

## COMMERCIAL LEASE

**DATE:** January 1, 2018

**BETWEEN:** Oregon City Urban Renewal Agency  
625 Center Street  
Oregon City, Oregon 97045 (“Landlord”)

**AND:** Clackamas Landscape Supply, Inc.  
Steven C. Pearson, President  
P. O. Box 610  
Oregon City, Oregon 97045 (“Tenant”)

### RECITALS

**A.** Landlord owns a certain parcel of real property located at 1795 Washington Street, Oregon City, Oregon, and commonly known as Assessor’s Map No. 2-2E-29, Tax Lot 1402 (“Tax Lot 1402”). Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, that certain portion of Tax Lot 1402 depicted on Exhibit A attached hereto and by this reference incorporated herein as the “Use Area” of Tax Lot 1402, consisting of approximately 225,970 square feet (the “Property”).

**B.** Landlord desires to lease the Property to Tenant, and Tenant desires to lease the Property from Landlord, subject to the terms and conditions set forth below, including the condition that this Lease be approved by the Oregon City Urban Renewal Commission.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties, intending to be legally bound, agree as follows:

### AGREEMENT

#### 1. NEW LEASE AGREEMENT.

**1.1. New Lease; Contingency.** In consideration of the covenants and agreements herein contained to be paid, kept and faithfully performed by Tenant, Landlord does hereby lease the Property to Tenant, and Tenant does hereby lease the Property from Landlord, on the terms and conditions stated herein. This Lease shall be contingent on approval of the City of Oregon City Urban Renewal Commission, and shall be null and void if such approval is not obtained by April 4, 2018. The parties agree that if such approval is obtained by such date, the terms of this Lease shall be effective retroactive to January 1, 2018.

**1.2. Term.** The term of this Lease shall be for a period of three years, commencing on January 1, 2018, and expiring at midnight on December 31, 2020, unless sooner terminated as provided herein. Notwithstanding the foregoing, Landlord may terminate this Lease at any time during the term of this Lease, including any renewal term, by providing Tenant with not less than twelve (12) months’ prior written notice of termination.

**1.3. Possession.** Tenant acknowledges that Tenant is currently in possession of the Property, and accordingly, Tenant’s right to possession under this Lease shall commence immediately upon mutual execution of this document.

**1.4. Renewal Terms.** If this Lease is not in default at the time each option is exercised or at the time the renewal term is to commence, Tenant shall have the option to renew this Lease for two (2) successive terms of one (1) year each, as follows:

**1.4.1** The option may be exercised by written notice to Landlord given not less than 60 days before the last day of the expiring term. Giving such notice shall be sufficient to make this Lease binding for the renewal term without further act of the parties; provided, however, if Landlord has provided Tenant with a notice of termination under Section 1.2 above, whether before or after Tenant exercises its option to renew, the renewal term shall expire on the termination date set forth in the termination notice. Upon Tenant exercising its option to renew as provided herein, Landlord and Tenant shall then be bound to take the steps required in connection with the determination of rent as specified below.

**1.4.2** Each renewal term shall commence on the day following expiration of the preceding Term.

**1.4.3** The terms and conditions of the Lease for each renewal term shall be identical with the original Term, except for rent and except that Tenant will no longer have any option to renew this Lease for the option that has been exercised.

**1.4.4** The monthly base rent for a renewal term shall be the greater of (a) the monthly base rent during the preceding term, plus two and one-half percent (2.5%); or (b) a reasonable rental for the ensuing term as agreed by the parties. If the parties do not agree on a reasonable rental within 30 days after Landlord's receipt of Tenant's notice of election to renew, the reasonable rental for the ensuing term shall be determined by a qualified, independent real property appraiser familiar with commercial rental values in the Oregon City, OR area. The appraiser shall be chosen by Tenant from a list of not fewer than three such persons submitted by Landlord. If Tenant does not make the choice within five days after submission of the list, Landlord may do so. If Landlord does not submit such a list within 10 days after written request from Tenant to do so, Tenant may name as an appraiser any individual with such qualifications. Within 30 days after the appraiser's appointment, the appraiser shall make a determination of the reasonable rental for the ensuing term, which shall be final and binding on both parties. Regardless of the appraiser's determination of the reasonable rent, in no event shall the monthly base rent be less than the monthly base rent during the preceding term, plus two and one-half percent (2.5%). The cost of the appraisal shall be borne equally by both parties.

**1.5. Condition of Property.** Landlord makes no representations or warranties as to the condition of the Property or any improvements thereon and Tenant accepts the Property in "AS-IS" condition.

## **2. RENT.**

**2.1. Base Rent.** For the twelve month period beginning January 1, 2018 and ending on December 31, 2020, Tenant shall pay the following monthly base rent to Landlord for the Property: **\$3,483.02 (three thousand four hundred eighty three and 02/100 dollars)**. For the twelve-month period beginning January 1, 2019 and ending on December 31, 2019, monthly base rent shall increase by two and one-half percent (2.5%) over monthly base rent for the immediately preceding twelve-month period. For the twelve-month period beginning January 1, 2020 and ending on December 31, 2020, monthly base rent shall increase by two and one-half percent (2.5%) over monthly base rent for the immediately preceding twelve-month period. Monthly base rent for any renewal period shall be determined as provided in Section 1.4.4 above. Rent shall be payable on the first day of each month in advance at such place as may be designated by Landlord.

**2.2. Security Deposit.** No security deposit is required for this Lease.

**2.3. Additional Rent.** All insurance costs and utility charges that Tenant is required to pay by this Lease, and any other sum that Tenant is required to pay to Landlord or third parties, shall be additional rent.

**2.4. Taxes.** Tenant shall be responsible for all real property taxes and assessments levied during the lease term on Tax Lot 1402. Tenant shall be responsible for payment of the entire amount of personal property taxes for improvements (including any office structure) located on the Property and separately assessed on the tax rolls; provided, however, that Tenant shall not be responsible for payment of any property taxes for improvements not located on the Property (but located on the same tax lot) and separately assessed on the tax rolls. All real property taxes and assessments payable for a period, part of which is during and part of which is before or after the lease

term, shall be prorated between Landlord and Tenant. In 2017/2018, these property taxes were as follows: 1795 Washington Street \$8,451.58.

The Landlord shall pay any property taxes due (excluding real property taxes billed directly to Tenant) prior to their due date and send a bill to the Tenant seeking reimbursement of any property taxes paid. Reimbursement by Tenant shall be made within thirty (30) days after billed by Landlord, and any late payment shall be subject to a late payment charge as provided in Section 2.5.

**2.5. Late Payment.** Tenant hereby acknowledges that late payment by Tenant to Landlord of rent and other charges due under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. If any installment of rent or any other charge due from Tenant is not received by Landlord within ten (10) days after such amount shall be due, then, at Landlord's election and upon Landlord's demand, Tenant shall pay to Landlord a late charge equal to five percent (5%) of such overdue amount, and in such event the parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of the late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any other rights and remedies granted to it hereunder.

### **3. USE OF PROPERTY.**

**3.1. Permitted Use.** The Property shall be used for the operation of a landscape supply company and for no other purpose without the prior written consent of Landlord.

**3.2. Restrictions on Use.** In connection with the use of the Property, Tenant shall:

**3.2.1** Promptly conform to and comply with, and cause all other persons to conform to and comply with, all laws, ordinances, regulations, directions, rules, and other requirements of all public authorities applicable to the use or occupancy of the Property and, in this respect, promptly correct at Tenant's expense any failure of compliance, and promptly make all required repairs, alterations, and additions.

**3.2.2** Refrain from any activity that would make it impossible to insure the Property against casualty, would increase the insurance rate, or would prevent Landlord from taking advantage of any ruling of the Oregon Insurance Rating Bureau, or its successor, allowing Landlord to obtain reduced premium rates for long-term fire insurance policies.

**3.2.3** Refrain from any use that would be reasonably offensive to owners or users of neighboring premises or that would tend to create a nuisance or damage the reputation of the Property.

**3.2.4** Comply with all rules and regulations as may be adopted and made available to Tenant by Landlord from time to time for the safety, care, cleanliness and orderly operation of the Property.

**3.3. Hazardous Substances.** Tenant shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, discharged or otherwise released on or under the Property. Tenant may use or otherwise handle on the Property only those Hazardous Substances typically used or sold in the prudent and safe operation of the business specified in Section 3.1; provided, however, if the Tenant uses or handles Hazardous Substances on the Property in the operation of the business specified in Section 3.1, Tenant shall assume full and complete responsibility therefore and all liability and expense relating thereto or arising therefrom. Tenant may store such Hazardous Substances on the Property only in quantities necessary to satisfy Tenant's reasonably anticipated needs. Tenant shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Property. Upon the expiration or termination of this Lease, Tenant shall, at Tenant's sole expense, remove all Hazardous Substances brought or permitted by Tenant from the Property. If Tenant breaches the obligations stated in this Section 3.3, or if the presence of Hazardous Materials on the Property caused or permitted by Tenant results in contamination of the Property, then Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities,

or losses (including without limitation diminution in value of the Property, damages for the loss or restriction on the use of rentable or usable space or of any adverse impact on marketing of space on the Property, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the lease term as a result of such contamination. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remediation, removal or restoration work required by any federal, state or local governmental agency, political subdivision, lender or buyer because of Hazardous Material present in the soil or groundwater on or under the Property brought or permitted by Tenant, diminution in value of the Property, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Property, and sums paid in settlement of claims, attorneys' fees, consultant fees, laboratory fees and expert fees. Without limiting the foregoing, if the presence of any Hazardous Materials on the Property caused or permitted by Tenant results in any contamination of the Property, Tenant shall promptly take all actions, at its sole expense, as are necessary to return the Property to the condition existing prior to the contamination of the Property by any such Hazardous Materials. Tenant will deliver to Landlord copies of any documents received from, or sent by Tenant to, the United States Environmental Protection Agency and/or any state, county or municipal environmental or health agency concerning the Tenant's operations on the Property. The term Environmental Law shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety or the environment. The term Hazardous Substance shall mean any hazardous, toxic, infectious or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

**3.4. Continuity of Use.** Tenant shall occupy the Property continuously for the purpose stated in Section 3.1 and carry on business during the hours customary in comparable businesses similarly situated.

#### **4. REPAIRS AND MAINTENANCE.**

**4.1. Tenant's Obligations.** Tenant shall, at Tenant's sole cost and expense, maintain and keep the Property, and all improvements now located or hereafter placed thereon, in repair, operating condition, working order and appearance during the entire term of this Lease which shall be equal to or better than at the commencement of the Lease. Tenant shall, at Tenant's sole cost and expense, perform and be responsible for all repairs, maintenance, alterations and replacements to the Property.

**4.2. Reimbursement for Repairs Assumed.** If Tenant fails or refuses to make repairs that are required by this Section 4, Landlord may at its option make the repairs on Tenant's behalf and charge the actual costs of repairs to Tenant. Such expenditures by Landlord shall be reimbursed by Tenant on demand together with interest at the rate of nine percent (9%) per annum from the date of expenditure by Landlord.

**4.3. Inspection of Property.** Landlord shall have the right to inspect the Property at any reasonable time or times to determine the necessity of repair.

#### **5. ALTERATIONS.**

**5.1. Alterations Prohibited Without Landlord's Consent.** Tenant shall make no permanent improvements or alterations on the Property of any kind without first obtaining Landlord's written consent.

**5.2. Ownership and Removal of Alterations.** Improvements and alterations installed by Tenant shall, at Landlord's option, be removed by Tenant upon expiration or earlier termination of this Lease and the Property restored unless the applicable Landlord's consent specifically provides otherwise.

**5.3. Liens.** Except with respect to activities for which Landlord is responsible, Tenant shall pay as due all claims for work done on and for services rendered or material furnished to the Property, and shall keep the Property free from any liens. If Tenant fails to pay any such claims or to discharge any lien, Landlord may at its option do so and collect the cost as additional rent. Any amount so added shall bear interest at the rate of nine percent (9%) per annum from the date expended by Landlord and shall be payable on demand. Such action by Landlord shall not constitute a waiver of any right or remedy which Landlord may have on account of Tenant's default.

## **6. INSURANCE.**

**6.1. Personal Property Insurance.** Tenant shall, at Tenant's own expense, keep all personal property of Tenant on the Property insured against fire and other risks covered by a standard fire insurance policy.

**6.2. Waiver of Subrogation.** Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policies. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

## **7. TAXES; UTILITIES.**

**7.1. Real Property Taxes.** Landlord shall pay as due all real property taxes and special assessments, levied, imposed or assessed against the Property, and Tenant shall reimburse Landlord for such payment as provided in Section 2.4.

**7.2. Property Taxes.** Tenant shall pay as due all taxes levied, assessed or imposed on its trade fixtures, furnishings, equipment and other personal property located on the Property.

**7.3. Special Assessments.** If an assessment for a public improvement is made against the Property, Landlord may elect to cause such assessment to be paid in installments, in which case all of the installments payable with respect to the lease term shall be treated the same as general real property taxes for purposes of Section 7.1.

**7.4. Contest of Taxes.** Landlord shall be permitted to contest the amount of any tax or assessment as long as such contest is conducted in a manner that does not cause any risk that Tenant's interest in the Property will be foreclosed for nonpayment.

**7.5. Payment of Utility Charges.** Tenant shall obtain utilities for the Property, if any, in Tenant's name and shall pay when due all charges for services and utilities incurred in connection with the use, occupancy, operation, and maintenance of the Property, including but not limited to charges for fuel, water, gas, heat, electricity, sewage disposal, and power, together with any taxes thereon.

## **8. DAMAGE OR DESTRUCTION.**

### **8.1. Definitions.**

**8.1.1** "Property Partial Damage" shall herein mean damage or destruction to the Property to the extent that the cost of repair is less than fifty percent (50%) of the then replacement cost of the Property.

**8.1.2** "Property Total Destruction" shall herein mean damage or destruction to the Property to the extent that the cost of repair is fifty percent (50%) or more of the then replacement cost of the Property.

**8.1.3** "Insured Loss" shall herein mean damage or destruction which was caused by an event required to be covered by the insurance described in Section 6 above.

**8.2. Partial Damage - Insured Loss.** Subject to the provisions of Sections 8.4, 8.5 and 8.6, if at any time during the term of this Lease there is damage which is an Insured Loss and which falls into the classification of Property Partial Damage, then Landlord shall, at Landlord's expense, repair such damage, but not Tenant's fixtures, equipment or tenant improvements, as soon as reasonably possible and this Lease shall continue in full force and effect.

**8.3. Partial Damage - Uninsured Loss.** Subject to the provisions of Sections 8.4, 8.5 and 8.6, if at any time during the term of this Lease there is damage which is not an Insured Loss and which falls within the classification of Property Partial Damage, unless caused by a negligent or willful act of Tenant (in which event Tenant shall make the repairs at Tenant's expense), Landlord may at Landlord's option either (i) repair such damage as soon as reasonably possible at Landlord's expense, in which event this Lease shall continue in full force and effect, or (ii) give written notice to Tenant within thirty (30) days after the date of the occurrence of such damage of Landlord's intention to cancel and terminate this Lease. Tenant shall have the right within ten (10) days after the receipt of such notice to give written notice to Landlord of Tenant's intention to repair such damage at Tenant's expense, without reimbursement from Landlord, in which event this Lease shall continue in full force and effect, and Tenant shall proceed to make such repairs as soon as reasonably possible. If Tenant does not give such notice within such 10-day period this Lease shall be cancelled and terminated as of the date of the occurrence of such damage.

**8.4. Total Destruction.** If at any time during the term of this Lease there is damage, whether or not an Insured Loss (including destruction required by any authorized public authority), which falls into the classification of Property Total Destruction, this Lease shall automatically terminate as of the date of such total destruction.

**8.5. Abatement of Rent.** In the event of damage described in Sections 8.2 or 8.3, and Landlord or Tenant repairs or restores the Property pursuant to the provisions of this Section 8, the rent payable hereunder for the period during which such damage, repair or restoration continues shall be abated in proportion to the degree to which Tenant's use of the Property is impaired, except that there shall be no rent abatement where the damage occurred as a result of the fault of Tenant. Except for abatement of rent, if any, Tenant shall have no claim against Landlord for any damage suffered by reason of any such damage, destruction, repair or restoration.

**8.6. Waiver.** Landlord and Tenant waive the provisions of any statutes which relate to termination of leases when leased property is destroyed and agree that such event shall be governed by the terms of this Lease.

## **9. CONDEMNATION.**

**9.1. Partial Taking.** If a portion of the Property is condemned and Section 9.2 does not apply, this Lease shall continue on the following terms:

**9.1.1** Landlord shall be entitled to all of the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of the condemnation.

**9.1.2** Landlord shall proceed as soon as reasonably possible to make sure repairs and alterations to the Property as are necessary to restore the remaining Property to a condition as comparable as reasonably practicable to that existing at the time of the condemnation.

**9.1.3** After the date on which title vests in the condemning authority or an earlier date on which alterations or repairs are commenced by Landlord to restore the balance of the Property in anticipation of taking, the rent shall be reduced in proportion to the reduction in value of the Property as an economic unit on account of the partial taking.

**9.1.4** If a portion of Landlord's property not included in the Property is taken, and severance damages are awarded account of the Property, or an award is made for detriment to the Property as a result of activity by a public body not involving a physical taking of any portion of the Property, this shall be regarded as a partial condemnation to which Sections 9.1.1 and 9.1.3 apply, and the rent shall be reduced to the extent of reduction in rental value of the Property as although a portion had been physically taken.

**9.2. Total Taking.** If a condemning authority takes all of the Property or a portion sufficient to render the remaining Property reasonably unsuitable for the use that Tenant was then making of the Property, this Lease shall terminate as of the date the title vests in the condemning authorities. Such termination shall have the same effect as a termination by Landlord under Section 8.4. Landlord shall be entitled to all of the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of the condemnation.

**9.3. Sale in Lieu of Condemnation.** Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated for the purposes of this Section 9 as a taking by condemnation.

## **10. LIABILITY INSURANCE AND INDEMNITY.**

**10.1. Liability Insurance.** Tenant shall provide at its expense on or before the commencement of this Lease and keep in force at all times during the term of this Lease, naming Landlord, and any lender and Tenant as insured parties, (i) a commercial general liability insurance policy or such successor comparable form of coverage in the broadest form then available (hereinafter referred to as a "Liability Policy") written on an "occurrence basis," including, without limitation, blanket contractual liability coverage, broad form property damage, independent contractor's coverage, and personal injury coverage, protecting Landlord, and the holders of any deeds of trust and Tenant against any liability whatsoever, occasioned by any occurrence on or about the Property or any appurtenances thereto; and (ii) an "All Risk" property policy insuring the full replacement cost of improvements paid for by Tenant and all of the furniture, trade fixtures, and other personal property of Tenant located in the Property against loss or damage by fire, theft, and such other risks or hazards. Such policies shall also insure against physical damage to the Property arising out of an accident covered thereunder, shall be written by good and solvent insurance companies licensed to do business in the State of Oregon satisfactory to Landlord, and shall be in such limits and with such maximum deductibles as Landlord may reasonably require. As of the date of this Lease, Landlord reasonably requires limits of liability under (i) the Liability Policy of not less than \$1,000,000 combined single limit per occurrence for bodily or personal injury (including death) and property damage combined; and (ii) the "All Risk" Property policy equal to the full replacement cost of any improvements paid for by Tenant, furniture, trade fixtures, and other personal property subject to a commercially reasonable deductible. Prior to the time such insurance is first required to be carried by Tenant and thereafter, at least thirty (30) days prior to the expiration date of any such policy, Tenant agrees to deliver to Landlord a certificate evidencing such insurance coverage. Said certificate shall contain an endorsement that such insurance may not be canceled except upon sixty (60) days' prior written notice to Landlord. All policies shall provide the interest of Landlord, and any holders of any deeds to secure debt shall not be invalidated because of any breach or violation of any warranties, representations, declarations, or conditions contained in the policies. All policies must contain a waiver of subrogation of claims against Landlord and/or Landlord's insurer, severability of interest clause, and a cross-liability clause, and shall be primary and shall not provide for contribution of any other insurance available to Landlord, its managing agent, or the holders of any such deeds to secure debt. Notwithstanding anything to the contrary contained in this Lease, the carrying of insurance by Tenant in compliance with this Section 10.1 shall not modify, reduce, limit, or impair Tenant's obligations and liabilities under Section 10.2 hereof.

**10.2. Indemnification.** Neither Landlord (nor its members, directors, officers, agents, servants, employees, successors or assigns), or any holder of any deed of trust or mortgage, shall be liable to Tenant, or to Tenant's employees, agents, invitees, licensees, contractors, or visitors, or to any other person, for any injury to person or damage to property or for consequential damages of any nature on or about the Property, (i) caused by third parties, (ii) caused by any act or omission of Tenant, its agents, servants, or employees, or of any other persons entering upon the Property, under express or implied invitation by Tenant, or (iii) caused by the condition of the Property, or the improvements located thereon or the failure or cessation of any service provided by Landlord (including security service and devices). Tenant agrees to indemnify, defend, and hold harmless Landlord (and its members, directors, officers, agents, servants, employees, successors and assigns), and any holder of any deed of trust or mortgage, of and from any and all liability, damage, expenses, attorney's fees, causes of actions, suits, claims or judgments, arising out of or connected with (i) Tenant's use, occupancy, management, or control of the Property, (ii) any failure of Tenant to comply with the terms of this Lease, and (iii) the acts or omissions of Tenant, its agents, officers, directors, employees, or invitees. Tenant shall, at its own cost and expense, defend any and all suits which may be brought against Landlord (or its members, directors, officers, agents, servants, employees, successors or assigns) either alone or in conjunction with others upon any such above mentioned cause or claim, and shall satisfy, pay, and discharge any and all judgments that may be recovered against any of them in any such action or actions in which any of them may be a party defendant. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons, in, upon or about the Property arising from any cause and Tenant hereby waives all claims in respect thereof against Landlord. The provisions of this Section 10.2 shall survive the expiration or earlier termination of this Lease.

## **11. QUIET ENJOYMENT; MORTGAGE PRIORITY.**

**11.1. Quiet Enjoyment.** Landlord warrants that it is the owner of the Property and will defend Tenant's right to quiet enjoyment of the Property from the lawful claims of all persons during the Lease term.

**11.2. Estoppel Certificate.** Tenant will, within ten (10) days after notice from Landlord, execute and deliver to Landlord a certificate stating whether or not this Lease has been modified and is in full force and effect and specifying any modifications or alleged breaches by Landlord. The certificate shall also state the amount of monthly base rent, the dates to which rent has been paid in advance, and the amount of any security deposit or prepaid rent. Failure to deliver the certificate within the specified time shall be conclusive upon Tenant that this Lease is in full force and effect and has not been modified except as represented in the notice requesting the certificate.

## **12. ASSIGNMENT AND SUBLETTING.**

**12.1. Landlord's Consent.** Tenant shall not, either voluntarily or by operation of law, sell, assign or transfer this Lease or sublet the Property or any part thereof, or assign any right to use the Property or any part thereof (each a "Transfer") without the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion. Any attempt to do so without such prior written consent shall not be void and, at Landlord's option, shall terminate this Lease. If Tenant requests Landlord's consent to any Transfer, Tenant shall promptly provide Landlord with a copy of the proposed agreement between Tenant and its proposed transferee, which agreement must provide that the transferee expressly assumes and agrees in writing to be bound by and directly responsible for all of Tenant's obligations hereunder, and with all such other information concerning the business and financial affairs of such proposed transferee as Landlord may request. Landlord may withhold such consent if the proposed transferee (i) is unsatisfactory to Landlord as to credit, net worth, character and business standing, (ii) is a person or entity whose possession of the Property would be inconsistent with Landlord's commitments with other tenants or with the mix of uses Landlord desires at the Property, or (iii) will not occupy the Property for the use authorized under this Lease. Landlord's consent to any such Transfer shall in no event release Tenant from its liabilities or obligations hereunder nor relieve Tenant from the requirement of obtaining Landlord's prior written consent to any further Transfer. Landlord's acceptance of rent from any other person shall not be deemed to be a waiver by Landlord of any provision of this Lease or a consent to any Transfer.

**12.2. Involuntary Assignment in Bankruptcy.** If this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. Section 101, et seq. (the "Bankruptcy Code") any and all moneys or other consideration payable or otherwise to be delivered to Landlord shall be and remain the exclusive property of Landlord and shall not constitute property of the Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any and all moneys or other considerations constituting Landlord's property shall be held in trust for the benefit of Landlord and be promptly paid or delivered to Landlord. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code, shall be deemed without further act or deed to assume all of the obligations arising under this Lease. Any such assignee shall upon demand execute and deliver to Landlord an instrument confirming such assumption.

## **12.3. Payment to Landlord and Termination of Lease.**

**12.3.1** Landlord may, as a condition to its consideration of any request for consent to a proposed Transfer, impose a fee to cover Landlord's administrative and legal expenses in connection therewith. Such fee shall (i) be payable by Tenant upon demand, (ii) include all legal fees incurred by Landlord, and (iii) be retained by Landlord regardless of whether such consent is granted.

**12.3.2** If any such proposed Transfer provides for the payment of, or if Tenant otherwise receives, rent, additional rent or other consideration for such Transfer which is in excess of the rent and all other amounts which Tenant is required to pay under this Lease (regardless of whether such excess is payable on a lump sum basis or over a term), then in the event Landlord grants its consent to such proposed Transfer, Tenant shall pay Landlord the amount of such excess as it is received by Tenant. Any violation of this paragraph shall be deemed a material and noncurable breach of this Lease.



**12.3.3** Landlord shall have the option in lieu of granting consent to the Transfer, of terminating this Lease and releasing Tenant from its remaining obligations hereunder. The option granted to Landlord under this paragraph must be exercised within thirty (30) days after Landlord's receipt of all information concerning such proposed Transfer which Tenant is required to provide pursuant to Section 12.1.

**12.3.4** If Tenant is a corporation, an unincorporated association, a partnership, a limited partnership, or a limited liability company, the transfer, assignment or hypothecation of any stock or interest in such entity in the aggregate in excess of twenty-five percent shall be deemed a Transfer of this Lease within the meaning and provisions of this Section 12.

**12.4. Effect of Violation.** Any attempted transfer in violation of the requirements of this Section 12 shall be null and void and, at the option of Landlord, will cause termination of this Lease.

**12.5. Effect of Consent.** Consent by Landlord to one transfer shall not constitute a consent to any further transfer. In the absence of an express written agreement executed by Landlord releasing Tenant, no transfer by Tenant shall act as a release of Tenant or any personal guarantor of this Lease, who shall remain primarily liable under this Lease, and any subsequent amendment of this Lease or forbearance by Landlord shall not release the Tenant or any personal guarantor from such liability.

**13. DEFAULT.** The following shall be events of default:

**13.1. Default in Rent.** Failure of Tenant to pay any rent or other charge within ten (10) days after it is due.

**13.2. Default in Other Covenants.** Failure of Tenant to comply with any term or condition or fulfill any obligation of this Lease (other than the payment of rent or other charges) within twenty (20) days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 20-day period, this provision shall be complied with if Tenant begins correction of the default within the 20-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

**13.3. Insolvency.** Insolvency of Tenant; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; an adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of any involuntary petition of bankruptcy and failure of Tenant to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of Tenant to secure discharge of the attachment or release of the levy of execution within ten (10) days shall constitute a default, provided, however, in the event that any provision of this Section 13.3 is contrary to any applicable law, such provision shall be of no force or effect.

**13.4. Abandonment.** Failure of Tenant for seven (7) days or more to occupy the Property for the purposes permitted under this Lease, unless such failure is excused under other provisions of this Lease.

**14. REMEDIES ON DEFAULT.**

**14.1. Termination.** In the event of a default this Lease may be terminated at the option of Landlord by written notice to Tenant. Whether or not this Lease is terminated by the election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant for the default, and Landlord may reenter, take possession of the Property, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

**14.2. Reletting.** Following reentry or abandonment, Landlord may relet the Property and in that connection may make any suitable alterations or refurbish the Property, or both, or change the character or use of the Property, but Landlord shall not be required to relet for any use or purpose other than that specified in this Lease, or to any tenant that Landlord may reasonably consider objectionable. Landlord may relet all or part of the Property,

alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

**14.3. Damages.** In the event of termination or retaking of possession following default, Landlord shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the lease term, the following amounts as damages:

**14.3.1** The loss of rental from the date of default until a new tenant is secured and paying out.

**14.3.2** The reasonable costs of reentry and reletting including without limitation the cost of any cleanup, refurbishing, removal of Tenant's property and fixtures, costs incurred under Section 14.5, or any other expense occasioned by Tenant's default, including but not limited to, any remodeling or repair costs, attorney fees, court costs, broker commissions, and advertising costs.

**14.3.3** Any excess of the value of the rent and all of Tenant's other obligations under this Lease over the reasonable expected return from the Property for the period commencing on the earlier of the date of trial or the date the Property are relet, and continuing through the end of the lease term. The present value of future amounts will be computed using a discount rate equal to the prime loan rate of major Oregon banks in effect on the date of trial.

**14.4. Right to Sue More Than Once.** Landlord may sue periodically to recover damages during the period corresponding to the remainder of the Lease term, and no action for damages shall bar a later action for damages subsequently accruing.

**14.5. Landlord's Right to Cure Defaults.** If Tenant fails to perform any obligation under this Lease, Landlord shall have the option to do so upon written notice to Tenant. All of Landlord's expenditures to correct the default shall be reimbursed by Tenant on demand with interest at the rate of nine percent (9%) per annum from the date of expenditure by Landlord. Such action by Landlord shall not waive any other remedies available to Landlord because of the default.

**14.6. Remedies Cumulative.** The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Landlord under the terms of this Lease or applicable law.

## **15. SURRENDER AT EXPIRATION.**

**15.1. Condition of Property.** Upon expiration of the lease term or earlier termination on account of default, Tenant shall surrender the Property in first-class condition. Alterations constructed by Tenant with permission from Landlord shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Tenant's obligations under this Section shall be subordinate to the provisions of Section 8 relating to destruction.

### **15.2. Fixtures.**

**15.2.1** All fixtures placed upon the Property during the Term, other than Tenant's trade fixtures, shall, at Landlord's option, become the property of Landlord. If Landlord so elects, Tenant shall remove any or all fixtures that would otherwise remain the property of Landlord, and shall repair any physical damage resulting from the removal. If Tenant fails to remove such fixtures, Landlord may do so and charge the cost to Tenant with interest at the legal rate from the date of expenditure.

**15.2.2** Prior to expiration or other termination of the Term Tenant shall remove all furnishings, furniture, and trade fixtures that remain its property. If Tenant fails to do so, this shall be an abandonment of the property, and Landlord may retain the property and all rights of Tenant with respect to it shall cease or, by notice in writing given to Tenant within twenty (20) days after removal was required, Landlord may elect to hold Tenant to its obligation of removal. If Landlord elects to require Tenant to remove, Landlord may effect a removal and place the property in public storage for Tenant's account. Tenant shall be liable to Landlord for the cost of removal,

transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Landlord.

**15.3. Holdover.**

**15.3.1** If Tenant does not vacate the Property at the time required, Landlord shall have the option to treat Tenant as a tenant from month to month, subject to all of the provisions of this Lease, except the provisions for term and at a rental rate equal to one hundred fifty percent (150%) of the rent last paid by Tenant during the original term, or to eject Tenant from the Property and recover damages caused by wrongful holdover. Failure of Tenant to remove fixtures, furniture, furnishings, or trade fixtures that Tenant is required to remove under this Lease shall constitute a failure to vacate to which this section shall apply if the property not removed will substantially interfere with occupancy of the Property by another tenant or with occupancy by Landlord for any purpose including preparation for a new tenant.

**15.3.2** If a month-to-month tenancy results from a holdover by Tenant under this Section 15.3, the tenancy shall be terminable at the end of any monthly rental period on written notice from Landlord given not less than ten (10) days prior to the termination date which shall be specified in the notice. Tenant waives any notice that would otherwise be provided by law with respect to a month-to-month tenancy.

**16. MISCELLANEOUS.**

**16.1. Nonwaiver.** Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision. No waiver shall be binding unless executed in writing by the party making the waiver.

**16.2. Attorney Fees.** In the event this Lease is referred to an attorney for collection of any sums due hereunder, or to enforce any other obligation of Tenant, Tenant agrees to pay Landlord's reasonable attorney fees even though no suit or action is filed thereon. In the event any suit, action, or other legal proceeding is instituted to construe, interpret or enforce the terms of this Lease (including any bankruptcy, insolvency or similar proceeding affecting creditor's rights generally), the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorney fees at trial or on appeal of such suit or action, and on petition for review and for collection of any judgment, in addition to all other sums provided by law.

**16.3. Notices.** Any notice or other communication required or permitted under this Agreement shall be in writing and shall be effective and deemed received the following business day when sent by a recognized overnight delivery service, upon the date of transmission when sent by facsimile or e-mail (electronically confirmed), on the third business day after the date of mailing when mailed by certified mail, postage prepaid, return receipt requested, from within the United States, or on the date of actual delivery, whichever is the earliest, and shall be sent to the parties at the addresses shown on the first page of this Agreement, or at such other address as either party may hereafter designate by written notice to the other.

**16.4. Succession.** Subject to the above-stated limitations on transfer of Tenant's interest, this Lease shall be binding on and inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns.

**16.5. Recordation.** This Lease shall not be recorded without the written consent of Landlord.

**16.6. Entry for Inspection.** Landlord shall have the right to enter upon the Property at any time to determine Tenant's compliance with this Lease, to make necessary repairs to the building or to the Property, or to show the Property to any prospective tenant or purchaser, and in addition shall have the right, at any time during the last 12 months of the term of this Lease, to place and maintain upon the Property notices for leasing or selling of the Property.

**16.7. Interest on Rent and Other Charges.** Any rent or other payment required of Tenant by this Lease shall, if not paid within ten (10) days after it is due, bear interest at the rate of nine percent (9%) per annum

(but not in any event at a rate greater than the maximum rate of interest permitted by law) from the due date until paid.

**16.8. Proration of Rent.** In the event of commencement or termination of this Lease at a time other than the beginning or end of one of the specified rental periods, then the rent shall be prorated as of the date of commencement or termination and in the event of termination for reasons other than default, all prepaid rent shall be refunded to Tenant or paid on its account.

**16.9. Time of Essence.** Time is of the essence of the performance of each of Tenant's obligations under this Lease.

**16.10. Entire Agreement.** This document is the entire, final and complete agreement of the parties related to the subject matter hereof and supersedes and replaces all written and oral agreements heretofore made or existing by and between the parties or their representatives with respect to such subject matter. Tenant hereby acknowledges that neither Landlord, nor any of Landlord's employees or agents, has made any oral or written warranties or representations to Tenant relative to the condition or use by Tenant of the Property. Tenant acknowledges that Tenant assumes all responsibility regarding the legal use and adaptability of the Property and the compliance thereof with all applicable laws and regulations in effect during the term of this Lease.

**16.11. Merger.** The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, or termination by Landlord, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subtenancies.

**16.12. Transfer of Landlord's Interest.** In the event of any transfer or transfers of Landlord's interest in the Property, other than a transfer for security purposes only, Landlord shall be automatically relieved of any and all obligations and liabilities on the part of Landlord accruing from and after the date of such transfer and Tenant agrees to attorn to the transferee who shall assume all Landlord's obligations hereunder.

**16.13. Landlord's Consent.** Any consent required by Landlord under this Lease shall be valid only if granted in writing and, unless otherwise specifically provided herein, may be withheld or conditioned by Landlord in its sole and absolute discretion.

**16.14. No Partnership.** Landlord is not by virtue of this Lease a partner or joint venturer with Tenant in connection with the business carried on under this Lease and shall have no obligation with respect to Tenant's debts and other liabilities.

**16.15. Severability.** In the event any provision or portion of this Lease is held to be unenforceable or invalid by any court of competent jurisdiction, the remainder of this Lease shall remain in full force and effect and shall in no way be affected or invalidated thereby.

**16.16. Amendment.** No amendment or modification of this Lease shall be valid unless in writing and signed by duly authorized representatives of both parties.

**16.17. Governing Law and Venue.** This Lease shall be interpreted, construed and governed by and under the laws of the State of Oregon as to interpretation, enforcement, validity, construction, and effect and in all other respects, without regard to the choice of law provisions thereof. Each of the parties submits to the jurisdiction of any state or federal court sitting in Portland, Oregon in any action or proceeding arising out of or relating to this Lease and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. Each party also agrees not to bring any action or proceeding arising out of or relating to this Lease in any other court. Each of the parties waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety, or other security that might be required of any other party with respect thereto. Each party agrees that a final judgment in any action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner provided by law or in equity.

**16.18. Joint and Several Liability.** Each individual person and each entity signing this Lease shall be jointly and severally liable for payment and performance of all of Tenant's obligations hereunder.

**16.19. Captions.** The caption headings of the sections and subsections of this Lease are for convenience of reference only and are not intended to be, and should not be construed as, a part of this Lease.

**16.20. Counterparts.** This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original instrument and all of which together shall constitute a single agreement.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed in duplicate on the day and year first above written.

**LANDLORD:**

OREGON CITY URBAN RENEWAL AGENCY

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Tony Konkol  
Executive Director

**TENANT:**

CLACKAMAS LANDSCAPE SUPPLY, INC.

---

Steve Pearson  
President

**ATTACHMENT:**

Exhibit A – Boundary Survey identifying Use Lines

U:\kgriffin\Real Property\1795 Washington\Clackamas\_Landscape\_Contract.DOC

PDX\_DOCS:474026.4 [34758.00800]