

**BOROUGH OF MT. OLIVER
RESOLUTION NO. 772-18**

The Council of the Borough of Mt. Oliver hereby resolves to enter into a Lease Agreement for the rental of 134 John Street, Pittsburgh, PA 15210 with Kenneth Doyle, in the form attached hereto. The proper officers of the Borough are authorized and directed to execute the said Agreement and to take any action or execute any documents necessary to implement said Agreement.

This Resolution adopted by the Council of the Borough of Mt. Oliver at a duly assembled public meeting held this 19th day of November, 2018.

ATTEST:

BOROUGH OF MT. OLIVER


Borough Manager

By: Amber L. McLaugh
President, Borough Council

LEASE AGREEMENT

BETWEEN

BOROUGH OF MT. OLIVER

LANDLORD

AND

KENNETH DOYLE (d.b.a. DOYLE LANDSCAPE)

TENANT

COMMENCEMENT DATE:

December 1, 2018

LEASE

I. BASIC LEASE PROVISIONS

I. BASIC LEASE PROVISIONS; DEFINED TERMS.

- A. Date of Signature: Nov. 20, 2018
- B. Landlord: Borough of Mt. Oliver
- C. Address of Landlord: 150 Brownsville Road, Pittsburgh, PA 15210
- D. Tenant: Kenneth Doyle (d.b.a. Doyle Landscape)
- E. Address of Tenant: 303 Beltzhoover Avenue, Pittsburgh, PA 15210
- F. Property: Vacant lot known as 134 John Street, Pittsburgh, PA 15210
- G. Premises: Vacant lot known as 134 John Street, Pittsburgh, PA 15210
- H. Term: One (1) year from the date of commencement of the lease, subject to earlier termination
- I. Option: Renewable for successor one (1) year terms
- J. Tentative Date for Delivery of Premises to Tenant: Dec. 1, 2018
- K. Commencement Date: Dec. 1, 2018
- L. Termination Date: _____, 2018

II. PREMISES AND TERM

1. **PREMISES**

- A. Premises. Landlord leases the Premises to Tenant, and Tenant accepts the Premises from Landlord, subject to the terms and provisions of this Lease. Tenant acknowledges that the Property is a vacant piece of land with no building or other improvements.
- B. Rentable Area. Tenant understands, acknowledges and agrees that the rentable area included in the Premises is the entire vacant lot comprising the Property.

2. **TERM** The Term shall commence on the Commencement Date and shall end on the Termination Date which shall be one (1) years after the Commencement Date.

3. **RENEWAL** This Agreement may be renewed by the giving of notice by either party of its desire to renew the lease. Said notice must be given one hundred eighty (180) days prior to the Termination date of the Lease. Both parties must agree upon renewal of the Lease and any changes to the terms of this Lease pursuant to renewal.

III. CONDITION OF THE PREMISES

1. **CONDITION OF THE PREMISES** Tenant has inspected the Premises and accepts the Premises as is.

IV. RENT

1. **RENT** Beginning on the Commencement Date, Tenant agrees to pay Rent, without demand, to Landlord in the amount of one hundred dollars (\$100.00) per each month or part thereof. Rent shall be payable in advance in equal monthly installments on the first day of each calendar month during the Term or any renewal thereof.

A. Trash Services.

Tenant's trash and garbage shall be disposed of as part of the regular trash collection at the Property. Tenant shall be responsible for payment of all trash charges assessed by the designated garbage collector for the Borough.

2. **TAXES** Tenant shall pay as additional Rent any property tax levied against the Property as a result of this Lease or Tenant's use of the property under this Lease, said additional Rent to be due, in full, thirty (30) days prior to the date for paying any such real estate without penalty to the taxing body.

V. USE AND OPERATION OF THE PREMISES

1. **PERMITTED USE** Tenant shall (a) use the Premises only for the storage of general landscaping equipment and machinery and (b) conduct its business at all times in a high grade and reputable manner so as to help establish and maintain the community standards for the Property. Tenant understands that all activities and use must comply with the Borough of Mt. Oliver Zoning Ordinance.

- A. **RESTRICTIONS ON PERMITTED USE** Tenant shall not, during the Term or any renewal thereof: injure, overload, deface or otherwise harm the Premises; commit any nuisance or waste; permit any noise, vibrations or noxious odors to emanate from the Premises; unreasonably annoy any owners or occupants of neighboring property; use the Premises for any hazardous purpose or in any manner that will suspend, void, violate or make inoperative any policy of insurance carried on any improvement on the Property or in any manner which will increase the cost of any of Landlord's insurance.

VI. COMPLIANCE WITH LAWS

1. **GENERALLY** Tenant shall, during the Term or any renewal thereof, comply with all applicable federal, state and municipal statutes, laws, ordinances, codes, orders, rules and regulations applicable to Tenant's use of the Premises. Tenant shall not make or permit any use of the Premises, or permit to be done anything upon the Premises or bring or keep anything on the Premises, which directly or indirectly is forbidden by any of the foregoing or which may be hazardous to persons or property.
2. **HAZARDOUS MATERIALS** Tenant shall not cause or permit any hazardous or toxic substances, materials or wastes to be brought upon, produced, stored, used, discharged or disposed of in, on or about the Premises without the prior written consent of Landlord (which consent may be withheld in Landlord's sole discretion) and, if Landlord shall grant its consent, then Tenant may do so only in compliance with all applicable laws. Tenant shall provide and maintain all licenses and permits legally necessary for the operation of its business and allow Landlord to inspect the same from time to time upon reasonable prior notice.

VII. MAINTENANCE AND REPAIRS

1. **TENANT MAINTENANCE** Tenant shall keep, at its sole cost and expense, the Premises clean, neat and safe, and in good order, and condition. Tenant shall be responsible for maintaining the Premises in compliance with all applicable Borough Ordinances, including, but not limited to, cutting the grass, removal of snow and/or ice, and keeping the Premises free from the accumulation of trash, garbage or other refuse. Tenant is responsible for any expense incurred to maintain the Premises.

VIII. ALTERATIONS AND REPAIRS

1. **ALTERATIONS** Tenant shall not make any alterations or repairs to the Premises without the prior approval of Landlord.
2. **QUALITY OF WORK** Tenant shall: pay promptly when due the entire cost of any work on the Premises undertaken by Tenant so that the Premises and the Property shall at all times be free of liens for labor and materials arising from the work; procure all necessary permits before undertaking any work; do all work in a good and workmanlike manner, employing materials of good quality; perform work only with contractors previously reasonably approved by Landlord; comply with all governmental requirements with respect to the work.
3. **LIENS** Tenant shall not, during the Term or any renewal thereof, suffer any mechanics', laborers' or materialmen's liens to be filed against the Premises or the Property or any interest in either of them by reason of any work, labor, services or materials performed at or furnished to, or claimed to have been performed at or furnished to, the Premises, by, or at the direction or sufferance of, Tenant or anyone holding the Premises through or under the Tenant.

IX. INSURANCE

1. **TENANT'S INSURANCE** Throughout the term and any renewal thereof, Tenant shall at its sole expense procure and provide a policy of liability insurance covering bodily injury and property damage related to its use and operation of the Premises. The insurance policy arrangement shall take the following form:
 - A. **Persons Insured:** Tenant shall be the named insured. Landlord and elected or appointed Municipal official shall be named as additional insureds.
 - B. **Limits:** Not less than one million dollars coverage for a person and per occurrence for a person's bodily injury. Coverage for property damage shall be not less than one million dollars per occurrence.
 - C. **Terms:** The policy shall not be subject to cancellation, except after thirty (30) days written notice to the insured and additional insured, and after written waiver received from Tenant and accepted by Landlord that Tenant waives any and all right of recovery from Landlord for any damage or loss caused by the risks covered by the policy.
 - D. **Proof of Insurance:** Tenant must be deliver to Landlord a certificate of insurance, evidencing the names of all insured entities or persons, a full copy of the policy and any riders, addenda and renewals, and a receipt for the premium. Renewals must be procured within thirty (30) days of expiration of the policy period. Proof of insurance renewals must be provided to Landlord within ten (10) days of procurement of the policy or renewal.
 - E. **Provider:** Tenant may choose the insurance provider so long as the provider is a good and responsible company doing insurance business in the Commonwealth of Pennsylvania.
 - F. **Default:** Should Tenant default in its obligation to provide proof of insurance or fail to procure required coverage or fail to timely procure or renew the policy, or fail to cure such default within ten (10) days of written notice of such failure from Landlord, Landlord may declare a default under Article XIV and may also obtain its own insurance and charge the same to Tenant, requiring reimbursement to Landlord within five (5) days from the date of written notice from the Landlord of the amount due.
 - G. **Indemnification and Defense:** Should Tenant let said insurance lapse or expire, Tenant agrees to indemnify, hold harmless and defend Landlord, its officers, employees and agents for claims made or coverage or defense would have otherwise been provided had the Tenant complied with this Article.
2. **LANDLORD'S INSURANCE** During the Term and any renewal thereof, Landlord covenants and agrees to carry or cause to be carried, with companies, in amounts and on terms satisfactory to Landlord, commercial general liability insurance pertaining to the Property and any other insurance policy deemed appropriate by the Landlord.
3. **MUTUAL WAIVER OF SUBROGATION RIGHTS** Whenever (a) any loss, cost, damage or expense relating from fire, explosion or any other casualty or occurrence is incurred by either of the parties to this Lease in connection with the Premises, and (b) such party is then reimbursed in whole or in part by insurance with respect to such loss, cost, damage or expense (or would have

been reimbursed if such party had carried the insurance required under this Lease), then the party so insured hereby releases the other party from any liability it may have on account of such loss, cost, damage or expense to the extent of any amount recovered by reason of such insurance and waives any right of subrogation which might otherwise exist in or accrue to any person on account thereof, provided that such release of liability and waiver of the right of subrogation shall not be operative in any case where the effect thereof is to invalidate such insurance coverage or increase the cost thereof (provided that in the case of increased cost the other party shall have the right, within thirty (30) days following written notice, to pay such increased cost thereupon keeping such release and waiver in full force and effect).

X. ASSIGNMENT

1. **TRANSFERS** Tenant acknowledges that Tenant's agreement to operate its business at the Premises for the Permitted Use is a primary inducement and precondition to Landlord's agreement to lease the Premises to Tenant. Accordingly, Tenant shall not convey, sell, mortgage, hypothecate, pledge or encumber this Lease or any interest in it. In addition, Tenant shall not: allow to exist or occur any transfer of or lien upon this Lease or Tenant's interest herein by operation of Law; transfer; enter into license, franchise or concession agreements; assign this Lease or any of Tenant's rights hereunder; sublet the Premises in whole or in part; or permit occupancy of all or any part of the Premises by anyone other than Tenant without first procuring the consent of Landlord, which consent shall be at the discretion of the Landlord. Any attempt to Transfer, without the Landlord's consent, shall be void and confer no rights.
2. **PROCEDURE FOR CONSENT** If Tenant proposes to Transfer this Lease, Tenant shall first give notice to Landlord of its intention to do so, which notice shall contain: (i) the name of the proposed transferee ("**Transferee**"); (ii) the nature and history of the proposed Transferee's business to be carried on at the Premises; and (iii) the terms and provisions of the proposed Transfer. Landlord agrees, within forty-five (45) days after receipt of such notice, to either consent to or disapprove of the proposed Transfer. Landlord's failure to respond within forty-five (45) days after receipt of such notice shall constitute a disapproval of the proposed Transfer.
3. **DOCUMENTATION** Each Transfer to which Landlord consents shall be by instrument in form reasonably satisfactory to Landlord, and shall be executed by Tenant and the Transferee, who shall agree, for the benefit of the Landlord, (i) in the case of an assignment, to assume the obligations of Tenant under this Lease and agree to perform the same, or (ii) in the case of a sublease, that sublease shall be subject and subordinate to this Lease and shall provide that the sublessee shall procure and maintain policies of insurance covering liability and covering all contents and subtenant's personal property stored or otherwise kept at the Premises and Fixtures (as that term is described below), as required of Tenant.

XI. SURRENDER

1. **SURRENDER OF THE PREMISES** At the expiration of the Term or earlier termination of the Lease, Tenant shall remove Tenant's goods and effects which are not permanently affixed to the Premises; remove the alterations and additions made by Tenant which Landlord shall direct as provided below; repair any damage caused by the removal and restore the Premises to their condition prior to the making of the alterations; and peaceably surrender the Premises and all alterations and additions and fixtures, and other equipment which are permanently affixed to the Premises (collectively, "**Fixtures**") (except those Fixtures installed by Tenant which Landlord has directed Tenant to remove), in clean and good order, repair and condition, damage by fire or other casualty and reasonable wear and tear excepted. If Tenant does not remove all of Tenant's

personal property from the Premises prior to the expiration of the Term or earlier termination of the Lease, Landlord may, at its option, remove it and deliver it to any other place of business of Tenant, or warehouse it, and Tenant shall pay, on demand, the cost of removal (including the repair of any injury or damage resulting from the removal), delivery and warehousing to Landlord. In order to effectuate the provisions of this Section, Tenant may send notice to Landlord at least sixty (60) days prior to the expiration of the Term requesting Landlord to advise Tenant which alterations and additions to the Premises and Fixtures Tenant must remove, and if Tenant gives that notice, Landlord shall, not later than thirty (30) days after Landlord's receipt of the notice, advise Tenant which alterations, additions and Fixtures must be removed. Landlord's failure to respond within the thirty (30) day period shall be deemed to mean that Tenant is not required to remove any alterations, additions or Fixtures.

XII. HOLDING OVER

1. **HOLDING OVER** Tenant shall have no right to occupy all or any part of the Premises after the expiration of the Term, or any renewal thereof, or after termination of the Lease or of Tenant's right to possession. If Tenant or any party claiming by, through or under Tenant remains in possession of the Premises after the expiration or termination of the Lease or Tenant's right of possession, Landlord may exercise any remedies available to it at law or in equity to recover possession of the Premises, and to recover damages. For each and every month or partial month that Tenant or any party claiming by, through or under Tenant holds over, Tenant shall pay monthly rental at the last rate agreed upon by Landlord and Tenant. If the holding over occurs at the expiration of the Term, or any renewal thereof, or by reason of a termination by mutual agreement of the parties, Landlord may, as an alternative remedy, elect that the holding over shall constitute a renewal of this Lease.

XIII. CASUALTY AND CONDEMNATION

1. **CASUALTY** If the Premises are damaged by fire, explosion, or any other casualty or cause to an extent which has damaged less than twenty five percent (25%) of the Premises, the damage shall promptly be repaired by Landlord at Landlord's expense, provided that Landlord shall not be obligated to expend for the repair an amount in excess of the insurance proceeds recovered as a result of the damage. If any damage occurs and (a) Landlord is not required to repair as provided above, or (b) the Premises is damaged to the extent of twenty-five percent (25%) or more of the cost of replacement, Landlord may elect either to repair the Premises, or terminate this Lease by giving notice to Tenant within ninety (90) days after the event causing the damage. If the casualty, or repairing renders all or any part of the Premises untenable, a proportionate abatement of Rent shall be allowed from the date when the damage occurred until the date Landlord completes its repair work, which proportion to be computed based on the relation which the rentable area of the portion of the Premises rendered unusable for the conduct of Tenant's business bears to the total rentable area of the Premises.
2. **EMINENT DOMAIN** If the entire Premises or so much of the Premises that Tenant cannot economically operate in the balance, shall be taken by any public authority by the exercise, or under the threat of the exercise of the power of eminent domain, the Term shall terminate as of the day the right to possession shall be taken by the public authority, and Tenant shall pay rent up to that date with an appropriate refund of rent which was paid in advance for the period subsequent to the date the right to possession is taken. If the Lease is not terminated as provided in the preceding sentence, the Lease shall terminate only as to the parts so taken as of the day the right to possession shall be taken by such public authority, and Tenant shall pay rent up to that day with appropriate refund by Landlord of rent which was paid in advance for any period

subsequent to the date the right to possession is taken, and thereafter the Rent shall be equitably reduced. Landlord shall at its expense make all necessary repairs or alterations to the Property so as to constitute the remaining Premises a complete unit, provided that Landlord shall not be obligated to undertake any such repairs and alterations if the cost exceeds the award received by Landlord. If more than twenty-five percent (25%) of the rentable area of the Premises shall be taken by the exercise, or under the threat of the exercise of the power of eminent domain, Landlord may, by notice to Tenant delivered on or before the day of surrendering the right to possession to the public authority, terminate this Lease and rent shall be paid or refunded as of the date of termination. All compensation awarded for any taking under the power of eminent domain, whether for the whole or a part of the Premises, shall be the property of Landlord, whether the damages shall be awarded as compensation for diminution in the value of the leasehold or to the fee of the Premises or otherwise, and Tenant assigns to Landlord all of Tenant's right to any compensation, except that Tenant shall have the right, if such a right exists under applicable law, to pursue against the condemning authority a separate award in respect of the loss of Tenant's leasehold improvements installed by or on behalf of Tenant and paid for by Tenant without reimbursement by Landlord, but only if Landlord's award is not diminished or delayed in any way.

XIV. DEFAULTS AND REMEDIES

1. **EVENTS OF DEFAULT** The occurrence of any of the following shall constitute a material default and breach of this lease by Tenant:
 - A. failure of Tenant to take possession of the Premises within 10 days after notice that the Premises are ready for occupancy;
 - B. the vacation or abandonment of the Premises;
 - C. the failure of the Tenant to pay, when due, any installment of rent or any additional sum due hereunder;
 - D. the failure of the Tenant to observe and perform any other terms or conditions of this lease, where the failure continues for 10 days after written notice thereof from Landlord;
 - E. failure to vacate the Premises at the end of the Term, or any renewal thereof.
2. If Tenant shall allow the lease to be in default for more than ten (10) days after written notice of such default, Landlord may at its sole option and without notice to Tenant:
 - A. terminate the lease;
 - B. accelerate all rent and other sums due hereunder and declare all such sums immediately due and payable;
 - C. perform for Tenant any such default and immediately recover as additional rent all sums spent to cure the default; together with interest thereon from the date of default at the prime rate per annum set by the Wall Street Journal at the date of default;
 - D. re-enter and take possession of said Premises and remove all persons and property therefrom, without being deemed guilty in any manner of trespass, and re-let the Premises or any part thereof for all or any part of the remainder of said Term to a party satisfactory

to Landlord and at such monthly rental as Landlord may with reasonable diligence, be able to secure. Should Landlord be unable to re-let after reasonable efforts to do so or should such monthly rental be less than the rental Tenant was obligated to pay under this Lease or any renewal thereof, plus the expense of re-letting, then Tenant shall pay the amount of such deficiency to Landlord.

It is expressly agreed that in the event of default by Tenant hereunder, Landlord shall have a lien on all goods, chattels or personal property of any description belonging to Tenant which are placed in or become part of the leased Premises as security for rent due and to become due for the remainder of the current Lease term; and Tenant hereby grants to Landlord a security interest in all such personal property placed in said leased Premises for such purposes. This shall not prevent the sale by Tenant of any merchandise in the ordinary course of business free of such lien to Landlord. In the event Landlord exercise the option to terminate the leasehold, re-enter and re-let the Premises as provided in this Paragraph, then Landlord may take possession of all Tenant's property on the Premises and sell same at public or private sale after giving Tenant reasonable notice of the time and place of any public sale or of the time after which any private sale is to be made, for cash or on credit, or for such prices and terms as Landlord deems best with or without having the property present at such sale. The proceeds of such sale shall be applied first to the necessary and proper expense of removing, storing and selling such property, then to the payment of any rent due or to become under this Lease with the balance, if any, to be paid to Tenant.

XV. NOTICES

1. **NOTICES** Except as otherwise provided in this Lease, all notices, demands, approvals, consents or agreements Landlord or Tenant desire or are required give under or in connection with this Lease, shall be in writing and shall be personally delivered, mailed by registered or certified mail, receipt requested, or sent by via facsimile or as an email attachment or by overnight courier service to the addresses provided in Section I of this Lease.

XVI. MISCELLANEOUS

1. **AUTHORIZATION** Tenant has been authorized by its governing board to enter into this Agreement. Likewise, Landlord, the Borough of Mt. Oliver, has obtained the necessary approval from its Borough Council to enter into this Agreement. Both parties represent and warrant that they are duly organized, validly existing, in good standing and qualified and empowered to conduct their business, and have the full power and authority to enter into and fully perform and comply with the terms of this Lease.
2. **RELATIONSHIP OF PARTIES** Nothing contained in this Lease shall be deemed by the parties or by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties or any relationship other than that of Landlord and Tenant.
3. **SEVERABILITY** The invalidity or unenforceability of any provision of this Lease shall not affect or impair any other provision.
4. **INTERPRETATION** The headings of the several articles and sections contained herein are for convenience only and do not define, limit or construe the contents of such articles or sections. When used in this Lease, the word "including" shall, unless otherwise provided, mean "including, without limitation". Whenever herein the singular is used, it shall include the plural and the

masculine gender shall include the feminine and neuter genders. Tenant shall not record this Lease or any memorandum or short form of it.

5. **APPLICABLE LAW** The laws of the Commonwealth of Pennsylvania shall govern the validity, performance and enforcement of this Lease, without reference to the conflicts of law. Jurisdiction and venue shall be deemed valid and appropriate in the Common Pleas Court of Allegheny County, Pennsylvania.
6. **ATTORNEYS' FEES** If a dispute should arise and suit be brought to interpret or enforce any part of this agreement, the prevailing party, shall be entitled to its costs, disbursements and attorneys fees at the final stages of adjudication should suit whether that stage be arbitration, trial or appeal.
7. **FORCE MAJEURE** Whenever a period of time is provided in this Lease for either party to do or perform any act or thing, that party shall not be liable or responsible for any delays due to strikes, lockouts, casualties, acts of God, war, governmental regulation or control or other causes beyond the reasonable control of said party, and if any of those events occurs, the time period shall be extended for the amount of time the party is delayed; provided that this Section shall not apply to Tenant's obligation to pay Rent, provide a security deposit, provide evidence of insurance required under this Lease, surrender the Premises when required, or deliver estoppel certificates or subordination agreements.
8. **BINDING EFFECT** Except as otherwise provided in this Lease, the rights and obligations of the parties shall extend to, bind and inure to the benefit of the parties and their respective representatives and permitted successors and assigns. Landlord, may at any time make an assignment of its interest in this Lease and, in the event of such an assignment, Landlord shall be released from any and all liability accruing under this Lease after the assignment.
9. **SURVIVAL** The covenants of this Lease which by their terms, require payment or performance by Tenant after the expiration of the Term or the earlier termination of the Lease, and the obligation to pay any liability accruing during the Term shall survive the expiration or earlier termination..
10. **COUNTERPARTS** This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Landlord and Tenant have executed this Lease the day and year first above written.

LANDLORD:

By: Borough of Mt. Oliver

By: 
Rick Hopkinson
Borough Manager

TENANT:

By: Kenneth Doyle

By: 
