

COMMERCIAL LEASE AGREEMENT

This Lease Agreement (this "Lease") is dated as of October 1, 2021, by and between the City of Peoria, an Illinois Municipal Corporation (hereinafter "Landlord"), and JIMAX Landscape LLC, an Illinois Limited Liability Company with its principal office at 3545 Jimax Way, Peoria (hereinafter "Tenant").

RECITALS:

WHEREAS, the Landlord owns approximately eleven (11) acres of property located at the corner of Darst and Clark Streets in Peoria, Illinois (the "Premises"); and

WHEREAS, Landlord desires to Lease to Tenant approximately 5.28 acres of the eleven acres of the property located at the corner of Darst and Clark Streets in Peoria, Illinois (said herein hereinafter referred to as the "Leased Premises"); and

WHEREAS, Tenant desires to lease from Landlord the Leased Premises; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein and in reliance upon the recitals set forth above and incorporated herein by reference, it is hereby agreed by the parties as follows:

ARTICLE 1. LEASED PREMISES

1.1 **Leased Premises.** In consideration of the mutual promises, covenants, and conditions herein set forth, Landlord hereby agrees to lease to Tenant and Tenant hereby agrees to lease from Landlord the premises (hereinafter "Premises"), which are deemed to contain approximately 5.28 acres, located within a part of property ID 1819276004 at the corner of Darst and Clark Street, commonly described as 2001 Clark Street, Peoria, IL 61607. The Premises are further delineated on the GIS maps attached hereto and incorporated herein as Exhibit A.

ARTICLE 2. TERM

2.1 **Term.** The lease term will begin on October 1, 2021 and will terminate on September 30, 2031.

2.2 **Termination.** This Lease may be terminated prior to the end of the Term by either of the following events:

- (a) Written agreement by both parties to terminate this Lease.
- (b) Pursuant to the breach provisions set forth in Article 11 herein.

2.3 **Surrender at Termination.** Upon termination of this Lease for any reason, Tenant shall be obligated to surrender the Leased Premises to Landlord in as good a condition as when this Lease commenced, reasonable wear and tear, and loss by casualty, excepted. Tenant shall surrender all keys for the Leased Premises to Landlord at the place then fixed for the payment of Rent (as hereinafter defined). Tenant shall remove its personal property and trade fixtures (collectively hereinafter referred to as "Trade Fixtures") that are removable without irreparable damage to the Leased Premises and have been placed or installed upon or within the Leased Premises by Tenant. All remaining installations, additions, hardware, fixtures and improvements, in or upon the Leased Premises, whether placed there by Tenant or Landlord, shall be Landlord's property and shall remain upon the Leased Premises all without compensation, allowance or credit to Tenant.

2.4 **Termination Upon Sale of Premises.** Notwithstanding any other provision of this Lease, Landlord may terminate this lease upon 3 months written notice to Tenant that the Premises have been sold.

2.5 **Holdover.** If Tenant maintains possession of the Premises for any period after the termination of this Lease ("Holdover Period"), Tenant shall pay to Landlord lease payment(s)

during the Holdover Period at a rate equal to the most recent rate preceding the Holdover Period plus 10%. Such holdover shall constitute a year-to-year extension of this Lease.

ARTICLE 3. RENT, TAXES AND UTILITIES

3.1 **Rent.** Tenant shall pay Landlord at 419 Fulton Street, Peoria, Illinois 61602, or such other place as designated in writing by Landlord, Rent of three thousand one hundred dollars (\$3,100.00) annually (“Rent”).

3.2 **Rent Commencement.** The first year’s Rent shall be payable on October 1, 2021. Rent shall be due and payable in advance on the first day of May during the Term of the Lease.

3.3 **Additional Rent.** In addition to the Rent, the Tenant will provide ongoing brush disposal and orderly wood waste storage for the Landlord's forestry waste at no charge. Additionally, the tenant has agreed to demolition six (6) buildings removal of vegetation, and provide drainage improvements with the installation of a retention basin at the corner of the property where Darst and Clark Street meet. The current land assessed value is estimated to be \$40,000.00, after site improvements the value is estimated to increase to \$135,000.00. As a result of the lease agreement and improvements by the lessee, the City will realize an estimated cost savings of \$410,000.00 over the length of the ten-year (10) agreement. All improvements and demolition identified in Attachment A shall be completed by March 31, 2022.

No outside contractors hired by the Landlord are permitted free forestry waste disposal. Events that generate significant forestry waste including ice storms, floods, windstorms and other acts of God will be disposed of at the current negotiated hourly rate agreed upon between the Tenant and Landlord. Notwithstanding, no service provisions identified herein shall conflict with the Landlord’s statutory obligation to pay prevailing wage requirements pursuant to 820 ILCS 130 *et. seq.* All forestry waste provided by the Landlord must be free from contamination including garbage, bricks, concrete, paper, carpets, shingles, and any other organic or non-organic waste material.

3.4 **Security Deposit.** At the time of the signing of this Lease, Tenant shall pay to Landlord, in trust, a security deposit of \$3,100.00. If Tenant defaults in the performance of any provision hereof, Landlord may use, apply or retain any part thereof for the payment of any lease payment³ or other sum in default; for the payment of any other amount which landlord may spend or become obligated to spend by reason of Tenant’s default; or to compensate Landlord for any loss or damage which Landlord may suffer by reason of Tenant’s default. If any portion of said deposit is so used or applied, Tenant shall, within five (5) days after receipt of written demand

3.5 **Late Payments.** For each payment that is not paid within 15 days after its due date, Tenant shall pay a late fee equal to 10 % of the required payment.

3.6 **Non-Sufficient Funds.** Tenant shall be charged \$50.00 for each check that is returned to Landlord for lack of sufficient funds.

3.7 **Utilities.** Tenant shall pay for all water, gas, heat, electricity, telephone, sewer, garbage removal and other utilities or services (“Utilities”) supplied to the Leased Premises, together with any taxes thereof, directly to the providers thereof.

3.8 **Taxes.** Should the Leased Premises lose or not be eligible for tax exemption status due to this Lease Agreement, Tenant will pay the property taxes on the Leased Premises. Tenant shall pay all personal taxes and any other charges which may be levied against the Leased Premises and which are attributable to Tenant's use of the Premises, along with all sales and/or use taxes (if any) that may be due in connection with the Rent.

ARTICLE 4. USE OF LEASED PREMISES

4.1 **Use.** Tenant may use the Premises for mulch production, grinding and sorting of wood waste, concrete crushing, brick crushing, and dirt and gravel screening and storage. The Premises may be used for any other purpose only with the prior written consent of the Landlord, which shall not be unreasonably withheld. Tenant shall notify Landlord of any anticipated extended absence from the Premises not later than the first day of the extended absence.

4.2 **Waste or Nuisance.** Excluding the specific use described in Section 4.1, above, Tenant shall not commit or suffer any waste upon the Leased Premises or any nuisance or other act or thing which may disturb the quiet enjoyment of any person or business within a reasonable proximity of the boundaries of the Leased Premises.

4.3 **Maintenance.** Tenant shall have the responsibility to maintain the Premises in good repair at all times during the term of this Lease.

4.4 **Dangerous Materials.** Tenant shall not keep or have on the Premises any article or thing of a dangerous, flammable, or explosive character that might substantially increase the danger of fire on the Premises, or that might be considered hazardous by a responsible insurance company, unless the prior written consent of Landlord is obtained and proof of adequate insurance protection is provided by Tenant to Landlord.

4.5 **Compliance with Regulations.** Tenant shall promptly comply with all laws, ordinances, requirements and regulations of the federal, state, county, municipal and other authorities, and the fire insurance underwriters. However, Tenant shall not by this provision be required to make alterations to the exterior of the building or alterations of a structural nature.

ARTICLE 5. RIGHTS RESERVED TO LANDLORD

5.1 **Landlord Rights.** Landlord shall have the following rights, each of which Landlord may exercise without liability to Tenant for damage or injury to property, person or business due to the exercise of those rights, except for any damage caused by Landlord's negligence and the exercise of those rights shall be deemed to constitute an eviction or disturbance of Tenant's use or possession of the Leased Premises and shall not give rise to any claim for set-off or deduction or abatement or Rent or any other claim:

(a) To use the Leased Premises for ongoing brush disposal and orderly wood waste storage;

(b) Landlord reserves the right to enter the Leased Premises from time to time at all reasonable hours, with reasonable notices, for the purpose of inspecting the same, or during the final (3) three months of the Term for exhibiting the Leased Premises for the purpose of subsequent lease or rental.

ARTICLE 6. IMPROVEMENTS

6.1 **Tenant Improvements.** Tenant shall have the obligation to conduct any construction or remodeling (at Tenant's expense) that may be required to use the Premises as specified above. Tenant may also construct such fixtures on the Premises (at Tenant's expense) that appropriately facilitate its use for such purposes. Such construction shall be undertaken, and such fixtures may be erected only with the prior written consent of the Landlord which shall not be unreasonably withheld. Tenant shall not install any signage or advertisements on any part of the Premises without Landlord's prior written consent. At the end of the lease term, Tenant shall remove its personal property and trade fixtures that are removable without irreparable damages to the Leased Premises, as outlined in Section 2.3, above.

ARTICLE 7. LIENS

8.1 **Liens.** Tenant shall keep the Leased Premises free from any encumbrances, mortgages or liens. In the event any lien attaches to the Leased Premises by virtue of an act or failure to act on the part of Tenant, or if Landlord receives statutory or other notice of any such lien or claim, Landlord shall have the right, but not obligation, to pay the amount of such lien or alleged amount due to cause its release, and such amount shall be considered additional Rent to be paid by Tenant on demand.

8.2 **Mechanics Liens.** Tenant shall keep the Leased Premises free from any mechanics liens. Neither the Tenant nor anyone claiming through the Tenant shall have the right to file mechanics liens or any other kind of lien on the Premises and the filing of this IRase constitutes notice that such liens are invalid. Further, Tenant agrees to (1) give actual advance notice to any contractors, subcontractors or suppliers of goods, labor, or services that such liens will not be valid, and (2) take whatever additional steps that are necessary in order to keep the premises free of all liens resulting from construction done by or for the Tenant.

ARTICLE 8. INDEMNITY/INSURANCE

8.1 **Indemnification.** Tenant agrees to indemnify, hold harmless, and defend Landlord from and against any and all losses, claims, liabilities, and expenses, including reasonable attorney

fees, if any, which Landlord may suffer or incur in connection with Tenant's possession, use or misuse of the Premises, except Landlord's act or negligence.

8.2 **Tenant's Insurance Obligations.** Tenant, at its sole cost and expense, shall maintain and keep in effect the following insurance coverages throughout the Term:

- (a) insurance against liability for bodily injury (including death) in or about the Leased Premises under a policy of commercial general liability insurance and umbrella liability (if necessary), on an occurrence basis and with limits not less than \$2,000,000 per occurrence.

- (b) workers' compensation insurance in at least the statutorily required amounts and employer's liability (with umbrella liability if necessary) but, in all events, with limits not less than \$1,000,000 each accident/disease – policy limit/disease – each employee.

- (c) property insurance for the full replacement costs thereof.

Said policy or policies shall name Landlord as an additional insured and shall bear endorsements to the effect that the insurer agrees to notify Landlord not less than thirty (30) days in advance of any modifications or cancellations thereof. In the event that Tenant shall fail to continuously maintain such insurance coverages during the Term, Landlord at its option, but without obligation to do so, may procure such insurance. Any sums expended by Landlord to procure such insurance shall be repaid by Tenant within thirty (30) days following written notice by Landlord.

ARTICLE 9. ASSIGNMENT AND SUBLETTING

9.1 **Assignments and Subletting.** Tenant may not assign or sublease any interest in the Premises, nor effect a change in the majority ownership of the Tenant (from the ownership existing at the inception of this lease), nor assign, mortgage or pledge this Lease, without the prior written consent of Landlord, which shall not be unreasonably withheld.

ARTICLE 10. SUBORDINATION

10.1 **Subordination of Lease.** This Lease is subordinate to any mortgage that now exists, or may be given later by Landlord, with respect to the Premises.

ARTICLE 11. BREACH

11.1 Breach by Tenant. Any of the following events or occurrences shall constitute a breach by Tenant under this Lease:

- (a) Failure of Tenant to pay any installment of Rent or Additional Rent due or failure of Tenant to perform any other covenant, condition or obligation contained herein.

- (b) Abandonment or vacation of Leased Premises by Tenant.

- (c) Insolvency of Tenant, an assignment by Tenant for the benefit of its creditors, the appointment of a receiver for Tenant or the filing of an involuntary petition in bankruptcy against Tenant and a failure to remove the same within sixty (60) days thereafter, or the filing of a bankruptcy petition by Tenant under any chapter of the Bankruptcy Code.

11.2 Notice and Tenant's Right to Cure. As a precondition to pursuing any remedy for alleged breach by Tenant, Landlord shall give notice of breach to Tenant. Each notice of breach shall specify in detail the alleged event of breach and the intended remedy. If the alleged breach is non-payment of the Rent, Tenant shall have thirty (30) days after notice is given to cure the breach. For cure of any other breach, Tenant shall promptly and diligently after the notice is received begin curing the breach and shall have thirty (30) days after notice is given to complete the cure. If Tenant fails to cure the breach within the time set forth above, Landlord may treat such event as a breach of this Lease, and terminate this Lease, in which event the entire Rent payable for the balance of the Term shall at once become due and payable at the option of Landlord, and, in addition, any other sums of money in damages owed by Tenant to Landlord.

11.3 **Landlord's Breach.** If Landlord fails to perform any of its obligations under this Lease within thirty (30) days after receipt of written notice from Tenant specifying Landlord's deficiency, Landlord shall be in default under this Lease; provided, however, that if the nature of Landlord's obligation is such that in excess of thirty (30) days are reasonably required for its performance, then Landlord shall not be in default if Landlord commences such performance within thirty (30) days and thereafter diligently pursues the same to completion. Upon any such uncured default by Landlord (after notice and an opportunity to cure as set forth above), Tenant may terminate this Lease and/or exercise any of its rights provided in law or at equity.

ARTICLE 12. MISCELLANEOUS

12.1 **Cumulative Remedies.** All rights and remedies herein enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law and such rights and remedies may be exercised and enforced concurrently and whenever and as often as occasion therefor arises.

12.2 **Waiver.** The waiver by Landlord of any breach by Tenant of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of Rent by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease. No covenant, term and condition of this Lease shall be deemed to have been waived by Landlord, unless such waiver is in writing by Landlord.

12.3 **Entire Agreement.** This Lease sets forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Leased Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them, other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by them.

12.4 **Notices.** Any notice, demand, request or other instrument which may be or is required to be given under this Lease shall be delivered in person or sent by United States Certified Mail, postage prepaid, return receipt requested and shall be addressed to:

LANDLORD:
City of Peoria
419 Fulton ST
Peoria, IL 61602

TENANT:
JIMAX Landscape LLC
3545 JIMAX way
Peoria, IL 61607

Such addresses may be changed from time to time by any party by providing notice as set forth above. Notices mailed in accordance with the above provisions shall be deemed received on the third day after posting.

12.5 **Captions and Section Numbers.** The captions, section numbers and article numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such captions, sections or articles of this Lease nor in any way affect this Lease.

12.6 **Partial Invalidity.** If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances, other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

12.7 **Successors and Assigns.** The terms, conditions and covenants of this Lease shall be binding upon and shall inure to the benefit of each of the parties hereto, and their successors or assigns pursuant to Article 9 herein.

12.8 **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Illinois, and Peoria County, Illinois, shall be the sole and exclusive venue for any legal proceedings arising out of this Lease.

12.9 **Force Majeure.** In the event that either party shall be delayed or hindered in or prevented from the performance of any act required under this Lease by reason of restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing this Lease, then performance of such act shall be excused for the period of the delay and the period of any such act shall be extended for a period equivalent to the period of such delay.

12.10 **Construction.** The parties have participated jointly in the negotiation and drafting of this Lease. In the event an ambiguity or question of intent or interpretation arises, this Lease shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Lease.

12.11 **Notice of Lease.** Each party agrees, at the request of the other, to execute and deliver to the other a short form Notice of Lease, in recordable form, setting forth the Term, a description of the Leased Premises, and such additional information as such other party may reasonably request, other than Rent.

12.12 **Dispute Resolution.** The parties will attempt to resolve any dispute arising out of or relating to this Agreement through friendly negotiations amongst the parties. If the matter is not resolved by negotiation, the parties will resolve the dispute using the below Alternative Dispute Resolution (ADR) procedure.

Any controversies or disputes arising out of or relating to this Agreement will be submitted to mediation in accordance with any statutory rules of mediation. If mediation is not successful in resolving the entire dispute or is unavailable, any outstanding issues will be submitted to final and binding arbitration under the rules of the American Arbitration Association. The arbitrator's award will be final, and judgment may be entered upon it by any court having proper jurisdiction.

IN WITNESS WHEREOF, the parties hereto have executed this Lease in multiple originals on the last date written below.

LANDLORD:

City of Peoria

By:

Date:

City of Peoria Public Works Director, Rick Powers

By:

Date:

City of Peoria City Manager, Patrick Urich

TENANT:

JIMAX Landscape LLC

By:

Date:

President, Jarrod Martis