

ASSIGNMENT OF LEASE

This Assignment of Lease (this "**Assignment of Lease**") is duly made, executed and delivered effective as of April 9, 2009 (the "**Closing Date**"), by and between:

Bordier's Nursery, Inc., a California corporation, as the debtor and debtor-in-possession ("**Seller**") in that certain Chapter 11 bankruptcy case entitled *In Re Bordier's Nursery, Inc., a California corporation*, which was commenced on December 23, 2008, pursuant to the filing of a voluntary petition pursuant to Chapter 11 of Title 11 of the United States Code, 11 U.S.C. Sections 101 et. seq. (the "**Bankruptcy Code**"), in the United States Bankruptcy Court for the Central District of California, Santa Ana Division (the "**Bankruptcy Court**"), as Case No. 8:08-bk-18501 RK (the "**Bankruptcy Case**");

and:

The Pinery, LLC, a California corporation ("**Buyer**");

(each, individually, a "**Party**", and both, collectively, the "**Parties**"), with regard to the following facts, circumstances, understandings and beliefs (collectively, "**Recitals**");

RECITALS:

- A. Buyer and Seller entered into an Asset Purchase Agreement (the "**APA**") bearing an Execution Date of March 30, 2009, pursuant to which Seller agreed to assign to Buyer, and Buyer agreed to accept from Buyer, an assignment of that certain "Flat Rate Lease" (the "**Lease**") dated as of December 15, 1986, made and executed by and between the City of San Diego, a municipal corporation, as the original and current lessor thereunder, and Charles T. Jancic, as the original lessee thereunder, said original lessee's interest thereunder having been subsequently assigned to Seller, as the current lessee thereunder, pursuant to a Lease Assignment, Assumption and Consent dated as of February 16, 1996.
- B. The APA and the assignment of the Lease by Seller to Buyer (the "**Lease Assignment**") were approved and authorized by the Bankruptcy Court pursuant to an order entered in the Bankruptcy Case on April 7, 2009 (the "**Sale Approval Order**").
- C. Buyer's closing obligations, as set forth in Section 3.7 of the APA, Seller's closing obligations, as set forth in Section 3.8 of the APA, and all other conditions precedent to the closing of the sale ("**Closing**"), were duly satisfied or waived pursuant to the APA, and the Sale was consummated, transacted and closed as of the Closing Date set forth above.
- D. The APA contemplates that Seller will deliver to Buyer upon the closing ("**Closing**") of the Sale a duly executed original assignment of lease evidencing the assignment of the Lease by Seller to Buyer, and the acceptance and assumption of the Lease by Buyer from Seller. This Assignment of Lease is the assignment of lease contemplated in the APA.

PURSUANT TO THE FOREGOING RECITALS, and in consideration of the obligations, covenants, warranties, representations and declarations contained in the APA, and the payment by Buyer to Seller of the Purchase Price set forth in the APA, the receipt of which is hereby acknowledged, Buyer and Seller, each intending to be legally bound by this Assignment of Lease, each hereby covenants, agrees, promises, warrants, represents and declares as follows:

1. **Definitions.** Capitalized words and phrases that are defined in this Assignment of Lease will have the meaning assigned to them in this Assignment of Lease when capitalized and used in this Assignment of Lease. Capitalized words and phrases that are defined in the APA but not otherwise defined in this Assignment of Lease will have the meaning assigned to them in the APA when capitalized and used in this Assignment of Lease unless the context in which such word or phrase is used reasonably prohibits such meaning.

2. **Assignment and Assumption of Lease.** Pursuant to and in accordance with the APA and the Sale Approval Order, Seller, as assignor, hereby transfers and assigns to Buyer, as assignee, all of Seller's right, title and interest in and to the Lease, Buyer hereby accepts such assignment, and Buyer hereby assumes all obligations, responsibilities and liabilities of the lessee under the Lease that arise on or after the Closing Date.

3. **Conflicting Documents.** In the event of a conflict between the Sale Approval Order and this Assignment of Lease, the Sale Approval Order will govern and control.

4. **Inurement.** This Assignment of Lease will inure to the benefit of Seller, as assignee, and Buyer, as assignor, and each of their respective successors, assigns, grantees, administrators, receivers and trustees, and will be binding upon Seller, Buyer and the Estate, and their respective successors, assigns, grantees, administrators, receivers and trustees, including without limitation any trustee appointed in the Bankruptcy Case.

THE UNDERSIGNED SELLER made, executed and delivered this Assignment of Lease effective as of the Closing Date set forth in the introductory paragraph of this document.

Bordier's Nursery, Inc.,
a California corporation

By: _____
Mark Berchiolli

Its: President

The Pinery, LLC,
a California corporation

By: _____
Philip C. Guardia

Its: President