

## KERSAT LANDSCAPING LICENSE AGREEMENT - 104 AUBURN ROAD

**THIS AGREEMENT** (the "Agreement") is made effective this 1<sup>st</sup> day of January 2024 by and between the **TOWN OF LANSING**, a municipal corporation with offices at 29 Auburn Road, Lansing, New York 14882, hereinafter referred to as "the Town", and **KERSAT LANDSCAPING, INC.**, a domestic corporation with an office address at 348 Conlon Road Lansing, New York, 14882, hereinafter referred to as the "Licensee."

**WHEREAS**, the Town owns property at 104 Auburn Road, upon which Licensee currently has an existing written lease that has been extended upon a month-to-month basis, which lease is hereby terminated and replaced by this license and Agreement, so **NOW THEREFORE**, for and in consideration of the mutual covenants herein expressed, and other lawful and valuable consideration, the parties hereto agree as follows:

1. The Town hereby licenses to Licensee, and Licensee hereby licenses the use of property and improvements described below, subject to the Term (as defined below) and the terms and conditions of this Agreement. This includes the entirety of the old highway barn, less the portion used by Scoops for its freezer(s) and the areas and parking to the north of such building (the "Premises"). It is acknowledged by the Town that, notwithstanding anything stated below, the water-pond feature, the fountain, the pavers, and signage are personal property of Licensee, removable by Licensee at will. Generally, this description is intended to describe the existing area of use that are hereby continued.
2. The term of this Agreement shall be from the 1<sup>st</sup> day of January 2024 through the 31<sup>st</sup> day of December, 2024 (the "Term"), unless sooner terminated pursuant to the terms hereof. Despite this Term, this Agreement is cancelable in whole or in any part for the convenience of the Town, including but not limited to the Town determining that there is a public use for the property, which cancellation shall be and become effective 60 days after the delivery of notification of such cancellation for convenience to Licensee.
3. Licensee shall pay on or before the first day of each month during the Term a license fee for use of the premises as follows: (i) \$950 per month for the months of April through November, annually; and (ii) \$725 for the months of December through March, annually (the "License Fee"). In the event that said License Fee is not paid by the 10<sup>th</sup> day of each month, there will be due to the Town a 5% late fee. This rate includes Licensee's prorated share for real property taxes due upon the premises. Licensee shall also pay 50% of the costs of any needed septic repairs or improvements, 100% all property maintenance and repairs, and 100% of all ground maintenance, including plowing and mowing when necessary. Licensee shall also pay for its own costs of recycling, trash and garbage removal, and Licensee shall arrange and pay for all utilities furnished to the premises, including electricity, natural gas, water, sewer, and telephone service.
4. Subject to the terms and conditions hereof, Licensee shall have the right to operate a landscaping business and storage facility for materials at the property, subject in all cases to the NYS property maintenance codes and local laws and zoning rules of the Town. The grant of a right in this License is not, and shall not be deemed or construed as, an approval for any land use, a permit, or as an indication that the use of the land by Licensee is lawful or proper. Licensee acknowledges that the past, present, or future placement or erection of improvements or plantings upon the property is and was done "at risk" and at the sole risk and expense of Licensee, as there never was nor is any guarantee as to continued use and possession of the property by Licensee, nor any promise of reimbursement or payment for the same from the Town.
5. Licensee hereby assumes and shall bear the entire risk of loss for theft, damage, destruction or other injury to the property and all contents and improvements thereat, regardless of which party owns the same, including all of the Town's and Licensee's improvements, equipment, supplies, or fixtures placed in or upon the property, from any and every cause whatsoever, and for injuries to or death of persons upon or using the property. Licensee shall obtain and maintain for the entire Term insurance against claims,

injuries, loss or damage to the property and its improvements, including general liability risk loss coverages as required below. The Town, and its officers, employees, and agents, shall be named as additional insureds thereunder upon a primary and noncontributory basis. All Insurance policies shall provide that they may not be canceled or altered in such a manner as adversely to affect the coverage afforded thereby without 30 days' prior written notice to the Town, that such insurance is primary with respect to the Town, and that any other insurance maintained by the Town is excess and noncontributing with such insurance. Licensee hereby disclaims all rights of subrogation against the Town, and each insurer shall be required by special endorsement or otherwise to disclaim all rights of subrogation against the Town. Licensee shall provide the Town with certificates of insurance naming the Town as an additional insured, which policies shall insure the Town against the general damages and losses and claims and injuries arising from the negligence of Licensee or otherwise with the following minimum coverages and terms:

A. Commercial General Liability, including contractual coverage and personal injuries with Each Occurrence coverage of \$1,000,000; General Aggregate \$1,000,000; Products/Completed Operations Aggregate \$1,000,000; Fire Damage-Legal \$100,000; and Medical Expense \$5,000.

B. Business Auto Coverage Liability for Owned, Hired and Non-Owned Autos: \$1,000,000 CSL or 500,000 per Person BI; \$1,000,000 per Accident BI; and \$250,000 PD Split Limits

C. All insurance shall be written with insurance carriers licensed by the New York State Office of Financial Services and have a Best's rating of A-XI or better. Proof of insurance shall be provided on the ACORD Certificate of Insurance, 25 (05/2010), or insurance company certificate. All Certificates must be signed by a licensed agent or authorized representative of the insurance company – broker signatures are not acceptable. Certificates of Insurance shall be submitted at the time of signing of this Agreement.

Licensee agrees to indemnify and save harmless the Town from any and all claims, losses, injuries, causes of action, suits, liabilities, damages, judgments, and costs, of any name or description, arising out of its use of the property and improvements or the terms of this Agreement, including all costs of environmental restoration, remediation, testing, and monitoring, specifically but not exclusively in relation to any actual or alleged violation of any environmental laws, regulations or orders. Indemnity obligations shall include any and all engineers', consultants', experts', and attorneys' fees, and the indemnity and hold harmless responsibilities of Licensee shall include any and all third-party claims to the extent permitted by law, including environmentally related claims and matters.

6. Licensee shall not store any material or use the property in any manner violative of environmental laws and rules, and Licensee warrants that it has not allowed or used the property for the storage or disposal of hazardous materials, as the term is defined below, or in or by any environmental laws, regulations, or rules. For purposes of this Agreement, "hazardous materials" includes, without limit, any asbestos, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in or construed under any environmental laws or regulations. Licensee hereby covenants that it shall not store or dispose of any hazardous materials on the premises, nor shall it suffer such materials to be stored or disposed of on the premises. Licensee shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of Licensee, a release of hazardous materials on or into the premises, nor upon any other property. Licensee shall comply with and shall, in conformity with all applicable laws, ordinances and regulations, and pursuant to commercially reasonable standards and procedures, ensure compliance with all applicable federal, state and local laws, ordinances, rules and regulations, whenever and by whomever promulgated, and shall obtain and comply with any and all approvals, registrations or permits issues or required thereunder, including all OSHA requirements. Licensee acknowledges and agrees that the termination or expiration of this Agreement shall not relieve or release Licensee of any legal liability or responsibility, whether by way of damages, penalties, remedial actions, or otherwise, for any adverse effects or consequences resulting at any time from Licensee's failure to comply

with any terms or provisions of this Agreement, or the requirements of any environmental law, regulation, or order.

7. At the end of the Term, or upon any earlier termination hereof, Licensee shall surrender and deliver-up to the Town the property free of any claims, liens, or interests adverse to the Town or the Town's title to the property, including any claims of Licensee, whether known or unknown, each and all of which are each hereby waived and relinquished, without recourse. The property shall be clean and cleared in a broom-cleaned condition, with landscaping and snow removal up to date. At all times the Town shall have the right and option of keeping any structures or improvements or landscaping or plantings at or upon the property, and if the Town chooses not to keep one or more of the same then such shall be removed by Licensee at Licensee's sole cost and expense.

8. Licensee has no right to improve the buildings or property without the written approval of the Town, and Licensee shall not allow any waste or nuisance on the premises, nor use or allow the premises to be used for any unlawful purpose. Nor shall Licensee place, allow, suffer, or permit any judgments, liens, or mechanic's liens for materials or labor claimed to have been furnished to or for the benefit of the property to be filed in respect of the property or any improvements thereupon. Licensee shall remove all such liens within 20 days of filing and, failing which, the Town may pay or bond the same with the costs thereof to become Added License Fee.

9. Licensee shall at its expense maintain the property, and all buildings and structures and appurtenances and keep them all in good repair. Upon advance notice by the Town, the Licensee shall permit access to the property and improvements to allow the Town to make upgrades or improvements to its buildings, including structural repairs, the installation of HVAC facilities, or upgrades in electric, water, or plumbing/septic services. The Town may also periodically enter and inspect the property and all premises therein, as well as enter without notice in the event of emergency or any required code or other inspections.

10. Any default under this Agreement shall be deemed an "Event of Default." Each of the following shall also be deemed an Event of Default: (i) if Licensee fails to pay any License Fee or other payment when due and payable, by acceleration or otherwise, and such failure continues for a period of five or more days; (ii) if Licensee fails to keep and maintain all insurance as required by this Agreement; (iii) if Licensee fails to perform or observe any covenant, condition, or agreement set forth in this license and Agreement, and such failure or breach shall continue for a period of 10 days (or re-occur within such 10-day period) after Licensee becomes aware of such failure or breach; (iv) if Licensee attempts to remove, sell, transfer, encumber, part with possession, sublet, or sub-license any portion of the property, or any improvements thereupon, or permits a judgment or other claim to become a lien upon any portion or all of the property; (v) if Licensee dissolves or ceases to exist as an operational entity, shall be adjudicated insolvent or bankrupt, ceases, becomes unable, or admits in writing its inability to pay its debts as they mature, makes a general assignment for the benefit of, or enters into any composition or arrangement with, creditors; applies for or consents to the appointment of a receiver, trustee, or liquidator of all or any substantial part of its assets or property, or be subject to proceedings seeking such an appointment, that are not dismissed with prejudice within 30 days, shall authorize or file a voluntary petition in bankruptcy, or apply for or consent to the application of any bankruptcy, reorganization in bankruptcy, arrangement, readjustment of debt, insolvency, dissolution, moratorium, or other similar law of any jurisdiction, or authorize such application or consent thereto, or suffer insolvency or bankruptcy proceedings instituted against it without consent or authorization, and such proceeding is not dismissed with prejudice within 60 days; or (vi) if the property is subjected to waste, used illegally, or occupied or used in violation of any applicable laws or regulations, including environmental laws and regulations, or if the Town is required to expend any money, directly or indirectly, due to any alleged or actual violation of any environmental law, regardless of whether the Town may require or be paid reimbursement.

Upon the occurrence of any Event of Default, and at any time thereafter, the Town may, with or without canceling this Agreement in its sole discretion, do any one or more of the following: (a) upon written notice to Licensee, cancel this Agreement; (b) declare immediately due and payable all sums due and to become due hereunder for the full Term of this Agreement; (c) with or without notice or legal process, enter and retake possession of the property, and remove Licensee therefrom, including all of Licensee's agents, employees, licensees, and any sub-tenants or sub-licensees, and any other persons, firms or corporations, and all or any of Licensee's property, either by summary dispossession proceedings, or by any suitable action or proceeding at law, or by force or otherwise. If Licensee has any personal property in or at the property, the Town shall suffer no liability for loss or damage thereto but may remove and store such items at Licensee's expense. Upon entry and the retaking of possession by the Town, Licensee shall peaceably vacate and remove itself from the property, and the Town shall not be liable to indictment, prosecution, or damages therefor. In the event of any termination of this Agreement or any default by Licensee, or of any re-entry by the Town, or any dispossession by summary proceedings or otherwise, all License Fees and all other charges required shall be immediately paid by Licensee.

Any costs and expenses incurred by the Town as a result of, or in relation to, any Licensee default are the responsibility of, and payable by, Licensee, including reasonable attorneys' and expert fees, regardless of whether formal proceedings be brought or filed. In the event of any breach or threatened breach by Licensee of any of the covenants, agreements, terms, or conditions contained in this Agreement, the Town shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any right or remedy allowed at law, in equity, by statute, or otherwise. Any request for equitable relief by the Town shall not require that the Town post any bond or undertaking, nor prove that the Town has any adequate remedy at law, and Licensee expressly agrees to stipulate to the same in connection with any proceeding brought. The Town may exercise any other right or remedy that may be available to it at law, equity, admiralty, or any other applicable law, code, rule, regulation, or the like, and no remedy referred to in this Agreement is intended to be exclusive but shall be cumulative and in addition to any other remedy referred to above, or otherwise available to the Town. It is agreed by Licensee that each clause and provision in this Agreement that calls for indemnity, reimbursement, or a limitation upon or disclaimer of damages or liability is a separate and independent element of risk and cost allocation, intended to be interpreted and enforced as such.

11. The Town and its officers, employees and agents have made no warranties, representations, or promises with respect to the property and improvements except as may be herein expressly set forth. No right, easements, or licenses are acquired by Licensee by implication or otherwise, and Licensee agrees to take and maintain possession of the property and improvements "**AS IS, WHERE IS.**" Licensee acknowledges that the Town has not made, and does not make, any warranty or representation whatsoever, either express or implied, as to the fitness, condition, merchantability, design, or operation of the premises, its fitness for any particular purpose, the quality or capacity of the land nor any other representation or warranty whatsoever. The Town shall not under any circumstances be liable to Licensee or any third party for consequential, incidental, indirect, special, punitive, or exemplary damages arising out of or related to this Agreement or the use of the premises, even if the Town is apprised of the likelihood of such damages, and even if such damage or loss was foreseeable.

12. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to have been inserted herein and, if any such provision is not included or inserted through mistake or otherwise, then upon the application of either party this Agreement shall be physically amended forthwith to make such insertion. Licensee shall at all times comply with Executive Law §§291-299 and the Civil Rights Law relating to prohibitions against discrimination and for providing equal opportunity, including affirmative action, and Licensee shall comply with sexual harassment prevention requirements, the new York Labor Law, and the Iran Divestment Act of 2012, US Department of Treasury and OFAC Rules, and the MacBride Fair Employment Principles.

13. In accordance with NYS laws and rules affecting municipal obligations, the obligations of the Town hereunder shall be executory to the extent of monies appropriated or available to Town for the implementation of this Agreement, and no liability shall be incurred by the Town beyond such monies appropriated or available. Neither the full faith and credit nor the taxing power of the Town is pledged to the payment of any amount due or to become due under this Agreement, nor for the costs of performance of any obligation of the Town, and neither this Agreement, nor any representation arising in connection herewith, creates any obligation by the legislative body of the Town to appropriate or make monies available for the purposes of this Agreement.

14. This Agreement constitutes the entire understanding of the parties, revokes and supersedes all prior discussions, negotiations, and agreements between the parties, and is intended as a final expression of their agreement. It shall not be modified or amended except in writing signed by the parties hereto that specifically refers to this Agreement. This Agreement shall take precedence over any other documents that may be in conflict herewith. Licensee acknowledges and agrees that it is not an agent of the Town, and that the sole relationship between the parties is that of Licensor and Licensee. The parties shall not be bound by any agent's or employee's representation, promise, or inducement not set forth in this Agreement, and no course of prior dealings between past or current parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this Agreement. Acceptance of or acquiescence in a course of performance rendered under this or any prior agreement shall not be relevant or admissible to determine the meaning of this Agreement, even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to make objection. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein. Words and phrases used herein are not defined or limited by the subject matter to which they are appended or associated, and each clause herein is severable and independently enforceable.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement, effective as of the day and year first above written.

**TOWN OF LANSING**

**KERSAT LANDSCAPING, INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_