

LEASE AGREEMENT

THIS LEASE, is made and entered into at Willowick, Ohio, this ____ day of February , 2023, by and between THE CITY OF WILLOWICK (“Lessor”), whose address is 30425 Lakeshore Blvd., Willowick, Ohio 44095, and KURTZ BROS., INC. (“Lessee”), whose address is 6415 Granger Road, Independence, Ohio 44131.

Recitals

A. Whereas, Lessor owns undeveloped land consisting of approximately 6.7 acres, with a PPN# 28A40000010, and a street address of 32800 Lakeland Boulevard, Willowick, Ohio 44095 (the “Property”).

B. Whereas, Lessor intends to lease a portion of the Property to Lessee, and Lessee intends to lease said portion from Lessor, subject and pursuant to the terms and conditions set forth herein.

NOW THEREFORE, based upon the foregoing and for good and valuable consideration, the receipt and sufficiency of which are hereby accepted, the parties hereto agree as follows:

Agreement

1. Premises. Upon the terms and conditions hereinafter set forth, in consideration of the payment of the rents as defined herein and the prompt performance by the Lessee of the covenants and agreements to be kept and performed by the Lessee, the Lessor does lease and let to the Lessee and the Lessee hereby leases from Lessor, the premises described in Exhibit A, “Site Plan,” hereof, and hereinafter referred to as the “Premises.”

Lessor shall retain full, unobstructed, and exclusive responsibility and access to the City’s detention basin located on the parcel for all maintenance and/or repair. Lessee shall not place any obstructions, boundaries or restrictions upon the Premises that will restrict or impede the Lessor’s access or ability to maintain the detention basin. Lessee shall not have any rights under this Agreement to disturb, discharge, or access the detention basin in any manner.

2. Use. Lessee shall use the Premises to conduct a wholesale and retail outlet for landscape and building materials and garden supplies, and all activities related thereto, including but not limited to production of same, and for no other purpose. Lessee shall, at its own costs and expense, obtain any and all licenses and permits necessary for such use and occupation. Lessee shall comply with all governmental and judicial orders and directives for the correction, prevention, and abatement of nuisances in or upon or connected with the Premises, all at Lessee’s sole expense. Lessee accepts the Premises subject to all zoning ordinances and other building and fire ordinances and governmental regulations relating to the use of the Premises. It is the intention of the parties that the use and occupancy of said Premises shall be strictly construed.

3. Term and Renewal Options. The initial term of this Lease shall be for a one (1) year term.

4. Commencement of Term. The parties acknowledge that the Lessee has occupied and operated its business on the Premises prior to the commencement of this Agreement and continuously since the eviction of Concrete, Inc. on September 3, 2019. The term of this Lease shall commence effective as of February 1, 2023 (the “Commencement Date”).

5. Rental. The rental rate shall be Three Thousand, Two Hundred Dollars (\$3,200.00), per month, for the term of this Lease, payable on the first day of each month.

6. Increase in Taxes as Additional Rent. As the Lessor, as a public entity, is unable to pay real estate property tax, the Lessee shall be assessed the real estate taxes, and assessments as set forth in the tax duplicate prepared for the property, which shall be timely paid by the Lessee. All building structures assessed for tax purposes will be the property of the Lessee, and the obligation of the Lessee.

7. Assignment and Sublet. Lessee shall not assign this Lease or sublet the Premises or any portion thereof without the prior written consent of Lessor, which consent may be held in the sole discretion of Lessor.

8. Removal of Improvements. Except as otherwise provided, all movable (i.e., not affixed to the ground or structure) improvements, furnishings, trade fixtures, air conditioning equipment, and other equipment installed in the Premises by or for the benefit of Lessee and paid for by the Lessee, shall be the property of the Lessee upon the termination of this Lease, provided (a) that any of such as are affixed to the Premises and require severance including, but not limited to, the truck scale and bin structures, may be removed only if Lessee shall repair any damage caused by such removal (in the case of the truck scale and bin structures, property must be re-graded to Lessor’s specifications), and (b) that Lessee shall have fully performed all of the covenants and agreements to be performed by Lessee under the provisions of this Lease. Any structures located upon the Premises and any fixtures thereto shall remain after termination and are the property of the Lessor. Any improvements, furnishings, trade fixtures and other equipment left at the Premises for more than fourteen (14) days after termination of this Lease, for any reason, shall be deemed abandoned and be the sole and exclusive property of the Lessor.

9. Signs. Lessee may place a sign or signs on the exterior of the Premises, with prior notice to Lessor, provided all such signage complies with zoning ordinances and local restrictions.

10. Insurance. Lessee shall keep the Premises and other structures located in, on or about the Premises (including all improvements, alterations, additions and changes thereto) insured against damage or destruction by fire and the perils commonly covered under an extended coverage endorsement to the extent of one hundred percent (100%) of the full replacement value thereof under an agreed amount endorsement. Lessor shall be named as a title holder of the policy, as well as an additional named insured under the policy of insurance.

Lessee hereby waives all rights of recovery and courses of action which Lessee has or may have or which may arise hereafter against the Lessor whether caused by negligence, intentional misconduct or otherwise, for any damage to premises, property or business caused by any of the

perils covered by standard fire policy with extended coverage and with vandalism and Malicious Mischief Endorsements, building and contents and business interruption insurance, or for which either party may be reimbursed as a result of insurance coverage affecting any loss suffered by it; provided, however, that the foregoing waivers shall apply only to the extent of any recovery made by the parties hereto under any policy of insurance now or hereafter issued and further that the foregoing waivers do not invalidate any policy of insurance of the parties hereto, now or hereafter issued, it being stipulated by the parties hereto that the waivers shall not apply in any case in which the application thereof would result in the invalidation of any such policy of insurance. Any additional premium caused by this Waiver of Subrogation shall be paid by the party benefited thereby. The proceeds of such insurance in case of loss or damage shall be applied on account of the obligation of Lessee to repair and/or rebuild the damaged or destroyed Building or Buildings within the Premises, and improvements located thereon. Such policy or policies may be made payable to the holder of any first mortgage on the Premises so insured as its interest may appear under a standard mortgagee clause provided such mortgagee agrees that it will in the event of loss make the proceeds of such insurance available to Lessee during the course of reconstruction and repair upon presentation of material and labor bills for work completed and an architect's certificate approving payment of such bills so that such moneys may be used by Lessee to pay such repairs.

Lessee shall carry Comprehensive General Liability Insurance on the Premises during the term of this Lease and any carry over of said term, such coverage including Products and Completed Operations Coverage and Automobile Liability. Lessee shall provide proof of such coverage to the Lessor within 14 days of execution of this Agreement. Lessee agrees to include the Lessor as an additional insured under the Lessee's certificate of insurance evidencing such coverage, the limit of such liability to be at least \$5,000,000.00 per occurrence, and in no event shall the liability limit be less than that liability amount in force for the Lessee for other insurance purposes. Lessee's failure to maintain insurance coverage on the Premises as provided for herein shall be considered a breach of this Agreement.

11. Indemnity/Liability

(a) Lessor shall not be liable to Lessee for any loss, damage, or injury to Lessee, Lessee's employees, Lessee's agents, or Lessee's property resulting from fire, theft, or any accident or casualty, all claims for any such damage or injury being hereby expressly waived by Lessee unless such damage or injury results from the negligence of the Lessor, its employees or agents. Lessor shall not be liable for any loss, damage, or injury to Lessee, Lessee's agents, servants, employees or visitors, or to Lessee's property by reason of damage or injury caused by or from water or water leakage, bursting or leaking of boilers, or water, sewer, or air conditioning equipment, or plumbing fixtures, or from electric wires, whatsoever, except in the case of the willful neglect of the Lessor, all claims for any such damage or injury being hereby expressly waived by Lessee.

(b) Lessee shall save Lessor harmless against and, at Lessee's expense, shall defend, settle and satisfy any demand, cause of action or claim of any kind whatsoever made against Lessor on account of any event, injury, or damage to any person or property arising out of Lessee's use, occupancy, or improvement of the Premises or due to any act or negligence of Lessee, Lessee's subtenants, or anyone under its control or employ. Lessee shall at once report in writing to

Lessor any defective condition known to Lessee which Lessor is required to repair. Lessor shall not be liable for, and Lessee, hereby for itself, its invitees, licensees, and permittees, releases, discharges, and acquits Lessor of any and all claims for loss, damage, or injury of any nature whatsoever to person or property resulting in any way from or in any fashion arising out of or connected with the occupancy or use of the Premises and the Property of which said Premises are a part, unless caused by negligent acts of Lessor, its agents, or employees.

(c) Lessor shall not be liable for any damage occasioned by reason of the construction of the Premises or for failure to keep the Premises in repair, unless notice of the need for repairs has been given Lessor, a reasonable time has elapsed and Lessor has failed to make such repairs. Unless due to Lessor's negligence, Lessor shall not be liable for any damage done or occasioned by or from the electrical system, the heating and/or air conditioning system, the plumbing and sewer systems in, above, upon or about the Premises or the building of which the Premises form a part, nor for damages occasioned by water, snow or ice being upon or coming through the roof, trapdoor, walls, windows, door or otherwise, nor for any damage arising from acts of negligence of co-tenants or other occupants of the Building of which the Premises may form a part, or the acts of any owners or occupants or adjoining or contiguous property.

12. Operation of Business. Lessee agrees to keep the Premises open for business during such times and business seasons as are in keeping with good business practice and in the manner which it generally operates its other offices, subject, however, to union agreements and restrictions, and except as it may be necessary that the Premises be closed on account of the order of any duly constituted authority, or for the purpose of making repairs or improvements, or during the period of strikes, lockouts, emergencies, or other causes beyond the Lessee's reasonable efforts to shorten such periods.

13. Utilities.

(a) Lessee shall pay for its own water, gas, and electric current and shall take all steps necessary to ensure the billings are timely paid, without default or assessment against the tax duplicate of the Premises.

(b) Any amounts paid by Lessor to make up any default on Lessee's part to fulfill Lessee's covenants herein written, are hereby agreed and declared to be so much additional rent and shall be due and payable with the next installment of rent due thereafter under this Lease.

(c) Lessee shall ensure that all utility companies and governmental agencies have the Lessee's business address to mail billing statements.

14. Repairs by Lessee. Lessee shall keep and maintain the Premises, in good condition and repair and shall make at its own expense all repairs necessary to maintain the Premises and fixtures and improvements in good working order except (a) structural repairs and replacements, (b) repairs required to be made by Lessor under this Section 14, and (c) repairs made necessary by reason of damage due to perils included in the insurance with endorsements for malicious mischief and vandalism. Lessee shall comply with all health and police regulations applicable to or affecting the use and maintenance of the Premises.

15. Use and Care of Premises.

(a) Lessee shall use and occupy the Premises in a careful, safe, and proper manner and shall keep the Premises in a clean and safe condition in accordance with local ordinances and lawful direction of property public officers.

(b) Lessee shall not use or allow the Premises to be used for any purpose other than as specified herein and shall not permit the Premises to be used for any unlawful purpose or in any way that will injure the structural integrity of the Building in which the Premises are situated, nor permit the Premises to be occupied in whole or in part by any other person, except pursuant to Paragraph 2 hereof.

(c) In the event Lessee's use of the Premises is such as to cause an increase in the insurance rates upon which the Premises are located, or the contents of such Building in which the Premises are located or the contents of such Building or Buildings, Lessee agrees to pay the additional premium cost incurred as a result of such use.

16. Destruction of Premises.

(a) If the Premises shall be destroyed or so injured by any cause as to be unfit, in whole or in part, for occupancy, and such destruction or injury could reasonably be repaired within three (3) months from the happening of such destruction or injury, then Lessee shall not be entitled to surrender possession of the Premises, nor shall Lessee's liability to pay rent under this Lease cease without the mutual consent of the parties hereto, which consent shall not be unreasonably withheld, delayed or conditioned

(b) If such destruction or injury cannot reasonably be repaired within three (3) months from the happening thereof, Lessee shall notify Lessor within sixty (60) days after the happening of such destruction or injury whether or not it intends to repair or rebuild, and if Lessee elects not to rebuild, this Lease shall be considered terminated, as of the date of destruction. In such event, however, Lessee agrees to restore the Premises to its pre-construction condition.

17. Defaults.

(a) In the event (i) rent or any installment thereof is not paid within fourteen (14) days from receipt of Lessor's notice of Lessee's failure to pay such rent; (ii) the Premises shall be deserted, abandoned, or vacated as determined in the sole discretion of Lessor; (iii) the Lessee shall fail to comply with any material term, provisions, condition, or covenant contained herein other than the payment of rent, and shall not cure such failure within thirty (30) days after the receipt of written notice from Lessee specifying any such default, (iv) any petition is filed by or against Lessee under any section or chapter of the Bankruptcy Act, as amended, is not dismissed within sixty (60) days, or any other proceedings now or hereafter authorized by the laws of the United States or of any State for the purpose of discharging or extending the time for payment of debts; (v) Lessee shall make an assignment for benefit of creditors; (vi) a receiver is appointed for Lessee by any court and shall not be dissolved within sixty (60) days thereafter; or (vii) the leasehold interest is levied on under execution; then, in any of said events, Lessor may, in addition to and not in limitation of any other remedy permitted by law or by this Lease:

(1) Terminate this Lease, in which event Lessee shall immediately surrender the Premises to Lessor, but if Lessee shall fail to do so Lessor may, after due process, and without prejudice to any other remedy Lessor may have for possession or arrearages in rent or damages for breach of contract, enter upon the Premises and expel or remove Lessee and its effects, without being liable to prosecution or any claim for damages therefore, and Lessee agrees to indemnify Lessor for all loss and damage which Lessee may suffer by reason of such Lease termination, whether through inability to re-let the Premises, or through decrease in rent, or otherwise.

(2) Declare the entire amount of the rent which would become due and payable during the remainder of the term of this Lease to be due and payable immediately, in which event Lessee agrees to pay the same, together with all rents theretofore due at the office of Lessee, provided, however, that such payment shall not constitute a penalty, forfeiture, or liquidated damage, but shall merely constitute payment in advance of the rent of the remainder of said term, and such payment shall be considered, construed, and taken to be a debt provable in bankruptcy or receivership. Should Lessor declare the entire amount rent due for the remainder of the term, Lessor shall take reasonable steps to re-let the Premises upon terms and conditions reasonably similar to the terms and conditions of this Lease, or sell the Premises. Any rental amounts then collected from such new lessee shall offset any amounts due from Lessee, and any amount so offset shall be returned to Lessee within a reasonable time period, but in no case shall such reasonable time period exceed thirty (30) days.

(b) It is expressly agreed and understood by and between the parties hereto that any installments of rent accruing under the provision of this Lease which shall not be paid when due shall bear interest at fifteen percent (15%). Any failure on Lessor's behalf to enforce this paragraph shall not constitute a waiver of this provision with respect to future accruals of past due rent.

(c) If Lessee shall default in making any payments of monies to any person, entity, or for any purpose as may be required hereunder, Lessor may pay such expense, but shall not be obligated to do so. Lessee upon Lessor's paying such expense shall be obligated to forthwith reimburse Lessor for the amount thereof. All sums of money payable by Lessee to Lessor hereunder shall be deemed as rent for use of the Premises and collectible by Lessor from Lessee as rent, and shall be due from Lessee to Lessor on the first day of the month following the payment of the expense by Lessor.

(d) The rights of the Lessor under this Lease shall be cumulative but not restrictive to those given by law, and failure on the part of the Lessor to exercise promptly any rights given hereunder shall not operate to waive or to forfeit any of the said rights.

18. Vacation of Premises. Lessee shall deliver up and surrender to Lessor possession of the Premises upon the expiration of the Lease or its termination in any way in as good condition and repair as the same shall be at the commencement of said term (loss by fire or other casualty covered by the standard extended coverage insurance policy and ordinary wear and decay only excepted), reasonable wear and tear excepted, and deliver the keys at the office of Lessor or Lessor's agent.

19. Termination. If at the expiration of the term of this Lease or any renewal thereof Lessee continues to occupy said Premises, such action shall constitute renewal of this Lease for a period of one (1) month upon the same terms and conditions, and, Lessor may, at its option, cancel such renewal at any time by giving to Lessee thirty (30) day notice of its intention to cancel.

20. Short-Term Lease. This Lease shall not be recorded, but a short form Lease describing the property herein demised, giving the term of this Lease and referring to this Lease, may be recorded by either party.

21. Rent Demanded. Every demand for rent due wherever and whenever made shall have the same effect as if made at the time it falls due and at the place of payment, and after the service of any notice or commencement of any suit, or final judgment therein, Lessor may receive and collect any rent due, and such collection or receipt shall not operate as a waiver of nor affect such notice, suit, or judgment.

22. Notice. Any notice or consent required to be given by or on behalf of either party upon the other shall be in writing and shall be given by mailing such notice or consent by registered or certified mail addressed to the other party at the address hereinbefore specified or at such other address as may be specified from time to time in writing delivered to the other party.

23. No Representation By Lessor. Lessor and its agents have made no representations or promises with respect to the Premises or the Building of which the same form apart except as herein expressly set forth. The taking of possession of the Premises by Lessee shall be conclusive evidence as against Lessee that the Premises were in good and satisfactory condition at the time such possession was so taken.

24. Waiver. No waiver of any condition or legal right or remedy shall be implied by the failure of Lessor to declare a forfeiture, or for any other reason, and no waiver of any condition or covenant shall be valid unless it be in writing signed by Lessor. No waiver by Lessor in respect to one tenant of the Building in which the Premises are located shall constitute a waiver in favor of any other tenant, nor shall the waiver of a breach of any condition be claimed or pleaded to excuse a future breach of the same condition or covenant or any other condition or covenant.

25. Eminent Domain. In the event that the Premises or any part thereof shall at any time after the execution of this Lease be taken for public or quasi-public use or condemned under eminent domain, the Lessee shall not be entitled to claim or have paid to the Lessee any compensation or damages whatsoever for or on account of any loss, injury, damage or taking of any right, interest, or estate of the Lessee, and Lessee hereby relinquishes to Lessor any rights to any such damages unless for damages of property owned by Lessee, but the Lessee shall be entitled to claim and have paid to it for the use and benefit of the Lessee all compensation and/or damages for and/or on account of and/or arising out of such taking and/or condemnation without deduction from the amount thereof for or on account of any right, title, interest or estate of the Lessee in or to said property, except that any reimbursement for relocation expenses shall be paid to the Lessee.

26. Lease Inures to Benefit of Assignees. The Lease and all the covenants, provisions, and conditions herein contained shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns respectively of the parties hereto, provided, however, that no assignment by, from, through or under Lessee in violation of the provisions hereof shall vest in the assigns any right, title or interest whatever.

27. Quiet Enjoyment. Lessor hereby covenants and agrees that if Lessee shall perform all the covenants and agreements herein stipulated to be performed on Lessee's part, Lessee shall at all times during the continuances hereof have the peaceable and quiet enjoyment and possession of the Premises without any manner of let or hindrance from Lessor or any person or persons lawfully claiming the Premises.

28. Interpretation. Wherever either the word "Lessor" or "Lessee" are used in this Lease, it shall be considered as meaning "Lessors" or "Lessees" respectively, wherever the context permits or requires, and when the singular and/or neuter pronouns are used herein, the same shall be construed as including all persons and corporations designated respectively as Lessee or Lessee in the heading of this instrument wherever the context requires.

29. Entire Agreement. This Lease contains the entire agreement between the parties, and any executory agreement hereafter made shall be ineffective to change, modify, or discharge it in whole or in part unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, or discharge is sought.

30. Broker Commission. Lessor and Lessee warrant, which shall survive the execution of this Lease, that no broker induced the Lessee to enter into this transaction. Lessor and Lessee each agree to indemnify, defend and hold harmless the other from any breach of said warranty.

31. Modifications. It is mutually agreed that this Lease cannot be changed, altered, modified, or extended, except in writing signed by both Lessor and Lessee or their duly authorized agents.

32. Severability. If any term or provision of this Lease or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

33. Acceptance of Condition of Premises. Lessee has examined the Premises herein and accepts same in present condition. The Lessee's taking possession shall be conclusive evidence as against the Lessee that the Premises were in good order and satisfactory condition when the Lessee took possession. No promise of the Lessor to alter, remodel, or improve the Premises and no representation respecting the condition of the premises have been made by the Lessor to the Lessee, unless the same is contained herein, or made apart hereof, and Lessee will make no claim on account of any representations whatsoever, whether made by a renting agent, broker, officer of other representative of Lessor or which may be contained in any circular, prospectus or advertisement relating to the Premises, or otherwise, unless the same is specifically set forth in

this Lease. This Lease does not grant any rights to light or air over property, except over public streets kept open by public authority.

35. Acknowledgement of Termination of Lease and Sublease. The parties hereto acknowledge and agree that the Lease between Lessor and Concrete Inc., and/or Anthony Allega Cement Contractor, Inc., and the Sublease between Concrete Inc. and Lessee, have terminated with each party no longer being bound by their terms. The parties hereto acknowledge and agree that this agreement shall be the sole agreement between the parties pertaining to the Premises.

LESSOR:

LESSEE:

CITY OF WILLOWICK, AN OHIO
MUNICIPAL CORPORATION

KURTZ BROS., INC., AN OHIO
CORPORATION

BY: _____
Mayor

BY: _____
Name: _____
Its: _____

Date: _____

Date: _____

Exhibit A

Site Plan