

LEASE AGREEMENT

THIS LEASE, made and entered into this _____ day of _____, 2018, by and between **THE CITY OF SALEM**, an Oregon Municipal Corporation, hereinafter called “Lessor”; and **ALPHA NURSERY, INC.**, hereinafter called “Lessee” (collectively the “Parties”).

RECITALS

- A. Lessor owns property identified as Tax Lot #062W31D00100 (“Property”);
- B. Lessor desires to lease the Property to Lessee and Lessee desires to lease the Property from Lessor on the terms and conditions contained herein.

1. **DESCRIPTION.** Lessor hereby lets unto the Lessee forty-five and twenty-six hundredths (45.26) acres of farm land that are contained in that certain tract of land situated in Marion County, Oregon, more particularly described 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 term of this Lease Agreement shall commence on November 1, 2018, and continue through October 31, 2021, unless sooner terminated as provided herein and terminates any prior lease agreement between the parties for this tract of land.

(b) If the Lease is not in default when each option is exercised or when the renewal term is to commence, Lessee, upon written agreement by Lessor, shall have the option to renew this Lease for three (3) successive terms of one (1) year each, as follows:

(i) Each of the renewal terms shall commence on the day following the expiration of the preceding term.

(ii) The option may be exercised by written notice to Lessor given not less than ninety (90) days before the last day of the expiring term. Giving such notice shall be sufficient to make the Lease binding for the renewal term without further act of the parties.

(iii) The terms and conditions of the Lease for each renewal term shall be identical with the original term except as otherwise provided in Section 3 and except that the Lessee will no longer have any option to renew this Lease that has been exercised.

(c) This Lease may be terminated by the Lessor in accordance with the **Default** provision contained in **Section 10** or **Eminent domain/Taking** provisions contained in **Section 11**.

(d) Upon termination of the Lease, Lessee shall have the right to access the Property to cultivate and harvest or gather that year's orchard production as provided by ORS 91.230.

3. **RENT.** Lessee shall pay to Lessor rent according to the provisions below:

(a) For the first term and option terms of the Lease, as describe in Section 2(a), the rent will be \$11,315.00 (\$250 x 45.26 acres) per year, paid in arrears, due on October 31st.

4. **PURPOSE.** Lessee shall use the aforesaid Property for horticultural purposes only.

5. **COSTS OF FARMING.** Lessee shall be responsible for and pay all the costs of materials, labor, equipment, utilities, and other expenses to farm the Property and raise crops from the Property during the Lease term, except as set forth specifically in this agreement.

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

(a) Lessee shall farm, cultivate, maintain, and operate the Property consistent with the best agricultural practices employed by the farming industry in the area where the Property is located and the type of crop being farmed;

(b) Not permit or suffer any strip or waste of the Property, keep down all noxious weeds and vegetation, and farm the Property consistent with the best agricultural practices employed by the farming industry in the area where the Property is located;

(c) Refrain from practices that will cause unusual erosion to the Property;

(d) Maintain the Property in compliance with all federal, state, and other governmental law, regulations, and directives;

(e) 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 grow Lessee's crops on the Property; and Lessee shall keep the Property and the crops 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 or crops are 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 or pay a reduced rent by the amount of orchard acres taken out of production.

(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 or pay a reduced rent by the amount of orchard acres taken out of production.

12. TAXES. Lessor 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 Public Works Director, at 555 Liberty Street SE, Room 325, Salem, Oregon 97301. Payments to Lessor shall be sent to Accounts Payable, 555 Liberty Street SE, Room 230, Salem, Oregon 97301. Any notice to Lessee shall be given to John Blake at PO Box 21299, Keizer, Oregon 97303.

19. RESERVATIONS.

(a) Lessor reserves the right to remove trees and other vegetation from the east 80 feet of the leased Property and utilize the said east 80 feet for roads, pipelines, and for any other purpose consistent with Lessor's utilization and development of its Willow Lake Water Pollution Control Facility. All provisions of this Lease agreement shall apply to reserved area unless, or until, the Lessor uses this land for other purposes than an orchard.

(b) Lessor also hereby reserves the right to take possession of such portions of the Property as may be needed for expansion to the Willow Lake Water Pollution Control Facility, including, but not limited to, expansion of administrative facilities; provided, however, the Lessor shall give the Lessee not less than one year's notice, in writing, of the Lessor's intent to exercise its intent to take possession, which notice shall describe with particularity that portion of the Property to be used for such expansion. After the

exercise of such reservation, the description of the Property as set forth in Exhibit A shall automatically amended, without further action of the parties.

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:

Alpha Nursery, Inc.

By: _____
Doug Zielinski
President

Exhibit A

Beginning on the South line of the Sanford Stephens Donation Land Claim in Township 6 South, Range 2 West of the Willamette Meridian in Marion County, Oregon, at a point which is 1,331.68 feet South 89° 46' East from the Southwest corner thereof; thence South 0° 30' East 1,363.69 feet to a Southwest corner of the tract of land conveyed by deed recorded Volume 16, page 262, of the Marion County Deed Records; thence South 89° 55' East along the South line of said tract 971.58 feet to the division line dividing the W.B. Stephens Donation Land Claim in to East and West halves; thence North 89° 39' East 513.24 feet to the Southwest corner of a 16.00 tract of land conveyed by deed recorded in Volume 111, page 20, of the Marion County Deed Records; thence North 0° 24' East along the West line of the said 16.00 acre tract, 1,355.79 feet to the South line of the Sanford Stephens Donation Land Claim; thence North 89° 46' West along the South line of the said Claim, 1,485.19 feet to the place of beginning.

FOR INFORMATION PURPOSES ONLY, THE MAP/TAX ACCT #(S) ARE REFERENCED HERE:

06S-02W-31D 100 R19263