

LEASE AGREEMENT

THIS LEASE, made and entered into this _____ day of _____, 20__, by and between **THE CITY OF SALEM**, an Oregon Municipal Corporation, hereinafter called “Lessor”; and **DONALD E. AND MARY L. CLARK.**, hereinafter called “Lessee” (collectively the “Parties”).

RECITALS

- A.** Lessor owns property identified as Tax Lot #TBD;
- B.** Lessor desires to lease a portion of the Property to Lessee and Lessee desires to lease the Property from Lessor on the terms and conditions contained herein (“Lease”).
- 1.** **DESCRIPTION.** Lessor hereby lets unto Lessee ~fifty-five hundredths (0.556) acre of land that is contained in that certain tract of land situated in Polk County, Oregon, shown in “Exhibit A,” attached hereto and by this reference made a part hereof (“Property”), for the term and upon the conditions and provisions hereinafter set forth.
- 2.** **TERM, TERMINATION, and RENEWAL OPTIONS.**
- (a)** The initial term of this Lease shall be five (5) years and commence on the date last signed by the Parties below.
- (b)** If the Lease is not in default upon expiration of the initial term or any renewal period, the Lease shall automatically renew for a period of one (1) year.
- (c)** This Lease may be terminated by Lessor in accordance with the Default provision contained in Section 10 or Eminent domain/Taking provisions contained in Section 11.
- (d)** This lease may be terminated with six months’ notice should the Property be required, in Lessor’s sole determination, for construction of Marine Drive NW and any additional right of way and/or related improvements.
- 3.** **RENT.** Lessee shall pay to Lessor rent according to the provisions below:
- (a)** No money, but other good and valuable consideration.
- 4.** **PURPOSE.** Lessee shall use the aforesaid Property for staging and storing of horticultural related purposes from farming of adjacent property only.
- 5.** **COSTS OF USE.** Lessee shall be responsible for and pay all the costs of materials, labor, equipment, utilities, and other expenses (including any ad valorem taxes levied upon the Property) for use of the Property during the Lease term, except as set forth specifically in this agreement.

6. **LESSEE'S DUTIES.** Lessee shall:

- (a) Not permit or suffer any strip or waste of the Property and keep down all noxious weeds and vegetation;
- (b) Refrain from practices that will cause unusual erosion to the Property;
- (c) Maintain the Property in compliance with all federal, state, and other governmental law, regulations, and directives;
- (d) Not permit disposal or dumping of rubbish, garbage, or refuse on the Property.

7. **LIENS AND ENCUMBRANCES.** Lessee shall pay when due all claims for work done on the Property, and for services rendered or material furnished to Lessee to utilize the Property; and Lessee shall keep the Property free of any liens arising out of the failure to pay such claims or arising out of any other activity of Lessee. If the Property is subjected to any lien because of the activities of Lessee, and the lien is not discharged within 10 days, Lessor may discharge the lien, and recover the cost from Lessee on demand, plus interest at the legal rate from the date of expenditure. Such action by Lessor shall not constitute a waiver of any right or remedy that Lessor may have on account of Lessee's default. If Lessee in good faith elects to contest the lien, then Lessee shall, on Lessor's written request, deposit with Lessor cash or sufficient corporate surety bond, or other security satisfactory to Lessor, to discharge the lien plus costs and interest.

8. **HAZARDOUS MATERIALS.**

(a) Lessee, at its sole expense, will operate and maintain all fuel and other hazardous materials storage containers and equipment, and will dispense with fuel and other hazardous materials in compliance with all applicable laws.

(b) Lessee shall not cause or permit any hazardous substances to be spilled, leaked, disposed of, or otherwise released on or under the Property. Lessee may use or otherwise handle on the Property only hazardous substances that are typically used or sold in the prudent and safe operation of the business specified in Section 4 of this Lease. Lessee may store those hazardous substances on the Property only in quantities necessary to satisfy Lessee's reasonably anticipated needs. Lessee must comply with the environmental laws and exercise the highest degree of care in the use, handling, and storage of hazardous substances, and must take all practicable measures to minimize the quantity and toxicity of hazardous substances used, handled, or stored on the Property.

(c) When this Lease expires or terminates, Lessee must remove all hazardous substances from the Property. The term *environmental law* means any federal, state, or local statute, regulation, or ordinance, or any judicial or other governmental order pertaining to the protection of health, safety, or environment. The term *hazardous substances* means any hazardous, toxic, infectious, or radioactive substance, waste, and material as defined or listed by any environmental laws and includes, without limitation, petroleum oil and its fractions.

(d) Lessee will defend, indemnify, and hold Lessor harmless from and against any and all claims, actions, lawsuits, damages, liability, and expense (including, without limitation, attorney fees) arising from loss, damage, or injury to persons or Property, including all claims relating to handling, using, or storing hazardous substances, or from

violations of federal or state law relating to hazardous substances occurring in, on, or about the Property, arising out of the Property, or occasioned wholly or in part by any act or omission of Lessee or Lessee's agents, contractors, customers, or employees.

9. **ASSIGNMENT AND SUBLEASE.** This Lease shall not be sold, assigned, or in any manner transferred or encumbered by Lessee, nor shall the Property or any part thereof be sublet without the prior consent of the Lessor in writing, which consent shall be in the Lessor's sole discretion.
10. **DEFAULT.** The following shall be events of default:
- (a) Failure to pay rent.
 - (b) Dissolution, termination of existence, insolvency, business failure, discontinuance as a going business except for labor disputes, appointment of a receiver of Property Lessee's estate, assignment of the Lease for the benefit of creditors, or commencement of any proceedings under any bankruptcy or insolvency laws by or against Lessee.
 - (c) Failure of Lessee to comply with any other term or condition, or fulfill any other obligation of the Lease within 10 days after written notice by Lessor 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 10-day period, this provision shall be complied with if Lessee begins correction of the default within the 10-day period and thereafter proceeds with reasonable diligence and in good faith to affect the remedy as soon as possible.
 - (d) Abandonment by the Lessee of the Property. In the event of default, Lessor shall have the right to declare the Lease terminated, and upon so declaring, Lessor shall have the right to forthwith re-enter the Property and repossess the same, and expel Lessee forcibly if necessary, and without prejudice to any remedies which might otherwise be invoked by Lessor.
11. **EMINENT DOMAIN/TAKING.**
- (a) If a governing body, as authorized under State Statute, condemns a portion of the Property under eminent domain, the Lessee shall have the ability to terminate the Lease.
 - (b) The Lessor shall have the same rights as any other authorized government body to take all, or a portion of the land, for a public purpose as identified by State Statute as eligible for eminent domain. In this event, the Lessee shall have the ability to terminate the Lease.
12. **TAXES.** Lessee shall pay all real and personal property taxes, if any, arising out of this leasehold and Lessee's activity on the Property.
13. **INSURANCE.**
- (a) Lessee shall keep all improvements and betterments on the Premises continuously insured with an insurance underwriter or underwriters authorized to business in the State of Oregon, with a Best's rating of "A" or better, and satisfactory to Lessor. The policy or policies shall be written on an "all-risk" special form and shall be on a replacement cost basis, to the full insurable value of the Lessee's property on the Premises.

(b) Lessee shall obtain, and continue to maintain in good standing during the Lease term, an occurrence form liability insurance policy or policies, including, but not limited to, commercial general for the protection of Lessee and Lessor, and their respective officers, employees, and agents, insuring Lessee and Lessor, against liability for personal injury, bodily injury, death, or damage to property, including loss of use, and all risks arising directly or indirectly out of Lessee's activities on, or any condition occurring on, or in any way related to, the Premises. The insurance shall name Lessor, officers, employees and agents as additional insureds, and shall include the stipulation that this insurance, as to the interest of Lessor, shall not be invalidated by any act or neglect or breach of contract by Lessee. The insurance provided by Lessee shall be primary and shall not require any contribution from any insurance or self-insurance carried by Lessor.

(c) If Lessee has one or more employees, Lessee shall maintain in force Workers Compensation insurance, including coverage for Employer's Liability.

(d) For each policy of insurance, Lessee shall furnish to Lessor an acceptable certificate evidencing the date, amount, and type of insurance that has been procured. All policies shall provide for not less than thirty days written notice to the Lessor before such policies are revised, not renewed, or canceled. Upon request, Lessee shall provide Lessor with a copy or copies of any policy required by this Lease.

(e) Lessor shall have the right to review the types and limits of required insurance. In the event Lessor determines that types or limits should be added, modified, increased or lowered, Lessor will provide notice to Lessee of its determination and Lessee shall modify its coverage to comply with the new requirements and provide Lessor with an updated certificate. Additions, modifications or increases shall be limited to those that are typical and standard within horticulture industry and/or required by applicable federal, state, or local government laws, rules, or regulations.

14. **LESSOR'S LIENS.** Lessor expressly reserves, and is hereby given, a lien upon Lessee's interest in all crops grown on the Property during the term hereof and any renewals thereof, to secure:

(a) The performance of all other covenants of the Lessee above set forth.

15. **INSPECTION.** Lessor and its agents shall have the right to enter upon the Property at reasonable times during the term of this Lease for the purpose of inspecting the Property.

16. **REPRESENTATIONS AND WARRANTIES.** Lessee accepts the Property, improvements, and the personal property, if any, included in this Lease in their present condition, as is, without any representation or warranties, express or implied, except as otherwise set forth in this Lease. It is understood and agreed that Lessor makes no guarantee or representation regarding the production or carrying capacity of the Property, that Lessee has inspected the Property, and that Lessee has made his or her own determination of the value of the Property.

17. **WAIVER.** Failure by either party at any time to require performance by the other of this Lease shall in no way affect that party's right to enforce any Lease provisions; nor shall any waiver of any breach be held to be a waiver of any succeeding breach or a waiver of

this nonwaiver clause. Any waiver of a breach of any term, condition, or covenant contained herein shall not be deemed a continuing waiver upon the part of the Lessor.

18. **NOTICE.** Any notice under this Lease shall be in writing and shall be effective when actually delivered or, if mailed, when deposited as registered or certified mail directed to the person and address stated below or to such other address as either party may specify by notice in writing to the other party. Any notice to Lessor shall be given to the Real Property Services Manager, at 350 Commercial Street NE, Salem, Oregon 97301. Any notice to Lessee shall be given to Don and Mary Clark, address TBD.
19. **SPECIAL CONDITIONS.**
 - (A) Should the Property ever become a Legal Lot and be offered for sale by Lessor, Lessee shall have a right of first refusal for purchase of the Property.
 - (B) Should the Property be converted to City of Salem Right of Way, Lessee shall be entitled to apply for a Right of Way Encroachment License for continued use of the Property, or portion thereof, not required for use or maintenance of Marine Drive NW street improvements and related utility improvements.
20. **COMPLIANCE WITH APPLICABLE LAWS.** Lessee represents warrants and agrees that it will conduct its activities on the Property in compliance with all applicable federal, state, and local laws, ordinances, and regulations.
21. **DANGEROUS CONDITIONS.** Lessee shall be responsible for remedying any dangers to person or property, or any dangerous conditions, that exist on the Property. Lessee shall take all reasonable precautions to warn others of any dangers or any dangerous conditions that exist on the Property, until such time as Lessee remedies the danger. Lessee shall notify Lessor of any dangers or any dangerous conditions, that are either known or discovered by Lessee and shall provide written notice to Lessor of how Lessee intends to warn others of the danger and the remedy Lessee intends to use to eliminate the danger. Lessor shall approve or reject Lessee's plan as soon as practicable given the nature of the danger. If the Lessor rejects Lessee's plan, Lessor's agent and Lessee shall work cooperatively to agree upon a Property plan to remedy the danger.
22. **LEGAL REVIEW AND RULE OF CONSTRUCTION.** Each party has had the opportunity to have an attorney of their choosing review this Lease Agreement and advise the party of the benefits and consequences of signing this Lease Agreement. Any rule of construction interpreting this instrument against its drafter shall be inapplicable.
23. **COUNTERPARTS AND FACSIMILE.** This Lease Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. Execution and delivery of this Lease Agreement by delivery of a facsimile copy bearing the facsimile signature of a party shall constitute a valid and binding execution and delivery by such party. Such facsimile copies shall constitute enforceable original documents.
24. **AMENDMENTS.** This Lease Agreement may be amended only by written instrument executed with the same formalities as this original.

25. **EFFECT OF LEASE**. Subject only to the provisions prohibiting transfer without Lessor's consent, the terms, covenants, and conditions hereof shall bind and inure to the benefit of the heirs, personal representatives, successors, and assigns of the parties.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed in their respective names effective the day and year first hereinabove written.

LESSOR:

City of Salem, Oregon

By: _____
Steven D. Powers
City Manager

LESSEE:

Donald E. Clark

By: _____

Mary L. Clark

By: _____

Exhibit A



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