.2) above. Buyer shall deliver written notice to Seller of any new encroachments and the provisions of Paragraph 04. below shall apply and the Closing Date shall be extended accordingly.

04. Title Defects.

- A. **Title Acceptance or Notice of Defects.** Buyer shall, within the Investigation Period, deliver to Seller a written notice of title defects. Title shall be deemed accepted by Buyer if either:
 - 1) Buyer fails to deliver to Seller a written notice of title defects within the time specified; or
 - 2) Buyer delivers a written notice of title defects and Seller cures the defects within one hundred twenty (120) days from receipt of the notice, which period is referred to in this Contract as the *"Curative Period."*
- B. **Cure of Title Defects.** If Buyer timely delivers notice of title defects to Seller, then upon receipt of the notice from Buyer, Seller shall use Seller's best efforts to cure the defects within the Curative Period. If the title defects are not cured within the Curative Period, then Buyer shall have thirty (30) days from the end of the Curative Period to elect, by written notice to Seller, to:
 - 1) terminate this Contract;
 - 2) extend the Curative Period for up to 90 days; or
 - 3) accept title subject to the existing title defects with no adjustment in the Purchase Price.

05. Representations of the Seller; Indemnification. Seller makes and acknowledges that each of the following representations and warranties are material, have been relied on by the Buyer, and shall survive the Closing:

- A. Seller represents and warrants to Buyer that, as of the Effective Date, and as of the Closing Date, Seller owns the Property and has the legal capacity and authority to convey the Property in accordance with this Contract.
- B. Seller represents and warrants to Buyer that the person signing this Contract on behalf of Seller has full power and authority to enter into and perform this Contract in according with its terms on behalf of Seller.

- C. Seller represents and warrants that if Seller is aware of any violation of any zoning, safety, environmental, health or other codes, laws, ordinances or regulations pertaining to the Property, then Seller shall notify Buyer of such violation within five (5) days after the Effective Date; and, if Seller becomes aware of any such violation after the Effective Date and before the Closing Date, then Seller shall notify Buyer of such violation by the earliest of five (5) days after learning of the violation or the Closing Date.
- D. Intentionally deleted.
- E. Seller represents and warrants that title to the Property shall be conveyed free and clear of any lease, lease renewal, option, agreement to sell, encumbrance, or any other agreement or rights of others which extend beyond the Closing Date, except for the Lease provided for in Paragraph 01.C. above.
- F. Seller represents and warrants that the Real Property has both legal and practical ingress and egress.

Seller agrees to indemnify, defend and hold harmless Buyer, its successors and assigns, from and against all liabilities, costs and expenses (including reasonable attorney's fees), arising out of any breach by Seller of any of Seller's obligations, representations, or warranties in connection with this transaction. This provision shall survive the Closing.

06. **Delivery of Due Diligence Materials and Investigation Period.**

- A. **Delivery of Due Diligence Materials.** Within five (5) days after the Effective Date, Seller shall deliver to Buyer all of the following existing items which are specifically related to the Property and which are in the Seller's or its agents' possession or control:
 - 1) survey drawings;
 - 2) environmental studies;
 - 3) copies of any contracts that survive the Closing;
 - 4) title insurance policies; and
 - 5) any and all other information regarding the Property which would reasonably be expected to be of assistance in Buyer's investigation of the Property.

For each day beyond the five (5) days noted above in which the Seller does not provide such documents, the Investigation Period shall be extended for one day.

- B. **Investigation Period.** The time period which commences on the Effective Date and which expires at 5:00 p.m. on the thirtieth (30th) day after the Effective Date is referred to in this Contract as the *"Investigation Period."*
- C. **Property Inspections.** During the Investigation Period Buyer shall have the right to enter the Property to conduct tests and inspect and investigate all aspects of the Property and to determine if the Property is suitable to Buyer for Buyer's Intended Use Of The Property. Seller shall, upon reasonable notice to Seller, provide to

Buyer and its designees access to the Property to allow Buyer to investigate all aspects of the Property.

Inspections made under this paragraph shall not damage the Property or interfere with the Seller's operations and Buyer shall give Seller reasonable notice of said inspections.

Seller hereby discloses to Buyer that the Property has been in operation as a farm and in agricultural operations for decades. As such, various fertilizers, pesticides, and other chemicals have been in long-term use on the Property, as well as the operation and maintenance of farm vehicles and equipment. It is the responsibility of Buyer, during the Investigative Period, to determine what, if any, impact these agricultural operations have had on the Property for the purpose of Buyer's decision to purchase the Property.

If Buyer discovers any unsafe condition or significant environmental damage to the Property, excluding unsafe conditions in or damage to the improvements on the Property, then Seller shall contribute a maximum of \$75,000 in matching funds (dollar for dollar with the Buyer) toward the costs of cleanup of the unsafe condition and/or environmental damage by way of a credit at Closing if the amount of the cost of the cleanup is known as of the Closing Date. If the amount of the cost of the cleanup is not known as of the Closing Date, then, at Closing, Seller shall place \$75,000.00 in escrow with the Closing Agent pursuant to a written agreement, referred to in this Contract as the "*Escrow Agreement*." The Escrow Agreement shall be upon terms as mutually agreed upon by the Parties and shall be for the purpose of providing the matching cleanup funds. The Escrow Agreement shall provide that if cleanup has not been completed within one (1) year after the Closing Date or the termination of the Lease, whichever is later, then any amount not spent from the escrow within one (1) year after the Closing Date or the termination of the Lease, whichever is later, shall be disbursed to Seller.

Buyer may, on the day before the Closing Date or on the Closing Date, perform a walk-through of the Property to determine the condition of the Property and to assure that it has been maintained in the condition required by this Contract.

- E. **Termination of This Contract During Investigation Period.** During the Investigation Period Buyer shall have the sole, absolute, complete, and unconditional right for any reason whatsoever, and without cause or obligation to state a cause, to terminate this Contract by delivering written notice of such termination to the Seller prior to the expiration of the Investigation Period. Such notice is referred to in this Contract as the "*Termination Notice*." If a Termination Notice is delivered, then the provisions of Paragraph 10.W., below, shall apply.
- F. **Acceptance of The Property.** If Buyer fails to provide the Termination Notice within the time required in Paragraph 06.E., then Buyer shall have waived its right to terminate this Contract pursuant to Paragraph 06.E. and Seller shall deliver the Property to Buyer and Buyer shall accept the Property in the condition as required by this Contract.

07. **Default.** If either Party fails, neglects or refuses to perform their obligations under this Contract (except for reasons permitted or authorized by this Contract), Buyer and Seller acknowledge and agree that such failure, neglect or refusal is a default under this Contract and that the economic consequences of default by either Party, considered at the time of contract formation, are speculative and uncertain. In event of default, if such default is not cured by the defaulting Party within 7 days after written notice to the defaulting Party from the non-defaulting Party, then the non-defaulting Party may terminate this Contract. Buyer and Seller agree that upon default of this Contract by a Party, the recovery of liquidated damages is a suitable and preferable alternative to remedies that might otherwise be available at law or in equity. Therefore, the following shall apply:

- A. **Seller's Failure To Close.** If Seller defaults by failing, neglecting or refusing to perform Seller's obligations under this Contract, and fails to cure such default, then Buyer's sole and exclusive remedy shall be the recovery from Seller of liquidated damages in the amount of one thousand dollars (\$1,000.00). Seller shall promptly tender said sum upon demand from Buyer. Upon such payment this Contract shall be terminated in accordance with the provisions of Paragraph 10.W. below.
- B. **Buyer's Failure To Close.** If Buyer defaults by failing, neglecting or refusing to perform Buyer's obligations under this Contract, and fails to cure such default, then Seller's sole and exclusive remedy shall be the recovery from Buyer of liquidated damages in the amount of one thousand dollars (\$1,000.00). Escrow Agent shall promptly tender said sum from the Deposit upon demand from Seller. Upon such payment this Contract shall be terminated in accordance with the provisions of Paragraph 10.W. below.
- C. **Mutual Acceptance of Remedies.** Buyer and Seller each agree to accept the liquidated damages specified above as full and complete compensation and settlement for any and all claims, whether founded upon contract, tort, statute, or otherwise, that may arise in connection with the failure, neglect or refusal of the other Party to perform their obligations under this Contract.

In connection with the enforcement of this Contract, Buyer and Seller expressly waive and disclaim any and all further claims and remedies including but not limited to injunctive relief, specific performance, the filing of a notice of lis pendens, and claims for monetary compensation including but not limited to benefit-of-the-bargain damages, lost profits, lost rental income, expenses incurred in preparing for settlement and all other costs, expenses, compensation and damages of whatever nature whether founded upon law or in equity.

08. **Closing.** The closing of the transaction contemplated herein, which is referred to in this Contract as the "*Closing*," shall take place on September 30, 2019, unless extended or shortened by written agreement of the Parties or by the terms of this Contract. The date on which the Closing occurs is referred to in this Contract as the "*Closing Date*." The Closing shall be held at the Martin County, Florida office of the Closing Agent at 10:00 AM unless a different time is agreed upon by the Parties and the Closing Agent. On or before the Closing Date:

- A. Seller shall execute and deliver, or shall have previously executed and delivered, to the Closing Agent each of the following prepared by the Closing Agent:

- 1) A statutory form warranty deed conveying marketable title to the Real Property, free and clear of all liens and encumbrances, in the condition required by Paragraph 03. above.
- 2) An affidavit, in a form acceptable to the Buyer, certifying that Seller is not a non-resident alien or a foreign entity, such that Seller and such interest holders are not subject to tax under the Foreign Investment and Real Property Tax Act of 1980, as amended, and the Regulations applicable thereto, referred to in this Paragraph as the "Act." If Seller is subject to tax under the Act, then Seller shall comply with all provisions of the Act.
- 3) A Seller's Closing Affidavit in the form as required by the Closing Agent to allow for the deletion of the standard title exceptions on the title insurance policy; provided that the Affidavit may provide for the tenants in possession pursuant to the Amended Lease.
- 4) A Settlement Statement (closing statement).
- 5) Such other affidavits, documents, or instruments as may reasonably be required or requested by the Closing Agent to close this transaction in a manner which allows for the issuance of a title insurance policy insuring marketable title in the condition as required by Paragraph 03. above.
- 6) An absolute Bill of Sale conveying and warranting title to all items of personal property remaining on the Property as of the Closing, except as permitted by Paragraph 01.D. above, which conveyance shall vest absolute title in and to the personal property in Buyer free and clear of all liens, encumbrances, and rights of any and all third parties.
- 7) A resolution of the members of Seller authorizing the sale and delivery of the deed and closing documents and certification by the appropriate party certifying the resolution and setting forth facts showing that the conveyance conforms to the requirements of applicable law and the governing documents of Seller.
- 8) Letters to each contractor providing service to the Property from Seller advising the contractors of the sale of the Property and, if applicable, the transfer of the applicable contract and any assignable warranties or guarantees received or held by Seller from any manufacturer, contractor, subcontractor, or material supplier in connection with the Property.
- 9) Authorization letter from Seller to Lender to allow Closing Agent to obtain loan payoff estoppel letters.
- 10) Such documentation as may be required to satisfy the Closing requirements of the underwriter of the Commitment.
- 11) Assignments of any applicable permits and licenses.
- 12) Any corrective instruments.

- 13) If Seller elects to lease the Property from the Buyer, then the Lease as provided in Paragraph 01.C.
- 14) If applicable, the Escrow Agreement as provided in Paragraph 06.C.
- B. If Seller has not elected to lease the Property from Buyer, then Seller shall have removed from the Property all items of personal property owned by Seller, including but not limited to furniture, furnishings, inventory and equipment.
- C. If Seller is obligated to discharge any encumbrances at or prior to Closing and fails to do so, Buyer may use a portion of the Purchase Price funds to satisfy the encumbrances.
- D. Buyer shall have timely complied with the requirements of Florida Statutes 286.23 to give Seller notice of Seller's obligations to provide the Beneficial Interest Disclosure in the form provided by Buyer.
- Seller shall have timely, (before entering into this Contract), provided to Buyer a completed and executed Beneficial Interest Disclosure required by Florida Statutes 286.23 and in the form provided by Buyer.
- (The Parties by entering into this Contract acknowledge that before entering into this Contract, both Parties have fully complied with all of the provisions of Florida Statutes Section 286.23.)
- E. Buyer shall execute and deliver, or shall have previously, executed and delivered to the Closing Agent:
- 1) A Buyer's Closing Affidavit as required by the Closing Agent to allow for the deletion of the standard title exceptions on the title insurance policy.
 - 2) A Settlement Statement (closing statement).
 - 3) Such other affidavits, documents, or instruments as may reasonably be required or requested by the Closing Agent to close this transaction in a manner which allows for the issuance of a title insurance policy insuring marketable title in the condition as required by Paragraph 03. above.
 - 4) If Seller elects to lease the Property from the Buyer, then the Lease as provided in Paragraph 01.C.
 - 5) If applicable, the Escrow Agreement as provided in Paragraph 06.C.
 - 6) A Resolution of the Board of County Commissioners of Martin County Florida approving the purchase of the Property.
- F. Buyer shall deliver, or shall have previously delivered, to the Closing Agent the funds representing the Purchase Price adjusted as provided in this Contract, in the form of a wire transfer.

- G. The Closing Agent shall cause the Commitment to be re-certified and updated to a more current date, to allow for the issuance of a policy of title insurance pursuant to the Commitment, without standard exceptions, except as to parties in possession under the Lease, if applicable.
- H. The Closing Agent shall disburse the Seller's net proceeds to Seller.

Copies of closing documents shall be submitted to the respective Parties or their attorneys at least two (2) days prior to the Closing Date.

09. Prorations & Expenses.

- A. **Real Estate Taxes and Special Assessments.** All taxes and non-ad valorem assessments included within Florida Statutes Sections 196.29 and 196.295, referred to collectively in this Contract as the "Taxes," which are a lien upon the Property on or prior to the Closing Date shall be paid by Seller in the following manner:

- 1) For Taxes that were due and payable in years before the year of the Closing, Seller shall pay all of the Taxes in full at or before Closing.
- 2) For Taxes that are attributable to the year in which the Closing occurs:
 - a) If the Closing Date occurs between January 1 and November 1, then Seller shall, in accordance with Florida Statutes Section 196.295, pay an amount equal to the current Taxes, prorated to the Closing Date, based upon the current assessment and millage rates applicable to the Real Property. The amount paid by Seller shall be placed in escrow with the county tax collector and the Taxes for the remainder of such year shall stand canceled.
 - b) If the Closing Date occurs during the time interval commencing on November 2 and ending on December 31, then as a Closing expense, Seller shall pay to the Tax Collector an amount equal to the current Taxes, prorated to the Closing Date levied against the Property for the year of Closing and the Taxes for the remainder of such year shall stand canceled.

If there are any other governmental taxes or assessments which are not governed by Florida Statutes Sections 196.29 and 196.295, then Seller shall pay all such taxes and assessments in full.

- B. **Documentary Stamps on the Deed of Conveyance.** Pursuant to Florida Statutes Section 201.01, Buyer is exempt from paying documentary stamps and transfer taxes in connection with the conveyance of the Property. Seller, as a non-exempt Party, shall pay for the costs of the documentary stamps and transfer taxes payable in connection with the conveyance of the Property to the Buyer.
- C. **Miscellaneous Costs.**

- 1) Buyer shall pay the following costs:
 - a) all inspection, survey, and title insurance related costs;
 - b) cost of recordation of the Statutory Warranty Deed and Resolution; and
 - c) Buyer's attorney's fees.
- 2) Seller shall pay the following costs:
 - a) any costs of clearing title defects;
 - b) documentary stamp tax on the deed of conveyance; and
 - c) Seller's attorney's fees.

10. **Miscellaneous.**

- A. **Controlling Law.** This Contract shall be construed and enforced in accordance with the laws of the State of Florida. Venue shall be in Martin County for all state court matters, and in the Southern District of Florida for all federal court matters.
- B. **Condemnation.** Seller represents and warrants that Seller has received no notice that any governmental authority intends to commence or has commenced proceedings for the taking of any portion of the Property by the exercise of any power of condemnation or eminent domain.

If, after the Effective Date and prior to Closing, Seller receives notice that any governmental authority intends to commence or has commenced proceedings for the taking of any portion of the Property by the exercise of any power of condemnation or eminent domain, then Seller shall send notice thereof to Buyer, which shall include all pertinent information relating thereto.

Buyer shall have the absolute right, at Buyer's sole discretion, to terminate this Contract without liability by notifying Seller in writing within thirty (30) days following the date Buyer receives notice of such occurrence. Alternatively, Buyer will have the option of purchasing what is left of the Property at the agreed upon Purchase Price and Seller will transfer to Buyer at Closing the proceeds of any award, or Seller's claim to any award payable for the taking. Seller will cooperate with and assist Buyer in collecting any such award.

- C. **Real Estate Brokers and Commissions.** The real estate brokers ("Brokers") involved in this transaction are Florida Commercial Enterprises, L.L.C., which is the Buyer's broker, and SLC Commercial, Inc., which is the Seller's broker. Any broker representations on behalf of the Seller shall be made by Seller's Broker only. Any representations made by Buyer's Broker shall not be relied upon by the Buyer as Seller's representations.

Seller agrees to pay to each of the Brokers at Closing and from the disbursements of the proceeds of sale, a real estate commission in the amount of two percent (2%) (total of 4%) of the gross Purchase Price for Brokers' services in effecting the sale to Buyer. Buyer shall not be obligated to pay any commission or amounts to either Broker.

- D. **Entire Agreement.** This Contract constitutes the entire agreement between the Parties with respect to this transaction and supersedes all prior agreements, written or oral, between Seller and Buyer relating to the subject matter hereof. Any modification or amendment to this Contract shall be effective only if in writing and executed by each of the Parties.
- E. **Representation.** Both Parties hereto represent and agree that they are each represented by their own legal counsel.
- F. **Assignment.** Neither Buyer nor Seller may assign its rights and obligations under this Contract without prior written consent of the other Party, except that Buyer may assign this Contract on or before the Closing Date to another Municipal, State or Federal governmental entity.
- G. **Notices.** Notices and other communications under this Contract shall in writing and be deemed to have been duly given if sent by a Party, by their attorney, or by their agent, in any of the following manners:

| Method of Delivery | Persons / Addresses For Seller | Persons / Addresses For Buyer |
|----------------------|--|---|
| By Personal Delivery | To either: Mr. Joe Howe or Mr. Lawrence E. Crary, III | To either: Martin County Real Property Manager (Carla Segura) or County Attorney of Martin County, Florida (Mrs. Sarah Woods) or any staff attorney in the office of the County Attorney of Martin County, Florida |

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| <p>By Federal Express, UPS or other overnight delivery service</p> <p>By US Postal Service</p> | <p>To either of the following:</p> <p>Howe Holdings, Inc. Attn: Mr. Joe Howe 3806 SW 96th Street Stuart, Florida 34996</p> <p>Crary Buchanan, P.A. Attn: Mr. Lawrence E. Crary, III 759 SW Federal Highway Suite 106 Stuart, FL 34994</p> | <p>To either of the following</p> <p>Martin County Real Property Manager Attn: Carla Segura Martin County Administrative Offices 2401 SE Monterey Road Stuart, FL 34996</p> <p>or</p> <p>The County Attorney of Martin County, Florida (Mrs. Sarah Woods) or any staff attorney in the office of the County Attorney of Martin County, Florida Martin County Administrative Offices 2401 SE Monterey Road Stuart, FL 34996</p> |
| Email | <p>Lawrence E. Crary III (LEC@crarybuchanan.com)</p> | <p>To both of the following:</p> <p>Martin County Real Property Manager: Carla Segura (Real_Property@martin.fl.us)</p> <p>and</p> <p>Martin County Attorney: c/o Elizabeth V. Lenihan (elenihan@martin.fl.us)</p> |

Notice personally delivered shall be deemed as delivered on the date of actual delivery.

Delivery by the US Postal Service shall be deemed to have been made on the earlier of the date of actual delivery or on the 3rd business day after the notice is delivered to the US Postal Service with certified mail, return receipt requested.

Delivery by an overnight delivery service shall be deemed to have been made on the earlier of the date of actual delivery or on the 2nd business day after the notice is delivered to the overnight delivery service. Receipt by the addressee is deemed to have been made on the date of delivery.

Delivery by electronic media shall be deemed to have been made on the date of delivery of the notice to the email destination as evidenced by an electronic receipt of delivery.

Either Party may change its notice information by giving written notice of such change to the other Party as provided in this Paragraph 10.G.

- H. **Binding Effect.** The terms hereof shall be binding upon and shall inure to the benefit of the Parties hereto and their applicable successors and assigns.
- I. **Paragraph Headings.** The captions in this Contract are inserted for convenience of reference and in no way define, describe or limit the scope or intent of this Contract or any of the provisions hereof.
- J. **Survival and Benefit.** Except as otherwise provided herein, each agreement, representation or warranty made in this Contract by or on behalf of either Party, or in any instruments delivered pursuant hereto or in connection herewith, shall survive the Closing Date and the consummation of the transaction provided for herein. The covenants, agreements and undertakings of each of the Parties hereto are made solely for the benefit of, and may be relied on only by the other Party hereto, its successors and assigns, and are not made for the benefit of, nor may they be relied upon, by any other person whatsoever.
- K. **Construction.** This Contract shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that both the Buyer and the Seller have contributed substantially and materially to the preparation and review of this Contract.
- L. **Attorney's Fees and Costs.** In any claim or controversy arising out of or relating to this Contract, each Party shall bear its own attorney's fees, costs and expenses.
- M. **Closing Agent.** Buyer shall select a title agent, who may be an attorney who represents the Buyer in this transaction, to issue the Commitment and final title insurance policy and such title agent shall serve as the escrow agent and as the closing agent. Such title/escrow/closing agent is referred to in this Contract as the "*Closing Agent.*" The Closing Agent shall receive the funds required to be paid under this Contract and other items required to be delivered under this Contract to the Closing Agent, and subject to clearance, disburse them in accordance with the terms of this Contract. Closing Agent will deposit all funds received in a non-interest bearing account. If Closing Agent receives conflicting demands or has a good faith doubt as to Closing Agent's duties or liabilities under this Contract, Closing Agent may:
 - 1) hold the subject matter in escrow until the Parties mutually agree to its disbursement or until issuance of a court order determining the Parties' rights regarding the escrow; or
 - 2) deposit the subject matter of the escrow with the clerk of court having jurisdiction over the dispute, and upon notifying the Parties of such action, Closing Agent shall be released from all liability except for the duty to account for items previously delivered out of escrow.

If any suit in which Closing Agent is made a Party because of acting as agent hereunder or interpleads the subject matter of the escrow, Closing Agent shall recover reasonable attorney's fees and costs, which fees and costs shall be paid from the escrow funds or equivalent and charged and awarded as court or other costs in favor of the prevailing Party. The Parties agree that Closing Agent shall not be liable to any person for misdelivery to Buyer or Seller of escrowed items, unless misdelivery is due to Closing Agent's willful breach of this Contract or gross negligence.

N. Counterparts. This Contract may be executed in two or more counterparts, each one of which shall constitute an original.

O. Time. Any time periods provided for herein that end on a Saturday, Sunday or legal holiday shall be extended to 5:00 p.m. on the next business day.

Calendar days shall be used in computing time periods. Any time periods provided for in this Contract which shall end on a Saturday, Sunday, or a national legal holiday (see U.S.C. §6103) shall extend to 5:00 p.m. of the next business day. Time periods of 5 days or less will be computed without including Saturday, Sunday, or national legal holidays.

Time is of the essence with regard to this Contract except to the extent that either Party shall have a period in which to cure any default as provided in Paragraph 07. above.

Any reference in this Contract to a specific time of day shall mean such time according to Eastern Standard Time or Eastern Daylight Saving Time, whichever is then in effect.

P. Exhibits. All exhibits or addenda referred to in this Contract which are attached to this Contract are incorporated into and made a part of this Contract.

Q. Conditional Approval By Martin County Administrator; Acceptance By Seller; Submission to BOCC For Final Approval.

1) This Contract shall first be conditionally executed by the Martin County Administrator, an Assistant Martin County Administrator, or any other authorized person on behalf of Buyer. The condition shall be the acceptance by Seller and subsequent approval by the Board of County Commissioners of Martin County, FL, referred to in this Contract as the "BOCC." This Contract as conditionally signed by Buyer or as conditionally signed by Buyer and Seller, is referred to in this Contract as the "Conditional Contract."

2) Seller shall have 10 days after the date of delivery of the Conditional Contract to Seller in which to accept, execute and deliver the original of the Conditional Contract to the Martin County Real Property Manager or to any attorney staff member of the office of the Martin County Attorney, both located at 2401 SE Monterey Road, Stuart, FL 34996. If not delivered by Seller to Buyer within such time period, Buyer may at any time thereafter revoke the offer.

- 3) As soon as administratively possible after receipt of the Conditional Contract signed by Seller, the Conditional Contract shall be submitted to the BOCC for consideration and for approval or rejection.
- R. **Effective Date of This Contract.** The "*Effective Date*" of this Contract shall be the date on which the BOCC approves the Conditional Contract. If the BOCC rejects the Conditional Contract, then the Conditional Contract shall thereupon be terminated and the provisions of Paragraph 10.W. below shall apply.
- S. **Disclosures.**
- 1) **Radon Disclosure.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health department. Pursuant to § 404.056(5), Florida Statutes.
- 2) **Energy Notification.** Buyer acknowledges receipt of the information and brochure required by Florida Statute §553.996.
- T. **Risk of Loss.** The Property contains only agricultural improvements which are limited in value and, therefore, except as provided below, there is no risk of loss of the Property. Seller shall bear the risk of loss if any significant amount of soil is removed from the Property.
- U. **Force Majeure.** Neither Party shall be required to perform any obligation under this Contract or be responsible to the other for damages if the performance is delayed, caused or prevented by force majeure. If force majeure becomes applicable then any affected times provided in the Contract shall be extended until the event causing the force majeure has ended.
- V. **Contract Not Recordable.** This Contract shall not be recorded in the Official Records of any County.
- W. **Termination of The Conditional Contract or of This Contract.** If the Conditional Contract or if this Contract is terminated for any reason, then:
- 1) Buyer shall:
- a) repair or replace any damage caused by Buyer in connection with the activities listed in Paragraph 06.C. above, and
- b) return to Seller the items provided by Seller to Buyer pursuant to Paragraph 06.A above, and
- c) pay to Seller any amount that may be owed by Buyer to Seller as a result of Buyer's default under Paragraph 07. above;
- 2) Seller shall pay to Buyer any amount that may be owed by Seller to Buyer as a result of Seller's default under Paragraph 07. above;
- and thereupon,

- 3) Buyer and Seller shall have no further obligations to each other under the Conditional Contract or under this Contract;
- 4) all rights of the Parties under the Conditional Contract and under this Contract shall be terminated; and
- 5) this Contract and the Conditional Contract shall be of no further force and effect.

- X. **Operation of Property During Contract Period.** Seller will continue to operate the Property and any business conducted on the Property in the manner operated prior to this Contract and will take no action that would adversely impact the Property, tenants, lenders or business.
- Y. **Execution and Delivery. Handwritten items. Unenforceable Portions of This Contract.** Signatures, initials, documents referenced in this Contract, counterparts and written modifications communicated electronically or on paper will be acceptable for all purposes, including delivery, and will be binding. Handwritten or typewritten terms inserted in or attached to this Contract prevail over preprinted terms. If any provision of this Contract is or becomes invalid or unenforceable, all remaining provisions will continue to be fully effective.
- Z. **Seller's Option for 1031 Exchange.** Seller shall have the option to complete a 1031 Deferred Exchange in this transaction. Buyer shall cooperate in the 1031 process, but Buyer shall not be required to pay any expenses related thereto, nor shall Buyer be required to hold title to any target property. All expenses related to the 1031 process shall be paid by Seller.
- AA. **Proceeds of Sale; Closing Procedure.** The statutory warranty deed shall be recorded upon clearance of funds and evidence of title continued at Buyer's expense, to show title in Buyer, without any encumbrances or change which would render Seller's title unmarketable from the date of the last evidence, and the proceeds of the sale shall be held in escrow by Closing Agent for a period of not longer than five (5) days from and after Closing Date. If Seller's title is rendered unmarketable, Buyer shall within said five (5) day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure said defect. In the event Seller fails to timely cure said defect, all monies paid hereunder shall, upon written demand therefore, be immediately refunded to Buyer and, simultaneously with such refunding, Buyer shall vacate the Property and reconvey same to the Seller by quit claim deed. The escrow and closing procedure required by this paragraph may be waived in the event the attorney, title agent or closing agent insures against adverse matters pursuant to Section 627.7841, Florida Statutes (2018), as amended. All professional fees shall be paid at time of disbursement.

IN WITNESS WHEREOF, the Parties have executed this Contract as of the dates stated below.

(THE BALANCE OF THIS PAGE IS INTENTIONALLY BLANK)

Seller:

Howe Holdings, Inc., a Florida corporation

BY: Jeffrey L. Howe, President

, 2019

Buyer:

Martin County, a political subdivision of the State of Florida

CONDITIONAL APPROVAL BY COUNTY ADMINISTRATOR OR OTHER AUTHORIZED PERSON

Martin County

By: Taryn Kryzda, County Administrator

, 2019

Approved As To Form and Legal Sufficiency for County Administrator Approval:

By:

Sarah Woods, County Attorney

BOCC APPROVAL:

Martin County Board of County Commissioners

By:

Edward V. Ciampi, Chair

Date Signed by Chair: _____, 2019

Date Approved by BOCC:

Approved As To Form and Legal Sufficiency or BOCC Approval:

By:

Sarah Woods, County Attorney

Attest:

Carolyn Timmann, Clerk of the Circuit Court and County Comptroller

F:\REAL-EST\MARTIN COUNTY\19-052\CONTRACT-02B

This document may be reproduced upon request in an alternative format by contacting the County ADA Coordinator (772) 320-3131, the County Administration Office (772) 288-5400, Florida Relay 711, or by completing our accessibility feedback form at www.martin.fl.us/accessibility-feedback

Exhibit 1
Contract Paragraph 01.B.1)

Legal Description of the Real Property

PARCEL 1: (Parcel ID: 55-38-41-000-063-00080-9)

Tract 8, Block 63, ST. LUCIE INLET FARMS, according to the plat thereof filed January 4, 1911, and recorded in Plat Book 1, Page 98, Palm Beach (now Martin) County, Florida public records.

PARCEL 2: (Parcel ID: 55-38-41-000-063-00010-4)

Tract 1, Block 63, ST. LUCIE INLET FARMS, according to the plat thereof filed January 4, 1911, and recorded in Plat Book 1, Page 98, Palm Beach (now Martin) County, Florida public records:

LESS AND EXCEPT the following described parcel, to-wit:

Begin at the Southwest corner of said Tract 1, Block 63;

thence run North 23° 20' 02" West along the West line of said Tract 1, a distance of 644.23 feet to the Northwest corner of said Tract 1;

thence run North 66° 44' 33" East along the North line of said Tract 1, a distance of 91.58 feet to a point on the proposed Easterly right-of-way line for Martin County; said point being on a non-tangent curve concave to the Southeast having a radius of 2310.86 feet and a central angle of 16° 11' 04"; the chord of which bears South 15° 14' 30" East;

thence run Southeasterly along arc of said curve, said curve also being the Easterly right-of-way line of the aforementioned proposed right-of-way for Martin County, a distance of 652.75 feet to the Southwest corner of said Tract 1 and the Point of Beginning, as conveyed to Martin County in Official Records Book 761, page 1015.

PARCEL 3: (Parcel ID: 55-38-41-000-062-00080-1)

Being that portion of Tract 8, Block 62, as recorded in Plat Book 1, Page 98, public records of Palm Beach (now Martin) County, Florida; lying Easterly of the proposed Martin County right of way line, said parcel being more particularly described as follows:

Beginning at the Southwesterly corner of said Tract 8, Block 62;

thence running Northwesterly along the arc of a curve concave to the Northeast having a radius of 2310.86 feet through a central angle of 2° 28' 04" and a chord bearing of N 05°08'23" W for a distance of 99.53 feet to the point of tangency of said curve;

thence continue N 03° 54' 21" W along the Easterly right-of-way line of the proposed Martin County right-of-way, a distance of 463.96 feet;

thence run N 66° 44' 33" E, a distance of 373.98 feet to the Easterly line of said Tract 8;

thence run S 23° 20' 02" E, a distance of 532.34 feet to the Northerly line of the 30.0 foot platted right-of-way;

thence run S 66° 44' 33" W for a distance of 559.38 feet to the Point of Beginning.

PARCEL 4: (Abandoned ROW – OR 766, PG 455)

That portion of a 30 foot public right-of-way set forth on the plat of St. Lucie Inlet Farms, said plat being recorded in Plat Book 1, Page 98, Public Records of Palm Beach (now Martin) County, Florida, lying east of the County right-of-way known as Willoughby Boulevard and between Tract 8, Block 62 and Tract 1, Block 63, being more particularly described as follows:

Begin at the southeasterly corner of Tract 8, Block 62;

thence run S 66° 44' 33" W along the southerly boundary of Tract 8, Block 62 for a distance of 559.38 feet to a point;

thence run southeasterly along a curve having a chord bearing of S 6° 45' 41" E, a radius of 2310.86' and a delta of 0° 46' 33" for a distance of 31.29 feet to a point;

thence run N 66° 44' 33" E for a distance of 568.31 feet to a point;

thence run N 23° 20' 02" W for a distance of 30 feet to the point of beginning.

Tax parcel ID Numbers:

| | |
|-----------|----------------------------------|
| Parcel 1: | 55-38-41-000-063-00080-9 |
| Parcel 2: | 55-38-41-000-063-00010-4 |
| Parcel 3: | 55-38-41-000-062-00080-1 |
| Parcel 4: | (Abandoned ROW – OR 766, PG 455) |

Street Addresses of the Real Property:

| | |
|-----------|---------------------------------------|
| Parcel 1: | 1705 Darling Street, Stuart, FL 34994 |
| Parcel 2: | Unassigned address, Stuart, FL 34994 |
| Parcel 3: | Unassigned address, Stuart, FL 34994 |
| Parcel 4: | Unassigned address, Stuart, FL 34994 |

Acres: 25 +/- This reference to the acreage amount is approximate and is for the purpose of helping to identify the applicable real property and is not included for the purpose of determining value.

The following aspects of the parcels described above are also included as part of the Real Property:

- A. All of the estate, right, title, interest, property, claim and demand whatsoever of the Seller in and to each and every one of the tenements, hereditaments and appurtenances belonging or appertaining to the parcels described above, and any and all reversionary or remainder interests of Seller in and to the parcels described above.
- B. All right, title and interest of Seller, if any, in and to the land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the parcels described above and to the land lying in all of the bed of any street, road or avenue lying within the parcels described above.
- C. All easements, rights-of-way, gores of land, ways, alleys, and passages and all estates, rights, titles, interests, privileges and liberties of any nature whatsoever, in any way belonging, relating or pertaining to the parcels described above.
- D. All structures and improvements on the real estate that exists on the parcels described above as of the Closing.

Exhibit 2
Contract Paragraph 02.B.1)

Legal Description of the Option Real Property

The East one-half (½) of Tract 7, Block 63, ST. LUCIE INLET FARMS, according to the plat thereof filed January 4, 1911, and recorded in Plat Book 1, Page 98, Palm Beach (now Martin) County, Florida public records, LESS the easterly 120 feet thereof.

Tax Parcel ID#: (55-38-41-000-063-00070-1)

Street Address of the Real Property: Unassigned address, Stuart, FL 34994 (NW corner of SE Willoughby Blvd. and SE Darling Street)

Acres: 3.12 +/- This reference to the acreage amount is approximate and is for the purpose of helping to identify the applicable real property and is not included for the purpose of determining value.

The following aspects of the parcel described above are also included as part of the Option Real Property:

- A. All of the estate, right, title, interest, property, claim and demand whatsoever of the Seller in and to each and every one of the tenements, hereditaments and appurtenances belonging or appertaining to the parcel described above, and any and all reversionary or remainder interests of Seller in and to the parcel described above.
- B. All right, title and interest of Seller, if any, in and to the land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the parcel described above and to the land lying in all of the bed of any street, road or avenue lying within the parcel described above.
- C. All easements, rights-of-way, gores of land, ways, alleys, and passages and all estates, rights, titles, interests, privileges and liberties of any nature whatsoever, in any way belonging, relating or pertaining to the parcel described above.
- D. All structures and improvements on the real estate that exists on the parcel described above as of the Closing.

Exhibit 3
Paragraph 01.C.

The Lease

See the Following 8 Pages

EXHIBIT 3

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease"), made this _____ day of September, 2019, between MARTIN COUNTY, a political subdivision of the State of Florida, the address of which is 2401 SE Monterey Road, Stuart, Florida 34996, ("County"); and FERNLEA NURSERIES, INC., a Florida corporation, the address of which is 3806 SW 96th Street, Palm City, Florida 33490 ("Tenant").

WITNESSETH:

County hereby leases to Tenant, and Tenant leases from County, the Premises and property described in Exhibit "A" attached hereto and made a part hereof (the "Premises"), consisting of approximately 25 acres of land currently in agricultural use by Tenant, subject to the following terms and conditions:

1. **TERM**: The term of this Lease (the "Term") shall commence as of the date on which County acquires title to the Premises and shall end at 11:59 pm on July 31, 2020.

2. **RENT**. On the first day of the Term of this Lease, Tenant shall pay to County rent in the amount of \$50,000.00 (which includes Florida sales and privilege tax, if any).

3. **TAXES, FEES AND CHARGES**. County shall pay the real property taxes and assessments on the Premises. Tenant shall pay, when due, all taxes assessed against Tenant's personal property. Tenant shall pay for all license fees, occupational taxes and other governmental charges assessed by reason of Tenant's use or occupancy of the Premises.

4. **UTILITIES AND SERVICES**. Tenant shall pay for all utilities and services for the Premises. Tenant shall enter into separate contracts for electricity, water, wastewater, solid waste and communications services as needed by Tenant.

5. **RISK OF LOSS - INSURANCE**. County shall not in any event be responsible for loss of property from or for damage to person or property occurring in or about the Premises, however caused (excluding the intentional and willful fault of County), and particularly not for any damage from electricity, gas, water, wastewater, plumbing, wind, rain, leakage, breakage or fire.

Tenant agrees to indemnify and hold harmless County, its elected officials, employees, and agents from and against all claims of whatever nature arising from any accident, injury or damage to person or property during the term hereof in or about the Premises where such accident, injury or damage results or is claimed to have resulted from an act, omission or negligence on the part of Tenant, or on the part of any of its licensees, agents, invitees or employees. This indemnity agreement shall include indemnity against all costs, claims, expenses, penalties, liens and liabilities incurred in or in connection with any such claim or

proceeding brought thereon and the defense thereof, including reasonable attorneys' fees and court costs.

Tenant agrees to and shall, at its expense, secure and provide proof thereof to County, from a good and responsible company or companies, doing insurance business in the State of Florida and maintain during the entire Term of this Lease, the following insurance coverage:

A. General Commercial Liability Insurance in the minimum amount of \$1,000,000 per claim for loss from an accident resulting in bodily injury to or death of persons or damage to or destruction of property and an aggregate amount of \$2,000,000, as well as an umbrella policy for an additional \$4,000,000. County shall be named as an additional insured on the aforementioned policy of insurance and policy shall be provided to County at execution of this Agreement. Such policy shall be non-cancelable with respect to County except upon thirty (30) days' prior written notice to County, and a substitute policy meeting the requirements of this Lease shall be provided prior to the effective date of any such cancellation.

B. Fire, Extended Coverage, Vandalism, and Extended Hazards Coverage Insurance on Tenant's personal property, fixtures, equipment, improvements and betterments, furniture and inventory in or on the Premises in an amount equal to the full insurable value thereof.

C. Tenant agrees to take out and maintain, during the term of this Lease, worker's compensation insurance for all its employees employed in connection with the business operated under this Lease as required by the Workers compensation Law, Chapter 440, Florida Statutes. Such insurance shall fully comply with the Workers Compensation Law. The Workers Compensation Insurance policy required by this Lease shall also include Employers Liability. Tenant shall provide proof of worker's compensation insurance.

D. Tenant shall waive all rights of subrogation against County.

E. County shall not be liable for any damage or liability of any kind or for any injury to or death of any persons or damage to any property on or about the Premises from any cause whatsoever, except in the instance of County's negligence or willful misconduct.

6. TENANT'S USE / ENVIRONMENTAL INDEMNIFICATION: Tenant agrees to use the Premises solely for commercial agricultural uses and will use the Premises for no other purposes.

A. With regards to Tenant's environmental responsibilities, Tenant agrees to comply with all existing and future applicable federal, state, and local laws. Tenant shall at all times be responsible for any discharge, disposal or release of any materials, human and animal wastes or hazardous substances ("Wastes") at the Premises in any manner whatsoever, occurring during the Term of this Lease by Tenant or any of Tenant's employees, agents, licensees, invitees or trespassers on the Premises that may be considered environmentally unsafe.

B. Tenant shall, at Tenant's expense, and upon demand of County or any other local, state or federal regulatory agency, promptly contain, remove and remediate any Wastes discharged, disposed or released on the Premises occurring during the Term of this

Lease. If Tenant does not take action promptly to have such Wastes contained, removed, and abated, County or any of its designated contractors or agents may, upon reasonable notice to Tenant, which notice shall be written unless an emergency condition exists, as determined by County at its sole discretion, undertake the removal of the Wastes; however, any such action by County or any of its designated contractors or agents shall not relieve Tenant of its obligations under this or any other provision of this Lease or as imposed by law.

C. Tenant shall provide County with notice of all discharges, disposals, and releases of Wastes occurring on the Premises. Upon request by County, Tenant shall make all documentation related to all releases, discharges, and disposals performed on the Premises available to review by County or its agents.

D. Tenant's responsibilities under this Article shall survive the expiration or earlier termination of this Lease and shall apply with equal force and effect to contamination discovered subsequently thereto, if the same is attributable to Tenant's historical presence on the Premises.

E. Tenant hereby agrees to indemnify, reimburse, defend and hold harmless County from and against all demands, claims, civil or criminal actions or causes of action, liens, assessments, civil or criminal penalties or fines, losses, damages, liabilities, obligations, costs, disbursements, expenses or fees of any kind or of any nature (including, without limitation, clean-up costs, attorneys', paralegals', consultants' or experts' fees and disbursements and costs of litigation) which may at any time be imposed upon, incurred by or asserted or awarded against County directly or indirectly, related to or resulting from: (i) any acts or omissions of Tenant, its agents, employees or contractors at, on or about the Premises during the Term of this Lease which contaminate air, soils, surface waters or groundwaters over, on or under the property; or (ii) pursuant to or in connection with the application of any Environmental Law, to the acts or omissions of Tenant or any other person on or about the Premises at Tenant's behest during the Term of this Lease and any environmental damage alleged to have been caused, in whole or in part, during the Term of this Lease by the manufacture, processing, distribution, use, handling, transportation, treatment, storage, discharge, release or disposal of Wastes on or about the Premises.

7. MAINTENANCE OF PREMISES / COUNTY'S ACCESS. County shall have no maintenance obligations under this Lease.

Tenant shall maintain the improvements on the Premises as needed for Tenant's use and operations.

County shall have access to the Premises at all reasonable times, provided that County does not disrupt or interfere with the operations of Tenant.

8. DAMAGE TO PREMISES. During the Term hereof, if the Premises become unusable by fire, force majeure or casualty, then Tenant may repair the damage as necessary to continue Tenant's use and operations on the Premises, or Tenant may terminate this Lease by written notice thereof to County and Tenant shall vacate the Premises without any reduction in the amount of Rent.

9. IMPROVEMENTS AND PERSONAL PROPERTY AT END OF TERM. During the Term of this Lease, or prior to the early termination of this Lease, Tenant shall have the right to remove all improvements on the Property desired by Tenant, including but not limited to buildings, structures, fixtures and systems, and Tenant shall remove all of Tenant's personal property, including but not limited to furniture, furnishings, inventory and equipment belonging to Tenant. Any and all personal items not removed will be forfeited or considered no longer Tenant's property unless determined to be hazardous substances which shall be removed at Tenant's expense. Tenant shall deliver the Premises to County in a condition no worse than accepted by Tenant at the beginning of the Term of this Lease, reasonable wear and tear excepted subject to the right of Tenant to remove all of the items described above.

10. PROHIBITION ON LIENS AND ENCUMBRANCES.

A. Tenant shall not cause or allow any liens or encumbrances of any kind to be placed on or apply to the Premises or any part thereof. In the event that a lien or encumbrance is placed or filed in violation of this clause, Tenant shall immediately cause the same to be released in full or shall bond the lien or encumbrance in accordance with law.

B. Tenant shall not pledge County's credit or make it a guarantor or surety for any contract debt, obligation, judgment, lien or any form of indebtedness. Tenant warrants and represents that it has no obligation or indebtedness which would impair its ability to fulfill the terms of this Lease.

11. ASSIGNMENT AND SUBLETTING. Tenant shall not assign this Lease. Tenant shall have the right to sublet the Premises or portions thereof to other commercial agricultural users upon notification to County and updates to any and all insurance policies.

12. DEFAULT/REMEDIES.

A. The following event shall constitute default by Tenant under the terms of this Lease: failure to perform any duty required of Tenant under this Lease within thirty (30) days of County's written demand for performance.

B. If a default by Tenant under this Lease occurs, County shall have the right, without further notification, to terminate this Lease by written notice to Tenant and to peaceably take possession of the Premises as allowed by law and remove therefrom all property of Tenant, storing said property at the expenses of Tenant.

13. TENANT'S RIGHT TO QUIET ENJOYMENT. Provided that Tenant is in full compliance with this Lease, Tenant shall be entitled to the quiet use and enjoyment of the Premises.

14. ATTORNEYS' FEES. In the event a suit shall be brought for recovery of possession of the Premises, or because of the breach of any other covenant contained herein, each party shall be responsible for its own attorney's fees and court costs, including those incurred in appellate proceedings.

15. ABANDONMENT OF PROPERTY. Upon the expiration of this Lease, or if this Lease should terminate for any cause, and at the time of such expiration or termination Tenant

or Tenant's agents, subtenants or any other person should leave any property of any kind or character on or in the Premises, the fact of such leaving of property on or in the Premises shall be conclusive evidence of intent by Tenant, Tenant's agents or subtenants, to abandon such property so left in or upon the Premises, and such leaving shall constitute abandonment of the property. County, its agents or attorneys, shall have the right and authority without notice to Tenant, Tenant's agent or subtenants, or anyone else, to remove and destroy, or to sell or authorize disposal of such property, or any part thereof, without being in any way liable to Tenant therefor, the said benefit received therefor shall belong to County as compensation for the removal and disposition of said property.

16. GOVERNING LAW AND VENUE. This Lease shall be governed and interpreted under the laws of the State of Florida. Venue in any proceedings regarding this Lease shall be in Martin County, Florida.

17. TIME OF ESSENCE. Time shall be of essence as to all provisions in this Lease.

18. THE FOLLOWING NOTICE IS REQUIRED BY FLORIDA LAW: RADON GAS:
Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your public health unit.

19. MISCELLANEOUS PROVISIONS.

A. Tenant acknowledges and agrees that it is prohibited from dispensing, selling, or giving away any cigarettes or tobacco products of any nature from, in, around, or in connection with the Premises. Alcoholic beverages may not be sold, dispensed, given away, and consumed on the Premises.

B. Tenant shall designate a qualified manager for its operations who shall be physically available during office operating hours. The qualifications of the designated manager shall be submitted to County upon request. Tenant agrees that a designated assistant manager shall be available when the manager is not available.

C. Tenant for itself, and its subtenants, as a part of the consideration for this Lease, does hereby covenant and agree that:

- 1) No person shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of the concession services offered in or at the Premises on the basis of age, sex, physical handicap or other disability, race, color, national origin, religion or ancestry; and
- 2) Tenant shall not discriminate against any employee or applicant for employment in connection with the Premises with respect to hiring, tenure, terms, conditions or privileges or employment, or any matter directly or indirectly related to employment on the basis of age, sex, physical handicap

or other disability, race, color, religion, national origin or ancestry; and

- 3) Tenant agrees that the Premises, including Tenant's facilities and programs, shall at all times comply with the Americans with Disabilities Act ("ADA") as required by law for the type of farming and agricultural activities in which Tenant shall be engaged on the Premises. Tenant represents that its activities are not open to the public. Tenant shall be solely responsible for all costs, penalties, and all other expenses which result from any violation of the ADA occurring on the Premises during the Term.

20. TENANT'S DUTIES REGARDING PUBLIC RECORDS. Tenant must provide public access to all records concerning this Lease according to applicable Florida laws including Chapter 119, Fla. Stat. If Tenant asserts any exemptions to Florida's public record laws, Tenant has the burden of establishing and defending the exemption.

21. NOTICES. Any notice shall be deemed duly served if personally served, or if mailed by certified mail, return receipt requested, or if sent via "overnight" courier service or electronic transmission as follows:

County:

Martin County Real Property
2401 SE Monterey Road
Stuart, Florida 34996
Telephone: (772) 221-2354
Email: real_property@martin.fl.us

With a copy to:

County Attorney
Martin County Administrative Offices
2401 SE Monterey Road
Stuart, Florida 34996

Tenant:

Fernlea Nurseries, Inc.
ATTN: Joe Howe
3806 SW 96th Street
Palm City, FL 34990
Telephone: (772)
Email: JoeHJr@fernlea.com

With a copy to:

Crary Buchanan Attorneys at Laws
ATTN. Lawrence E. Crary, III
759 SW Federal Hwy., Suite 106
Stuart, Florida 34994
Email: LEC@crarybuchanan.com

Any party may change the information above by giving written notice of such change as provided herein.

IN WITNESS WHEREOF, County and Tenant have duly executed this Lease on the day and year first above written.

Witnesses:





TENANT:

FERNLEA NURSERIES, INC.,
a Florida corporation

By: _____

Its: _____


Jeffrey L. Howe
President

COUNTY:

ATTEST:

MARTIN COUNTY BOARD OF COUNTY
COMMISSIONERS

By: _____

CAROLYN TIMMANN
CLERK OF THE CIRCUIT COURT
AND COMPTROLLER

By: _____

EDWARD V. CIAMPI, CHAIRMAN

APPROVED AS TO FORM
& LEGAL SUFFICIENCY:

By: _____

SARAH W. WOODS, COUNTY
ATTORNEY

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EXHIBIT A TO LEASE

LEGAL DESCRIPTION OF THE PREMISES

Note: The Premises will be the same real property that is actually conveyed by Tenant to Landlord pursuant to the Contract to which this Lease is attached as Exhibit 3. The Premises will include the Option Real Property if Buyer exercises the option to purchase the Option Real Property.