

the monthly Rent divided by the number of days in the month for which such rent is due.

(b) All rental payments provided for herein shall be payable to Landlord, at the address hereafter set forth, until written notice to the contrary is received by Tenant.

4. Delivery of possession. If Landlord for any reason whatsoever cannot deliver possession of the Demised Premises to Tenant at the commencement date of the term as above specified, this Lease shall not be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage resulting therefrom; but, in that event, there shall be a proportionate reduction of all rent for the period between the said specified date for the commencement of the term and the date when Landlord does in fact deliver possession to Tenant. No such failure to give possession on the date of commencement of the term shall be construed in any way to extend the term of this Lease.

5. Property of Tenant. All property placed on the Demised Premises by, at the direction of or with the consent of the Tenant, its employees, agents, licensees or invitees, shall be at the risk of the Tenant or the owner thereof, and Landlord shall not be liable for any loss of or damage to said property resulting from any cause whatsoever.

6. Use of Demised Premises. Tenant shall use the Demised Premises only for leaf mulching/storage/transfer, cart storage, vehicle staging, uses related to the same, and any other lawful use. The Tenant shall maintain the Demised Premises to the extent necessary to comply with all laws and regulations of any government or other entity having jurisdiction over open spaces, including, but not limited to, weed control, erosion control, stream and/or air pollution. During the Term of this Lease, Tenant shall use the Demised Premises only for lawful purposes. Tenant shall, at all times in the use of the Demised Premises and the performance of this Lease, comply with all laws, ordinances, decrees, orders, rules and regulations of any lawful authority, agency or governmental unit having jurisdiction over the Demised Premises or the adjacent public streets. Furthermore, Tenant shall make, at its own expense, all alterations of the Demised Premises required by any such authority, agency or governmental unit and shall save Landlord harmless from penalties, fines, costs, expenses or damages resulting from failure to do so.

7. Taxes. Landlord shall pay, satisfy and discharge as the same become due and payable, all assessments, real estate taxes, ad valorem taxes of any sort and any other governmental charges (collectively "taxes"), penalties and interest levied or imposed upon or against the Demised Premises during the Term of this Lease.

Landlord covenants to protect Tenant against foreclosure of any lien resulting from imposition of any such tax, assessment or other charge which Landlord may contest, including the posting of bonds or other security, to prevent the prosecution of any proceedings which could result in same.

8. Utilities. During the Term of this Lease, the Tenant shall pay for all electricity, gas, water, heat, air conditioning, sewerage, janitorial services, garbage disposal and all other utilities

or services relating to its use and/or occupancy of the Demised Premises.

9. Insurance.

a. Liability Coverage.

Tenant agrees to carry at its own expense throughout the term of this Lease comprehensive general liability coverage (not insurance) covering the premises and Tenant's use thereof, with minimums of \$1,000,000.00 per occurrence on account of bodily injuries to or death of one person and \$2,000,000.00 on account of bodily injuries to or death of more than one person as a result of any one accident, and with \$100,000.00 coverage for property damage in an accident, and to provide Landlord with a copy of a certificate of coverage prior to the date of any use or occupancy of the premises by Tenant. This coverage must be written on an occurrence basis. Such coverage shall bear endorsements to the effect that the administrator of the coverage agrees to mail notification to Landlord, as a certificate holder, not less than ten (10) days in advance of cancellation thereof.

Landlord agrees to carry throughout the term of this Lease general liability insurance with respect to the premises with a minimum combined coverage for bodily injury and property damage of \$1,000,000.00.

b. Waiver of Subrogation. Anything in this Lease to the contrary notwithstanding, Landlord and Tenant hereby waive and release each other of and from any and all right of recovery, claim, action or cause of action, against each other, their agents, officers and employees, for any loss or damage that may occur to or at the premises, improvements to the premises, or personal property within the premises, by reason of fire or the elements, regardless of cause or origin, including negligence of Landlord or Tenant and their agents, officers, employees or others for whom such party may be responsible; provided, however, that this release shall be applicable and in force and effect only with respect to such loss or damage as may be covered by releasor's insurance policy or coverage. Said mutual waiver and release shall not adversely affect or impair said policies or coverage or prejudice the right of the releasor to recover thereunder. This mutual waiver and release does not apply to claims caused by a party's willful misconduct.

c. Insurance Criteria. Insurance policies required by this Lease shall:

- (i) be issued by insurance companies licensed to do business in the state of North Carolina;
- (ii) name the non-procuring party as an additional insured as its interest may appear (other landlords or tenants may also be added as additional insureds in a blanket policy);
- (iii) provide that the insurance not be canceled or materially changed in the scope or

amount of coverage unless thirty (30) days' advance notice is given to the non-procuring party;

- (iv) be primary policies - not as contributing with, or in excess of, the coverage that the other party may carry;
- (v) be permitted to be carried through a "blanket policy" or "umbrella" coverage;
- (vi) have property deductibles not greater than \$50,000; and
- (vii) be maintained during the entire Term.

d. Evidence of Coverage. No less than ten (10) days after the beginning of the Term, Tenant shall give copies of certificates of coverage to Landlord. The certificate shall specify amounts, types of coverage, and the waiver of subrogation, if available. The coverage shall be renewed or replaced and maintained by Tenant. If Tenant fails to give the required certificate within thirty (30) days after the notice of demand for it, Landlord may obtain and pay for that coverage, but is not obligated to do so, and receive reimbursement from the party required to have the coverage.

10. Maintenance: Repairs; Alterations; Reconstruction. Tenant, at its sole cost and expense, shall maintain the Demised Premises in a good condition and state of repair, ordinary wear and tear only excepted, and in accordance with all applicable laws, rules, ordinances, orders and regulations of federal, state, county, municipal and other governmental agencies and bodies having jurisdiction. Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations of any kind in or on the Demised Premises.

11. Assignment and Subletting. Tenant shall not sell, assign, pledge, or hypothecate this Lease or sublet the Demised Premises or any part thereof without the prior written consent of the Landlord, which consent shall not be unreasonably withheld. Consent by Landlord to one assignment or subletting shall not operate as a waiver as to future assignments or subleases. If this Lease shall be assigned or the Demised Premises or any portion thereof sublet by Tenant at a rental that exceeds all rentals to be paid to Landlord hereunder, attributable to the Demised Premises or portion thereof so assigned or sublet, then and in such event any such excess shall be paid over to Landlord by Tenant. If Tenant shall request Landlord's consent to an assignment of this Lease or a subletting of the Demised Premises or any portion thereof, Landlord shall, at its election upon notice to Tenant and without limitation, have the right to enter into a direct lease with the proposed assignee or subtenant and/or terminate this Lease.

12. Events of Default. If any one (1) or more of the following events ("Events of Default") shall occur:

- a. Failure to pay Rent when due; or if the Tenant shall default in the payment of any other sum of money specified hereunder to be paid by Tenant, and Tenant does not remedy either default

within ten (10) business days after written notice thereof; or

b. If Tenant shall default in the performance of any other of the terms, conditions or covenants contained in this Lease to be performed or observed by it, and the Tenant does not remedy such default within thirty (30) days after written notice thereof or, if such default cannot be remedied in such period, does not within thirty (30) days commence to undertake such act or acts as shall be necessary to remedy the default and shall not complete such act or acts within a reasonable time; or

c. If the Tenant shall become bankrupt or insolvent, or file or have filed against it in any court pursuant to any statute, either of the United States or any State, a petition in bankruptcy or insolvency or for reorganization, or file or have filed against it a petition for the appointment of a receiver or trustee for all or substantially all of the assets of the Tenant and such appointment shall not be vacated or set aside within sixty (60) days from the date of such appointment, or if the Tenant makes an assignment for the benefit of creditors or petitions for or enters into an arrangement.

13. Remedies upon Default. Landlord shall have the following remedies if Tenant commits a default. These remedies are not exclusive; they are cumulative in addition to any remedies now or later allowed by law or equity.

a. Landlord shall have the right to continue this Lease in full force and effect, and the right to enter the Demised Premises without notice to vacate (any right to which is hereby waived by Tenant) and relet them, without being liable for forcible entry, trespass, or other tort. Tenant shall be liable immediately to Landlord for all costs Landlord shall incur in reletting the Demised Premises, and Tenant shall pay to Landlord the Rent due under this Lease on the date that the Rent is due, less the rent Landlord receives from any reletting.

b. Landlord shall have the right to terminate this Lease without notice to vacate (any right to which is hereby waived by Tenant), and Tenant's rights to possession of the Demised Premises at any time, and re-enter the Demised Premises, and Landlord shall have the right to pursue its remedies at law or in equity to recover of tenant all amounts of Rent then due or thereafter accruing and such other damages as are caused by Tenant's default.

c. No course of dealing between Landlord and Tenant or any delay on the part of Landlord in exercising any rights it may have under this Lease shall operate as a waiver of any of the right of Landlord hereunder nor shall any waiver of a prior default operate as a waiver of any subsequent default or defaults, and no express waiver shall affect any condition, covenant, rule, or regulation other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

14. Eminent Domain. In the event the whole or any material part of the Demised Premises shall be taken by eminent domain or in any manner for a public use, the Landlord may at its option terminate this Lease. Tenant shall not be entitled to any part of any award or payment which may

be paid to Landlord or made for Landlord's benefit in connection with such public use, and Tenant shall have no claim or rights as against Landlord for the value of any unexpired term of this Lease.

15.

Indemnification. (a) Tenant shall defend, release, indemnify and hold harmless Landlord, its agents, employees, members, managers, and partners from and against any and all liabilities, judgments, demands, causes of action, claims, losses, damages, costs and expenses, including reasonable attorneys' fees and costs, arising out of the use, occupancy, conduct, operation, or management of the Premises by, or the willful misconduct or negligence of Tenant, and its officers, agents, or employees, in or about the Premises or arising from any breach or default under this Lease by Tenant. When the claim is caused by the joint negligence or willful misconduct of Tenant and Landlord or Tenant and a third party (except Tenant's officers, agents, or employees, each acting within the scope of their authority) unrelated to Tenant, Tenant's duty to defend, indemnify, and hold Landlord harmless shall be in proportion to Tenant's allocable share of the joint negligence or willful misconduct.

(b) Landlord shall defend, release, indemnify and hold harmless Tenant and, if acting within the scope of their authority, its officers, agents, and employees, from and against any and all liabilities, judgments, demands, causes of action, claims, losses, damages, costs and expenses, including reasonable attorneys' fees and costs, arising out of the willful misconduct or negligence of Landlord and its members, managers, partners, agents, or employees, in or about the Premises or arising from any breach or default under this Lease by Landlord. When the claim is caused by the joint negligence or willful misconduct of Tenant and Landlord or Landlord and a third party (except Landlord's members, manager, partners, agents, or employees, each acting within the scope of their authority) unrelated to Landlord, Landlord's duty to defend, indemnify, and hold Tenant harmless shall be in proportion to Landlord's allocable share of the joint negligence or willful misconduct.

(c) The provisions of this Section 15 shall survive the expiration or termination of this Lease with respect to any claims or liability occurring prior to such expiration or termination.

16. Inspection. Landlord and its authorized representatives at their sole risk may enter the Demised Premises or any part thereof at all reasonable times for the purpose of inspecting the same. Landlord shall not have any duty to make any such inspection nor shall it incur any liability or obligation for not making any such inspection.

17. Repossession. Upon the effective date of termination of this Lease, pursuant to default or otherwise, Landlord may enter upon and repossess the Demised Premises or any part thereof by summary proceedings, ejectment or otherwise, and may remove Tenant and all other persons and any and all property therefrom, without prejudice to any remedies which might otherwise be used for arrears of Rent or for breach of covenant. Landlord shall be under no liability for, or by reason of, any such entry, repossession or removal, whether by direct act of the Landlord or its assigns or through the medium of legal proceedings, for that purpose instituted, and such entry, repossession or removal shall not affect the liability of the Tenant or its successors for past Rent accrued under

this Lease through the date of such entry, repossession or removal, but thereafter, Tenant shall be relieved of liability.

18. Miscellaneous. If any term of this Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such term shall not be affected thereby. Whenever in this Lease it is provided that any document or matter is to be satisfactory to Landlord or may be required by Landlord, it shall be deemed to mean reasonably satisfactory or reasonably required, as the case may be. Unless expressly provided for in this Lease, any approval or consent of Landlord required hereunder shall not be unreasonably (in an ordinary business sense) withheld. This Lease may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought. The headings in this Lease are for purposes of reference only and shall not limit or define the meaning hereof. This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument.

19. Removal of Property. Tenant shall remove within thirty (30) days after the expiration or earlier termination of this Lease any and all trade fixtures, equipment or personal property which Tenant has placed on the Demised Premises, and Tenant shall restore the Demised Premises to its same condition as at the time of the installation thereof, normal wear and tear and grading changes alone excepted; should Tenant fail to do so, Tenant shall promptly reimburse Landlord for any expense or cost incurred by Landlord in restoring the Demised Premises to the condition to which Tenant is so obligated.

20. Notices. Any notice or submission required or permitted under this Lease shall be in writing and shall be deemed to be given three (3) days after being sent by prepaid registered or certified mail addresses to the parties hereto as follows:

to the Tenant:

S. Kirk Bjorling
Real Estate Administrator
City of Winston-Salem
P.O. Box 2511
Winston-Salem, NC 27102

to the Landlord:

KDM of Wilmington, LLC
3330 River Road
Wilmington, NC 28412

21. Covenants of Title. Landlord covenants, warrants and represents (i) that it is seized of the Demised Premises in fee simple and has full right and authority to lease the same upon the terms and conditions herein set forth; (ii) that Tenant's leasehold estate to the Demised Premises is subject to any and all easements and restrictions of record; and (iii) that Tenant shall peacefully and quietly hold and enjoy the Demised Premises safe from any claims arising by through or under Landlord for the full Term hereof so long as Tenant does not default in the performance of any of its covenants hereunder.

22. Recording. Landlord and Tenant agree that a memorandum of this Lease may be recorded in the Forsyth County Public Registry but that this Lease itself will not be so recorded.

23. Brokerage Fees. Landlord and Tenant warrant to each other that no real estate broker or other person will claim a commission fee or other compensation in connection with this Lease. Should any claim for commission be established, the parties hereby expressly agree to hold each other harmless with respect thereto (including costs of reasonable attorneys' fees) to the extent that one or the other is shown to have been responsible for the creation of such claim.

24. Transfer of Landlord's Interest. In the event of the sale, assignment or transfer by Landlord of its interest in the Demised Premises and/or in this Lease (other than a collateral assignment to secure a debt of Landlord) to a successor in interest (who must expressly assume the obligations of Landlord hereunder), Landlord shall be released or discharged from all of its covenants and obligations hereunder, except such obligations as shall have accrued prior to any such sale, assignment or transfer; and Tenant agrees to look solely to such successor in interest of Landlord for performance of such obligations. Tenant shall thereafter attorn and look solely to such assignee, as Landlord, provided Tenant has first received written notice of such assignment of Landlord's interest.

25. Gender; Singular and Plural. As used herein, the neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes a corporation, partnership or other legal entity when the context so requires. The singular number includes the plural, and vice versa, whenever the context so requires.

26. Nature and Extent of Agreement. This instrument and Exhibits A constitute the complete agreement of the parties regarding the terms and conditions of the Lease of the Demised Premises, and there are no oral or written conditions, terms, understandings or other agreements pertaining thereto which have not been incorporated herein. This instrument creates only the relationship of Landlord and Tenant between the parties hereto as to the Demised Premises, and nothing herein shall in any way be construed to impose upon either party hereto any obligations or restrictions not herein expressly set forth. Specifically, nothing in this Lease shall be construed to render the Landlord in any way or for any purpose a partner, joint venturer or associate in any relationship with Tenant other than that of Landlord and Tenant, and this Lease shall not be construed to authorize either Landlord or Tenant to act as agent for the other. The laws of the

State of North Carolina shall govern the validity, interpretation, performance and enforcement of this Lease.

27. **Municipal Authority.** Tenant represents and warrants its approval and authority to enter into this Lease and pre-audit certification as required by North Carolina municipal finance laws. Tenant shall indemnify and defend Landlord from any breach by Tenant of these representations and warranties, and Tenant shall not claim sovereign immunity as a defense to entry into or enforcement of the Lease provisions.

28. **Binding Effect.** Subject to express provisions hereof to the contrary, this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns during the Term hereof and during any extensions or renewals of said Term.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed and sealed all in pursuance of proper legal authority, as of the day and year first above written.

[SIGNATURE PAGES FOLLOW]

TENANT:

CITY OF WINSTON-SALEM

By: *Lu N. King*
City Manger

(SEAL)

ATTEST:

Janice S. Williams
City Secretary

The seal of the City of Winston-Salem, North Carolina, is circular with a rope-like border. Inside the border, the text "CITY OF THE CITY OF WINSTON-SALEM" is written around the top and bottom. In the center, "NORTH CAROLINA" is written with a star above it.

LANDLORD:

KDM OF WILMINGTON, LLC

By: *Adriana* [SEAL]
Its Manager

APPROVED AS TO FORM AND LEGALITY

THIS DOCUMENT HAS BEEN PRE-AUDITED IN ACCORDANCE WITH THE N.C. LOCAL GOVERNMENT BUDGET AND FISCAL CONTROL ACT

Angela I. Carmon
Angela I. Carmon, City Attorney

Lisa Saunders
Lisa Saunders, Asst. Financial Officer
DENISE L. ZELL Chief

EXHIBIT A

