

Agricultural and Food Processing Clearance Order  
 Pedido de Empleados para Agricultura y Procesamiento de Alimentos

U.S. Department of Labor  
 Employment and Training Administration  
 O.M.B. Approval No. 1205-0134 Expires 08/31/2009



1. Employer's Name and Address (Number, Street, City, State, Zip Code, and Telephone Number) Nombre y Dirección del Empleador (Número, calle, ciudad, código postal y teléfono) Russell's Tree & Shrub Farm, LLC 9800 Transit Road East Amherst, NY 14051 Ph: (716) 689-6764	Industry Code / Código de Industria: 111421 Job Order # / No. Orden de Empleo: NY0928216 Occupational Title and Code / Título Ocupacional y Código: 45-2092.01 Nursery Workers Clearance Order Issue Date / Fecha de Emisión: JAN 19 2010
2. Location and Direction to Work Site / Dirección del lugar de trabajo 9800 Transit Road, East Amherst, NY in Erie County 7315 Salt Road, Clarence, NY in Erie County 500 Rice Road, Elma, NY in Erie County Rte 104, Olcott, NY in Niagara County Workers will be notified which work location they will work the next day at the end of each workday. (see attachment / para más detalles vea)	Job Order Expiration Date / Fecha de expiración: 3/22/10 6. Anticipated Period of Employment / Período Anticipado de Empleo From/Desde: 2/22/10 To/Hasta: 11/15/10 7. No. of Worker's Requested / No. de Trabajadores Pedidos: 4
3. Location and Description of Housing / Dirección y Descripción de la Vivienda Wood Frame 9836 Transit Road, East Amherst, NY 14051 (see attachment / para más detalles vea)	8. Anticipated Hours of Work per Week / Horas Anticipadas de Trabajo por Semana Total: 40 Sunday / Domingo: 0 Monday / Lunes: 7 Tuesday / Martes: 7 Wednesday / Miércoles: 7 Thursday / Jueves: 7 Friday / Viernes: 7 Saturday / Sábado: 5 9. Collect Calls Accepted / Se Aceptan Llamadas a Cobrar: Employer / El Empleador: Yes ___ No <input checked="" type="checkbox"/> Local Office / Oficina Local: Yes ___ No <input checked="" type="checkbox"/>
4. Board Arrangements / Arreglo de Alojamiento Housing is provided at no cost to workers who are not reasonably able to return the same day to their place of residence. Housing is not provided to non-workers. SEE ETA 790 ATTACHMENTS FOR FULL BOARDING ARRANGEMENTS (see attachment / para más detalles vea)	
5. Referral Instructions / Instrucciones para el Referimiento de Candidatos All local applicants and intrastate (in state) are to apply directly to employer Monday thru Thursday between the hours of 9:00 am and 4:00 pm and Fridays between 9:00 am and 11:00 am. All interstate (out of state) applicants may apply at any State Workforce Agency (SWA) office or by contacting employer directly. SEE ETA 790 ATTACHMENTS FOR FULL REFERRAL INSTRUCTIONS (see attachment / para más detalles vea)	
10. Job Specifications / Descripción del Trabajo (Summary of Material Job Specifications in ENGLISH must be included inside this box) Greenhouse/Nursery: Performs any combination of following duties concerned with preparing soil and growth media, cultivating, and otherwise participating in horticultural activities. Hauls and spreads topsoil, fertilizer, etc. to condition land. Digs, rakes, and screens soil and fills cold frames and hot beds to prepare them for planting. Plants, sprays, weeds, and waters plants, shrubs, and trees. Ties, bunches, wraps, and packs flowers, plants, and shrubs to fill orders and loads onto trucks for marketing. Work on potting line transplanting seedlings into selling containers and place in growing area. Bedding Plants: Worker will fill flats with potting soil in preparation for planting. Filled flats will be stacked for transport to planting area. Workers will then plant plugs or seedlings into flats as instructed by supervisor. Planted flats will be tagged with appropriate picture tags. Completed flats will be watered in by hand and placed in growing area for finishing. Potted Plants/Hanging Baskets: Worker will fill pots/baskets with potting soil in preparation for planting. One or more transplants will be planted in each container as specified by supervisor. Completed containers will be watered in by hand and placed in growing area for finishing. Workers may be required to install hangers on hanging baskets. Workers may be required to place watering tubes into containers to facilitate the irrigation process. Flowering Trees, Evergreens, & Shrubs: Workers will be working with flowering trees, evergreens and shrubs. Workers will plant, cultivate, harvest, propagate, grade, store and ship container and field grown horticultural products. Harvesting field-grown crops includes digging up products and placing on pallets. Grading is done by size. Products are measured, tied in bundles and placed in storage for shipment. Workers will also take cuttings from trees and shrubs, place in containers pre-filled with dirt and transplant seedlings to prepared areas. Shrubs and some trees are harvested for resale when they reach approximately 1-3 inches in height, although most products must reach approximately 3 feet tall before they are ready for market. Bare root Products: Workers will handle a variety of bare root products. Workers will plant, cultivate, harvest and prepare products for shipment. Bare root products start from liners. When products reach the appropriate size, and at the supervisor's instruction, products will be budded to promote growth. When products reach approximately 3-5 feet in height, workers will be required to harvest the products by digging the trees/shrubs, placing on pallets and transferred to storage for shipment. Shrubs and some trees are harvested for resale when they reach approximately 1-3 inches in height. Workers will also take cuttings from products, place in containers pre-filled with dirt and transplant to prepared areas at the appropriate time. Able to stand, bend, reach, cut and pull weight of plants and materials. Employees must be able to frequently lift trees ranging in weight from 50 to 75 pounds and occasionally lift trees weighing up to 100 pounds. Workers are subject to random drug testing at employer's expense. Descripción del Trabajo (Summary of Material Job Specifications in SPANISH must be included inside this box) Invernadero/Plantario de niños: Realiza cualquier combinación de deberes siguientes referidos a preparar el suelo y medios del crecimiento, a la cultivación, y de otra manera a participar en actividades hortícolas. Transportes y extensiones tierra vegetal, fertilizante, etc. para condicionar la tierra. Los empujes, los rastros, y las pantallas los marcos fríos manchan y de los terraplenes y las camas calientes para prepararlos para plantar. Plantas, aerosoles, malas hierbas, y plantas de aguas, arbustos, y árboles. Lazos, manojos, abrigos, y flores de los paquetes, plantas, y arbolitos para llenar órdenes y cargas sobre los carros para la comercialización. Trabajo en la línea plantas de semillero de trasplante del rellenado en la venta de los envases y coloque en superficie creciente. Plantas de lecho: El trabajador llenará planos del suelo de rellenado con objeto del establecimiento. Los planos llenados serán apilados para el transporte a plantar área. Los trabajadores entonces plantarán los enchufes o las plantas de semillero en planos según lo dado instrucciones por el supervisor. Los planos plantados serán marcados con etiqueta con las etiquetas apropiadas del cuadro. Los planos terminados serán regados adentro a mano y colocados en la superficie creciente para el acabamiento. Plantas Potted/cestas colgantes: El trabajador llenará los pots/cestas del suelo de rellenado con objeto del establecimiento. Uno o más trasplantes serán plantados en cada envase según lo especificado por el supervisor. Los envases terminados serán regados adentro a mano y colocados en la superficie creciente para el acabamiento. Los trabajadores pueden ser requeridos instalar suspensiones en cestas colgantes. Los trabajadores pueden ser requeridos colocar los tubos de riego en los envases para facilitar el proceso de la irrigación. Árboles florecientes, árboles de hoja perenne, & Arbustos: Los trabajadores trabajarán con los árboles florecientes, los árboles de hoja perenne y los arbustos. Los trabajadores plantarán, cultivarán, cosecharán, propagarán, calificarán, almacenarán y enviarán al envase y productos hortícolas cultivados en los campos. La cosecha de cosechas cultivadas en los campos incluye desenterrar productos y la colocación en las plataformas. La clasificación es hecha por tamaño. Los productos se miden, se atan en paquetes y se colocan en el almacenaje para el envío. Los trabajadores también tomarán cortes de los árboles y de los arbustos, lugar en los envases prellenados con el suelo y la sujeción; plantas de semillero del trasplante a las áreas preparadas. Los arbustos y algunos árboles se cosechan para la venta cuando alcanzan aproximadamente 1-3 pulgadas en altura, aunque la mayoría de los productos deben alcanzar aproximadamente 3 pies de alto antes de que estén listos para el mercado. Productos palados de la raíz: Los trabajadores manejarán una variedad de productos palados de la raíz. Los trabajadores plantarán, cultivarán, cosecharán y prepararán los productos para el envío. Los productos palados de la raíz empiezan con trazadores de líneas. Cuando los productos alcanzan el tamaño apropiado, y en la instrucción de los supervisores, los productos serán florecidos para promover crecimiento. Cuando los productos alcanzan aproximadamente 3-5 pies en altura, cavando requerirán cosechar los productos os árboles/los arbustos, colocando en las plataformas y serán transferidos a los trabajadores al almacenaje para el envío. Los arbustos y algunos árboles se cosechan para la venta cuando alcanzan aproximadamente 1-3 pulgadas en altura. Los trabajadores también llevarán cortes de productos, lugar en los envases prellenados con sujeción y el trasplante las áreas preparadas en el momento apropiado. Capaz de trabajar en temperaturas diversas. Capaz de colocar, de doblar, de alcanzar, de cortar y de tirar de las malas hierbas para el período entero del trabajo cada día. Los empleados deben poder levantar con frecuencia los árboles que se extienden en peso a partir del 50 a 75 libras y levantar de vez en cuando los árboles que pesan hasta 100 libras. Los trabajadores estén conforme a la prueba al azar de la droga. (see attachment / para más detalles vea)	

11. Wage Rates, Special Pay Information and Deductions / Tarifa de Pago, Información Sobre Pagos Especiales y Deducciones (Rebajas)							
Crop Activities / Cultivos	Hourly Wage Salario por Hora	Piece Rate / Pago por Pieza/ Unidad(es)	Special Pay (bonus, etc.) Pagos Especiales (Bono, etc.)	Deductions / Deducciones	YES	NO	Pay Period Periodo de Pago
Nursery Labor	\$8.74	\$		FICA	*X		Weekly /
	\$	\$		Federal Tax	*X		Semi-annual X
	\$	\$		State Tax	*X		Bi-Weekly /
	\$	\$		Meals (comidas)		X	cada 2 sem.
	\$	\$		Other (specify)		X	Other / Otro

More Details About the Pay / Más Detalles Sobre el Pago: Employers guarantee to offer employment for the hourly equivalent of 3/4 of the workdays of the total specified period during which the work contract and all amendments thereof are in effect, beginning with the first workday after the workers' arrival at the assigned Grower's farm, ready, willing, able, and eligible to work and ending on the expiration date specified in the work contract and all extensions thereof or upon the termination of this employment as provided below. For purposes of this guarantee, a "workday" consists of seven hours Monday-Friday and five hours on Saturday. The guarantee shall be void from the beginning should the Worker voluntarily abandon this employment before the end of the contract period or in the event the Worker is terminated for lawful job-related reason. The payroll period shall be weekly. Workers will be paid weekly. The employer will make the following deductions from the Worker's wages: FICA taxes and Federal Income tax as required by law. Cash advances and repayment of loans, repayment of overpayment of wages to the worker, payment for articles which the worker loses, and state and Federal taxes will not be deducted from these worker's wages that are working under a temporary agricultural visa.

12. Transportation Arrangements / Arreglos de Transportación (Please explain) The Employer will not advance transportation and subsistence costs to Workers for transportation to the place of employment. This paragraph applies only to Workers for whom the employer is legally obligated to supply housing. After worker has completed 50% of work contract period, employer shall reimburse worker for reasonable cost of transportation and subsistence from place of recruitment to place of work. Upon satisfactory completion of the work agreement, employer will pay for such Workers reasonable costs of return transportation and subsistence to the place of recruitment, except when the worker will not be returning to the place of recruitment, due to subsequent employment with another employer who does not agree to pay such costs, in which case the employer only pays for the transportation and subsistence to the next job. The amount of such transportation payment will be equal to the Worker's actual transportation costs not to exceed the most economical and reasonable common carrier transportation charge for the distance involved. By way of illustration and not in limitation of the foregoing, the employer will not pay transportation for such worker if he does not have suitable documents to comply with proof of identity and employment eligibility requirements of IRCA, if he is discharged for lawful job-related reasons, if he has knowledge at the place of recruitment that he can not perform the duties of the job as described above, or if he abandons this employment when he is needed by the Grower. (see attachment / para más detalles vea)

13. Is it the prevailing practice to use Farm Labor Contractors (FLC) to recruit, supervise, transport, house, or pay workers for this (these) crop activity(ies)? Es la costumbre en el área de usar Contratistas Agrícolas para reclutar, supervisar, transportar, dar vivienda, ó pagarle a los trabajadores en este/estos tipo(s) de cosecha(s) / sembrado(s)? Yes \_\_\_ No  If you have checked yes, what is the FLC wage for each activity? / Si contesto "Si," cuál es el salario que le pagó el Contratista Agrícola por cada actividad?

14. Unemployment insurance provided / Seguro por Desempleo: Yes  No  \*if applicable excludes H-2A workers

15. Workers compensation insurance provided / Indemnización por accidente de trabajo: Yes  No

16. Are tools provided at no charge to the workers? / ¿Se le proveen las herramientas de trabajo a los trabajadores sin cargo alguno? Yes  No

17. List any arrangements which have been made with establishment owners or agents for the payment of a commission or other benefits for sales made to workers. (If there are no such arrangements, enter "None") / Indique todo acuerdo o convenio con los propietarios del establecimiento o sus representantes con respecto al pago de una comisión u otros beneficios por ventas hechas a los trabajadores. (Si no hay ningún acuerdo o convenio, indique "Ninguno")  
NONE / NINGUNO

18. List any strike work stoppage, slowdown, or interruption of operation by the employees at the place where the workers will be employed. (If there are no such incidents, enter "None") / Enumere todo huelga, paro o interrupción de las operaciones por parte de los empleados en el lugar de empleo. (Si no hay, indique "Ninguno")  
NONE / NINGUNO

19. Address of Order Holding Office (include Telephone number) Dirección de la Oficina donde se Radicó la Oferta (incluya número de teléfono)

20. Name of Local Office Representative (include direct dial telephone number) / Nombre del Representante de la Oficina Local (incluya numero de teléfono)

New York State Department of Labor  
One Stop Office nearest to you

New York State Department of Labor  
One Stop Office nearest to you

21. Employer's Certification: This job order describes the actual terms and conditions of the employment being offered by me and contains all the material terms and conditions of the job. Certificación del Empleador: Esta orden de trabajo describe los términos y condiciones de trabajo y contiene todos los materiales, terminus, y condiciones ofrecidos.  
Employer's Signature & Title / Firma y Título del Empleador  
*Daniel Miller* President

READ CAREFULLY: In view of the statutorily established basic function of the employment service as a no-fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither the ETA nor the State agencies are guarantors of the accuracy or truthfulness of information contained on job orders submitted by employers. Nor does any job order accepted or recruited upon by the One-Stop Career Center constitute a contractual job offer to which the One-Stop Career Center, ETA or a State agency is in any way a party.  
LEA SE CUIDADOSAMENTE: En vista de su función básica establecida estatutariamente el Servicio de Empleo es un intercambio gratis de trabajo para juntar a los empleadores y trabajadores que buscan empleo, ni ETA ni las agencias del estado pueden garantizar la verdad y certeza de la información contenida en la Orden de Trabajo sometida por el Empleador. Tampoco, ninguna orden de trabajo aceptada o reclutada por el Servicio de Empleos constituye una oferta contractual de la cual ETA ni la agencia del Estado son parte

Public reporting burden for the ETA Form 790 is estimated to be approximately 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and reviewing the collection. Respondents obligation to reply to these requirements are mandatory by 20 CFR 653.600. Persons are not required to respond to this collection of information unless it displays a currently valid OMB number. Comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing the burden can be sent to the U.S. Department of Labor, Office of Workforce Investment, Room 8-4321, Washington DC 20210 (Paperwork Reduction Act of 1995, OMB Control No. 1205-0134).

## ATTACHMENT TO ETA 790

The term "Employer" used herein shall refer to the named employer(s) in section 1.

Workers recruited under this Job Order are recruited to work on the employer's farm in the certified occupation during the period of employment shown in Item 6. The employer/members will offer US workers at least the same opportunities, wages, benefits, and working conditions as those which the employer offers or intends to offer to non-immigrant foreign workers

1. Name and address of employers: Russell's Tree & Shrub Farm LLC, 9800 Transit Road, East Amherst, NY 14051.

4. Employers will furnish free cooking and kitchen facilities to those workers who are entitled to live in the employers' housing so that workers may prepare their own meals. Workers will buy their own groceries. Once a week the employers will offer to provide (on a voluntary basis by the workers) free transportation to assure workers access to the closest store where they can purchase groceries.

Housing capacity is strictly regulated by the US Department of Labor, and no person, other than the eligible employees authorized by the employer, may occupy or remain overnight in employer-provided housing. The housing is offered as temporary in-season (during the employment period only) housing provided for migrant agricultural workers while they are employed at farms beyond normal commuting distance from their residence. Workers provided housing by the employer must promptly vacate the housing upon termination of employment. All housing is group housing in which all workers will share kitchens and common areas without regard to gender. Female workers, however, will be provided with sleeping facilities shared only with other family members or with other females. Sex-segregated toilets facilities will be provided.

Housing is provided at no cost to workers who are not reasonably able to return the same day to their place of residence. This paragraph applies to such workers only. Housing is not provided to non-workers. Housing capacity is strictly regulated by the US Department of Labor, and no person, other than the eligible employees authorized by the employer, may occupy or remain overnight in employer-provided housing. The housing is offered as temporary in-season (during the employment period only) housing provided for migrant agricultural workers while they are employed at farms beyond normal commuting distance from their residence. Workers provided housing by the employer must promptly vacate the housing upon termination of employment. No charge will be made for beds or cooking utensils and similar items furnished to workers to whom housing is provided hereunder unless unlawfully removed or damaged beyond normal wear and tear. All housing is group housing in which all workers will share kitchens and common areas without regard to gender. Female workers, however, will be provided with sleeping facilities shared only with other family members or with other females. Sex-segregated toilets facilities will be provided. Workers who reside in such housing agree to be responsible for maintaining the housing in a neat and clean manner.

Workers residing in employer's housing may have mail directed to them at the employer's address on attached addendum. Workers will be provided a name and telephone number where they may be contacted in case of emergency while residing in the housing.

5. All applicants must first contact the order holding office for permission to refer prior to contacting employers. For interstate (out of state) state employment service agency staff is encouraged to call to make a referral while the applicant is at the Job Service office. Interviews will be conducted quickly over the telephone to create less of a burden on the applicant. Participation and monitoring of the interview process by SWA staff guarantees proper disclosure of the terms and conditions and protects the integrity of the interview process. Workers should be fully apprised by the local employment office of the terms, conditions and nature of employment prior to referral. This will enable applicants to review all the information and make an informed decision about the job and will ensure compliance with disclosure requirements and enable local staff to conduct the telephone interview quickly.

Only workers legally entitled to work in the United States and who possess original identity and employment eligibility documents sufficient to complete INS Form I-9, as required by the Immigration and Nationality Act, will be permitted to complete the hiring process. Workers referred against this order should be informed that they must have these documents in their possession when they arrive at the place of employment. Provided that workers complete section 1 of form I-9, workers will have three business days to produce the required documentation to complete section 3 of form I-9, as provided in the Act. Workers not providing this required documentation will not be allowed to go to work on the fourth business day of employment, or any subsequent days until the documentation is provided, as provided in the Act.

Employer will interview the person for 1) Availability for entire season, 2) Available transportation to the job site, 3) Has been fully apprised by the local employment services of the terms and conditions of employment. Workers recruited against the Job Offer from within normal commuting distance will not be provided with housing, subsistence and transportation. Only workers legally entitled to work in the United States and who possess original identity and employment eligibility documents sufficient to complete INS Form I-9, as required by the Immigration and Nationality Act, will be permitted to complete the hiring process.

Workers referred against this order should be informed that they must have these documents in their possession when they arrive at the place of employment.

6. Anticipated dates of employment: 2/22/10 until 11/15/10.

7. The approximate maximum number of workers to be employed in the certified occupation by the grower is shown in the Addendum (the list of employers). The actual number of workers employed in the certified job opportunities of the grower at any given time may be more or less than the approximate numbers shown in the addendum, depending upon crop conditions, weather, markets or other circumstances that develop during the season.

8. Anticipated Hours of Work: Worker will report to work at the designated time and place as directed by the Grower each day. The standard workweek is 7 hours per day Monday-Friday and 5 hours on Saturday is normal; however, workers may be requested to work 10 hours per day depending upon the conditions in the fields and maturity of the crops but will not be required to do so. Also, the workers may be requested to work on federal holidays and on their Sabbath but will not be required to do so. Workers may volunteer to work additional hours when work is available. Down Time: Workers should expect occasional periods of little or no work because of weather, crop or other conditions beyond the employer's control. These periods can occur anytime throughout the season.

#### 10. Job Specifications:

**Tools and Equipment:** The employer will furnish, without charge, all tools, supplies, and equipment required in the performance of the specified work.

**A.) Greenhouse/Nursery:** Performs any combination of following duties concerned with preparing soil and growth media, cultivating, and otherwise participating in horticultural activities. Hauls and spreads topsoil, fertilizer, etc. to condition land. Digs, rakes, and screens soil and fills cold frames and hot beds to prepare them for planting. Plants, sprays, weeds, and waters plants, shrubs and trees. Ties, bunches, wraps, and packs flowers, plants, and shrubs to fill orders and loads onto trucks for marketing. Work on potting line transplanting seedlings into selling containers and place in growing area.

**Bedding Plants:** Worker will fill flats with potting soil in preparation for planting. Filled flats will be stacked for transport to planting area. Workers will then plant plugs or seedlings into flats as instructed by supervisor. Planted flats will be tagged with appropriate picture tags. Completed flats will be watered in by hand and placed in growing area for finishing.

**Potted Plants/Hanging Baskets:** Worker will fill pots/baskets with potting soil in preparation for planting. One or more transplants will be planted in each container as specified by supervisor. Completed containers will be watered in by hand and placed in growing area for finishing. Workers may be required to install hangers on hanging baskets. Workers may be required to place watering tubes into containers to facilitate the irrigation process.

**Flowering Trees & Shrubs:** Workers will be working with flowering trees and shrubs. Workers will plant, cultivate, harvest, propagate, grade, store and ship container and field grown horticultural products. Harvesting field-grown crops includes digging up products and placing on pallets. Grading is done by size. Products are measured, tied in bundles and placed in storage for shipment. Workers will also take cuttings from trees and shrubs, place in containers pre-filled with dirt & transplant seedlings to prepared areas. Shrubs and some trees are harvested for resale when they reach approximately 1-3 inches in height, although most products must reach approximately 3 feet tall before they are ready for market.

**Bare root Products:** Workers will handle a variety of bare root products. Workers will plant, cultivate, harvest and prepare products for shipment. Bare root products start from liners. When products reach the appropriate size, and at the supervisors instruction, products will be budded to promote growth. When products reach approximately 3-5 feet in height, workers will be required to harvest the products by digging the trees/shrubs, placing on pallets and transferred to storage for shipment. Shrubs and some trees are harvested for resale when they reach approximately 1-3 inches in height. Workers will also take cuttings from products, place in containers pre-filled with dirt and transplant to prepared areas at the appropriate time.

**General Duties:** Duties performed in the field will be sporadic all through the contract due to the various duties, i.e., preparing soil, planting, pruning, cutting, deadheading, pinching, trimming to shape, spacing plants, fertilizing with granular or liquid fertilizer, cleaning work areas, transporting plant materials in the nursery/greenhouse areas, loading and unloading plants and all other duties associated with producing crops for the employers listed in this order. Between harvesting, workers will be required to perform duties to prepare crops for marketing. Workers will also unload pallets from trucks or wagons into fields for transplanting. Worker may unload and restock for storage.

#### Farm Equipment Operation During Field Operations:

Workers may be required to operate tractors and other farm equipment during field operations as an incidental activity in the production of crops. Farm equipment operation incidental to production and harvesting will be paid at the AEW of \$8.74 per hour. Before any worker is required to operate any farm equipment, the worker will be instructed in the proper and safe operation of tractor. Workers will be required to operate tractors according to instructions and in a manner that protects the operator, other workers, trees, crops and equipment. Repeated failure to obey operating and safety instructions may result in termination.

**GENERAL CONDITIONS APPLICABLE TO ALL CROPS:** Fieldwork begins at assigned time shortly after daylight. Work is performed during light rain and in high humidity and in temperatures ranging from 100 (+) degrees to below 35 degrees F. Workers will work on their feet in bent, stooped, and crouched positions for long periods of time. Workers will make fast, simple, repeated movements of fingers, hands, and wrists. Workers must be able to bend, stretch, twist, or reach out with the body, arms, and/or legs. Workers will use muscles to lift, push, pull, or carry heavy objects, such as shrubs or potted plants. These could/will weigh from 50 -75 lbs. occasionally workers will lift trees, shrubs, and other material weighing up to 100 pounds. All the tasks in this Job Description constitute one (1) job; the employer may assign workers to different tasks on any day or to multiple tasks during the same day in the sole judgment of the employer. Workers may be required to perform work, on the farm, that is incidental to farming operation of the listed employers, such as performing hand cultivation tasks, weeding or hoeing, harvesting crops, cleaning and repairing farm buildings, seed beds, racks, grounds, operate tractor/farm equipment incidental crop set up and move irrigation pipes and equipment, gardening, weeding and shrubbing, etc. This is a very demanding and competitive business in which quality specifications must be rigorously adhered to. Sloppy work cannot and will not be tolerated.

**Full Crop Commitment:** This is regular work, seven hours per day, Monday-Friday, and five hours on Saturday for the full remainder of the period of employment. The worker agrees to work for assigned employer(s) whenever work is available during the full remaining period of employment even though work may be slack at times. The worker understands that if he quits or is terminated for cause prior to the end of the period of employment, he will not receive the 3/4 guarantee discussed below and will not receive certain transportation reimbursements discussed below. Excessive tardiness and/or absences will not be tolerated and will result in termination.

Daily individual work assignments, crew assignments, and location of work, will be made by and at the sole discretion of the farm manager and/or farm supervisor as the needs of the farming operation dictate. Workers may be assigned a variety of duties in any given day and/or different tasks on different days. Workers will be expected to perform any of the listed duties and work on any crop as assigned by the worker's supervisor.

#### 11. Wage Rates, Special Pay Information and Deductions:

Harvesting specifications, in particular, can change from time to time during the season due to crop or market conditions, even on the same crop. Workers will be expected to conform to the specific instructions given for each day's work.

The farm owner/supervisor or a designated employee will provide specific instructions and close supervision. Workers will be expected to perform their duties in a timely and proficient manner and will have close supervision to insure adherence to instruction. Work will be closely monitored and reviewed for quality.

All work will be paid the adverse effect wage rate (AEWR) of \$6.74 per hour. In the event DOL promulgates a new AEWR during the recruitment or work contract period, which is lower than the current AEWR at the time of application, this lower AEWR becomes the guarantee at the discretion of the employer. In the event the AEWR is eliminated from the H-2A program during the life of this work agreement, either administratively or legislatively, the employer reserves the right to pay the new wage rate under the new guidelines as soon as it becomes effective.

A). The employer will make the following deductions from the Worker's wages: FICA taxes and State and Federal Income tax as required by law. Cash advances will be deducted in full from the worker's next regular paycheck with the employee's written consent. If the employer does not deduct the advances in full from the next regular paycheck, then thereafter the employer will only deduct, with the employees written consent, up to 10% of the gross wage each pay period until fully paid off. Overpayments will be deducted in full from the workers next regular paycheck with the employees written consent. Repayment of loans made to employees at interest rates less than prime will be deducted from wages, with the employee's written consent, at no more than 10% of the employee's gross wage each pay period until fully paid off. FICA, State and Federal taxes will not be deducted from those worker's wages that are working under a temporary, agricultural visa. No deduction not required by law will be made that brings the worker's hourly earnings below the statutory federal or state minimum wage.

B). Employers guarantee to offer employment for the hourly equivalent of 3/4 of the workdays of the total specified period during which the work contract and all amendments thereof are in effect, beginning with the first workday after the workers' arrival at the assigned Grower's farm, ready, willing, able, and eligible to work and ending on the expiration date specified in the work contract and all extensions thereof or upon the termination of this employment as provided below. For purposes of this guarantee, a "workday" consists of seven hours Monday-Friday and five hours on Saturday. The worker is not required to work on his Sabbath or on federal holidays which are New Year's Day, January 1; Martin Luther King, Jr.'s birthday, the third Monday in January; Presidents Day, the third Monday in February; Memorial Day, the last Monday in May; Independence Day, July 4; Labor Day, the first Monday in September; Columbus Day, the second Monday in October; Veteran's Day, November 11; Thanksgiving Day, the fourth Thursday in November; and Christmas Day, December 25. On certain of these days, work may be available. If the worker at the conclusion of his work agreement has been afforded less employment opportunity than required under this provision, the worker will be paid at his average hourly rate for the hours, in addition to those actually offered, up to the hourly equivalent of the guaranteed number of days. In determining whether the guarantee of employment has been met, any hours, which the Worker fails to work during a workday when the Employer offers him the opportunity to work, and all hours of work actually performed shall be counted toward meeting this guarantee. In addition the employer may count hours of work offered all hours for which work was offered and not worked which do not exceed a total of hours worked and hours offered but not worked of the normal work hour. The guarantee described in this paragraph shall not apply if the worker voluntarily abandons this employment before the end of the contract period or in the event the worker is terminated for a lawful job-related reason. The guarantee described in this paragraph shall not apply to an H-2A alien worker who is terminated because of the employer's compliance with the requirement to employ all qualified eligible US workers who apply during the first 30 days of the employment period in accordance with the rule at 20 CFR 655.102(f)(3)(i), percent of the contract period.

C). This employment guarantee shall be terminated before the end of the Period of Employment if the services of the workers are no longer required for reasons beyond the control of the Employer due to fire, frost, flood, drought, hail, other Act of God which makes fulfillment of this contract impossible. In such cases, the employer will make efforts to transfer worker to other comparable employment acceptable to worker. If such transfer is not effective, workers will be returned at Employer's expense to the place from which Worker, without intervening employment, came to work for employer. In the event of such termination, the 3/4-guarantee period ends on the date of termination. The guarantee shall be void from the beginning should the Worker voluntarily abandon this employment before the end of the contract period or in the event the Worker is terminated for lawful job-related reason.

D). The payroll period shall be weekly. Workers will be paid weekly.

E). Employer will provide a worker referred through the SWA Interstate System forty (40) hours of work for the week beginning with the anticipated date of need, unless the employer has amended the date of need by notifying the local employment service office at least 10 working days prior to the original date of need. If the employer fails to notify the order-holding office, then employer shall pay an eligible worker referred

through the interstate clearance system \$8.74 per hour for the first week, starting with the original anticipated date of need. The employer may require the worker to perform alternative work if the guarantee cited in this section is invoked. If the worker fails to notify the order-holding office of his continuing interest in the job no sooner than nine working days and no later than five working days before the date of need, the worker will be disqualified from the above-mentioned assurance. Alternative work will be general labor and maintenance activities including, cleaning/stacking greenhouse supplies, cleaning and maintaining migrant housing, pulling weeds, fence mending and the repair and maintenance of greenhouse buildings and equipment.

F). The Employer will furnish to the worker, on or before each payday one or more written statements showing the worker's total earnings for the pay period, his hourly rate or piece rate (if applicable); the hours of work which have been offered to the worker, the total hours actually worked by the worker, an itemization of all deductions made from the worker's wages; the worker's net pay; the employer's name, address and IRS identification number.

12. Transportation: In accordance with the regulations found at 20 CFR 655.104(b)(1), (2), and (3) the following paragraphs under section 17 are the terms and conditions, in their entirety, related to the transportation benefit and related subsistence benefit, when applicable, provided under this clearance order.

The Employer will offer transportation to and from the daily work site at no cost to the workers entitled to the housing benefit. The use of this daily transportation by eligible workers is voluntary; no worker is required as a condition of employment to utilize the daily transportation to the worksite offered by the employer. Employer will provide free transportation to eligible workers from the housing site to the worksite and return. Workers are always free to choose their own means of transportation at their own expense.

The following paragraphs related to inbound and outbound transportation pertain only to workers who are not within commuting distance and cannot return to their place of residence the same day and are, therefore, eligible for the benefit.

The Employer will not advance transportation and subsistence costs to the place of employment for any worker.

For US workers eligible for the inbound transportation benefit, the Employer will reimburse US workers who complete 50 percent of the work contract period and who are beyond commuting distance the reasonable cost of transportation and subsistence from the place from which the worker has departed to the employer's place of employment. The amount of the reimbursement for transportation cost will be the worker's actual transportation cost from the place from which the worker has departed to the employer's place of employment, and by regulation is not required to exceed the most economical and reasonable common carrier transportation cost for the distance involved. For eligible foreign (H-2A) workers coming from outside the United States, this reimbursement benefit basis is the place from which the worker departed is the place of recruitment which DOL has interpreted in the regulations to mean the appropriate US consulate or port of entry. All other criteria for this benefit are identical, as described in this paragraph, for foreign and domestic workers. The employer reserves the right to arrange charter or other transportation to assure the lowest available inbound transportation cost. Such inbound transportation will be at the worker's expense. Workers who do not avail themselves of such transportation, when available, will be reimbursed only the per worker cost of the employer-arranged transportation.

The employer will reimburse workers' costs of inbound transportation and subsistence to the extent required by the H-2A regulations not later than the date on which the worker has completed 50 percent of the period of employment beginning on the first day the worker is at the place of employment and available for work and the ending date of employment set forth in Item 6. The employer will provide or pay for workers' return transportation and subsistence to the extent required by the H-2A regulations for workers who complete the period of employment set forth in Item 6 or whose services are no longer required by the employer, whichever occurs first. Reimbursement of inbound and return transportation will only be provided to workers upon agreeable completion of the work agreement, except when the worker will not be returning to the place of recruitment, due to subsequent employment with another employer who does not agree to pay such costs, in which case the employer only pays for the transportation and subsistence to the next job.

For US workers who complete the work contract and are eligible for the outbound transportation benefit, the Employer will provide or pay for the worker's reasonable cost of return transportation and subsistence from the place of employment to the place from which the worker departed to work for the employer, except when the worker will not be returning to the place of recruitment due to subsequent employment with another employer. If the subsequent employer has not agreed to provide or pay for the worker's transportation to the subsequent place of employment, the Employer will provide or pay for the transportation and subsistence to the subsequent place of employment in lieu of providing or paying for such expenses from the place of employment to the place from which the worker departed to work for the employer. If the subsequent employer has agreed to provide or pay for the worker's transportation and subsistence to the subsequent place of employment the Employer will not provide or pay for such expenses. For foreign (H-2A) workers who came to work from outside the United States, this outbound transportation benefit basis is the place from which the worker has departed will be considered to be the appropriate US consulate or port of entry as interpreted by DOL in the regulations. All other criteria for this benefit are identical, as described in this paragraph, for foreign and domestic workers. The Employer reserves the right to arrange charter or other return transportation. Workers eligible for this benefit who do not wish to avail themselves of employer arranged return transportation would be provided their outbound transportation and subsistence checks through the grower via US mail. In those circumstances, the grower will distribute the checks as soon as all work is completed, as determined by the employer, and the worker is ready to depart. Workers may select any means of transportation home they choose, however, the reimbursement is limited to the most economical and reasonable common carrier transportation cost for the distance involved. Workers who arrange their own transportation understand they assume all liability and hold harmless the growers/association for any damages, injuries, and personal or property losses.

The employer will not reimburse, pay for or provide transportation and subsistence to a worker who does not provide documentation of identity and employment eligibility required to complete INS Form I-9, or who has knowledge at the place of recruitment that he can not perform the duties of the job as described in this job order, or who abandons his employment, or who is discharged for lawful job related reasons. The

Employer will provide or pay for transportation and subsistence under this agreement if the worker is terminated because of work related injury and is so certified by a doctor acceptable to the Employer before leaving the place of employment, or is terminated because of an Act of God which makes fulfillment of the work contract impossible, as provided in paragraph 9C, or if the worker is displaced by a U.S. worker under the 30 day rule in 20 CFR 655.102(f)(3)(i).

Daily subsistence reimbursement will be paid to workers who are eligible for reimbursement of transportation costs in accordance with the regulations at 20 CFR 655.104(h)(1), which refers to 20 CFR 655.104(g) and is governed by 20 CFR 655.114(a), which is capped at \$9.90 per day for 3 meals under the regulation.

**Other Conditions of Employment:** A). Termination: Employer may terminate the worker for lawful job-related reasons and so notify the Job Service local office if the worker: a) refuses without justified cause to perform work for which the worker was recruited and hired, b) commit serious act(s) of misconduct or serious or repeated violation(s) of the assigned grower's work rules; the Employer may make and post work rules which shall apply to this employment; the worker shall abide by such rules (a copy of Work Rules is attached) c) fails after completing the training period to perform the work as specified in Item 11 and Attachment, or d) malingers or otherwise refused without justified cause to perform as directed the work for which the Worker was recruited and hired; e) provides other lawful job-related reason(s) for termination of employment f) abandons this employment; two consecutive scheduled working days of unexcused absence shall be an abandonment of employment; employees must notify the assigned Grower and secure permission for necessary absences g) falsifying identification, personnel, medical, production or other work related records h) fails or refuses to take random drug test for all employees i) commits acts of insubordination. Reason beyond employer's control" includes termination of workers, if he not a U.S. worker because a U.S. worker makes himself available for the job under DOL's 50% rule. Workers must notify the employer prior to voluntarily terminating their employment. All wages due will be forwarded to the last known address for Workers that leave without providing notice. It is imperative that workers provide a complete and accurate address to the employer no later than the first day of employment. These employers have a no complete, no rehire policy. Termination for lawful job related reasons before the specified ending date listed in this application will disqualify the employee from future employment opportunities with this employer. Workers who abandon their employment without notice during the period covered by this work agreement will be disqualified from future employment opportunities with this employer. Voluntary resignation before the specified ending date listed in this application may disqualify the employee from future employment opportunities with this employer. For workers who resign their employment voluntarily, the employer will consider and evaluate special circumstances and hardship cases on a case-by-case basis. Employees, without exception, are required to notify appropriate supervisory staff prior to voluntarily terminating their employment to be considered and eligible for exemption to the no complete - no rehire policy.

B). The employer may discipline the worker, including requiring the worker to leave the field ("time out") for a period determined by the foreman, suspension from employment for up to three days, or termination of employment as described in termination (A) above.

C). Injuries: Worker will be covered by Worker's Compensation Insurance or equivalent employer provided insurance for injuries arising out of and in the course of employment. Employer's proof of insurance coverage will be provided to the Regional Administrator before certification is granted. All workers must report all injuries and illnesses to their employer. Failure not to do so may result in termination.

D). Employer Obligation if Employment Extended: No extension of employment beyond the Period of Employment specified in the job order shall relieve the Employer from paying the wages already earned, or if specified in the job order as a term of employment, providing return transportation or paying return transportation expenses to the Worker.

E). Employer Notification of Changes in Employment Terms and Conditions: Employers will expeditiously notify the order-holding local office or State agency by telephone immediately upon learning that a crop is maturing earlier or later, or that weather conditions, over recruitment, or other factors have changed the terms and conditions of employment. The terms of this Work Agreement thereafter may be changed upon posted notice to the Worker.

F). Outreach Workers: Outreach workers shall have reasonable access to the Worker in the conduct of outreach activities pursuant to 20 CFR 653.107 and 20 CFR 653.501.

G). Training: There will be a short demonstration period (up to 1 hr.) to familiarize workers with job specifications, to demonstrate proper methods and other crop specific issues. The employer will not provide separate formal orientation or training periods for each different crop or each different type of task or job assignment covered within the job description. After completion of the training period the employer will expect all workers to possess the skills to work in the production of the crops noted in Item II. For purposes of this section seven or more hours will be considered one day.

H). Work Agreement: A copy of the contract or Job Clearing Order and work rules (copy attached) will be provided to the worker by the employer no later than on the day the work commences.

I). U.S. workers may or may not be covered by unemployment insurance and may or may not be eligible under current unemployment regulations

J). Employer agrees to abide by the regulations at 20 CFR 655.103, Assurances, and 20 CFR 653.501.

K). The employer as a part of positive recruitment as per 20 CFR 655.105(a) is willing, if and when any substantial number of applicants are available, to coordinate group transportation arrangements (to facilitate their purchase of bus tickets etc.), where appropriate, and to provide any additional information that workers need to coordinate their arrival.

L). The employer is an equal opportunity employer. Women and minorities are encouraged to apply for these jobs.

M). There are not any strikes, work stoppage, slowdowns or interruption of operations by employees at the place where the workers will be employed.

N). For workers covered by 29 CFR 500.075(8) there are not any arrangements made with establishment owners or agents for the payment of a commission or other benefits for sales made to the workers.

O). **SUBSTANCE ABUSE POLICY:** This employer will strive to provide a safe and healthful work environment, free of substance abuse, for the protection of our associates, employees and visitors. All applicants will be required to pass a pre-employment drug test. The use, possession or being under the influence of illegal drugs or alcohol during working time is prohibited. (Alcohol may be permitted in the housing facility outside work hours.) Employees may be requested to take random drug tests at no cost to the worker. Failure to comply with the request or testing positive will result in immediate termination.

P. **Grievance and Arbitration Procedure:** As required by Department of Labor regulations, all workers (foreign or domestic) have a right to file a grievance or complaint with the nearest local office of the New York Employment Security Commission, as described in 20 CFR 658, Subpart E (Job Service Complaint System). As an option, Russell's Tree & Shrub Farm, LLC, provides a grievance and arbitration procedure available to all workers (domestic and/or foreign) for the resolution of grievances involving Covered Rights arising out of employment under this clearance order. This procedure is established for workers, at no cost to the worker, to use for the resolution of complaints not made through an administrative process (such as through the Job Service Complaint System, the New York Employment Security Commission, the U.S. Department of Labor, the Equal Employment Opportunity Commission, etc.). Employees must agree to use this procedure as an alternative to filing suit in local, state or federal court as a condition of employment.

If a timely filed grievance under the Russell's Tree & Shrub Farm, LLC procedure involving a Covered Right is not resolved to the satisfaction of the worker and/or has not been referred to a government agency, the worker may request confidential, binding arbitration of the grievance as the worker's sole remedy. A Covered Right is defined as a violation of statutory or common law rights, such as discrimination, harassment, or retaliation based on race, sex, national origin, color, religion, age, or disability; wrongful termination or constructive discharge; workers' compensation retaliation, denial of medical leaves under any law, including the Family and Medical Leave Act; common-law torts based on negligence or intentional acts; breaches of contract; "right to work" violations; and disputes regarding pay, including claims under the Fair Labor Standards Act and any applicable state wage and hour law.

\*Use of the masculine pronoun herein is for convenience of reference only.

## WORK RULES

The following work rules are intended to provide guidance to workers on the standards of conduct and performance expected of them by the Employer. Violation of these rules or other lawful job-related employer requirements, including these work rules, would be considered grounds for discipline or immediate discharge. Penalties for infractions may include suspension from work without pay for the remainder of the day, or for up to three days, in the sole judgment of the Employer, depending on the seriousness of the infraction, the worker's prior record, and other relevant factors. Repeated, serious, or aggravated infractions may result in immediate discharge. Workers are expected to comply with all rules relating to discipline, attendance, work quality and quantity, and the maintenance of all property.

1. Workers must perform their assigned work in a careful, workmanlike manner in accordance with the provision of the work contract. Sloppy work will not be tolerated.
2. Use or possession of alcoholic beverages or illegal drugs is strictly prohibited during work time or during any workday before work is completed for the day (such as during meals); workers may not report for work under the influence of alcoholic beverages or illegal drugs. Illegal drugs may not be used or kept on any employer premises, including housing at any time. Use or possession of illegal drugs, failing or refusing to take a drug test will be **CAUSE FOR IMMEDIATE TERMINATION**.
3. Excessive absences and/or tardiness will not be permitted. Employees are expected to be present, on time, able and willing to perform the assigned work every scheduled workday. This is not sporadic or "day work." Excessive absences are defined as: Two consecutive days of unexcused absences or three unexcused absences in a 30-day period. Violation will be **CAUSE FOR IMMEDIATE TERMINATION**. Workers must report at assigned time and place each workday as directed by the grower or supervisor. **WORKERS WILL BE DISCHARGED FOR EXCESSIVE TARDINES**. Excessive tardiness is defined as 2 unexcused tardies in a row or 5 unexcused tardies in a period of thirty days.
4. Workers shall maintain and keep the living quarters provided to them in compliance with OSHA 1910.142 Standards as posted in the housing and in clean condition and in good repair, allowing for reasonable wear and tear. Workers shall cooperate with other workers assigned to such housing in maintaining common kitchen and living areas in good condition. Workers will be required to keep the exterior area surrounding the camp clean and clear of debris. Workers shall promptly report any problems with housing to the employer or designated supervisor.
5. Workers living in employer's housing assigned to bunk beds may not separate bunk beds, as floor space in sleeping rooms is needed by all occupants.
6. Workers living in employer's housing may not cook in sleeping rooms or any other non-kitchen areas. Workers are forbidden from removing batteries from smoke detectors for any reason. **VIOLATION WILL BE CAUSE FOR IMMEDIATE TERMINATION**.
7. Workers must not drop paper, cans, bottles and other trash in fields, packing house, or on housing premises. Trash and waste receptacles must be used.
8. Workers may not take unauthorized breaks from work.
9. Workers may not leave the field or other assigned work area without permission of farmer or person in charge.
10. Workers may not enter employer's premises without authorization.
11. Workers may not begin work prior to scheduled starting time or continue working after stopping time unless authorized by the employer.
12. Workers living in employer's housing may have guests on housing premises so long as there is no behavior hurtful to others. No persons, other than workers assigned by employer to a room, may sleep in any room.
13. Workers may not deliberately restrict production.

NY work rules English

## REGLAS DE TRABAJO

Las reglas de trabajo siguientes son queridas para proporcionar la dirección a trabajadores en los estándares de conducta e interpretación esperada de ellos por el Patrón. La violación de estas reglas u otras exigencias de patrón relacionadas con el trabajo legales, incluso estas reglas de trabajo, será considerada tierra para disciplina o descarga inmediata. Las penas para infracciones pueden incluir la suspensión del trabajo sin la paga para el resto del día, o durante hasta tres días, en el único juicio del Patrón, según la seriedad de la infracción, el registro previo del trabajador, y otros factores relevantes. Las infracciones repetidas, serias, o agravadas pueden causar la descarga inmediata. Se espera que trabajadores cumplan con todas las reglas acerca de disciplina, asistencia, calidad de trabajo y cantidad, y el mantenimiento de toda la propiedad.

1. Los trabajadores deben realizar su trabajo adjudicado en una manera cuidadosa, parecida a un trabajador de acuerdo con la provisión del contrato de trabajo. El trabajo descuidado no será tolerado.
2. El uso o la posesión de bebidas alcohólicas o medicinas ilegales son estrictamente prohibidos durante el tiempo de trabajo o durante cualquier día laborable antes de que el trabajo sea completado para el día (como durante comidas); los trabajadores pueden no hacer un informe para el trabajo bajo la influencia de bebidas alcohólicas o medicinas ilegales. Las medicinas ilegales no pueden ser usadas o siguieron cualquier local de patrón, incluso el alojamiento en cualquier momento. El uso o la posesión de medicinas ilegales, fallando o rechazando tomar una prueba de medicina serán **CAUSA PARA LA TERMINACIÓN INMEDIATA**.
3. Las ausencias excesivas y/o la tardanza no serán permitidas. Se espera que empleados estén presentes, a tiempo, capaces y complacientes a realizar el trabajo adjudicado cada previsto el día laborable. Este no es el "o trabajo de día esporádico." Las ausencias excesivas son definidas como: Dos días consecutivos de ausencias no perdonadas o tres ausencias no perdonadas en un periodo de un 30 día. La violación será **LA CAUSA PARA LA TERMINACIÓN INMEDIATA**. Los trabajadores deben hacer un informe en tiempo adjudicado y lugar cada día laborable como dirigido por el cultivador o supervisor. **Los TRABAJADORES SERÁN DESCARGADOS PARA LA TARDANZA EXCESIVA**. La tardanza excesiva es definida cuando 2 no perdonó tardes en fila o 5 no perdonó tardes en un periodo de treinta días.
4. Los trabajadores mantendrán y guardarán la residencia proporcionada a ellos conforme a OSHA 1910.142 Estándares como fijado en el alojamiento y en la condición limpia y en la reparación buena, tener en cuenta el desgaste razonable. Los trabajadores cooperarán con otros trabajadores adjudicados a tal alojamiento en el mantenimiento de cocina común y áreas vivas en buenas condiciones. Se requerirá que trabajadores guarden el área exterior que rodea el campo limpio y libre de escombros. Los trabajadores relatarán puntualmente cualquier problema con el alojamiento al patrón o supervisor designado.
5. Los trabajadores que viven en el alojamiento del patrón adjudicado a literas pueden no separar literas, cuando el espacio en cuartos durmientes es necesario por todos los inquilinos.
6. Los trabajadores que viven en el alojamiento del patrón pueden no cocinarse en cuartos durmientes o ninguna otra no cocina. Los trabajadores están prohibidos de quitar baterías de detectores de humo por cualquier razón. **LA VIOLACIÓN SERÁ LA CAUSA PARA LA TERMINACIÓN INMEDIATA**.
7. Los trabajadores no deben dejar caer papel, latas, botellas y otra basura en campos, embalando la casa, o en el alojamiento del local. La basura y los receptáculos de desecho deben ser usados.
8. Los trabajadores pueden no tomar rupturas no autorizadas del trabajo.
9. Los trabajadores pueden no dejar el campo u otra área de trabajo adjudicada sin el permiso de agricultor o persona responsable.
10. Los trabajadores pueden no entrar en el local del patrón sin la autorización.
11. Los trabajadores pueden no comenzar el trabajo antes del tiempo inicial previsto o seguir trabajando después del tiempo parador a menos que no autorizado por el patrón.

**CONDITIONAL ACCESS**

The request for conditional access into the intrastate or interstate clearance system is made on behalf of indicated employer whose housing has not yet been inspected and found in compliance with applicable regulations and is made with the express understanding that the respective employer assumes the obligation under the applicable regulations for timely compliance with applicable housing standards. See addendum.

Rennell Miller Pres  
Signed

09/02/09  
Date



## Agency and Indemnity Agreement

This Agency and Indemnity Agreement (the "Agreement") entered into by and between the International Labor Management Corporation, Inc. (the "ILMC"), an agricultural labor consulting firm in the state of North Carolina and Russell's Tree & Shrub Farm, an agricultural producer(s) in the state of New York, who is a Client of the ILMC ("Client").

WHEREAS, the ILMC is qualified and capable as Agent of rendering consulting and administrative services necessary to assist the Client in participating in the H-2A program and for the client to obtain supplementary foreign workers under the labor certification process for temporary agricultural employment in the United States ("H-2A workers") to meet the reasonable labor requirements; and

WHEREAS, the Client desires to avail himself of the consulting and administrative services of the ILMC as Agent in participating in the US government authorized H-2A alien certification program to meet the Client's reasonable labor requirements for the calendar year beginning January 1, 2010;

NOW THEREFORE, in consideration of the payment by the Client of the established dues, admission fees and other assessments and such costs as are charged from time to time for providing the services requested by the Client, and for other good and sufficient consideration, including the mutual promises contained in the ILMC Bylaws and this Agreement, pursuant to the requirements of 20 C.F.R. 655.101 (a)(3), and the parties hereto further agree as follows:

### A. ILMC Obligations

- (1) The ILMC will prepare and process forms and documents pursuant to applicable laws and regulations of the United States Department of Labor and the United States Immigration and Naturalization Service required for the client to participate in the US government authorized H-2A alien certification program.
- (2) The ILMC, on behalf of its Client, will undertake the administrative tasks of the domestic recruitment requirements as established by the regulations and guidelines of the United States Department of Labor (listing the job order with the appropriate State Employment Service Agency, and preparing and filing the necessary recruitment report for the United States Department of Labor), in order for the client to participate in the H-2A program.
- (3) The ILMC will maintain, either directly or through its designated representatives, all contacts with the State Workforce Agency, the State Department of Labor, the United States Department of Labor, and the United States Citizenship and Immigration Services, and other governmental agencies necessary to effectuate the purpose of this Agreement.

### B. Client Obligations

- (1) The Client agrees to comply timely with all reasonable policies, procedures, and schedules established by the ILMC which it considers essential for compliance with laws and regulations, successful participation and for the proper operation of the H-2A program.
- (2) The Client agrees to comply with all of the terms and conditions of employment made by the ILMC on the Client's behalf in the Agricultural and Food Processing Clearance Order, ETA Form 790, and Application for Alien Employment Certification, ETA 750 ("Job Order") and with each term of the agricultural work agreement, which describes all the material terms and conditions of employment, that is entered into with both U.S. and H-2A workers by the Client. The Client agrees to familiarize

himself with the terms and conditions of employment in the job order and the agricultural work agreement and to comply with all obligations imposed on the Client as an employer of U.S. and/or H-2A migrant and/or seasonal agricultural labor found in applicable law and regulations, including without limitation, those at 20 C.F.R. Parts 653 and 655.

- (3) In particular, but not limiting the foregoing, the Client agrees a) to pay worker's required wages and benefits, b) to make those deductions from the worker's paychecks which are required and only those deductions allowed by law, c) to provide housing as required which meets all applicable standards, d) to reimburse timely required transportation and associated daily subsistence costs, e) to provide written statements of the worker's total earnings, hourly rate and/or piece rate of pay, the hours of employment which had been offered to the worker, the hours actually worked by the worker, and itemization of all deductions made from the worker's wages and, if rates are used, the units produced daily, and f) to terminate the worker only for lawful job related reasons.
- (4) The Client agrees to pay timely any judgment or penalty entered against Client and to indemnify and hold harmless the ILMC and any of its other Clients for judgments entered against it or them arising out of the Client's violation of his obligations under applicable law or regulation (including 20 C.F.R. Parts 653 and 655), the job order or the agricultural work agreement and any attorneys' fees and costs incurred by the ILMC or other Clients in defending against such claim. Client acknowledges that the laws and regulations governing the employment of migrant and seasonal farm labor and supplementary foreign agricultural workers are subject to disputed interpretations. Therefore, the Client agrees that in matters in which a claim is made or litigation is instituted against the ILMC, the Board of Directors may exercise its discretion a) to settle such matters on behalf of itself and the Client on terms it deems appropriate, b) to litigate such matters, and c) to determine whether such settlements, judgments, penalties, costs and attorneys fees will be borne by the Client out of whose alleged action or inaction the claim was asserted or, what amount, if any, will be borne by the ILMC and/or shared among its Clients. The terms of this Paragraph 4 survive any future separation of the parties to this agreement and the term of this Agreement.
- (5) The Client agrees to pay the ILMC any assessment made by the ILMC as the Client's share of legal and any other expense or liability incurred by the ILMC in defending, prosecuting or settling any application for H-2A certification, claim, litigation, or administrative complaint or appeal, whether or not arising out of claims against the Client or arising out of the fault of the Client, in accordance with a formula approved by the ILMC. The terms of this paragraph 5 survive any future separation of the parties to this agreement and the term of this Agreement.

*Demetrius G. Galloway*  
Client Signature

*Per*  
Title

*Sarah E. Farrell*  
Sarah E. Farrell, President, ILMC

12. Los trabajadores que viven en el alojamiento del patrón pueden tener a invitados en el alojamiento del local mientras que no hay ningún comportamiento hiriente a otros. Ningunas personas, además de trabajadores adjudicados por el patrón a un cuarto, pueden dormir en cualquier cuarto.
13. Los trabajadores pueden no restringir deliberadamente la producción.
14. Cualquier trabajador que verbalmente o físicamente amenaza a otro trabajador, el agricultor o cualquier supervisor con cualquier instrumento o arma ESTARÁ SUJETO LA DESCARGA INMEDIATA TO.
15. LOS TRABAJADORES SERÁN DESCARGADOS para luchar en el local del patrón, incluso el alojamiento del local, en cualquier momento.
16. Los trabajadores pueden no fijar o quitar ningún aviso, signos, u otras instrucciones de tabloncitos de anuncios del patrón o propiedad del patrón sin autoridades específicas del patrón.
17. LOS TRABAJADORES SERÁN DESCARGADOS si ellos roban de compañeros de trabajo o del patrón.
18. Los trabajadores pueden no falsificar identificación, personal, médico, producción u otros archivos relacionados con el trabajo. Los INFRACTORES ESTARÁN SUJETOS LA DESCARGA INMEDIATA TO.
19. Los trabajadores pueden no abusar voluntariamente o destruir ninguna maquinaria, camión u otro vehículo, equipo, instrumentos u otra propiedad que pertenece al patrón o a otros empleados. LOS INFRACTORES ESTARÁN SUJETOS LA DESCARGA de TO INMEDIATAMENTE.
20. Los trabajadores pueden no usar o hacer funcionar camiones u otros vehículos, máquinas, instrumentos u otro equipo y propiedad a la cual el trabajador no ha sido expresamente adjudicado por su supervisor. Los trabajadores pueden no usar o hacer funcionar camiones u otros vehículos, instrumentos u otro equipo o propiedad para su uso privado a menos que expresamente no autorizado por el patrón.
21. Los trabajadores pueden no emplear mal o quitar del local de granja sin la autorización de su supervisor ninguna propiedad de patrón como camiones y otros vehículos, camas, refrigeradores, instrumentos, etc. Los INFRACTORES ESTARÁN SUJETOS LA DESCARGA de TO INMEDIATAMENTE
22. Los trabajadores deben obedecer todas las reglas de seguridad y prácticas de seguridad comunes y deben relatar cualquier herida o accidentes a su supervisor o el patrón tan pronto como es razonablemente posible. El COMPORTAMIENTO DE TRABAJO INSEGURO PUEDE SUJETAR AL INFRACTOR PARA DESCARGAR.
23. Los trabajadores deben seguir las instrucciones del supervisor.
24. Los trabajadores pueden no cometer actos de la insubordinación - fracaso de considerar autoridades.
25. Después del período de adiestramiento, esperan a trabajadores a tropas las habilidades necesarias de realizar el trabajo descrito en el contrato de trabajo y al estándar puesto por el patrón.
26. Los trabajadores pueden no interrumpir otros trabajadores descansar/duermen el período por ruido excesivo o escándalo. Los trabajadores no deben tocar la música fuerte después 9:00 de la tarde durante noches de trabajo o después 12:00 de la tarde el sábado por la noche.
27. Los trabajadores no engranarán a sabiendos en ningún tipo del comportamiento o tomarán cualquier acción que podría hacer que el cultivador fuera fuera de la conformidad con cualquier ley local, estatal, o federal.

14. Any worker who verbally or physically threatens another worker, the farmer or any supervisor with any tool or weapon **WILL BE SUBJECT TO IMMEDIATE DISCHARGE.**
15. **WORKERS WILL BE DISCHARGED** for fighting on the employer's premises, including housing premises, at any time.
16. Workers may not post or remove any notices, signs, or other instructions from the employer's bulletin boards or the employer's property without specific authority from the employer.
17. **WORKERS WILL BE DISCHARGED** if they steal from fellow workers or from the employer.
18. Workers may not falsify identification, personnel, medical, production or other work-related records. **VIOLATORS WILL BE SUBJECT TO IMMEDIATE DISCHARGE.**
19. Workers may not willfully abuse or destroy any machinery, truck or other vehicle, equipment, tools or other property belonging to the employer or to other employees. **VIOLATORS WILL BE SUBJECT TO DISCHARGE IMMEDIATELY.**
20. Workers may not use or operate trucks or other vehicles, machines, tools or other equipment and property to which the worker has not been specifically assigned by his supervisor. Workers may not use or operate trucks or other vehicles, tools or other equipment or property for their personal use unless expressly authorized by the employer.
21. Workers may not misuse or remove from the farm premises without authorization from his supervisor any employer property such as trucks and other vehicles, beds, refrigerators, tools, etc. **VIOLATORS WILL BE SUBJECT TO DISCHARGE IMMEDIATELY**
22. Workers must obey all safety rules and common safety practices and must report any injuries or accidents to their supervisor or the employer's as soon as is reasonably possible. **UNSAFE WORK BEHAVIOR MAY SUBJECT THE VIOLATOR TO DISCHARGE.**
23. Workers must follow supervisor's instructions.
24. Workers may not commit acts of insubordination - failure to regard authority.
25. After the training period, workers are expected to possess the skills necessary to perform the job described in the work agreement and to the standard set by the employer.
26. Workers may not interrupt other workers rest/sleep period by excessive noise or commotion. Workers must not play loud music after 9:00 PM on work nights or after 12:00 PM on Saturday night.
27. Workers will not knowingly engage in any type of behavior or take any action that might cause the grower to be out of compliance with any local, state, or federal law.

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