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C T Corporation System.

Requestor's Name
660 East Jefferson Street

Address
Tallahassee, FL 32301

City State Zip Phone 222-1092

CORPORATION(S) NAME

Ground Control Acquisition Corp.
merged into
Ground Control Landscaping, Inc

FILED
98 JUN -9 PM 4:00
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

( ) Profit
( ) NonProfit
( ) Limited Liability Company
( ) Foreign
( ) Amendment
( ) Dissolution/Withdrawal
(X) Merger
( ) Mark

( ) Limited Partnership
( ) Reinstatement
( ) Limited Liability Partnership
( ) Annual Report
( ) Reservation
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DIVISION OF CORPORATION

Add
William Murdy - Director
William Fiedler - VP & A.S.

6/10
Joe Merger
CC

CR2E031 (1-89)

ARTICLES OF MERGER
Merger Sheet

MERGING:

GROUND CONTROL ACQUISITION CORP., a Delaware corporation, not qualified in Florida

INTO

GROUND CONTROL LANDSCAPING, INC., a Florida corporation, 587215

File date: June 9, 1998

Corporate Specialist: Joy Moon-French

FILED

98 JUN -9 PM 4:00

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

DOMESTIC CORPORATION AND FOREIGN CORPORATION

ARTICLES OF MERGER

The undersigned corporations, pursuant to Section 607.1107 of the Florida Business Corporation Act hereby execute the following Articles of Merger:

FIRST: The names of the corporations proposing to merge and the names of the states or countries under the laws of which such corporations are organized are as follows:

Name of corporation	State/country of incorporation
Ground Control Acquisition Corp.	Delaware
Ground Control Landscaping, Inc.	Florida

SECOND: The laws of the state or country under which such foreign corporation is organized permit such merger and such foreign corporation is complying with those laws in effecting the merger.

THIRD: The foreign corporation complies with Section 607.1105 F.S.if it is the surviving corporation of the merger; and each domestic corporation complies with the applicable provisions of Sections 607.1101 - 607.1104 F.S. and, if it is the surviving corporation of the merger, with Section 607.1105 F.S. (as set forth below).

FOURTH: The plan of merger is as follows: See Attached.

FIFTH: The effective date of the certificate of merger shall be the 9th day of June 1998.

Sixth: The plan of merger was adopted by the shareholders of Ground Control Acquisition Corp., on the 17th day of March, 1998, and was adopted by the shareholders of Ground Control Landscaping, Inc. on the 17th day of March, 1998.

Signed this 9th day of June 1998.

Ground Control Landscaping, Inc.

By: _____
Name: Mark Yahn
Title: President

Ground Control Acquisition Corp.

By: _____
Name: William L. Fiedler
Title: Vice President

PLAN OF MERGER

AGREEMENT AND PLAN OF ORGANIZATION

dated as of March 17, 1998

by and among

LANDCARE USA, INC.

GROUND CONTROL ACQUISITION CORP.
(a subsidiary of LandCare USA, Inc.)

GROUND CONTROL LANDSCAPING, INC.

and

the STOCKHOLDERS named herein

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by and among

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AGREEMENT AND PLAN OF ORGANIZATION

THIS AGREEMENT AND PLAN OF ORGANIZATION (the "Agreement") is made as of March 17, 1998, by and among LandCare USA, Inc., a Delaware corporation ("LandCare"), Ground Control Acquisition Corp., a Delaware corporation ("Newco"), Ground Control Landscaping, Inc., a Florida corporation (the "Company"), and the stockholders identified on the signature pages hereof (the "Stockholders"). The Stockholders are all the stockholders of the Company.

RECITALS

WHEREAS, Newco is a corporation duly organized and existing under the laws of the State of Delaware, having been incorporated on or about March 6, 1998 solely for the purpose of completing the transactions set forth herein, and is a wholly-owned subsidiary of LandCare, a corporation organized and existing under the laws of the State of Delaware;

WHEREAS, the respective Boards of Directors of Newco and the Company (which together are hereinafter collectively referred to as "Constituent Corporations") deem it advisable and in the best interests of the Constituent Corporations and their respective Stockholders that Newco merge with and into the Company pursuant to this Agreement and the applicable provisions of the laws of the States of Delaware and the State of Incorporation (as defined below);

WHEREAS, LandCare is entering into other separate agreements substantially similar to this Agreement (the "Other Agreements"), each of which is entitled "Agreement and Plan of Organization," with each of the Other Founding Companies (as defined herein) and their respective stockholders in order to acquire additional landscaping and related services businesses;

WHEREAS, this Agreement, the Other Agreements and the IPO (as defined herein) constitute the "LandCare Plan of Organization;"

WHEREAS, the Stockholders and the Boards of Directors and the stockholders of LandCare, each of the Other Founding Companies and each of the subsidiaries of LandCare that are parties to the Other Agreements have approved and adopted the LandCare Plan of Organization as an integrated plan pursuant to which the Stockholders and the stockholders of each of the Other Founding Companies will transfer the capital stock of each of the Founding Companies (as defined herein) to LandCare and the stockholders of each of the Other Founding Companies will acquire the stock of LandCare (but not cash or other property) as a tax-free transfer of property under Section 351 of the Code;

WHEREAS, in consideration of the agreements of the Other Founding Companies pursuant to the Other Agreements, the Board of Directors of the Company has approved this Agreement (which is subject to the terms and conditions herein set forth), as part of the LandCare Plan of Organization in order to transfer the capital stock of the Company to LandCare;

WHEREAS, unless the context otherwise requires, capitalized terms used in this Agreement or in any schedule attached hereto and not otherwise defined shall have the following meanings for all purposes of this Agreement:

"1933 Act" means the Securities Act of 1933, as amended.

"1934 Act" means the Securities Exchange Act of 1934, as amended.

"Acquired Party" means the Company, any Subsidiary of the Company and any member of a Relevant Group.

"Acquisition Companies" means Newco and each of the other Delaware companies created for purposes of effecting the acquisitions of some or all of the Other Founding Companies and wholly-owned by LandCare prior to the Funding and Consummation Date.

"Affiliate" means, with respect to any Person, any Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Person.

"Articles of Merger" shall mean those Articles or Certificates of Merger with respect to the Merger in such forms as may be required by the laws of the State of Delaware and the State of Incorporation.

"Balance Sheet Date" shall mean December 31, 1997.

"Closing" has the meaning set forth in Section 4.

"Closing Date" has the meaning set forth in Section 4.

"Code" means the Internal Revenue Code of 1986, as amended.

"Company" has the meaning set forth in the first paragraph of this Agreement.

"Company Stock" has the meaning set forth in Section 2.1.

"Constituent Corporations" has the meaning set forth in the second recital of this Agreement.

"Draft Registration Statement" means the March 12, 1998 draft of the Registration Statement, and any corrections thereto and supplemental information delivered by LandCare to the Company for delivery to the Stockholders prior to the time this Agreement is delivered to LandCare.

"Effective Time of the Merger" shall mean the time as of which the Merger becomes effective, which shall occur on the Funding and Consummation Date.

"Environmental Laws" has the meaning set forth in Section 5.13.

"Expiration Date" has the meaning set forth in Section 5(A).

"Founding Companies" means:

(a) Arteka Corporation, a Minnesota corporation, as well as its affiliates Arteka Natural Green Corporation, a Minnesota corporation and Arteka Nurseries, Inc., a Minnesota corporation;
(b) D. R. Church Landscape Co., Inc., an Illinois corporation;
(c) Desert Care Landscaping, Inc., an Arizona corporation;
(d) Four Seasons Landscape and Maintenance, Inc., a California corporation;
(e) Ground Control Landscaping, Inc., a Florida corporation;
(f) Southern Tree & Landscape Co., Inc., a North Carolina corporation; and
(g) Trees, Inc., a Nevada corporation.

"Funding and Consummation Date" has the meaning set forth in Section 4.

"IPO" means the initial public offering of LandCare Stock pursuant to the Registration Statement described herein.

"Material Adverse Effect" has the meaning set forth in Section 5.1.

"Material Documents" has the meaning set forth in Section 5.23.

"Merger" means the merger of Newco with and into the Company pursuant to this Agreement and the applicable provisions of the laws of the State of Delaware and the laws of the State of Incorporation.

"LandCare" has the meaning set forth in the first paragraph of this Agreement.

"LandCare Charter Documents" has the meaning set forth in Section 6.1.

"LandCare Stock" means the common stock, par value $.01 per share, of LandCare.

"Newco" has the meaning set forth in the first paragraph of this Agreement.

"Newco Stock" means the common stock, par value $.01 per share, of Newco.

"Other Founding Companies" means all of the Founding Companies other than the Company.

"Person" means an individual or a corporation, limited partnership, general partnership, limited liability company, trust, unincorporated association, joint venture, association, or government or any agency, instrumentality, or political subdivision thereof, or other entity.

"Pricing" means the date of determination by LandCare and the Underwriters of the public offering price of the shares of LandCare Stock in the IPO; the parties hereto contemplate that the Pricing shall take place on the Closing Date.

"Qualified Plans" has the meaning set forth in Section 5.20.

"Registration Statement" means that certain registration statement on Form S-1 to be filed with the SEC covering the shares of LandCare Stock to be issued in the IPO and all amendments thereto.

"Relevant Group" means the Company and any Affiliated, combined, consolidated, unitary or similar group of which the Company is or was a member for Tax reporting purposes.

"Returns" means any returns, reports or statements (including any information returns) required to be filed for purposes of a particular Tax.

"Schedule" means each Schedule attached hereto (as the same may from time to time be amended), which shall reference the relevant sections of this Agreement, on which parties hereto disclose information as part of their respective representations, warranties and covenants.

"SEC" means the United States Securities and Exchange Commission.

"State of Incorporation" means the State of Florida.

"Stockholders" has the meaning set forth in the first paragraph of this Agreement.

"Subsidiary" means, as to any Person, any corporation or entity, 50% or more of the shares of voting stock (or in the case of an entity which is not a corporation, 50% or more of the equity interests that provide the power to manage or direct the management of such entity) of which is at the time any determination is being made, owned, directly or indirectly, by such Person and its wholly owned Subsidiaries.

"Surviving Corporation" shall mean the Company as the surviving party in the Merger.

"Tax" or "Taxes" means all federal, state, local or foreign net or gross income, gross receipts, net proceeds, sales, use, ad valorem, value added, franchise, withholding, employment, excise, property, deed, stamp, alternative or add on minimum, or other taxes, assessments, duties, fees, levies or other governmental charges, whether disputed or not, together with any interest, penalties, additions to tax or additional amounts with respect thereto.

"Underwriters" means the prospective underwriters identified in the Draft Registration Statement.

NOW, THEREFORE, in consideration of the premises and of the mutual agreements, representations, warranties, provisions and covenants herein contained, the parties hereto hereby agree as follows:

1. THE MERGER

1.1 **Delivery and Filing of Articles of Merger.** The Constituent Corporations will cause the Articles of Merger to be signed, verified and delivered to LandCare at the Closing to be held for filing with the Secretary of State of the State of Delaware and the Secretary of State (or other appropriate authority) of the State of Incorporation on or effective as of the Funding and Consummation Date.

1.2 **Effective Time of the Merger.** At the Effective Time of the Merger, Newco shall be merged with and into the Company in accordance with the Articles of Merger, the separate existence of Newco shall cease, the Company shall be the surviving party in the Merger and the Company is sometimes hereinafter referred to as the Surviving Corporation. The Merger will be effected in a single transaction.

1.3 **Certificate of Incorporation, By-laws; Board of Directors and Officers of Surviving Corporation.** At the Effective Time of the Merger:

(i) the Certificate of Incorporation of the Company then in effect shall be the Certificate of Incorporation of the Surviving Corporation until changed as provided by law;

(ii) the By-laws of Newco then in effect shall become the By-laws of the Surviving Corporation; and subsequent to the Effective Time of the Merger, such By-laws shall be the By-laws of the Surviving Corporation until they shall thereafter be duly amended (and such By-laws shall be amended from time to time, if necessary, to comply with applicable state law);

(iii) the Board of Directors of the Surviving Corporation shall consist of the persons who are on the Board of Directors of the Company immediately prior to the Effective Time of the Merger, provided that William Murdy or another officer of LandCare shall become an additional director of the Surviving Corporation effective as of the Effective Time of the Merger, and the number of directors constituting the entire Board of Directors of the Company shall be

increased, if necessary, to accommodate the addition of such additional director; the Board of Directors of the Surviving Corporation shall hold office subject to the provisions of the laws of the State of Incorporation and of the Certificate of Incorporation and By-laws of the Surviving Corporation; and

(iv) the officers of the Company immediately prior to the Effective Time of the Merger shall continue as the officers of the Surviving Corporation in the same capacity or capacities, and effective upon the Effective Time of the Merger William Fiedler and another officer of LandCare shall each become an additional Vice President and Assistant Secretary of the Surviving Corporation, such officers to serve, subject to the provisions of the Certificate of Incorporation and By-laws of the Surviving Corporation, until their respective successors are duly elected and qualified.

1.4 **Certain Information With Respect to the Capital Stock of the Company, LandCare and Newco.** The respective designations and numbers of outstanding shares and voting rights of each class of outstanding capital stock of the Company, LandCare and Newco as of the date of this Agreement are as follows:

(i) as of the date of this Agreement, the authorized and outstanding capital stock of the Company is as set forth on Annex II hereto;

(ii) immediately prior to the Closing Date and the Funding and Consummation Date, except for changes permitted by Section 7.12 hereof, the authorized capital stock of LandCare will consist of 100,000,000 shares of LandCare Stock, of which the number of issued and outstanding shares will be set forth in the Registration Statement, 5,000,000 shares of preferred stock, $.01 par value, of which no shares will be issued and outstanding, and 3,000,000 shares of Restricted Voting Common Stock, $.01 par value (the "Restricted Common Stock"), all of which will be issued and outstanding except as otherwise set forth in the Registration Statement; and

(iii) as of the date of this Agreement, the authorized capital stock of Newco consists of 1,000 shares of Newco Stock, of which one hundred (100) shares are issued and outstanding.

1.5 **Effect of Merger.** At the Effective Time of the Merger, the effect of the Merger shall be as provided in the applicable provisions of the General Corporation Law of the State of Delaware (the "Delaware GCL") and the law of the State of Incorporation. Except as herein specifically set forth, the identity, existence, purposes, powers, franchises, privileges, rights and immunities of the Company shall continue unaffected and unimpaired by the Merger and the corporate franchises, existence and rights of Newco shall be merged with and into the Company, and the Company, as the Surviving Corporation, shall be fully vested therewith. At the Effective Time of the Merger, the separate existence of Newco shall cease and, in accordance with the terms of this Agreement, the Surviving Corporation shall possess all the rights, privileges, immunities and franchises, of a public, as well as of a private, nature, and all property, real, personal and mixed, and all debts due on

whatever account, including subscriptions to shares, and all taxes, including those due and owing and those accrued, and all other choses in action, and all and every other interest of or belonging to or due to the Company and Newco shall be transferred to, and vested in, the Surviving Corporation without further act or deed; and all property, rights and privileges, powers and franchises and all and every other interest shall be thereafter as effectually the property of the Surviving Corporation as they were of the Company and Newco; and the title to any real estate, or interest therein, whether by deed or otherwise, under the laws of the State of Incorporation vested in the Company and Newco, shall not revert or be in any way impaired by reason of the Merger. Except as otherwise provided herein, the Surviving Corporation shall thenceforth be responsible and liable for all the liabilities and obligations of the Company and Newco and any claim existing, or action or proceeding pending, by or against the Company or Newco may be prosecuted as if the Merger had not taken place, or the Surviving Corporation may be substituted in their place. Neither the rights of creditors nor any liens upon the property of the Company or Newco shall be impaired by the Merger, and all debts, liabilities and duties of the Company and Newco shall attach to the Surviving Corporation, and may be enforced against such Surviving Corporation to the same extent as if said debts, liabilities and duties had been incurred or contracted by such Surviving Corporation.

2. CONVERSION OF STOCK

2.1 **Manner of Conversion.** The manner of converting the shares of (i) outstanding capital stock of the Company ("Company Stock") and (ii) Newco Stock, issued and outstanding immediately prior to the Effective Time of the Merger, respectively, into shares of (x) LandCare Stock and cash and (y) common stock of the Surviving Corporation, respectively, shall be as follows:

As of the Effective Time of the Merger:

(i) all of the shares of Company Stock issued and outstanding immediately prior to the Effective Time of the Merger, by virtue of the Merger and without any action on the part of the holder thereof, automatically shall be deemed to represent (1) the right to receive the number of shares of LandCare Stock set forth on Annex I hereto with respect to such holder and (2) the right to receive the amount of cash set forth on Annex I hereto with respect to such holder;

(ii) all shares of Company Stock that are held by the Company as treasury stock shall be canceled and retired and no shares of LandCare Stock or other consideration shall be delivered or paid in exchange therefor; and

(iii) each share of Newco Stock issued and outstanding immediately prior to the Effective Time of the Merger, shall, by virtue of the Merger and without any action on the part of LandCare, automatically be converted into one fully paid and non-assessable share of common stock of the Surviving Corporation which shall constitute all of the issued and outstanding shares of common stock of the Surviving Corporation immediately after the Effective Time of the Merger.

All LandCare Stock received by the Stockholders pursuant to this Agreement shall, except for restrictions on resale or transfer described in Sections 15 and 16 hereof, have the same rights as all the other shares of outstanding LandCare Stock by reason of the provisions of the Certificate of Incorporation of LandCare or as otherwise provided by the Delaware GCL. All LandCare Stock received by the Stockholders shall be issued and delivered to the Stockholders free and clear of any liens, claims or encumbrances of any kind or nature. All voting rights of such LandCare Stock received by the Stockholders shall be fully exercisable by the Stockholders and the Stockholders shall not be deprived nor restricted in exercising those rights. At the Effective Time of the Merger, LandCare shall have no class of capital stock issued and outstanding other than the LandCare Stock and the Restricted Voting Common Stock.

3. DELIVERY OF MERGER CONSIDERATION

3.1 On the Funding and Consummation Date the Stockholders, who are the holders of all of the outstanding capital stock of the Company, shall, upon surrender of certificates representing such shares, receive the respective numbers of shares of LandCare Stock and the amounts of cash described on Annex I hereto, said cash to be payable by certified check or wire transfer.

3.2 The Stockholders shall deliver to LandCare at the Closing the certificates representing Company Stock, duly endorsed in blank by the Stockholders, or accompanied by blank stock powers, and with all necessary transfer tax and other revenue stamps, acquired at the Stockholders' expense, affixed and canceled. The Stockholders agree promptly to cure any deficiencies with respect to the endorsement of the stock certificates or other documents of conveyance with respect to such Company Stock or with respect to the stock powers accompanying any Company Stock.

4. CLOSING

At or prior to the Pricing, the parties shall take all actions necessary to prepare to (i) effect the Merger (including the execution of the Articles of Merger which shall be delivered to LandCare for filing with the appropriate authorities effective on the Funding and Consummation Date) and (ii) effect the conversion and delivery of shares referred to in Section 3 hereof; provided, that such actions shall not include the actual completion of the Merger or the conversion and delivery of the shares and funds referred to in Section 3 hereof, each of which actions shall only be taken upon the Funding and Consummation Date as herein provided. In the event that there is no Funding and Consummation Date and this Agreement automatically terminates as provided in this Section 4, the Articles of Merger shall not be filed and shall be returned to the Stockholders. The taking of the actions described in clauses (i) and (ii) above (the "Closing") shall take place on the closing date (the "Closing Date") at the offices of Bracewell & Patterson, L.L.P., South Tower Pennzoil Place, 711 Louisiana, Suite 2900, Houston, Texas 77002. On the Funding and Consummation Date (x) the Articles of Merger shall be filed with the appropriate state authorities so that they shall be, as early as practicable on the Funding and Consummation Date, effective and the Merger shall thereby be effected, (y) all transactions contemplated by this Agreement, including the conversion and delivery of shares and the delivery of funds in the amount and in the manner provided in Section 3 hereof and

(z) the closing with respect to the IPO shall occur and be completed. The date on which the actions described in the preceding clauses (x), (y) and (z) occurs shall be referred to as the "Funding and Consummation Date." During the period from the Closing Date to the Funding and Consummation Date, this Agreement may only be terminated by the parties if (a) the underwriting agreement in respect of the IPO is terminated pursuant to the terms of such underwriting agreement, or (b) the conditions set forth in Sections 8.5 and 8.9 hereof are not being satisfied as of the Funding and Consummation Date. This Agreement shall also in any event automatically terminate if the Funding and Consummation Date has not occurred within 15 business days following the Closing Date. Time is of the essence.

5. REPRESENTATIONS AND WARRANTIES OF THE STOCKHOLDERS

Each of the Stockholders jointly and severally represents and warrants that all of the representations and warranties in this Section 5 are true at the date of this Agreement and, subject to Section 7.8 hereof, shall be true at the time of Closing and the Funding and Consummation Date, and agrees that such representations and warranties shall survive the Funding and Consummation Date for a period of twelve months (the last day of such period being the "Expiration Date"), except that the representations and warranties set forth in Section 5.22 hereof shall survive until such time as the limitations period has run for all tax periods ended on or prior to the Funding and Consummation Date, which shall be deemed to be the Expiration Date for Section 5.22, and the representations and warranties set forth in Section 5.31 hereof shall survive perpetually. For purposes of this Section 5, the term "Company" shall mean and refer to the Company and all of its Subsidiaries, if any. For purposes of this Section 5, the phrase "knowledge of the Stockholders" shall mean the actual knowledge of the Stockholders after due inquiry of the appropriate management personnel employed by the Company.

5.1 **Due Organization.** The Company is a corporation duly incorporated and organized, validly existing and in good standing under the laws of the State of Incorporation, and has the requisite power and authority to carry on its business as it is now being conducted. The Company is duly qualified to do business and is in good standing in each jurisdiction in which the nature of its business or the ownership or leasing of its properties makes such qualification necessary, except (i) as set forth on Schedule 5.1 or (ii) where the failure to be so authorized or qualified would not have a material adverse effect on the business, operations, properties, assets or condition (financial or otherwise), of the Company taken as a whole (as used herein with respect to the Company, or with respect to any other Person, a "Material Adverse Effect"). Schedule 5.1 sets forth a list of all jurisdictions in which the Company is authorized or qualified to do business. True, complete and correct copies of (i) the Certificate of Incorporation and By-laws, each as amended, of the Company (the "Charter Documents"), and (ii) the stock records of the Company, are all attached to Schedule 5.1. The Company has delivered complete and correct copies of all minutes of meetings, written consents and other evidence, if any, of deliberations of or actions taken by the Company's Board of Directors and stockholders during the last five years.

5.2 **Authorization.** (i) The representatives of the Company executing this Agreement have the authority to enter into and bind the Company to the terms of this Agreement and (ii) the Company has the full legal right, power and authority to enter into this Agreement and the Merger. The most recent resolutions adopted by the Board of Directors of the Company and the most recent resolutions adopted by the Stockholders approve this Agreement and the transactions contemplated hereby in all respects, and copies of all such resolutions, certified by the Secretary or an Assistant Secretary of the Company as being in full force and effect on the date hereof, are attached hereto as Schedule 5.2.

5.3 **Capital Stock of the Company.** The authorized capital stock of the Company is as set forth on Annex II, and all of the issued and outstanding shares of the capital stock of the Company are owned by the Stockholders in the amounts set forth in Annex II. All of the issued and outstanding shares of the capital stock of the Company have been duly authorized and validly issued, are fully paid and nonassessable, are owned of record and beneficially by the Stockholders and further, such shares were offered, issued, sold and delivered by the Company in compliance with all applicable state and Federal laws concerning the issuance of securities. Further, none of such shares were issued in violation of any preemptive rights of any past or present stockholder.

5.4 **Transactions in Capital Stock, Organization Accounting.** Except as set forth on Schedule 5.4, the Company has not acquired any Company Stock since January 1, 1995. Except as set forth on Schedule 5.4, (i) no option, warrant, call, conversion right or commitment of any kind exists which obligates the Company to issue any of its authorized but unissued capital stock; (ii) the Company has no obligation (contingent or otherwise) to purchase, redeem or otherwise acquire any of its equity securities or any interests therein or to pay any dividend or make any distribution in respect thereof; and (iii) neither the voting stock structure of the Company nor the relative ownership of shares among any of its respective Stockholders has been altered or changed in contemplation of the Merger and/or the LandCare Plan of Organization.

5.5 **No Bonus Shares.** Except as set forth on Schedule 5.5, none of the shares of Company Stock was issued pursuant to awards, grants or bonuses in contemplation of the Merger or the LandCare Plan of Organization.

5.6 **Subsidiaries.** Except as set forth on Schedule 5.6, the Company has no Subsidiaries. Except as set forth in Schedule 5.6, the Company does not presently own, of record or beneficially, or control, directly or indirectly, any capital stock, securities convertible into capital stock or any other equity interest in any corporation, association or business entity nor is the Company, directly or indirectly, a participant in any joint venture, partnership or other non-corporate entity.

5.7 **Predecessor Status; etc.** Set forth on Schedule 5.7 is a listing of all names of all predecessor companies of the Company, including the names of any entities acquired by the Company (by stock purchase, merger or otherwise) or owned by the Company or from whom the Company previously acquired all or substantially all of any such entity's assets (or all or substantially all of the assets used by any such entity in a line of business), in any case, from the

earliest date upon which any Stockholder acquired his or her stock in any Company. Except as disclosed on Schedule 5.7, the Company has not been, within such period of time, a subsidiary or division of another corporation or a part of an acquisition which was later rescinded.

5.8 **Spin-off by the Company.** Except as set forth on Schedule 5.8, there has not been any sale, spin-off or split-up of material assets of either the Company or any Affiliate since January 1, 1995.

5.9 **Financial Statements.** Schedule 5.9 sets forth complete and correct copies of the balance sheets of the Company as of the dates shown thereon and the related statements of operations, stockholder's equity and cash flows for the periods shown thereon, together with the related notes and schedules (such balance sheets, the related statements of operations, stockholder's equity and cash flows and the related notes and schedules being referred to herein as the "Financial Statements"). The Financial Statements have been prepared from the books and records of the Company as of the dates and for the periods covered thereby. The books of account of the Company have been kept accurately in the ordinary course of business, the transactions recorded therein represent bona fide transactions, and the revenues, expenses, assets and liabilities of the Company have been properly recorded therein all material respects.

5.10 **Liabilities and Obligations.** Schedule 5.10 sets forth an accurate list as of the Balance Sheet Date of (i) all material liabilities of the Company of a nature that they are required in accordance with GAAP to be reflected on a balance sheet and which are not reflected on the balance sheet of the Company at the Balance Sheet Date or otherwise reflected in the Company Financial Statements at the Balance Sheet Date and which are not disclosed on any of the other Schedules to this Agreement, and (ii) all loan agreements, indemnity or guaranty agreements, bonds, mortgages, pledges and material security agreements to which the Company is a party or by which its properties may be bound. To the knowledge of the Stockholders, except as set forth on Schedule 5.10, since the Balance Sheet Date the Company has not incurred any material liabilities of any kind, character or description, whether accrued, absolute, secured or unsecured, contingent or otherwise, other than liabilities incurred in the ordinary course of business. The Company has also delivered to LandCare on Schedule 5.10, in the case of those contingent liabilities related to pending or threatened litigation, or other liabilities which are not fixed, a good faith and reasonable estimate of the maximum amount which the Company reasonably expects will be payable and the amount, if any, accrued or reserved for each such potential liability on the Company's Financial Statements; in the case of any such liability for which no estimate has been provided, the estimate for purposes of this Agreement shall be deemed to be zero.

5.11 **Accounts and Notes Receivable.** Schedule 5.11 sets forth an accurate list of the accounts and notes receivable of the Company, as of the Balance Sheet Date, including any such amounts which are not reflected in the balance sheet as of the Balance Sheet Date, and including receivables from and advances to employees and the Stockholders, which are identified as such. Except to the extent reflected on Schedule 5.11, such accounts, notes and other receivables are

collectible in the amounts shown on Schedule 5.11, net of reserves reflected in the balance sheet as of the Balance Sheet Date.

5.12 **Permits and Intangibles.** The Company holds all licenses, franchises, permits and other governmental authorizations ("Licenses") the absence of any of which could have a Material Adverse Effect on the Company's business, and the Company has delivered to LandCare an accurate list and summary description (which is set forth on Schedule 5.12) of all such Licenses, and of any trademarks, trade names, patents, patent applications and copyrights owned or held by the Company or by any of its employees if used or held for use by the Company in the conduct of its business (including interests in software or other technology systems, programs and intellectual property) (it being understood and agreed that a list of environmental permits and other environmental approvals is set forth on Schedule 5.13). At or prior to the Closing, all such trademarks, trade names, patents, patent applications, copyrights and other intellectual property owned by any employees of the Company will be assigned or licensed to the Company for no additional consideration. To the knowledge of the Stockholders, the Licenses and other rights listed on Schedules 5.12 and 5.13 are valid, and the Company has not received any notice that any Person intends to cancel, terminate or not renew any such License or other right. The Company has conducted and is conducting its business in compliance with the requirements, standards, criteria and conditions set forth in the Licenses and other rights listed on Schedules 5.12 and 5.13 and is not in violation of any of the foregoing except where such non-compliance or violation would not have a Material Adverse Effect on the Company. Except as specifically provided in Schedule 5.12, the transactions contemplated by this Agreement will not result in a default under or a breach or violation of, or adversely affect the rights and benefits afforded to the Company by, any such Licenses or other rights.

5.13 **Environmental Matters.** Except as set forth on Schedule 5.13, and except where any failure to comply, either singly or in the aggregate, has not had and will not have a Material Adverse Effect on the Company or its business, (i) the Company has complied with and is in compliance with all Federal, state, local and foreign statutes (civil and criminal), laws, ordinances, regulations, rules, permits, judgments, orders and decrees applicable to it or any of its properties, assets, operations and businesses relating to environmental protection (collectively "Environmental Laws") including, without limitation, Environmental Laws relating to air, water, land and the generation, storage, use, handling, transportation, treatment or disposal of Hazardous Wastes, Hazardous Materials and Hazardous Substances (as such terms are defined in any applicable Environmental Law), as well as petroleum and petroleum products (collectively "Hazardous Materials"), (ii) the Company has obtained and adhered to all necessary permits and other approvals necessary to treat, transport, store, dispose of and otherwise handle Hazardous Materials, a list of all of which permits and approvals is set forth on Schedule 5.13, and has reported to the appropriate authorities, to the extent required by all Environmental Laws, all past and present sites owned and operated by the Company where Hazardous Materials have been treated, stored, disposed of or otherwise handled, (iii) to the knowledge of the Stockholders, there have been no releases or threats of releases (as these terms are defined in Environmental Laws) of any Hazardous Materials at, from, in or on any property owned or operated by the Company except as permitted by Environmental Laws, and (iv) to the knowledge of the Stockholders, there is no on-site or off-site location to which

the Company has transported or disposed of Hazardous Materials or arranged for the transportation of Hazardous Materials which is the subject of any Federal, state, local or foreign enforcement action or any other investigation which could reasonably be expected to lead to any claim against the Company, LandCare or Newco for any clean-up cost, remedial work, damage to natural resources, property damage or personal injury, including, but not limited to, any claim under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act or comparable state or local statutes or regulations.

5.14 **Personal Property.** The Company has delivered to LandCare an accurate list (which is set forth on Schedule 5.14) of (x) all personal property material to the operations of the Company included in "property" or "plant, property and equipment" or any similar category on the balance sheet of the Company as of the Balance Sheet Date, (y) all other tangible personal property owned by the Company with an individual fair market value (in the reasonable judgment of the Stockholders; it being understood that the Stockholders are not obtaining appraisals of any such property in connection with the preparation of Schedule 5.14) in excess of $25,000 (i) as of the Balance Sheet Date and (ii) acquired since the Balance Sheet Date and (z) all material leases and agreements in respect of personal property, including, in the case of each of (x), (y) and (z), (1) true, complete and correct copies of all such leases and (2) an indication as to which assets are currently owned, or were formerly owned, by Stockholders, relatives of Stockholders, or Affiliates of the Company. Except as set forth on Schedule 5.14, (i) all material personal property used by the Company in its business is either owned by the Company or leased by the Company pursuant to a lease included on Schedule 5.14, (ii) all of the personal property listed on Schedule 5.14 is in good working order and condition, ordinary wear and tear excepted and (iii) all leases and agreements included on Schedule 5.14 are in full force and effect and constitute valid and binding agreements of the parties (and their successors) thereto in accordance with their respective terms.

5.15 **Significant Customers; Material Contracts and Commitments.** The Company has delivered to LandCare an accurate list (which is set forth on Schedule 5.15) of all customers (persons or entities) representing 1% or more of the Company's annual revenues for the year ended December 31, 1997; provided, however, that Schedule 5.15 need not set forth more than the Company's 25 largest customers during such period. Except to the extent set forth on Schedule 5.15, none of such customers have canceled or substantially reduced or, to the knowledge of the Stockholders, are currently attempting or threatening to cancel a contract or substantially reduce utilization of the services provided by the Company.

The Company has listed on Schedule 5.15 all Material Contracts (as defined below) to which the Company is a party or by which it or any of its properties are bound, other than agreements listed on Schedules 5.10, 5.14 or 5.16, (a) in existence as of the Balance Sheet Date and (b) entered into since the Balance Sheet Date, and in each case has delivered true, complete and correct copies of such agreements to LandCare. For purposes of this Agreement, the term "Material Contracts" includes contracts between the Company and significant customers (as described above), joint venture or partnership agreements, contracts with any labor organization, strategic alliances, options

to purchase land and other contracts which are not terminable on sixty days or less notice and involve payments by the Company in any twelve-month period in excess of $25,000. The Company has also indicated on Schedule 5.15 a summary description of all plans or projects involving the opening of new operations, expansion of existing operations, the acquisition of any personal property, business or assets requiring, in any event, the payment of more than $25,000 by the Company during any 12-month period. All of the Material Contracts are in full force and effect and constitute valid and binding agreements of the parties (and their successors) thereto in accordance with their respective terms.

5.16 **Real Property.** Schedule 5.16 includes a list of all real property owned or leased by the Company at the date hereof and all other real property, if any, used by the Company in the conduct of its business. Except as set forth on Schedule 5.16, any such real property owned by the Company will be sold or distributed by the Company on the terms set forth on Schedule 5.16 and leased back by the Company on the terms set forth on Schedule 5.16 pursuant to a lease in substantially the form of Annex VI hereto (or with terms substantially similar to those of Annex VI) at or prior to the Closing Date. Except as set forth on Schedule 5.16, the lease relating to any such real property leased by the Company from any of the Stockholders or any Affilliate of any of the Stockholders will be terminated as of the Closing Date and a new lease in substantially the form of Annex VI hereto (or with terms substantially similar to those of Annex VI) will be entered into as of the Closing Date on the terms set forth on Schedule 5.16. The Company has good and insurable title to any real property owned by it that is not shown on Schedule 5.16 as property intended to be sold or distributed prior to the Closing Date, subject to no mortgage, pledge, lien, conditional sales agreement, encumbrance or charge, except for:

(i) liens reflected on Schedules 5.10 or 5.16 as securing specified liabilities (with respect to which no material default exists);

(ii) liens for current taxes not yet payable and assessments not in default;

(iii) easements for utilities serving the property only; and

(iv) easements, covenants and restrictions and other exceptions to title which do not adversely affect the current use of the property.

True, complete and correct copies of all leases and agreements in respect of such real property leased by the Company are attached to Schedule 5.16, and an indication as to which such properties, if any, are currently owned, or were formerly owned, by Stockholders or Affiliates of the Company or Stockholders is included in Schedule 5.16. Except as set forth on Schedule 5.16, all of such leases included on Schedule 5.16 are in full force and effect and constitute valid and binding agreements of the parties (and their successors) thereto in accordance with their respective terms.

5.17 **Insurance.** The Company has delivered to LandCare (i) an accurate list as of the Balance Sheet Date of all insurance policies carried by the Company, (ii) an accurate list of all

insurance loss runs or workers compensation claims received for the past three policy years and (iii) true, complete and correct copies of all insurance policies currently in effect. Such insurance policies evidence all of the insurance that the Company is required to carry pursuant to all of its contracts and other agreements and pursuant to all applicable laws, and to the knowledge of the Stockholders provide adequate coverage against the risks involved in the Company's business. All of such insurance policies are currently in full force and effect. Since January 1, 1995, no insurance carried by the Company has been canceled by the insurer and the Company has not been denied coverage.

5.18 **Compensation; Employment Agreements; Organized Labor Matters.** The Company has delivered to LandCare an accurate list (which is set forth on Schedule 5.18) showing all officers, directors and key employees of the Company, listing all employment agreements with such officers, directors and key employees and the rate of compensation (and the portions thereof attributable to salary, bonus and other compensation, respectively) of each of such persons as of (i) the Balance Sheet Date and (ii) the date hereof. The Company has provided to LandCare true, complete and correct copies of any employment agreements for persons listed on Schedule 5.18. Since the Balance Sheet Date, there have been no material increases in the compensation payable or any special bonuses to any officer, director, key employee or other employee, except ordinary salary increases implemented and bonuses paid on a basis consistent with past practices.

Except as set forth on Schedule 5.18, (i) the Company is not bound by or subject to any arrangement with any labor union, (ii) no employees of the Company are represented by any labor union or covered by any collective bargaining agreement, (iii) to the knowledge of the Stockholders, no campaign to establish such representation is in progress and (iv) there is no pending or, to the knowledge of the Stockholders, threatened labor dispute involving the Company and any group of its employees nor has the Company experienced any labor interruptions over the past three years. The Company believes its relationship with employees to be good.

5.19 **Employee Plans.** The Stockholders have delivered to LandCare an accurate schedule (Schedule 5.19) (the "Benefit Plans Schedule") showing all employee benefit plans of the Company, including all employment agreements and other agreements or arrangements containing "golden parachute" or other similar provisions, and deferred compensation agreements, together with true, complete and correct copies of such plans, agreements and any trusts related thereto, and classifications of employees covered thereby as of the Balance Sheet Date. Except for the employee benefit plans, if any, described on the Benefit Plans Schedule, the Company does not sponsor, maintain or contribute to any plan, program, fund or arrangement that constitutes an "employee pension benefit plan", and the Company has no obligation to contribute to or accrue or pay any benefits under any deferred compensation or retirement funding arrangement on behalf of any employee or employees (such as, for example, and without limitation, any individual retirement account or annuity, any "excess benefit plan" (within the meaning of Section 3(36) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")) or any non-qualified deferred compensation arrangement). For the purposes of this Agreement, the term "employee pension benefit plan" shall have the same meaning as is given that term in Section 3(2) of ERISA. The

Company has not sponsored, maintained or contributed to any employee pension benefit plan other than the plans set forth on the Benefit Plans Schedule. Except as set forth on the Benefit Plans Schedule, the Company is not required to contribute to any retirement plan pursuant to the provisions of any collective bargaining agreement establishing the terms and conditions of employment of any of the Company's or any Subsidiary's employees.

Except as set forth on the Benefit Plans Schedule, the Company is not now, or will not as a result of its past activities become, liable to the Pension Benefit Guaranty Corporation or to any multiemployer employee pension benefit plan under the provisions of Title IV of ERISA.

All employee benefit plans listed on the Benefit Plans Schedule and the administration thereof are in compliance in all material respects with their terms and all applicable provisions of ERISA and the regulations issued thereunder, as well as with all other applicable federal, state and local statutes, ordinances and regulations.

All accrued contribution obligations of the Company with respect to any plan listed on the Benefit Plans Schedule have either been fulfilled in their entirety or are fully reflected on the balance sheet of the Company as of the Balance Sheet Date.

5.20 **Compliance with ERISA**. All plans listed on the Benefit Plans Schedule that are intended to qualify (the "Qualified Plans") under Section 401(a) of the Code have been determined by the Internal Revenue Service to be so qualified, and copies of the determination letters relating thereto are attached to the Benefit Plans Schedule. Except as disclosed on the Benefit Plans Schedule, all reports and other documents required to be filed with any governmental agency or distributed to plan participants or beneficiaries (including, but not limited to, actuarial reports, audits or tax returns) have been timely filed or distributed, and copies thereof for the past two years are included as part of the Benefit Plans Schedule. None of (i) the Stockholders, (ii) the Company, or (iii) to the knowledge of the Stockholders, any other person, has engaged in any transaction with any plan listed in the Benefit Plans Schedule prohibited under the provisions of Section 4975 of the Code or Section 406 of ERISA. No plan listed in the Benefit Plans Schedule has incurred an accumulated funding deficiency, as defined in Section 412(a) of the Code and Section 302(1) of ERISA; and the Company has not incurred any liability for excise tax or penalty due to the Internal Revenue Service nor any liability to the Pension Benefit Guaranty Corporation. Except as set forth on the Benefit Plans Schedule:

(i) there have been no terminations, partial terminations or discontinuations of contributions to any Qualified Plan without notice to and approval by the Internal Revenue Service;

(ii) no plan listed in the Benefit Plans Schedule subject to the provisions of Title IV of ERISA has been terminated;

(iii) there have been no "reportable events" (as that phrase is defined in Section 4043 of ERISA) with respect to any such plan listed in the Benefit Plans Schedule; and

(iv) no circumstances exist pursuant to which the Company could have any direct or indirect liability whatsoever (including, but not limited to, any liability to any multiemployer plan or the PBGC under Title IV of ERISA or to the Internal Revenue Service for any excise tax or penalty, or being subject to any statutory lien to secure payment of any such liability) with respect to any plan now or heretofore maintained or contributed to by any entity other than the Company that is, or at any time was, a member of a "controlled group" (as defined in Section 412(n)(6)(B) of the Code) that includes the Company.

5.21 **Conformity with Law; Litigation.** Except to the extent set forth on Schedule 5.21 or 5.13, and except for violations which, either singly or in the aggregate, have not had and will not have any Material Adverse Effect, the Company is not in violation of any law or regulation or any order of any court or Federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality having jurisdiction over it; and except to the extent set forth on Schedule 5.10 or 5.13, there are no material claims, actions, suits or proceedings, pending or, to the knowledge of the Stockholders, threatened against or affecting, the Company, at law or in equity, or before or by any Federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality having jurisdiction over it and no notice of any claim, action, suit or proceeding, whether pending or threatened, has been received by the Company, and, to the knowledge of the Stockholders, there is no basis for any such claim, action, suit or proceeding. The Company has conducted and is now conducting its business in compliance with the requirements, standards, criteria and conditions set forth in applicable federal, state and local statutes, ordinances, orders, approvals, variances, rules and regulations, including all such orders and other governmental approvals set forth on Schedules 5.12 and 5.13, except where any such noncompliance, individually or in the aggregate, would not have a Material Adverse Effect.

5.22 **Taxes.** The Company has timely filed all requisite Federal, state and other tax returns or extension requests for all fiscal periods ended on or before the Balance Sheet Date; and except as set forth on Schedule 5.22, there are no examinations in progress or claims pending against it for federal, state and other Taxes (including penalties and interest) for any period or periods prior to and including the Balance Sheet Date and no notice of any claim for Taxes, whether pending or threatened, has been received. All Tax due from the Company for any period ended before the date hereof, including interest and penalties (whether or not shown on any Return) has been paid. The amounts shown as accruals for taxes on the Company Financial Statements are sufficient for the payment of all Taxes (including penalties and interest) for all periods ended on or before that date. Copies of (i) any tax examinations, (ii) extensions of statutory limitations and (iii) the federal and local income tax returns and franchise tax returns of the Company for their last three (3) fiscal years, or such shorter period of time as any of them shall have existed, are attached hereto as Schedule 5.22 or have otherwise been delivered to LandCare. The Company has disclosed to LandCare when its taxable year ends. The Company uses the accrual method of accounting for income tax purposes, and the Company's methods of accounting have not changed in the past five years. The Company is not an investment company as defined in Section 351(e)(1) of the Code. The Company is not and has not during the last five years been a party to any tax sharing agreement or agreement of similar effect. The Company is not and has not during the last five years been a member of any consolidated

group. Except as described on Schedule 5.22, the Company has not received, been denied, or applied for any private letter ruling during the last five years.

5.23 **No Violations; No Consents Required, Etc.** The Company is not in violation of any Charter Document. Neither the Company nor, to the knowledge of the Stockholders, any other party thereto, is in default under any lease, instrument, agreement, license, or permit set forth on Schedule 5.12, 5.13, 5.14, 5.15 or 5.16 (the "Material Documents") in any manner that could result in a Material Adverse Effect; and, except as set forth in Schedule 5.23, (a) the rights and benefits of the Company under the Material Documents will not be materially adversely affected by the transactions contemplated hereby and (b) the execution of this Agreement and the performance of the obligations hereunder and the consummation of the transactions contemplated hereby will not result in any material violation or breach of or constitute a default under, any of the terms or provisions of the Material Documents or the Charter Documents. Except as set forth on Schedule 5.23, none of the Material Documents requires notice to, or the consent or approval of, any governmental agency or other third party with respect to any of the transactions contemplated hereby in order to remain in full force and effect, and consummation of the transactions contemplated hereby will not give rise to any right to termination, cancellation or acceleration or loss of any material right or benefit. Except as set forth on Schedule 5.23, none of the Material Documents prohibits the use or publication by the Company, LandCare or Newco of the name of any other party to such Material Document, and none of the Material Documents prohibits or restricts the Company from freely providing services to any other customer or potential customer of the Company, LandCare, Newco or any Other Founding Company.

5.24 **Absence of Changes.** Since the Balance Sheet Date, except as set forth on Schedule 5.24 or as otherwise contemplated hereby, there has not been:

(i) any material adverse change in the financial condition, assets, liabilities (contingent or otherwise) or business of the Company;

(ii) any damage, destruction or casualty loss (whether or not covered by insurance) materially adversely affecting the properties or business of the Company;

(iii) any change in the authorized capital of the Company or its outstanding securities or any change in its ownership interests or any grant by the Company of any options, warrants, calls, conversion rights or commitments;

(iv) any declaration or payment of any dividend or distribution in respect of the capital stock or any direct or indirect redemption, purchase or other acquisition of any of the capital stock of the Company;

(v) any increase in the compensation, bonus, sales commissions or fee arrangement payable or to become payable by the Company to any of its officers, directors,

Stockholders, employees, consultants or agents, except for ordinary and customary bonuses and salary increases for employees in accordance with past practice;

(vi) any sale or transfer, or any agreement to sell or transfer, any material assets, property or rights of Company to any person, including, without limitation, the Stockholders and their Affiliates;

(vii) any cancellation, or agreement to cancel, any indebtedness or other obligation owing to the Company, including without limitation any indebtedness or obligation of any Stockholders or any Affiliate thereof;

(viii) any plan, agreement or arrangement granting any preferential rights to purchase or acquire any interest in any of the assets, property or rights of the Company or requiring consent of any party to the transfer and assignment of any such assets, property or rights;

(ix) any purchase or acquisition of, or agreement, plan or arrangement to purchase or acquire, any property, rights or assets outside of the ordinary course of the Company's business;

(x) any waiver of any material rights or claims of the Company;

(xi) any amendment, cancellation or termination of any material contract, agreement, license, permit or other right to which the Company is a party;

(xii) any change in the Company's Charter Documents;

(xiii) any contract entered into or commitment incurred involving any liability or commitment to make any capital expenditures, except in the normal course of business (consistent with past practice) or involving an amount not in excess of $25,000;

(xiv) any mortgage, pledge or other lien or encumbrance upon any assets or properties of the Company (whether now owned or hereafter acquired) created, assumed or permitted to exist, except (1) purchase money liens incurred in connection with the acquisition of equipment with an aggregate cost not in excess of $25,000 necessary or desirable for the conduct of the businesses of the Company, (2) (A) liens for taxes either not yet due or being contested in good faith and by appropriate proceedings (and for which contested taxes adequate reserves have been established and are being maintained) or (B) materialmen's, mechanics', workers', repairmen's, employees' or other like liens arising in the ordinary course of business, or (3) liens set forth on Schedule 5.10 and/or 5.15 hereto; or

(xv) any transaction by the Company outside the ordinary course of its business.

5.25 **Deposit Accounts; Powers of Attorney.** The Company has delivered to LandCare an accurate schedule (which is set forth on Schedule 5.25) as of the date of this Agreement of:

(i) the name of each financial institution in which the Company has accounts or safe deposit boxes;

(ii) the names in which the accounts or boxes are held;

(iii) the type of account and account number; and

(iv) the name of each person authorized to draw thereon or have access thereto.

Schedule 5.25 also sets forth the name of each person, corporation, firm or other entity holding a general or special power of attorney from the Company and a description of the terms of such power.

5.26 **Validity of Obligations.** The execution and delivery of this Agreement by the Company and the performance of the transactions contemplated herein have been duly and validly authorized by the Board of Directors of the Company and this Agreement has been duly and validly authorized by all necessary corporate action and is a legal, valid and binding obligation of the Company.

5.27 **Relations with Governments.** Except for political contributions made in compliance with applicable laws, neither the Company nor any Affiliate of the Company acting on behalf of the Company has given or offered anything of value to any governmental official, political party or candidate for government office. None of such Persons has taken any action which would cause the Company to be in violation of the Foreign Corrupt Practices Act of 1977, as amended, or any law of similar effect.

5.28 **Disclosure.** (a) The representations and warranties of the Stockholders set forth in this Agreement, including the relevant Annexes and Schedules hereto, do not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements herein and therein, in light of the circumstances under which they were made, not misleading. If, prior to the 25th day after the date of the final prospectus of LandCare utilized in connection with the IPO, the Stockholders become aware of any fact or circumstance which would affect the accuracy of a representation or warranty of the Stockholders in this Agreement in any material respect, the Stockholders shall immediately give notice of such fact or circumstance to LandCare. Subject to the provisions of Section 7.8, such notification shall not relieve either the Company or the Stockholders of their respective obligations under this Agreement.

(b) The Stockholders acknowledge and agree (i) that there exists no firm commitment, binding agreement, or promise or other assurance of any kind, whether express or implied, oral or written, that the Registration Statement will become effective or that the IPO pursuant thereto will occur at a particular price or within a particular range of prices or occur at all; (ii) that neither

LandCare or any of its officers, directors, agents or representatives nor any Underwriter shall have any liability to the Company, the Stockholders or any other person affiliated or associated with the Company for any failure of the Registration Statement to become effective, the IPO to occur at a particular price or to occur at all; and (iii) that the decision of Stockholders to enter into this Agreement, or to vote in favor of or consent to the proposed Merger, has been or will be made independent of, and without reliance upon, any statements, opinions or other communications, or due diligence investigations which have been or will be made or performed by any prospective Underwriter, relative to LandCare or the prospective IPO. Notwithstanding the foregoing, LandCare has agreed and herein acknowledges its agreement to use its reasonable efforts to consummate the LandCare Plan of Organization and IPO as contemplated hereby.

5.29 **[Intentionally Omitted]**

5.30 **No Interests In Other Businesses**. Except as disclosed on Schedule 5.30, neither the Company nor any Stockholder, nor any Affiliate of any of them, has any ownership or similar interest in any business that offers or sells services or products of any nature whatsoever to the Company or to any customers of the Company in connection with or as a direct or indirect result of the Company's provision of services or products to its customers.

5.31 **Authority; Ownership**. Such Stockholder has the full legal right, power and authority to enter into this Agreement. Such Stockholder owns beneficially and of record all of the shares of the Company Stock identified on Annex II as being owned by such Stockholder, and, except as set forth on Schedule 5.31, such Company Stock is owned free and clear of all liens, security interests, pledges, voting agreements, voting trusts, contractual restrictions on transfer, encumbrances and claims of every kind.

5.32 **Preemptive Rights**. Such Stockholder does not have, or hereby waives, any preemptive or other right to acquire shares of Company Stock that such Stockholder has or may have had.

5.33 **No Intention to Dispose of LandCare Stock**. No Stockholder is under any binding commitment or contract to sell, exchange or otherwise dispose of shares of LandCare Stock to be received as described in Section 3.1 of this Agreement.

6. REPRESENTATIONS OF LANDCARE AND NEWCO

LandCare and Newco jointly and severally represent and warrant that all of the following representations and warranties in this Section 6 are true at the date of this Agreement and, subject to Section 7.8 hereof, shall be true at the time of Closing and the Funding and Consummation Date, and that such representations and warranties shall survive the Funding and Consummation Date for a period of twelve months (the last day of such period being the "Expiration Date"), except that the warranties and representations set forth in Section 6.14 hereof shall survive until such time as the

limitations period has run for all tax periods ended on or prior to the Funding and Consummation Date, which shall be deemed to be the Expiration Date for Section 6.14.

6.1 **Due Organization.** LandCare and Newco are each corporations duly incorporated and organized, validly existing and in good standing under the laws of the State of Delaware, and each has the requisite power and authority to carry on its business as it is now being conducted. LandCare and Newco are each qualified to do business and are each in good standing in each jurisdiction in which the nature of its business makes such qualification necessary, except where the failure to be so authorized or qualified would not have a Material Adverse Effect. True, complete and correct copies of the Certificate of Incorporation and By-laws of LandCare (the "LandCare Charter Documents") have been or will be filed as exhibits to the Registration Statement, and copies thereof and copies of the Certificate of Incorporation and Bylaws of Newco will be provided to the Stockholders promptly upon request.

6.2 **Authorization.** (i) The respective representatives of LandCare and Newco executing this Agreement have the authority to enter into and bind LandCare and Newco to the terms of this Agreement and (ii) LandCare and Newco have the full legal right, power and authority to enter into this Agreement and consummate the Merger. All corporate acts and other proceedings required to have been taken by LandCare and Newco to authorize the execution, delivery and performance of this Agreement and the consummation of the Merger have been duly and properly taken.

6.3 **Capital Stock of LandCare and Newco.** The authorized capital stock of LandCare and Newco is as set forth in Sections 1.4(ii) and (iii), respectively. All of the issued and outstanding shares of the capital stock of Newco are owned by LandCare. All of the issued and outstanding shares of the capital stock of LandCare and Newco have been duly authorized and validly issued, are fully paid and nonassessable, and further, such shares were offered, issued, sold and delivered by LandCare and Newco in compliance with all applicable state and federal laws concerning the issuance of securities. Further, none of such shares were issued in violation of the preemptive rights of any past or present stockholder of LandCare or Newco.

6.4 **Transactions in Capital Stock, Organization Accounting.** Except for the Other Agreements and except as set forth in or contemplated by the Draft Registration Statement or set forth on Schedule 6.4 hereto, (i) no option, warrant, call, conversion right or commitment of any kind exists which obligates LandCare or Newco to issue any of their respective authorized but unissued capital stock; and (ii) neither LandCare nor Newco has any obligation (contingent or otherwise) to purchase, redeem or otherwise acquire any of its equity securities or any interests therein or to pay any dividend or make any distribution in respect thereof. Complete and accurate copies of all stock option or stock purchase plans and a list of all outstanding options, warrants or other rights to acquire shares of the stock of LandCare will be provided to the Stockholders promptly upon request.

6.5 **Subsidiaries.** Newco has no Subsidiaries. LandCare has no Subsidiaries except for Newco and each of the companies identified as "Newco" in each of the Other Agreements and other

newly incorporated Subsidiaries that have conducted no business and have been created solely to effectuate the business of LandCare. Except as set forth in the preceding sentence or set forth on Schedule 6.5 hereto, neither LandCare nor any Subsidiary of LandCare presently owns, of record or beneficially, or controls, directly or indirectly, any capital stock, securities convertible into capital stock or any other equity interest in any corporation, association or business entity, and neither LandCare nor Newco, directly or indirectly, is a participant in any joint venture, partnership or other non-corporate entity.

6.6 **Financial Statements.** The historical financial statements of LandCare included in the Draft Registration Statement (the "LandCare Financial Statements") have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the period indicated (except as noted thereon), and present fairly in all material respects the financial position of LandCare as of the date and for the period indicated.

6.7 **Liabilities and Obligations.** Except as set forth in the Draft Registration Statement or on Schedule 6.7 hereto, neither LandCare nor any Subsidiary of LandCare has any material liabilities, contingent or otherwise, except as set forth in or contemplated by this Agreement and the Other Agreements and except for fees incurred in connection with the transactions contemplated hereby and thereby.

6.8 **Conformity with Law; Litigation.** Except to the extent set forth in the Draft Registration Statement or on Schedule 6.8 hereto, (a) neither LandCare nor any Subsidiary of LandCare is in violation of any law or regulation or any order of any court or Federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality having jurisdiction over any of them which would have a Material Adverse Effect, (b) there are no material claims, actions, suits or proceedings, pending or, to the knowledge of LandCare or Newco, threatened against or affecting, LandCare or any Subsidiary of LandCare, at law or in equity, or before or by any Federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality having jurisdiction over any of them, and (c) no notice of any claim, action, suit or proceeding, whether pending or threatened, has been received by LandCare or Newco. LandCare and its Subsidiaries have conducted and are conducting their respective businesses in substantial compliance with the requirements, standards, criteria and conditions set forth in applicable Federal, state and local statutes, ordinances, permits, licenses, orders, approvals, variances, rules and regulations and are not in violation of any of the foregoing which would have a Material Adverse Effect.

6.9 **No Violations.** LandCare is not in violation of any LandCare Charter Document, and no Subsidiary of LandCare is in violation of its Certificate of Incorporation or Bylaws. None of LandCare, Newco, or, to the knowledge of LandCare and Newco, any other party thereto, is in default under any lease, instrument, agreement, license, or permit to which LandCare or any Subsidiary of LandCare is a party, or by which LandCare or any Subsidiary of LandCare, or any of their respective properties, are bound (collectively, the "LandCare Documents"); and (a) the rights and benefits of LandCare and any Subsidiary of LandCare under the LandCare Documents will not

be adversely affected by the transactions contemplated hereby and (b) the execution and delivery of this Agreement by LandCare and Newco and the performance of their obligations hereunder do not, and the consummation of the transactions contemplated hereby and compliance with the terms hereof will not, conflict with, or result in any violation or default (with or without notice or lapse of time, or both), under or give rise to a right of termination, cancellation, or acceleration of any obligation or to loss of a material benefit under, or result in the creation of any lien upon any of the assets of LandCare or any Subsidiary of LandCare under, any provision of (i) the Certificate of Incorporation or Bylaws of LandCare or the comparable governing instruments of any Subsidiary of LandCare, (ii) any note, bond, mortgage, indenture or deed of trust or any license, lease, contract, commitment, agreement or arrangement to which LandCare and any Subsidiary of LandCare is a party or by which any of their respective properties or assets are bound or (iii) any judgment, order, decree or law, ordinance, rule or regulation, applicable to LandCare or any Subsidiary of LandCare or their respective properties or assets. The execution of this Agreement and the Other Agreements and the performance of the obligations hereunder and thereunder and the consummation of the transactions contemplated by the LandCare Plan of Organization will not result in any material violation or breach or constitute a default under, any of the terms or provisions of the LandCare Documents or the LandCare Charter Documents. Except as contemplated hereby or described in the Registration Statement or on Schedule 6.9 hereto, none of the LandCare Documents requires notice to, or the consent or approval of, any governmental agency or other third party with respect to any of the transactions contemplated by the LandCare Plan of Organization in order to remain in full force and effect and consummation of the transactions contemplated thereby will not give rise to any right to termination, cancellation or acceleration or loss of any right or benefit.

6.10 **Validity of Obligations.** The execution and delivery of this Agreement by LandCare and Newco and the performance of the transactions contemplated herein have been duly and validly authorized by the respective Boards of Directors of LandCare and Newco and this Agreement has been duly and validly authorized by all necessary corporate action and is a legal, valid and binding obligation of LandCare and Newco.

6.11 **LandCare Stock.** At the time of issuance thereof and delivery to the Stockholders, the LandCare Stock to be delivered to the Stockholders pursuant to this Agreement will constitute valid and legally issued shares of LandCare, fully paid and nonassessable, and with the exception of restrictions upon resale set forth in Sections 15 and 16 hereof, will be identical in all substantive respects (which do not include the form of certificate upon which it is printed or the presence or absence of a CUSIP number on any such certificate) to the LandCare Stock issued and outstanding as of the date hereof by reason of the provisions of the Delaware GCL. Except as set forth above, the LandCare Stock issued and delivered to the Stockholders shall at the time of such issuance and delivery be free and clear of any liens, security interests, claims or encumbrances of any kind or character. The shares of LandCare Stock to be issued to the Stockholders pursuant to this Agreement will not be registered under the 1933 Act except as provided in Section 17 hereof.

6.12 **Other Agreements; No Side Agreements.** Except as described on Schedule 6.12 hereto, each of the Other Agreements is substantially similar to this Agreement. Neither LandCare

nor Newco has entered or will enter into any agreement with any of the Other Founding Companies or any of the stockholders of the Other Founding Companies other than the Other Agreements and the agreements contemplated by each of the Other Agreements, including the employment agreements and leases referred to herein or entered into in connection with the transactions contemplated hereby and thereby.

6.13 **Business; Real Property; Material Agreements.** LandCare was formed in October 1997 and has conducted only limited operations since that time. Neither LandCare nor any Subsidiary thereof has conducted any material business since the date of its inception, except in connection with this Agreement, the Other Agreements and the IPO. Except as described in the Draft Registration Statement, neither LandCare nor any Subsidiary of LandCare owns or has at any time owned any real property or any material personal property or is a party to any other agreement other than the Other Agreements and the agreements contemplated thereby and to such agreements as will be filed as Exhibits to the Registration Statement.

6.14 **Taxes.** LandCare and each Subsidiary thereof have timely filed all requisite federal, state and other Returns or extension requests for all fiscal periods ended prior to the date hereof for which such Returns are due; and there are no examinations in progress or claims against LandCare or any Subsidiary thereof for federal, state and other Taxes (including penalties and interest) for any such period and no notice of any claim for Taxes, whether pending or threatened, has been received. All Taxes which LandCare or any Subsidiary of LandCare has been required to collect or withhold have been duly and timely collected and withheld and have been set aside in accounts for such purposes, or have been duly and timely paid to the proper governmental authority. All Tax, including interest and penalties (whether or not shown on any tax return) owed by LandCare, any member of an affiliated or consolidated group which includes or included LandCare, or with respect to any payment made or deemed made by LandCare herein has been paid. The amounts shown as accruals for taxes on LandCare Financial Statements are sufficient for the payment of all taxes of the kinds indicated (including penalties and interest) for all fiscal periods ended on or before that date. Neither LandCare nor any Subsidiary thereof has entered into any tax sharing agreement or similar arrangement. Neither LandCare nor any Subsidiary thereof is an investment company as defined in Section 351(e)(1) of the Code.

6.15 **Absence of Changes.** Since the Balance Sheet Date, except as set forth in the Draft Registration Statement delivered to the Stockholders, and except as contemplated by this Agreement and the Other Agreements or as set forth on Schedule 6.15 hereto, there has not been:

(i) any material adverse change in the financial condition, assets, liabilities (contingent or otherwise) or business of LandCare or Newco;

(ii) any damage, destruction or loss (whether or not covered by insurance) materially adversely affecting the properties or business of LandCare or Newco;

(iii) any change in the authorized capital of LandCare or Newco or their outstanding securities or any change in their ownership interests or any grant of any options, warrants, calls, conversion rights or commitments;

(iv) any declaration or payment of any dividend or distribution in respect of the capital stock or any direct or indirect redemption, purchase or other acquisition of any of the capital stock of LandCare or Newco;

(v) any sale or transfer, or any agreement to sell or transfer, any material assets, property or rights of LandCare or any Subsidiary thereof to any person;

(vi) any cancellation, or agreement to cancel, any indebtedness or other obligation owing to LandCare or any Subsidiary thereof;

(vii) any plan, agreement or arrangement granting any preferential rights to purchase or acquire any interest in any of the assets, property or rights of LandCare or any Subsidiary thereof or requiring consent of any party to the transfer and assignment of any such assets, property or rights;

(viii) any waiver of any material rights or claims of LandCare or any Subsidiary of LandCare;

(ix) any amendment or termination of any material contract, agreement, license, permit or other right to which LandCare or any Subsidiary of LandCare is a party;

(x) any transaction by LandCare or any Subsidiary of LandCare outside the ordinary course of its business;

(xi) any other distribution of property or assets by LandCare or any Subsidiary of LandCare other than in the ordinary course of business.

6.16 **Disclosure**. The Draft Registration Statement delivered to the Company and the Stockholders, together with the representations and warranties of LandCare and Newco set forth in this Agreement, does not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements herein and therein, in light of the circumstances under which they were made, not misleading; provided, however, that the foregoing does not apply to statements contained in or omitted from any of such documents made or omitted in reliance upon information furnished by the Company or the Stockholders or the Other Founding Companies or the stockholders thereof.

(b) Based on and assuming the accuracy of certain information furnished to LandCare by the Stockholders, the offering and issuance of shares of LandCare Stock to the Stockholders and

to the stockholders of the Other Founding Companies pursuant to this Agreement and to the Other Agreements have been made in compliance with all applicable federal and state securities laws.

7. COVENANTS PRIOR TO CLOSING

7.1 **Access and Cooperation; Due Diligence**. (a) Between the date of this Agreement and the Funding and Consummation Date, the Company will afford to the officers and authorized representatives of LandCare access to all of the Company's sites, properties, books and records and will furnish LandCare with such additional financial and operating data and other information as to the business and properties of the Company as LandCare may from time to time reasonably request. The Company will cooperate with LandCare and its representatives, auditors and counsel in the preparation of any documents or other materials which may be required in connection with any documents or materials required by this Agreement. LandCare, Newco, the Stockholders and the Company will treat all information obtained in connection with the negotiation and performance of this Agreement or the due diligence investigations conducted with respect to the Other Founding Companies as confidential in accordance with the provisions of Section 14 hereof. In addition, LandCare will cause each of the Other Founding Companies to enter into a provision similar to this Section 7.1.

(b) Between the date of this Agreement and the Funding and Consummation Date, LandCare will afford to the officers and authorized representatives of the Company access to all of LandCare's and Newco's sites, properties, books and records and will furnish the Company with such additional financial and operating data and other information as to the business and properties of LandCare and Newco as the Company may from time to time reasonably request. LandCare and Newco will cooperate with the Company, its representatives, auditors and counsel in the preparation of any documents or other material which may be required in connection with any documents or materials required by this Agreement. The Company will cause all information obtained in connection with the negotiation and performance of this Agreement to be treated as confidential in accordance with the provisions of Section 14 hereof.

7.2 **Conduct of Business Pending Closing**. Between the date of this Agreement and the Funding and Consummation Date, the Company will, except as set forth on Schedule 7.2:

(i) carry on its business in substantially the same manner as it has heretofore and not introduce any material new method of management, operation or accounting;

(ii) use its reasonable efforts to maintain its properties and facilities, including those held under leases, in as good working order and condition as at present, ordinary wear and tear excepted;

(iii) perform in all material respects all of its obligations under agreements relating to or affecting its respective assets, properties or rights;

(iv) use its reasonable efforts to keep in full force and effect present insurance policies or other comparable insurance coverage;

(v) use its reasonable efforts to maintain and preserve its business organization intact, retain its respective present key employees and maintain its relationships with suppliers, customers and others having business relations with the Company;

(vi) use its reasonable efforts to maintain compliance with all material permits, laws, rules and regulations, consent orders, and all other orders of applicable courts, regulatory agencies and similar governmental authorities applicable to it;

(vii) maintain present debt and lease instruments and not enter into new or amended debt or lease instruments without the knowledge and consent of LandCare (which consent shall not be unreasonably withheld), provided that debt and/or lease instruments may be replaced without the consent of LandCare if such replacement instruments are on terms at least as favorable to the Company as the instruments being replaced; and

(viii) maintain or reduce present salaries and commission levels for all officers, directors, employees and agents except for ordinary and customary bonus and salary increases for employees in accordance with past practices.

7.3 **Prohibited Activities**. Except as disclosed on Schedule 7.3, between the date hereof and the Funding and Consummation Date, the Company will not, without prior written consent of LandCare, which consent will not be unreasonably withheld:

(i) make any change in its Articles of Incorporation or By-laws;

(ii) issue any securities, options, warrants, calls, conversion rights or commitments relating to its securities of any kind other than in connection with the exercise of options or warrants listed in Schedule 5.4;

(iii) declare or pay any dividend, or make any distribution in respect of its stock whether now or hereafter outstanding, or purchase, redeem or otherwise acquire or retire for value any shares of its stock;

(iv) enter into any contract or commitment or incur or agree to incur any liability or make any capital expenditures, except in the normal course of business (consistent with past practice) or involving an amount not in excess of $25,000;

(v) create, assume or permit to exist any mortgage, pledge or other lien or encumbrance upon any assets or properties whether now owned or hereafter acquired, except (1) with respect to purchase money liens incurred in connection with the acquisition of equipment with an aggregate cost not in excess of $25,000 necessary or desirable for the conduct of the businesses

of the Company, (2) (A) liens for taxes either not yet due or being contested in good faith and by appropriate proceedings (and for which contested taxes adequate reserves have been established and are being maintained) or (B) materialmen's, mechanics', workers', repairmen's, employees' or other like liens arising in the ordinary course of business (the liens set forth in clause (2) being referred to herein as "Statutory Liens"), or (3) liens set forth on Schedule 5.10 and/or 5.15 hereto;

(vi) sell, assign, lease or otherwise transfer or dispose of any property or equipment except in the normal course of business and other than distributions of real estate and other assets as permitted in this Agreement (including the Schedules hereto);

(vii) negotiate for the acquisition of any business or the start-up of any new business;

(viii) merge or consolidate or agree to merge or consolidate with or into any other corporation;

(ix) waive any material rights or claims of the Company, provided that the Company may negotiate and adjust bills and accounts in the course of good faith disputes with customers in a manner consistent with past practice, provided, further, that such adjustments shall not be deemed to be included in Schedule 5.11 unless specifically listed thereon;

(x) amend or terminate any material agreement, permit, license or other right of the Company; or

(xi) enter into any other transaction outside the ordinary course of its business or prohibited hereunder.

7.4 **No Shop**. None of the Stockholders, the Company, nor any agent, officer, director, trustee or any representative of any of the foregoing will, during the period commencing on the date of this Agreement and ending with the earlier to occur of the Funding and Consummation Date or the termination of this Agreement in accordance with its terms, directly or indirectly:

(i) solicit or initiate the submission of proposals or offers from any person for,

(ii) participate in any discussions pertaining to, or

(iii) furnish any information to any person other than LandCare, the Other Founding Companies (to the extent necessary or appropriate in connection with the transactions contemplated hereby) or their respective authorized agents relating to, any acquisition or purchase of all or a material amount of the assets of, or any equity interest in, the Company or a merger, consolidation or business combination of the Company.

7.5 **Notice to Bargaining Agents**. Prior to the Closing Date, the Company shall satisfy any requirement for notice of the transactions contemplated by this Agreement under applicable collective bargaining agreements, and shall provide LandCare on Schedule 7.5 with proof that any required notice has been sent.

7.6 **Agreements**. The Stockholders and the Company shall (except as otherwise agreed to by LandCare or reflected in Schedule 7.6) terminate (i) any stockholders agreements, voting agreements, voting trusts, options, warrants and employment agreements between the Company and any employee listed on Schedule 9.12 hereto and (ii) any existing agreement between the Company and any Stockholder, on or prior to the Funding and Consummation Date provided that nothing herein shall prohibit or prevent the Company from paying (either prior to or on the Closing Date) notes or other obligations from the Company to the Stockholders in accordance with the terms thereof, which terms have been disclosed to LandCare. Such termination agreements are listed on Schedule 7.6 and copies thereof shall be attached thereto.

7.7 **Notification of Certain Matters**. The Stockholders and the Company shall give prompt notice to LandCare of (i) the occurrence or non-occurrence of any event the occurrence or non-occurrence of which would be likely to cause any representation or warranty of the Company or the Stockholders contained herein to be untrue or inaccurate in any material respect at or prior to the Closing and (ii) any failure of any Stockholder or the Company to comply with or satisfy any material covenant, condition or agreement to be complied with or satisfied by such person hereunder. LandCare and Newco shall give prompt notice to the Company of (i) the occurrence or non-occurrence of any event the occurrence or non-occurrence of which would be likely to cause any representation or warranty of LandCare or Newco contained herein to be untrue or inaccurate in any material respect at or prior to the Closing and (ii) any failure of LandCare or Newco to comply with or satisfy any material covenant, condition or agreement to be complied with or satisfied by it hereunder. The delivery of any notice pursuant to this Section 7.7 shall not be deemed to (i) modify the representations or warranties hereunder of the party delivering such notice, which modification may only be made pursuant to Section 7.8, (ii) modify the conditions set forth in Sections 8 and 9, or (iii) limit or otherwise affect the remedies available hereunder to the party receiving such notice.

7.8 **Amendment of Schedules**. Each party hereto agrees that, with respect to the representations and warranties of such party contained in this Agreement, such party shall have the continuing obligation until 24 hours prior to the anticipated effectiveness of the Registration Statement to supplement or amend promptly the Schedules hereto with respect to any matter hereafter arising or discovered which, if existing or known at the date of this Agreement, would have been required to be set forth or described in the Schedules, provided however, that supplements and amendments to Schedules 5.10, 5.11, 5.14 and 5.15 shall only have to be delivered at the Closing Date, unless such Schedule is to be amended to reflect an event occurring other than in the ordinary course of business. Notwithstanding the foregoing sentence, no amendment or supplement to a Schedule prepared by the Company that constitutes or reflects an event or occurrence that would

have a Material Adverse Effect may be made unless LandCare and a majority of the Founding Companies other than the Company consent to such amendment or supplement; and provided further, that no amendment or supplement to a Schedule prepared by LandCare or Newco that constitutes or reflects an event or occurrence that would have a Material Adverse Effect may be made unless a majority of the Founding Companies consent to such amendment or supplement. For all purposes of this Agreement, including without limitation for purposes of determining whether the conditions set forth in Sections 8.1 and 9.1 have been fulfilled, the Schedules hereto shall be deemed to be the Schedules as amended or supplemented pursuant to this Section 7.8. In the event that one of the Other Founding Companies seeks to amend or supplement a Schedule pursuant to Section 7.8 of one of the Other Agreements, and such amendment or supplement constitutes or reflects an event or occurrence that would have a Material Adverse Effect on such Other Founding Company, LandCare shall give the Company notice promptly after it has knowledge thereof. If LandCare and a majority of the Founding Companies (other than the Founding Company seeking to amend or supplement a Schedule) consent to such amendment or supplement, which consent shall have been deemed given by LandCare or any Founding Company if no response is received within 24 hours following receipt of notice of such amendment or supplement (or sooner if required by the circumstances under which such consent is requested), but the Company does not give its consent, the Company may terminate this Agreement pursuant to Section 12.1(iv) hereof. In the event that the Company seeks to amend or supplement a Schedule pursuant to this Section 7.8, and LandCare and a majority of the Other Founding Companies do not consent to such amendment or supplement, this Agreement shall be deemed terminated by mutual consent as set forth in Section 12.1(i) hereof. In the event that LandCare or Newco seeks to amend or supplement a Schedule pursuant to this Section 7.8 and a majority of the Founding Companies do not consent to such amendment or supplement, this Agreement shall be deemed terminated by mutual consent as set forth in Section 12.1(i) hereof. No party to this Agreement shall be liable to any other party if this Agreement shall be terminated pursuant to the provisions of this Section 7.8. No amendment of or supplement to a Schedule shall be made later than 24 hours prior to the anticipated effectiveness of the Registration Statement.

7.9 **Cooperation in Preparation of Registration Statement**. The Company and Stockholders shall furnish or cause to be furnished to LandCare and the Underwriters all of the information concerning the Company and the Stockholders reasonably requested by LandCare or the Underwriters for inclusion in, and will cooperate with LandCare and the Underwriters in the preparation of, the Registration Statement and the prospectus included therein (including audited and unaudited financial statements of the Company, prepared in accordance with generally accepted accounting principles, in form suitable for inclusion in the Registration Statement). The Company and the Stockholders agree promptly to advise LandCare if at any time during the period in which a prospectus relating to the IPO is required to be delivered under the Securities Act, any information contained in the prospectus concerning the Company or the Stockholders becomes incorrect or incomplete in any material respect, and to provide the information needed to correct such inaccuracy. Insofar as the information relates solely to the Company or the Stockholders, the Company

represents and warrants as to such information with respect to itself, and each Stockholder represents and warrants, as to such information with respect to the Company and himself or herself, that the Registration Statement will not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

7.10 **Final Financial Statements**. The Company shall provide prior to the Funding and Consummation Date, and LandCare shall have had sufficient time to review, the unaudited consolidated balance sheets of the Company as of the end of all fiscal quarters following the Balance Sheet Date and ending not later than 15 days prior to the Funding and Consummation Date, and the unaudited consolidated statement of income, cash flows and retained earnings of the Company for all such fiscal quarters, disclosing no material adverse change in the financial condition of the Company or the results of its operations from the financial statements as of the Balance Sheet Date. Such financial statements shall have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods indicated (except as noted therein). Except as noted in such financial statements, all of such financial statements will present fairly the results of operations of the Company for the periods indicated therein.

7.11 **Further Assurances**. The parties hereto agree to execute and deliver, or cause to be executed and delivered, such further instruments or documents or take such other action as may be reasonably necessary or convenient to carry out the transactions contemplated hereby.

7.12 **Authorized Capital**. Prior to the Funding and Consummation Date, LandCare shall maintain its authorized capital stock as set forth in the Registration Statement filed with the SEC except for such changes in authorized capital stock as are made to respond to comments made by the SEC or requirements of any exchange or automated trading system for which application is made to register the LandCare Stock and any changes necessary or advisable in order to permit the delivery of the opinion contemplated by Section 8.12 hereof.

7.13 **Compliance with the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Hart-Scott-Rodino Act")**. All parties to this Agreement hereby recognize that one or more filings under the Hart-Scott-Rodino Act may be required in connection with the transactions contemplated herein. If it is determined by the parties to this Agreement that filings under the Hart-Scott-Rodino Act are required, then: (i) each of the parties hereto agrees to cooperate and use its best efforts to comply with the Hart-Scott-Rodino Act, and (ii) such compliance by the Stockholders and the Company shall be deemed a condition precedent in addition to the conditions precedent set forth in Section 9 of this Agreement, and such compliance by LandCare and Newco shall be deemed a condition precedent in addition to the conditions precedent set forth in Section 8 of this Agreement. If filings under the Hart-Scott-Rodino Act are required, the costs and expenses thereof (including legal fees and costs and filing fees) shall be borne by LandCare. The obligation of each party to consummate the transactions contemplated by this Agreement is subject to the expiration or termination of the waiting period under the Hart-Scott-Rodino Act, if applicable.

7.14 **Stockholders of LandCare.** Promptly after a request by the Company, LandCare will deliver to the Company a list of the stockholders of LandCare as of the date of this Agreement.

8. CONDITIONS PRECEDENT TO OBLIGATIONS OF STOCKHOLDERS AND COMPANY

The obligations of the Stockholders and the Company with respect to actions to be taken on the Closing Date are subject to the satisfaction or waiver on or prior to the Closing Date of all of the following conditions. Subject to Section 12 hereof, the obligations of the Stockholders and the Company with respect to actions to be taken on the Funding and Consummation Date are subject to the satisfaction or waiver on or prior to the Funding and Consummation Date of the conditions set forth in Sections 8.1, 8.5, 8.8, 8.9 and 8.12. As of the Closing Date or subject to Section 12 hereof, with respect to the conditions set forth in Sections 8.1, 8.5, 8.8, 8.9 and 8.12, as of the Funding and Consummation Date, if any such conditions have not been satisfied, the Stockholders (acting in unison) shall have the right to terminate this Agreement, or in the alternative, waive any condition not so satisfied. Any act or action of the Stockholders in consummating the Closing or delivering certificates representing Company Stock as of the Funding and Consummation Date shall constitute a waiver of any conditions not so satisfied. However, no such waiver shall be deemed to affect the survival of the representations and warranties of LandCare and Newco contained in Section 6 hereof.

8.1 **Representations and Warranties; Performance of Obligations.** All representations and warranties of LandCare and Newco contained in Section 6, as amended or supplemented in accordance with Section 7.8, shall be true and correct in all material respects as of the Closing Date and the Funding and Consummation Date as though such representations and warranties had been made as of that time; all of the terms, covenants and conditions of this Agreement to be complied with and performed by LandCare and Newco on or before the Closing Date and the Funding and Consummation Date shall have been duly complied with and performed in all material respects; and certificates to the foregoing effect dated the Closing Date and the Funding and Consummation Date, respectively, and signed by the President or any Vice President of LandCare shall have been delivered to the Stockholders.

8.2 **Satisfaction.** All actions, proceedings, instruments and documents required to carry out this Agreement or incidental hereto and all other related legal matters shall be reasonably satisfactory to the Company and its counsel. The Stockholders and the Company shall be satisfied that the Registration Statement and the prospectus forming a part thereof, including any amendments thereof or supplements thereto, shall not contain any untrue statement of a material fact, or omit to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, provided that the condition contained in this sentence shall (for purposes of this Section 8.2) be deemed satisfied if the Company or Stockholders shall have failed to inform

LandCare in writing prior to the effectiveness of the Registration Statement of the existence of an untrue statement of a material fact or the omission of such a statement of a material fact.

8.3 **No Litigation**. No action or proceeding before a court or any other governmental agency or body shall have been instituted or threatened to restrain or prohibit the Merger or the IPO and no governmental agency or body shall have taken any other action or made any request of the Company as a result of which the management of the Company deems it inadvisable to proceed with the transactions hereunder.

8.4 **Opinion of Counsel**. The Company shall have received an opinion from counsel for LandCare, dated the Closing Date, in the form annexed hereto as Annex III.

8.5 **Registration Statement**. The Registration Statement shall have been declared effective by the SEC and the underwriters named therein shall have agreed to acquire on a firm commitment basis, subject to the conditions set forth in the underwriting agreement, on terms such that the aggregate value of the cash and the number of shares of LandCare Stock to be received by the Stockholders is not less than the Minimum Value set forth on Annex I.

8.6 **Consents and Approvals**. All necessary consents of and filings with any governmental authority or agency relating to the consummation of the transactions contemplated herein shall have been obtained and made and no action or proceeding shall have been instituted or threatened to restrain or prohibit the Merger and no governmental agency or body shall have taken any other action or made any request of the Company as a result of which the Company deems it inadvisable to proceed with the transactions hereunder.

8.7 **Good Standing Certificates**. LandCare and Newco each shall have delivered to the Company a certificate, dated as of a date no later than ten days prior to the Closing Date, duly issued by the Delaware Secretary of State and in each state in which LandCare or Newco is authorized to do business, showing that each of LandCare and Newco is in good standing and authorized to do business and that all state franchise and/or income tax returns and taxes for LandCare and Newco, respectively, for all periods prior to the Closing have been filed and paid.

8.8 **No Material Adverse Change**. No event or circumstance shall have occurred with respect to LandCare or Newco which has had or is reasonably likely to have a Material Adverse Effect.

8.9 **Closing of IPO**. The closing of the sale of the LandCare Stock to the Underwriters in the IPO shall have occurred simultaneously with the Funding and Consummation Date hereunder.

8.10 **Secretary's Certificate**. The Company shall have received a certificate or certificates, dated the Closing Date and signed by the secretary of LandCare and of Newco,

certifying the truth and correctness of attached copies of the LandCare's and Newco's respective Certificates of Incorporation (including amendments thereto), By-Laws (including amendments thereto), and resolutions of the boards of directors and, if required, the Stockholders of LandCare and Newco approving LandCare's and Newco's entering into this Agreement and the consummation of the transactions contemplated hereby.

8.11 **Employment Agreements**. The person or persons listed on Schedule 9.12 under the caption relating to the Company shall have been afforded the opportunity to enter into an Employment Agreement substantially in the form of Annex V hereto.

8.12 **Tax Matters**. The Stockholders shall have received an opinion of Arthur Andersen LLP or other tax advisor reasonably acceptable to the Stockholders that the LandCare Plan of Organization will qualify as a tax-free transfer of property under Section 351 of the Code and that the Stockholders will not recognize gain to the extent the Stockholders exchange stock of the Company for LandCare Stock (but not cash or other property) pursuant to the LandCare Plan of Organization.

9. CONDITIONS PRECEDENT TO OBLIGATIONS OF LANDCARE AND NEWCO

The obligations of LandCare and Newco with respect to actions to be taken on the Closing Date are subject to the satisfaction or waiver on or prior to the Closing Date of all of the following conditions. The obligations of LandCare and Newco with respect to actions to be taken on the Funding and Consummation Date are subject to the satisfaction or waiver on or prior to the Funding and Consummation Date of the conditions set forth in Sections 9.1, 9.4 and 9.13. As of the Closing Date or, with respect to the conditions set forth in Sections 9.1, 9.4 and 9.13, as of the Funding and Consummation Date, if any such conditions have not been satisfied, LandCare and Newco shall have the right to terminate this Agreement, or waive any such condition, but no such waiver shall be deemed to affect the survival of the representations and warranties contained in Section 5 hereof.

9.1 **Representations and Warranties; Performance of Obligations**. All the representations and warranties of the Stockholders and the Company contained in this Agreement, as amended or supplemented in accordance with Section 7.8, shall be true and correct in all material respects as of the Closing Date and the Funding and Consummation Date with the same effect as though such representations and warranties had been made on and as of such date; all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Stockholders and the Company on or before the Closing Date or the Funding and Consummation Date, as the case may be, shall have been duly performed or complied with in all material respects; and the Stockholders shall have delivered to LandCare certificates dated the Closing Date and the Funding and Consummation Date, respectively, and signed by them to such effect.

9.2 **No Litigation**. No action or proceeding before a court or any other governmental agency or body shall have been instituted or threatened to restrain or prohibit the Merger or the IPO and no governmental agency or body shall have taken any other action or made any request of LandCare as a result of which the management of LandCare (acting in good faith) deems it inadvisable to proceed with the transactions hereunder.

9.3 **Secretary's Certificate**. LandCare shall have received a certificate, dated the Closing Date and signed by the secretary of the Company, certifying the truth and correctness of attached copies of the Company's Certificate of Incorporation (including amendments thereto), By-Laws (including amendments thereto), and resolutions of the board of directors and the Stockholders approving the Company's entering into this Agreement and the consummation of the transactions contemplated hereby.

9.4 **No Material Adverse Effect**. No event or circumstance shall have occurred with respect to the Company which has had or is reasonably likely to have a Material Adverse Effect.

9.5 **Stockholders' Release**. The Stockholders shall have delivered to LandCare an instrument dated the Closing Date which shall be effective only upon the occurrence of the Funding and Consummation Date releasing the Company from (i) any and all claims of the Stockholders against the Company and (ii) obligations of the Company to the Stockholders, except for (x) items specifically identified on Schedules 5.10 and 5.15 as being claims of or obligations to the Stockholders, and (y) continuing obligations to Stockholders relating to their employment by the Company. In the event that the Funding and Consummation Date does not occur, then the release instrument referenced herein shall be void and of no further force or effect.

9.6 **Satisfaction**. All actions, proceedings, instruments and documents required to carry out the transactions contemplated by this Agreement or incidental hereto and all other related legal matters shall have been approved by counsel to LandCare.

9.7 **Termination of Related Party Agreements**. Except as set forth on Schedule 9.7 or otherwise approved by LandCare, all existing agreements between the Company and the Stockholders (and entities controlled by the Stockholders) other than real property leases shall have been canceled effective prior to or as of the Closing Date, and all real property leases between the Company and the Stockholders (and any entity controlled by the Stockholders) shall have been amended as described in Section 5.16.

9.8 **Opinion of Counsel**. LandCare shall have received an opinion from Counsel to the Company and the Stockholders, dated the Closing Date, substantially in the form annexed hereto as Annex IV.

9.9 **Consents and Approvals**. All necessary consents of and filings with any governmental authority or agency relating to the consummation of the transactions contemplated herein shall have been obtained and made; all consents and approvals of third parties listed on Schedule 5.23 shall have been obtained.

9.10 **Good Standing Certificates**. The Company shall have delivered to LandCare a certificate, dated as of a date no earlier than ten days prior to the Closing Date, duly issued by the appropriate governmental authority in the Company's state of incorporation and, unless waived by LandCare, in each state in which the Company is authorized to do business, showing the Company is in good standing and authorized to do business and that all state franchise and/or income tax returns and taxes for the Company for all periods prior to the Closing have been filed and paid.

9.11 **Registration Statement**. The Registration Statement shall have been declared effective by the SEC.

9.12 **Employment Agreements**. The person or persons listed on Schedule 9.12 each shall enter into an employment agreement substantially in the form of Annex V hereto.

9.13 **Closing of IPO**. The closing of the sale of the LandCare Stock to the Underwriters in the IPO shall have occurred simultaneously with the Funding and Consummation Date hereunder.

9.14 **FIRPTA Certificate**. Each Stockholder shall have delivered to LandCare a certificate to the effect that he is not a foreign person pursuant to Section 1.1445-2(b) of the Treasury regulations.

9.15 **Environmental Reviews**. LandCare shall have received a report from an independent environmental consultant retained by LandCare at its expense to conduct an environmental review of the Company's owned and leased sites, and such report shall not disclose any environmental condition that, in LandCare's reasonable judgment, either (i) could be expected to have a Material Adverse Effect on the Company, or (ii) poses any risk of a substantial liability to the Company.

10. COVENANTS OF LANDCARE AND THE STOCKHOLDERS AFTER CLOSING

10.1 **Release From Guarantees; Repayment of Certain Obligations**. LandCare shall use reasonable efforts, including offering its own guarantee, to have the Stockholders and their spouses released from any and all guarantees of the Company's indebtedness identified on Schedule 10.1. In the event that LandCare cannot obtain such releases from the lenders of any such guaranteed indebtedness identified on Schedule 10.1 on or prior to 120 days subsequent to the Funding and Consummation Date, LandCare shall promptly pay off or otherwise refinance or retire

such indebtedness. LandCare shall indemnify the Stockholders against, and shall promptly reimburse the Stockholders for, any amounts which the Stockholders are obligated to pay under any such guarantees listed on Schedule 10.1, and shall be subrogated to any rights of the Stockholders accruing as a result of any such payments by the Stockholders.

10.2 **Preservation of Tax and Accounting Treatment**. Except as contemplated by this Agreement or the Registration Statement, after the Funding and Consummation Date, LandCare shall not and shall not permit any of its subsidiaries to undertake any act that would jeopardize the tax-free status of the organization, including without limitation:

(a) the retirement or reacquisition, directly or indirectly, of all or part of the LandCare Stock issued in connection with the transactions contemplated hereby; or

(b) the entering into of financial arrangements for the benefit of the Stockholders.

10.3 **Preparation and Filing of Tax Returns**.

(i) The Company, if possible, or otherwise the Stockholders shall file or cause to be filed all income Tax Returns (federal, state, local or otherwise) of any Acquired Party for all taxable periods that end on or before the Funding and Consummation Date, and shall permit LandCare to review all such Tax Returns prior to such filings. Unless the Company is a C corporation, the Stockholders shall pay or cause to be paid all Tax liabilities (in excess of all amounts already paid with respect thereto or properly accrued or reserved with respect thereto on the Company Financial Statements) shown by such Returns to be due.

(ii) LandCare shall file or cause to be filed all separate Returns of, or that include, any Acquired Party for all taxable periods ending after the Funding and Consummation Date, and shall permit the Stockholders a reasonable opportunity to review all such Returns for periods including the Funding and Consummation Date prior to the filing thereof.

(iii) Each party hereto shall, and shall cause its Subsidiaries and Affiliates to, provide to each of the other parties hereto such cooperation and information as any of them reasonably may request in filing any Return, amended Return or claim for refund, determining a liability for Taxes or a right to refund of Taxes or in conducting any audit or other proceeding in respect of Taxes. Such cooperation and information shall include providing copies of all relevant portions of relevant Returns, together with relevant accompanying schedules and relevant work papers, relevant documents relating to rulings or other determinations by Taxing authorities and relevant records concerning the ownership and Tax basis of property, which such party may possess. Each party shall make its employees reasonably available on a mutually convenient basis at its cost to provide explanation of any documents or information so provided. Subject to the preceding

sentence, each party required to file Returns pursuant to this Agreement shall bear all costs of filing such Returns.

(iv) Each of the Company, Newco, LandCare and each Stockholder shall comply with the Tax reporting requirements of Section 1.351-3 of the Treasury Regulations promulgated under the Code, and treat the transaction as a tax-free contribution under Section 351(a) of the Code subject to gain, if any, recognized on the receipt of cash or other property under Section 351(b) of the Code.

10.4 **Directors**. The persons named in the Draft Registration Statement shall be appointed as directors and elected as officers of LandCare, as and to the extent set forth in the Draft Registration Statement, promptly following the Funding and Consummation Date.

11. INDEMNIFICATION

The Stockholders, LandCare and Newco each make the following covenants that are applicable to them, respectively:

11.1 **General Indemnification by the Stockholders**. Subject to Section 11.5, the Stockholders covenant and agree that they jointly and severally will indemnify, defend, protect and hold harmless LandCare, Newco, and, subsequent to the Funding and Consummation Date, the Company and the Surviving Corporation at all times, from and after the date of this Agreement until the Expiration Date (provided that for purposes of Section 11.1(iii) below, the Expiration Date shall be the date on which the applicable statute of limitations expires), from and against all claims, damages, actions, suits, proceedings, demands, assessments, adjustments, costs and expenses (including specifically, but without limitation, reasonable attorneys' fees and expenses of investigation) incurred by LandCare, Newco, the Company or the Surviving Corporation as a result of or arising from (i) any breach of the representations and warranties of the Stockholders or the Company set forth herein or on the schedules or certificates delivered in connection herewith, (ii) any breach of any agreement on the part of the Stockholders or the Company under this Agreement, or (iii) any liability under the 1933 Act, the 1934 Act or other Federal or state law or regulation, at common law or otherwise, arising out of or based upon any untrue statement of a material fact relating to the Company or the Stockholders, and provided to LandCare or its counsel by the Company or the Stockholders (but in the case of the Stockholders, only if such statement was provided in writing) which is contained in the Registration Statement or any prospectus forming a part thereof, or any amendment thereof or supplement thereto, or arising out of or based upon any omission or alleged omission to state therein a material fact relating to the Company or the Stockholders required to be stated therein or necessary to make the statements therein not misleading, provided, however, that such indemnity shall not inure to the benefit of LandCare, Newco, the Company or the Surviving Corporation to the extent that such untrue statement (or alleged untrue statement) was made in, or omission (or alleged omission) occurred in, any

preliminary prospectus and the Company or the Stockholders provided, in writing, corrected information to LandCare for inclusion in the final prospectus, and such information was not so included or the final prospectus was not properly delivered, and provided further, that no Stockholder shall be liable for any indemnification obligation pursuant to this Section 11.1 to the extent attributable to a breach of any representation, warranty or agreement made herein individually by any other Stockholder.

LandCare and Newco acknowledge and agree that other than the representations and warranties of the Company or the Stockholders specifically contained in this Agreement, there are no representations or warranties of the Company or the Stockholders, either express or implied, with respect to the transactions contemplated by this Agreement, the Company or its assets, liabilities and business.

LandCare and Newco further acknowledge and agree that, should the Funding and Consummation Date occur, their sole and exclusive remedy with respect to any and all claims relating to this Agreement and the transactions contemplated in this Agreement, shall be pursuant to the indemnification provisions set forth in this Section 11. LandCare and Newco hereby waive, from and after the Funding and Consummation Date, to the fullest extent permitted under applicable law, any and all rights, claims and causes of action they or any indemnified person may have against any Stockholder relating to this Agreement or the transactions arising under or based upon any federal, state, local or foreign statute, law, rule, regulation or otherwise except their rights under this Section 11.

11.2 **Indemnification by LandCare**. LandCare covenants and agrees that it will indemnify, defend, protect and hold harmless the Stockholders and, prior to the Funding and Consummation Date, the Company, at all times from and after the date of this Agreement until the Expiration Date (provided that for purposes of Section 11.2(iv) below, the Expiration Date shall be the date on which the applicable statute of limitations expires), from and against all claims, damages, actions, suits, proceedings, demands, assessments, adjustments, costs and expenses (including specifically, but without limitation, reasonable attorneys' fees and expenses of investigation) incurred by the Stockholders or the Company as a result of or arising from (i) any breach by LandCare or Newco of their representations and warranties set forth herein or on the schedules or certificates attached hereto, (ii) any breach of any agreement on the part of LandCare or Newco under this Agreement, (iii) any liabilities which the Stockholders may incur due to LandCare's or Newco's failure to be responsible for the liabilities and obligations of the Company as provided in Section 1 hereof (except to the extent that LandCare or Newco has claims against the Stockholders by reason of such liabilities); or (iv) any liability under the 1933 Act, the 1934 Act or other Federal or state law or regulation, at common law or otherwise, arising out of or based upon any untrue statement or alleged untrue statement of a material fact relating to LandCare, Newco or any of the Other Founding Companies contained in any preliminary prospectus, the Registration Statement or any prospectus forming a part thereof, or any amendment thereof or supplement thereto, or arising out

of or based upon any omission or alleged omission to state therein a material fact relating to LandCare or Newco or any of the Other Founding Companies required to be stated therein or necessary to make the statements therein not misleading.

11.3 **Third Person Claims**. Promptly after any party hereto (hereinafter the "Indemnified Party") has received notice of or has knowledge of any claim by a person not a party to this Agreement ("Third Person"), or the commencement of any action or proceeding by a Third Person, the Indemnified Party shall, as a condition precedent to a claim with respect thereto being made against any party obligated to provide indemnification pursuant to Section 11.1 or 11.2 hereof (hereinafter the "Indemnifying Party"), give the Indemnifying Party written notice of such claim or the commencement of such action or proceeding. Such notice shall state the nature and the basis of such claim and a reasonable estimate of the amount thereof. The Indemnifying Party shall have the right to defend and settle, at its own expense and by its own counsel, any such matter so long as the Indemnifying Party pursues the same in good faith and diligently, provided that the Indemnifying Party shall not settle any proceeding without the written consent of the Indemnified Party, which consent shall not be unreasonably withheld or delayed. If the Indemnifying Party undertakes to defend or settle, it shall promptly notify the Indemnified Party of its intention to do so, and the Indemnified Party shall cooperate with the Indemnifying Party and its counsel in the defense thereof and in any settlement thereof. Such cooperation shall include, but shall not be limited to, furnishing the Indemnifying Party with any books, records or information reasonably requested by the Indemnifying Party that are in the Indemnified Party's possession or control. All Indemnified Parties shall use the same counsel, which shall be the counsel selected by Indemnifying Party, provided that if counsel to the Indemnifying Party shall have a conflict of interest that prevents counsel for the Indemnifying Party from representing the Indemnified Party, the Indemnified Party shall have the right to participate in such matter through counsel of its own choosing and the Indemnifying Party will reimburse the Indemnified Party for the reasonable expenses of its counsel. After the Indemnifying Party has notified the Indemnified Party of its intention to undertake to defend or settle any such asserted liability, and for so long as the Indemnifying Party diligently pursues such defense, the Indemnifying Party shall not be liable for any additional legal expenses incurred by the Indemnified Party in connection with any defense or settlement of such asserted liability, except (i) as set forth in the preceding sentence and (ii) to the extent such participation is requested by the Indemnifying Party, in which event the Indemnified Party shall be reimbursed by the Indemnifying Party for reasonable additional legal expenses and out-of-pocket expenses. If the Indemnifying Party desires to accept a final and complete settlement of any such Third Person claim and the Indemnified Party refuses to consent to such settlement, then the Indemnifying Party's liability under this Section with respect to such Third Person claim shall be limited to the amount so offered in settlement by said Third Person. Upon agreement as to such settlement between said Third Person and the Indemnifying Party, the Indemnifying Party shall, in exchange for a complete release from the Indemnified Party, promptly pay to the Indemnified Party the amount agreed to in such settlement and the Indemnified Party shall, from that moment on, bear full responsibility for any additional costs of defense which it subsequently incurs with respect to such claim and all additional costs of

settlement or judgment. If the Indemnifying Party does not undertake to defend such matter to which the Indemnified Party is entitled to indemnification hereunder, or fails diligently to pursue such defense, the Indemnified Party may undertake such defense through counsel of its choice, at the cost and expense of the Indemnifying Party, and the Indemnified Party may settle such matter, and the Indemnifying Party shall reimburse the Indemnified Party for the amount paid in such settlement and any other liabilities or expenses incurred by the Indemnified Party in connection therewith, provided, however, that under no circumstances shall the Indemnified Party settle any Third Person claim without the written consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed. All settlements hereunder shall effect a complete release of the Indemnified Party, unless the Indemnified Party otherwise agrees in writing. The parties hereto will make appropriate adjustments for insurance proceeds in determining the amount of any indemnification obligation under this Section.

11.4 **Exclusive Remedy**. The indemnification provided for in this Section 11 shall be the exclusive remedy in any action seeking damages or any other form of monetary relief brought by any party to this Agreement against another party with respect to the matters set forth herein, provided that, nothing herein shall be construed to limit the right of a party, in a proper case, to seek injunctive relief for a breach of this Agreement. Any indemnity payment under this Section 11 shall be treated as an adjustment to the exchange consideration for tax purposes unless a final determination (which shall include the execution of a Form 870-AD or successor form) with respect to the indemnified party or any of its Affiliates causes any such payment not to be treated as an adjustment to the exchange consideration for U.S. Federal Income Tax purposes.

11.5 **Limitations on Indemnification**. LandCare, Newco, the Surviving Corporation and the other persons or entities indemnified pursuant to Section 11.1 shall not assert any claim for indemnification hereunder against the Stockholders until such time as, and solely to the extent that, the aggregate of all claims which such persons may have against such the Stockholders shall exceed the greater of (a) 1.0% of the sum of (i) the cash paid to Stockholders plus (ii) the value of the LandCare Stock delivered to Stockholders (calculated as provided in this Section 11.5) or (b) $50,000 (the "Indemnification Threshold").

No person shall be entitled to indemnification under this Section 11 if and to the extent that such person's claim for indemnification is directly or indirectly related to a breach by such person of any representation, warranty, covenant or other agreement set forth in this Agreement.

Notwithstanding any other term of this Agreement, no Stockholder shall be liable under this Section 11 for an amount which exceeds the amount of proceeds received by such Stockholder in connection with the Merger. For purposes of calculating the value of the LandCare Stock received by a Stockholder, LandCare Stock shall be valued at its initial public offering price as set forth in the Registration Statement. It is hereby agreed that a Stockholder shall have the right to satisfy an

indemnification obligation through payment of a combination of stock and cash in proportion equal to the proportion of stock and cash received by such Stockholder in connection with the Merger, valued as described immediately above, but shall also have the right to satisfy any such obligation in cash.

12. TERMINATION OF AGREEMENT

12.1 **Termination**. This Agreement may be terminated at any time prior to the Funding and Consummation Date solely:

(i) by mutual consent of the boards of directors of LandCare and the Company;

(ii) by the Company or by LandCare if the transactions contemplated by this Agreement to take place at the Closing shall not have been consummated by September 30, 1998, unless the failure of such transactions to be consummated is due to the willful failure of the party (including, in the case of the Company, any such failure of the Stockholders) seeking to terminate this Agreement to perform any of its obligations under this Agreement to the extent required to be performed by it prior to or on the Closing Date;

(iii) by the Company or by LandCare if a material breach or default shall be made by the other party (including, in the case of LandCare's right to terminate, any such material breach or default by the Stockholders) in the observance or in the due and timely performance of any of the covenants or agreements contained herein, and the curing of such default shall not have been made on or before the Funding and Consummation Date, or by the Company, if the conditions set forth in Section 8 hereof have not been satisfied or waived as of the Closing Date or the Funding and Consummation Date, as applicable, or by LandCare, if the conditions set forth in Section 9 hereof have not been satisfied or waived as of the Closing Date or the Funding and Consummation Date, as applicable;

(iv) pursuant to Section 7.8 hereof; or

(v) pursuant to Section 4 hereof;

provided, however, that (except as provided in Section 4 hereof) during the period from the Closing Date to the Funding and Consummation Date, this Agreement may be terminated only if (a) the underwriting agreement relating to the IPO is terminated in accordance with its terms, or (b) the conditions set forth in Sections 8.5 and 8.9 hereof are not being satisfied as of the Funding and Consummation Date.

12.2 **Liabilities in Event of Termination.** Except as provided in Section 7.8 hereof, the termination of this Agreement will in no way limit any obligation or liability of any party based on

or arising from a breach or default by such party with respect to any of its representations, warranties, covenants or agreements contained in this Agreement including, but not limited to, legal and audit costs and out of pocket expenses.

13. NONCOMPETITION

13.1 **Prohibited Activities.** Except as and solely to the extent set forth on Schedule 13.1 hereto, the Stockholders will not, for a period of five (5) years following the Funding and Consummation Date, for any reason whatsoever, directly or indirectly, for themselves or on behalf of or in conjunction with any other Person or Persons:

(i) engage, as an officer, director, shareholder, owner, partner, joint venturer, or in a managerial capacity, whether as an employee, independent contractor, consultant or advisor, or as a sales representative, in any landscaping business or operation or related services business in direct competition with LandCare or any of the Subsidiaries thereof, within 100 miles of where the Company conducted business prior to the Funding and Consummation Date or within the one-year period prior to the Funding and Consummation Date (the "Territory");

(ii) call upon any individual who is, at that time, within the Territory, an employee of LandCare or any Subsidiary thereof for the purpose or with the intent of enticing such employee away from or out of the employ of LandCare or any Subsidiary thereof;

(iii) call upon any Person which is, at that time, or which has been, within one-year prior to the Funding and Consummation Date, a customer of LandCare or any Subsidiary thereof, of the Company or of any of the Other Founding Companies within the Territory for the purpose of soliciting or selling products or services in direct competition with LandCare within the Territory;

(iv) call upon any prospective acquisition candidate, on any Stockholder's own behalf or on behalf of any competitor in the landscaping business or any related services business, which candidate, to the actual knowledge of such Stockholder after due inquiry, was called upon by LandCare or any Subsidiary thereof or for which, to the actual knowledge of such Stockholder after due inquiry, LandCare or any Subsidiary thereof made an acquisition analysis, for the purpose of acquiring such entity; or

(v) except on behalf of LandCare or any Subsidiary, disclose customers, whether in existence or proposed, of the Company to any Person, for any reason or purpose whatsoever except to the extent that the Company has in the past disclosed such information to the public for valid business reasons.

Notwithstanding the above, the foregoing covenant shall not be deemed to prohibit any Stockholder from acquiring as a passive investment not more than two percent (2%) of the capital

stock of a competing business whose stock is traded on a national securities exchange or over-the-counter.

13.2 **Damages.** Because of the difficulty of measuring economic losses to LandCare as a result of a breach of the foregoing covenant, and because of the immediate and irreparable damage that could be caused to LandCare for which it would have no other adequate remedy, each Stockholder agrees that the foregoing covenant may be enforced by LandCare in the event of breach by such Stockholder, by injunctions and restraining orders.

13.3 **Reasonable Restraint.** It is agreed by the parties hereto that the foregoing covenants in this Section 13 impose a reasonable restraint on the Stockholders in light of the activities and business of LandCare and the Subsidiaries thereof on the date of the execution of this Agreement and the current plans of LandCare and its Subsidiaries.

13.4 **Severability; Reformation.** The covenants in this Section 13 are severable and separate, and the unenforceability of any specific covenant shall not affect the provisions of any other covenant. Moreover, in the event any court of competent jurisdiction shall determine that the scope, time or territorial restrictions set forth are unreasonable, then it is the intention of the parties that such restrictions be enforced to the fullest extent which the court deems reasonable, and the Agreement shall thereby be reformed.

13.5 **Independent Covenant.** All of the covenants in this Section 13 shall be construed as an agreement independent of any other provision in this Agreement, and the existence of any claim or cause of action of any Stockholder against LandCare or any subsidiary thereof, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by LandCare of such covenants. The covenants contained in Section 13 shall not be affected by any breach of any other provision hereof by any party hereto and shall have no effect if the transactions contemplated by this Agreement are not consummated.

13.6 **Materiality.** The Company and the Stockholders hereby agree that this covenant is a material and substantial part of this transaction.

14. NONDISCLOSURE OF CONFIDENTIAL INFORMATION

14.1 **Stockholders.** The Stockholders recognize and acknowledge that they had in the past, currently have, and in the future may possibly have, access to certain confidential information of the Company, the Other Founding Companies, and/or LandCare, such as operational policies, and pricing and cost policies that are valuable, special and unique assets of the Company's, the Other Founding Companies' and/or LandCare's respective businesses. The Stockholders agree that they will not disclose such confidential information to any person, firm, corporation, association or other entity for any purpose or reason whatsoever, except (a) to authorized representatives of LandCare,

(b) following the Closing, such information may be disclosed by the Stockholders as is required in the course of performing their duties for LandCare or the Surviving Corporation and (c) to counsel and other advisers, provided that such advisers (other than counsel) agree to the confidentiality provisions of this Section 14.1, unless (i) such information becomes known to the public generally through no fault of the Stockholders, (ii) disclosure is required by law or the order of any governmental authority under color of law, provided, that prior to disclosing any information pursuant to this clause (ii), the Stockholders shall, if possible, give prior written notice thereof to LandCare and provide LandCare with the opportunity to contest such disclosure, or (iii) the disclosing party reasonably believes that such disclosure is required in connection with the defense of a lawsuit against the disclosing party. In the event of a breach or threatened breach by any of the Stockholders of the provisions of this Section 14.1, LandCare shall be entitled to an injunction restraining such Stockholders from disclosing, in whole or in part, such confidential information. Nothing herein shall be construed as prohibiting LandCare from pursuing any other available remedy for such breach or threatened breach, including the recovery of damages. In the event the transactions contemplated by this Agreement are not consummated, Stockholders shall have none of the above-mentioned restrictions on their ability to disseminate confidential information with respect to the Company. Each Stockholder further agrees that in the event the transactions contemplated herein are not consummated (i) neither the Company nor any Stockholder can thereafter use any confidential information of the Other Founding Companies for any purpose and (ii) upon written request of any Other Founding Company to the Company, the Company and Stockholders will return all confidential information pertaining to such Other Founding Company to such Other Founding Company.

14.2 **LandCare and Newco.** LandCare and Newco recognize and acknowledge that they had in the past and currently have access to certain confidential information of the Company, such as operational policies, and pricing and cost policies that are valuable, special and unique assets of the Company's business. LandCare and Newco agree that, prior to the Closing, or if the Transactions contemplated by this Agreement are not consummated, they will not disclose such confidential information to any Person for any purpose or reason whatsoever, except (a) to authorized representatives of the Company, (b) to counsel and other advisers, provided that such advisers (other than counsel) agree to the confidentiality provisions of this Section 14.2, (c) to the Other Founding Companies and their representatives pursuant to Section 7.1(a), unless (i) such information is or becomes known to the public generally through no fault of LandCare or Newco, (ii) disclosure is required by law or the order of any governmental authority under color of law, provided, that prior to disclosing any information pursuant to this clause (ii), LandCare and Newco shall, if possible, give prior written notice thereof to the Company and the Stockholders and provide the Company and the Stockholders with the opportunity to contest such disclosure, or (iii) the disclosing party reasonably believes that such disclosure is required in connection with the defense of a lawsuit against the disclosing party, and (d) to the public to the extent necessary or advisable in connection with the filing of the Registration Statement and the IPO and the securities laws applicable thereto and to the operation of LandCare as a publicly held entity after the IPO. In the event of a breach or

threatened breach by LandCare or Newco of the provisions of this Section 14.2, the Company and the Stockholders shall be entitled to an injunction restraining LandCare and Newco from disclosing, in whole or in part, such confidential information. Nothing herein shall be construed as prohibiting the Company and the Stockholders from pursuing any other available remedy for such breach or threatened breach, including the recovery of damages.

14.3 **Damages.** Because of the difficulty of measuring economic losses as a result of the breach of the foregoing covenants in Section 14.1 and 14.2, and because of the immediate and irreparable damage that would be caused for which they would have no other adequate remedy, the parties hereto agree that, in the event of a breach by any of them of the foregoing covenants, the covenant may be enforced by the other parties by injunctions and restraining orders.

14.4 **Survival.** The obligations of the parties under this Article 14 shall survive the termination of this Agreement for a period of five years from the Funding and Consummation Date.

15. TRANSFER RESTRICTIONS

15.1 **Transfer Restrictions.** Unless otherwise agreed by LandCare, except for transfers to immediate family members who agree to be bound by the restrictions set forth in this Section 15.1 (or trusts for the benefit of the Stockholders or family members, the trustees of which so agree), for a period of two years from the Funding and Consummation Date, except pursuant to Section 17 hereof, none of the Stockholders shall sell, assign, exchange, transfer, encumber, pledge, distribute, appoint, or otherwise dispose of any shares of LandCare Stock received by the Stockholders in the Merger. The certificates evidencing the LandCare Stock delivered to the Stockholders pursuant to Section 3 of this Agreement will bear a legend substantially in the form set forth below and containing such other information as LandCare may deem necessary or appropriate:

THE SHARES REPRESENTED BY THIS CERTIFICATE MAY NOT BE SOLD, ASSIGNED, EXCHANGED, TRANSFERRED, ENCUMBERED, PLEDGED, DISTRIBUTED, APPOINTED OR OTHERWISE DISPOSED OF, AND THE ISSUER SHALL NOT BE REQUIRED TO GIVE EFFECT TO ANY ATTEMPTED SALE, ASSIGNMENT, EXCHANGE, TRANSFER, ENCUMBRANCE, PLEDGE, DISTRIBUTION, APPOINTMENT OR OTHER DISPOSITION PRIOR TO [SECOND ANNIVERSARY OF FUNDING AND CONSUMMATION DATE]. UPON THE WRITTEN REQUEST OF THE HOLDER OF THIS CERTIFICATE, THE ISSUER AGREES TO REMOVE THIS RESTRICTIVE LEGEND (AND ANY STOP ORDER PLACED WITH THE TRANSFER AGENT) AFTER THE DATE SPECIFIED ABOVE.

LandCare agrees, however, to use reasonable efforts to implement an arrangement with a nationally recognized investment banking firm pursuant to which such firm will facilitate sales by the Stockholders beginning after the date one year after the Funding and Consummation Date; and in

the event such an arrangement is implemented on terms reasonably satisfactory to LandCare, LandCare will waive the foregoing restriction to the extent reasonably necessary to permit the Stockholders to participate in such arrangement.

16. FEDERAL SECURITIES ACT REPRESENTATIONS

16.1 **Compliance with Law.** The Stockholders acknowledge that the shares of LandCare Stock to be delivered to the Stockholders pursuant to this Agreement have not been and will not be registered under the 1933 Act (except as provided in Section 17 hereof) and therefore may not be resold without compliance with the 1933 Act. The LandCare Stock to be acquired by such Stockholders pursuant to this Agreement is being acquired solely for their own respective accounts, for investment purposes only, and with no present intention of distributing, selling or otherwise disposing of it in connection with a distribution. The Stockholders covenant, warrant and represent that none of the shares of LandCare Stock issued to such Stockholders will be offered, sold, assigned, pledged, hypothecated, transferred or otherwise disposed of except after full compliance with all of the applicable provisions of the 1933 Act and the rules and regulations of the SEC. All the LandCare Stock shall bear the following legend in addition to the legend required under Section 15 of this Agreement:

THE SHARES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "ACT") AND MAY ONLY BE SOLD OR OTHERWISE TRANSFERRED IF THE HOLDER HEREOF COMPLIES WITH THE ACT AND APPLICABLE SECURITIES LAW.

16.2 **Economic Risk; Sophistication.** The Stockholders are able to bear the economic risk of an investment in the LandCare Stock to be acquired pursuant to this Agreement and can afford to sustain a total loss of such investment and have such knowledge and experience in financial and business matters that they are capable of evaluating the merits and risks of the proposed investment in the LandCare Stock. The Stockholders party hereto have had an adequate opportunity to ask questions and receive answers from the officers of LandCare concerning any and all matters relating to the transactions described herein including, without limitation, the background and experience of the current and proposed officers and directors of LandCare, the plans for the operations of the business of LandCare, the business, operations and financial condition of the Founding Companies other than the Company, and any plans for additional acquisitions and the like. The Stockholders have asked any and all questions in the nature described in the preceding sentence and all questions have been answered to their satisfaction.

17. REGISTRATION RIGHTS

17.1 **Piggyback Registration Rights.** At any time following the Funding and Consummation Date, whenever LandCare proposes to register any LandCare Stock for its own or others account under the 1933 Act for a public offering, other than (i) any shelf or other registration of shares to be used as consideration for acquisitions of additional businesses by LandCare (including any registration of resales of such shares by the holders thereof) and (ii) registrations relating to employee stock options or other benefit plans, LandCare shall give each of the Stockholders prompt written notice of its intent to do so. Upon the written request of any of the Stockholders given within 30 days after receipt of such notice, LandCare shall cause to be included in such registration all of the LandCare Stock issued to the Stockholders pursuant to this Agreement (including any stock issued as (or issuable upon the conversion or exchange of any convertible security, warrant, right or other security which is issued by LandCare as) a dividend or other distribution with respect to, or in exchange for, or in replacement of such LandCare Stock) which any such Stockholder requests, provided that LandCare shall have the right to reduce the number of shares included in such registration to the extent that inclusion of such shares could, in the written opinion of tax counsel to LandCare or its independent auditors, jeopardize the status of the transactions contemplated hereby and by the Registration Statement as a tax-free organization under Section 351 of the Code. In addition, if LandCare is advised in writing in good faith by any managing underwriter of an underwritten offering of the securities being offered pursuant to any registration statement under this Section 17.1 that the number of shares to be sold by persons other than LandCare is greater than the number of such shares which can be offered without adversely affecting the offering, LandCare may reduce pro rata the number of shares offered for the accounts of such persons (based upon the number of shares proposed to be sold by each such person) to a number deemed satisfactory by such managing underwriter, provided, that, for each such offering made by LandCare after the IPO, such reduction shall be made first by reducing the number of shares to be sold by persons other than LandCare, the Stockholders and the stockholders of the Other Founding Companies (collectively, the Stockholders and the stockholders of the other Founding Companies being referred to herein as the "Founding Stockholders"), and thereafter, if a further reduction is required, by reducing the number of shares to be sold by the Founding Stockholders.

17.2 **Demand Registration Rights.** At any time after the date two years after the Funding and Consummation Date and prior to the date three years after the Funding and Consummation Date, the holders of a majority of the shares of LandCare Stock issued to the Founding Stockholders pursuant to this Agreement and the Other Agreements which have not been previously registered or sold and which are not entitled to be sold under Rule 144(k) (or any similar or successor provision) promulgated under the 1933 Act may request in writing that LandCare file a registration statement under the 1933 Act covering the registration of the shares of LandCare Stock issued to the Stockholders pursuant to this Agreement and the Other Agreements (including any stock issued as (or issuable upon the conversion or exchange of any convertible security, warrant, right or other security which is issued by LandCare as) a dividend or other distribution with respect to, or in

exchange for, or in replacement of such LandCare Stock) then held by such Founding Stockholders (a "Demand Registration"). Within ten (10) days of the receipt of such request, LandCare shall give written notice of such request to all other Founding Stockholders and shall, as soon as practicable but in no event later than 45 days after notice from any Stockholder, file and use its best efforts to cause to become effective a registration statement covering all such shares. LandCare shall be obligated to effect only one Demand Registration for all Founding Stockholders and will keep the registration statement relating to such Demand Registration current and effective for not less than 120 days (or such shorter period as is required to sell all of the shares registered thereby).

Notwithstanding the foregoing paragraph, following any such a demand, a majority of LandCare's disinterested directors (i.e. directors who have not demanded or elected to sell shares in any such public offering) may defer the filing of the registration statement for up to a 60 day period after the date on which LandCare would otherwise be required to make such filing pursuant to the foregoing paragraph if such directors determine in good faith that the filing of such a registration statement or the making of any required disclosure in connection therewith would have a material adverse effect on LandCare or interfere with a transaction in which LandCare is then engaged or is then pursuing.

If at the time of any request by the Founding Stockholders for a Demand Registration LandCare has fixed plans to file within 60 days after such request a registration statement covering the sale of any of its securities in a public offering under the 1933 Act, no registration of the Founding Stockholders' LandCare Stock shall be initiated under this Section 17.2 until 90 days after the effective date of such registration unless LandCare is no longer proceeding diligently to effect such registration; provided that LandCare shall provide the Founding Stockholders the right to participate in such public offering pursuant to, and subject to, Section 17.1 hereof.

In the event that the Founding Stockholders make a demand registration request pursuant to this Section 17.2 and such registration is delayed by LandCare as a consequence of the exercise of its rights under this Section 17.2, then the period during which such demand registration may be requested by the Founding Stockholders shall be extended for an equal number of days.

17.3 **Registration Procedures.** Whenever LandCare is required to register shares of LandCare Stock pursuant to Sections 17.1 and 17.2, LandCare will, as expeditiously as possible:

a. Prepare and file with the SEC a registration statement with respect to such shares and use its best efforts to cause such registration statement to become effective (provided that before filing a registration statement or prospectus or any amendments or supplements or term sheets thereto, LandCare will furnish a representative of the Stockholders with copies of all such documents proposed to be filed) as promptly as practical;

b. Prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective for a period of not less than 120 days;

c. Furnish to each Stockholder who so requests such number of copies of such registration statement, each amendment and supplement thereto and the prospectus included in such registration statement (including each preliminary prospectus and any term sheet associated therewith), and such other documents as such Stockholder may reasonably request in order to facilitate the disposition of the relevant shares;

d. Use its best efforts to register or qualify the securities covered by such registration statement under such other securities or Blue Sky laws of such jurisdictions as shall be reasonably requested by the Stockholders, and to keep such registration or qualification effective during the period such registration statement is to be kept effective, provided that LandCare shall not be required to become subject to taxation, to qualify to do business or to file a general consent to service of process in any such states or jurisdictions;

e. Cause all such shares of LandCare Stock to be listed or included on any securities exchanges or trading systems on which similar securities issued by LandCare are then listed or included;

f. Notify each Stockholder at any time when a prospectus relating thereto is required to be delivered under the 1933 Act within the period that LandCare is required to keep the registration statement effective of the happening of any event as a result of which the prospectus included in such registration statement, together with any associated term sheet, contains an untrue statement of a material fact or omits any fact necessary to make the statement therein not misleading, and, at the request of such Stockholder, LandCare will prepare a supplement or amendment to such prospectus so that, as thereafter delivered to the purchasers of the covered shares, such prospectus will not contain an untrue statement of material fact or omit to state any fact necessary to make the statements therein not misleading.

All expenses incurred in connection with the registration under this Article 17 (including all registration, filing, qualification, legal, printer and accounting fees, but excluding underwriting commissions and discounts), shall be borne by LandCare.

17.4 **Indemnification**.

(a) In connection with any demand or piggyback registration, LandCare shall indemnify, to the extent permitted by law, each Stockholder and each Person who controls such Stockholder (an "Indemnified Party") against all losses, claims, damages, liabilities and expenses (including reasonable attorneys' fees and expenses of investigation) arising out of or resulting from any untrue

or alleged untrue statement of material fact contained in any registration statement, prospectus or preliminary prospectus or associated term sheet or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading except insofar as the same are caused by or contained in or omitted from any information furnished in writing to LandCare by such Indemnified Party expressly for use therein or by such Indemnified Party's failure to deliver a copy of the registration statement or prospectus or any amendment or supplements thereto after LandCare has furnished such Indemnified Party with a sufficient number of copies of the same.

(b) In connection with any demand or piggyback registration, each Stockholder shall furnish to LandCare in writing such information as is reasonably requested by LandCare for use in any such registration statement or prospectus and will indemnify, to the extent permitted by law, LandCare, its directors and officers and each person who controls LandCare (within the meaning of the 1933 Act) against any losses, claims, damages, liabilities and expenses (including reasonable attorneys' fees and expenses of investigation) resulting from any untrue or alleged untrue statement of a material fact or any omission or alleged omission of a material fact required to be stated in the registration statement or prospectus or any amendment thereof or supplement thereto necessary to make the statements therein not misleading, but only to the extent that such untrue statement or omission is contained in information so furnished in writing by such Stockholder specifically for use in preparing the registration statement. Notwithstanding the foregoing, the liability of a Stockholder under this Section 17.4 shall be limited to an amount equal to the net proceeds actually received by such Stockholder from the sale of the relevant shares covered by the registration statement.

(c) Any person entitled to indemnification hereunder will (i) give prompt notice to the indemnifying party of any claim with respect to which it seeks indemnification and (ii) unless in such indemnified party's reasonable judgment, a conflict of interest between such indemnified and indemnifying parties may exist with respect to such claim, permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party. Any failure to give prompt notice shall deprive a party of its right to indemnification hereunder only to the extent that such failure shall have adversely affected the indemnifying party. If the defense of any claim is assumed, the indemnified party will not be subject to any liability for any settlement made without its consent (but such consent shall not be unreasonably withheld). An indemnifying party who is not entitled or elects not to assume the defense of a claim will not be obligated to pay the fees and expenses of more than one counsel for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable judgment of any indemnified party, a conflict of interest may exist between such indemnified party and any other of such indemnified parties with respect to such claim.

17.5 **Underwriting Agreement.** In connection with each registration pursuant to Sections 17.1 and 17.2 covering an underwritten registered offering, LandCare and each participating holder agree to enter into a written agreement with the managing underwriters (which in the case of a

Demand Registration under Section 17.2 will be reasonably satisfactory to the holders of a majority of the shares of the Founding Stockholders participating in the Demand Registration), in such form and containing such provisions as are customary in the securities business for such an arrangement between such managing underwriters and companies of LandCare's size and investment stature, including indemnification provisions.

17.6 **Rule 144 Reporting.** With a view to making available the benefits of certain rules and regulations of the SEC that may permit the sale of LandCare stock to the public without registration, LandCare agrees to use its reasonable efforts to:

(i) make and keep public information regarding LandCare available as those terms are used in Rule 144 under the 1933 Act for a period of four years beginning 90 days following the effective date of the Registration Statement;

(ii) file with the SEC in a timely manner all reports and other documents required of LandCare under the 1933 Act and the 1934 Act at any time after it has become subject to such reporting requirements; and

(iii) so long as a Stockholder owns any restricted LandCare Common Stock, furnish to each Stockholder forthwith upon written request a written statement by LandCare as to its compliance with the reporting requirements of Rule 144 (at any time from and after 90 days following the effective date of the Registration Statement), and of the 1933 Act and the 1934 Act (any time after it has become subject to such reporting requirements), a copy of the most recent annual or quarterly report of LandCare, and such other reports and documents so filed as a Stockholder may reasonably request in availing itself of any rule or regulation of the SEC allowing a Stockholder to sell any such shares without registration.

18. GENERAL

18.1 **Cooperation.** The Company, the Stockholders, LandCare and Newco shall each deliver or cause to be delivered to the other on the Funding and Consummation Date, and at such other times and places as shall be reasonably agreed to, such additional instruments as the other may reasonably request for the purpose of carrying out this Agreement. The Company will cooperate and use its reasonable efforts to have the present officers, directors and employees of the Company cooperate with LandCare on and after the Funding and Consummation Date in furnishing information, evidence, testimony and other assistance in connection with any tax return filing obligations, actions, proceedings, arrangements or disputes of any nature with respect to matters pertaining to all periods prior to the Funding and Consummation Date.

18.2 **Successors and Assigns.** This Agreement and the rights of the parties hereunder may not be assigned (except by operation of law) and shall be binding upon and shall inure to the benefit

of the parties hereto, the successors of LandCare, and the heirs and legal representatives of the Stockholders.

18.3 **Entire Agreement.** This Agreement (including the schedules, exhibits and annexes attached hereto) and the documents delivered pursuant hereto constitute the entire agreement and understanding among the Stockholders, the Company, Newco and LandCare and supersede any prior agreement and understanding relating to the subject matter of this Agreement. This Agreement, upon execution, constitutes a valid and binding agreement of the parties hereto enforceable in accordance with its terms and may be modified or amended only by a written instrument executed by the Stockholders, the Company, Newco and LandCare, acting through their respective officers or trustees, duly authorized by their respective Boards of Directors. Any disclosure made on any Schedule delivered pursuant hereto shall be deemed to have been disclosed for purposes of any other Schedule required hereby, provided that the Company shall make a good faith effort to cross reference disclosure, as necessary or advisable, between related Schedules.

18.4 **Counterparts.** This Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

18.5 **Brokers and Agents.** Except as disclosed on Schedule 18.5, each party represents and warrants that it employed no broker or agent in connection with this transaction and agrees to indemnify the other parties hereto against all loss, cost, damages or expense arising out of claims for fees or commission of brokers employed or alleged to have been employed by such indemnifying party.

18.6 **Expenses.** (a) Whether or not the transactions herein contemplated shall be consummated, LandCare will pay the fees, expenses and disbursements of LandCare and its agents, representatives, accountants and counsel incurred in connection with the subject matter of this Agreement and any amendments thereto, including all costs and expenses incurred in the performance and compliance with all conditions to be performed by LandCare under this Agreement, including the fees and expenses of Arthur Andersen, LLP, Bracewell & Patterson, L.L.P., and any other person or entity retained by LandCare or by Notre Capital Ventures II, L.L.C., and the costs of preparing and filing the Registration Statement. Each Stockholder shall pay all sales, use, transfer, real property transfer, recording, gains, stock transfer and other similar taxes and fees ("Transfer Taxes") imposed in connection with the Merger, other than Transfer Taxes, if any, imposed by the State of Delaware. Each Stockholder shall file all necessary documentation and Returns with respect to such Transfer Taxes. In addition, each Stockholder acknowledges that he, and not the Company or LandCare, will pay all taxes due upon receipt of the consideration payable pursuant to Section 3 hereof. The Stockholders acknowledge that the risks of the transactions contemplated hereby include tax risks, with respect to which the Stockholders are relying solely on the opinion contemplated by Section 8.12 hereof.

18.7 Notices. All notices of communication required or permitted hereunder shall be in writing and may be given by depositing the same in United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested, or by delivering the same in person to an officer or agent of such party.

(a) If to LandCare, or Newco, addressed to them at:

LandCare USA, Inc.
Three Riverway, Suite 630
Houston, Texas 77056
Attn: President

with copies to:

Thomas W. Adkins
Bracewell & Patterson, L.L.P.
South Tower Pennzoil Place
711 Louisiana Street, Suite 2900
Houston, Texas 77002-2781

(b) If to the Stockholders, addressed to them at their addresses set forth on Annex II or to the address of the Company set forth below, with copies to:

Miranda K. Mandel
Neal, Gerber & Eisenberg
Two N. LaSalle Street, 22nd Floor
Chicago, Illinois 60602

(c) If to the Company, addressed to it at:

Ground Control Landscaping, Inc.
2169 N. Forsyth Rd.
Orlando, FL 32807
Attention: Mark Yahn

or to such other address or counsel as any party hereto shall specify pursuant to this Section 18.7 from time to time.

18.8 **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Texas.

18.9 **Survival of Representations and Warranties.** The representations, warranties, covenants and agreements of the parties made herein and at the time of the Closing or in writing delivered pursuant to the provisions of this Agreement shall survive the consummation of the transactions contemplated hereby and any examination on behalf of the parties until the Expiration Date.

18.10 **Exercise of Rights and Remedies.** Except as otherwise provided herein, no delay of or omission in the exercise of any right, power or remedy accruing to any party as a result of any breach or default by any other party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of any similar breach or default occurring later; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default occurring before or after that waiver.

18.11 **Time.** Time is of the essence with respect to this Agreement.

18.12 **Reformation and Severability.** In case any provision of this Agreement shall be invalid, illegal or unenforceable, it shall, to the extent possible, be modified in such manner as to be valid, legal and enforceable but so as to most nearly retain the intent of the parties, and if such modification is not possible, such provision shall be severed from this Agreement, and in either case the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

18.13 **Remedies Cumulative.** No right, remedy or election given by any term of this Agreement shall be deemed exclusive but each shall be cumulative with all other rights, remedies and elections available at law or in equity.

18.14 **Captions.** The headings of this Agreement are inserted for convenience only, shall not constitute a part of this Agreement or be used to construe or interpret any provision hereof.

18.15 **Amendments and Waivers.** Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived only with the written consent of LandCare, Newco, the Company and Stockholders who hold or who will hold at least 50% of the LandCare Stock issued or to be issued upon consummation of the Merger. Any amendment or waiver effected in accordance with this Section 18.15 shall be binding upon each of the parties hereto, any other person receiving LandCare Stock in connection with the Merger and each future holder of such LandCare Stock.

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

LANDCARE USA, INC.

By:_____
William Murdy
Chief Executive Officer

GROUND CONTROL ACQUISITION CORP.

By:_____
William Fiedler
Vice President

GROUND CONTROL LANDSCAPING, INC.

By: _____
Name: Mark S. Yahn
Title: President

STOCKHOLDERS:

_____
Mark S. Yahn

_____
Laurie L. Yahn

SCHEDULE 6.4

None.

SCHEDULE 6.5

None.

SCHEDULE 6.7

None.

SCHEDULE 6.8

None.

SCHEDULE 6.9

None.

SCHEDULE 6.12

1. The Agreement with D.R. Church is structured as an exchange agreement rather than as a merger agreement.
2. The Agreements with Desert Care and Arteka Nurseries provide for S corporation distributions.
3. The Agreements with Four Seasons and D. R. Church exclude a charitable remainder trust and an ESOP, respectively, from the normal indemnity provisions.
4. The Agreement with Southern Tree provides for the release from individual guaranties of a non-stockholder who has guaranteed company debt, and requires Southern to separate a credit facility now cross guaranteed by Southern and an affiliate.
5. TheAgreement with Desert Care notes that Desert Care has done its accounting and taxes on a cash basis and provides that LandCare will indemnify the Stockholder against up to $450,000 in deferred taxes resulting from Desert Care's termination of its S corporation election, and provides that the Stockholder will indemnify Desert Care and LandCare against deferred income tax liabilities to the extent they exceed $450,000.

SCHEDULE 6.15

None.

SCHEDULE 9.12

D. R. Church Landscape Co., Inc. - Bruce A. Church

Desert Care Landscaping, Inc. - Jeff A. Meyer, Vincent J. Rector and Marcus A. Rector

Ground Control Landscaping, Inc. - Mark S. Yahn

Four Seasons Landscape & Maintenance - James R. Marcus

Trees, Inc. - Linda Benge and Gerald Benge

Southern Tree and Landscape Companies - David Blakeley

Arteka Corporation - David Luse

ANNEX I

TO THAT CERTAIN
AGREEMENT AND PLAN OF ORGANIZATION
DATED AS OF MARCH 17, 1998
BY AND AMONG
LANDCARE USA, INC.
AND THE OTHER PARTIES NAMED THEREIN

GROUND CONTROL LANDSCAPING, INC.

CONSIDERATION TO BE PAID TO STOCKHOLDERS

Aggregate consideration to be paid to STOCKHOLDERS:

$6,600,000 in cash and the value of outstanding Common Stock of LandCare USA, Inc. ("LandCare") (assuming an offering price of $11.00 per share), consisting of 360,000 shares of LandCare Stock and $2,640,000 in cash, it being agreed that the actual amount of all cash payments described in this Annex I will depend on the actual initial offering price of the Common Stock of LandCare in the IPO, and may be more or less than $11.00 per share; provided, however that such price shall not be less than $8.00 per share.

Consideration to be paid to each STOCKHOLDER:

Stockholder	Shares of Common Stock of LandCare	Cash ($)
Mark S. & Laurie L. Yahn	360,000	$2,640,000
TOTALS:	360,000	$2,640,000

MINIMUM VALUE: $4,800,000 (based on a price of $8.00 per share)

ANNEX II
LANDCARE USA FOUNDING COMPANIES

Stockholder Information

1. **ARTEKA CORPORATION** -- a Minnesota corporation

Stockholder Name	Number of Shares	Address
David K. Luse	1,000	15236 Boulder Pointe Road Eden Prairie, MN 55344
TOTAL OUTSTANDING:	**1,000**	

2. **ARTEKA NATURAL GREEN CORPORATION** - a Minnesota corporation

Stockholder Name	Number of Shares	Address
David K. Luse	10,000	15236 Boulder Pointe Road Eden Prairie, MN 55344
TOTAL OUTSTANDING:	**10,000**	

3. **ARTEKA NURSERIES, INC.** - a Minnesota corporation

Stockholder Name	Number of Shares	Address
David K. Luse	7,000	15236 Boulder Pointe Road Eden Prairie, MN 55344

O. Charles Brown as Trustee of the David Luse Trust for Andrea Luse	535	5811 South Cedar Lake Road Minneapolis, MN 55416
O. Charles Brown as Trustee of the David Luse Trust for Kiel Luse	535	5811 South Cedar Lake Road Minneapolis, MN 55416
O. Charles Brown as Trustee of the David Luse Trust for Allison Luse	535	5811 South Cedar Lake Road Minneapolis, MN 55416
O. Charles Brown as Trustee of the David Luse Trust for Michael Thompson	55	5811 South Cedar Lake Road Minneapolis, MN 55416
Stewart Hanson	800	15195 Martin Drive Eden Prairie, MN 55416
Scott Shanesy	270	15195 Martin Drive Eden Prairie, MN 55416
O. Charles Brown	270	5811 South Cedar Lake Road Minneapolis, MN 55416
TOTAL OUTSTANDING:	**10,000**	

4. **DESERT CARE LANDSCAPING, INC.** -- an Arizona corporation

Stockholder Name	**Number of Shares**	**Address**
Jeff A. & Alison Meyer	66	7430 E. Edward Lane Scottsdale, AZ 85250
Vincent J. Rector	17	2511 E. Lamar Rd Phoenix, AZ 85016
Marcus A. Rector	17	1025 N. 48th St Apt. #120 Phoenix, AZ 85008
TOTAL OUTSTANDING:	**100**	

5. **D. R. CHURCH LANDSCAPE CO., INC..** -- an Illinois corporation

Stockholder Name	Number of Shares	Address
Bruce A. Church	31,913.17	1064 Apple Lane Lombard, IL 60148
D. R. Church Landscape Co. Inc. Employee Stock Ownership Plan, Bruce A. Church, Trustee	17,528.42552	951 N. Ridge Ave. Lombard, IL 60148
Denise L. Church	3,619	411 S. State Springfield, IL 60071
Peggy R. Church Olson	3,619	6 Stanford Place Champaign, IL 61820
Deborah A. Church	3,619	4910 MacWood Drive Richmond, IL 60071
Denny R. Church	1,653.56259	5 N. 820 Oak Dr. St. Charles, IL 60175
TOTAL OUTSTANDING:	61,952.15811	

6. **FOUR SEASONS LANDSCAPE AND MAINTENANCE, INC.** -- a California corporation

Stockholder Name	Number of Shares	Address
James R. Marcus	486.20	13842 Malcolm Ave. Saratoga, CA 95070
Harold D. Cranston	291.20	1615 Monterey Blvd. San Francisco, CA 94127
Harold and Mary Cranston Charitable Remainder Unitrust, Harold Cranston, Trustee	135.0	1615 Monterey Blvd. San Francisco, CA 94127

Kenneth Sinclair	121.55	168 Rebecca Way Folsom, CA 95630
James A. Cumbra	121.55	1569 Willismgate Dr. San Jose, CA 95118
John Cranston	30.0	1615 Monterey Blvd. San Francisco, CA 94127
Susan Cranston	30.0	1615 Monterey Blvd. San Francisco, CA 94127
TOTAL OUTSTANDING:	**1,215.50**	
Robert Bilotti	17.0 Stock Award Incentive Program Common Stock	1131 Schooner St. Foster City, CA 94404
Steve Jacobson	7.0 Stock Award Incentive Program Common Stock	1129 Apache St. Livermore, CA 94588
Roger Vesey	7.0 Stock Award Incentive Program Common Stock	2834 Yarmouth Way San Ramon, CA 94583
TOTAL OUTSTANDING:	**31.0** **Stock Award** **Incentive Program** **Common Stock**	

7. **GROUND CONTROL LANDSCAPING** -- a Florida corporation

Stockholder Name	Number of Shares	Address
Mark S. Yahn and Laurie L. Yahn	450	
TOTAL OUTSTANDING:	**450**	

8. **SOUTHERN TREE AND LANDSCAPE CO., INC.**-- a North Carolina corporation

Stockholder Name	Number of Shares	Address
Southern Shade Tree Co.	2,400	3326 Hiway 51 Fort Mill, SC 29715
N. David Blakeley	500	1891 Hickory Pt. Dr. Lexington, NC 27292
TOTAL OUTSTANDING:	**2,900**	

9. **TREES, INC.** -- a Nevada corporation

Stockholder Name	Number of Shares	Address
Linda Benge	236,000	6200 Taggart Houston, TX 77007
Gerald Benge	236,000	31915 Walnut Creek Magnolia, TX 77355
Susan Benge Givens	236,000	12844 Burlingame Oklahoma City, OK 73120

Linda Benge, as Escrow Agent under Stock Pledge and Escrow Agreement dated 8/14/92	2,000	
TOTAL OUTSTANDING:	**710,000**	**Common Stock**
Linda Benge, as Escrow Agent under Stock Pledge and Escrow Agreement dated 8/14/92	3,240,440	
TOTAL OUTSTANDING:	**3,240,440**	**Preferred Stock**

ANNEX III

TO THE AGREEMENT
AND PLAN OF ORGANIZATION
DATED AS OF MARCH __, 1998

FORM OF OPINION OF COUNSEL TO LANDCARE USA, INC.

_____,1998

_____
_____
_____

Attn:_____

Ladies and Gentlemen:

We have acted as counsel to LandCare USA, Inc., a Delaware corporation ("LandCare") and _____ Acquisition Corp., a Delaware corporation ("Acquisition Corp.") in connection with the transactions contemplated by the Agreement and Plan of Organization (the "Agreement") dated as of March __, 1998, among LandCare, Acquisition Corp., _____ and the stockholders named therein (the "Stockholders"). This opinion is being delivered to you pursuant to Section 8.4 of the Agreement. All capitalized terms used herein, unless expressly defined herein, shall have the meanings ascribed to such terms in the Agreement.

We have examined originals, or copies certified or otherwise identified to our satisfaction, of the Agreement and such documents and records as we deemed to be necessary as a basis for the opinion hereinafter expressed. With respect to such examination, we have assumed the genuineness of all signatures appearing on all documents presented to us as originals, and the conformity to the originals of all documents presented to us as conformed or reproduced copies. We also have assumed the due execution and delivery of the Agreement by all parties thereto other than LandCare and Acquisition Corp. In addition, we have relied on certificates of officers of LandCare and Acquisition Corp. and certificates of public officials as to certain matters of fact relating to this opinion and have made such investigations of law as we have deemed necessary and relevant as the basis hereof.

Based upon the foregoing and such consideration of matters of law as we deemed to be relevant, and subject to the qualifications and assumptions set forth herein, we are of the following opinion:

1. LandCare and Acquisition Corp. have each been duly incorporated and are validly existing in good standing under the laws of the State of Delaware.

2. The Agreement has been duly authorized, executed and delivered by each of LandCare and Acquisition Corp. and constitutes the valid and binding agreement of each of LandCare and Acquisition Corp., enforceable against each of them in accordance with its terms. LandCare and Acquisition Corp. and their stockholders have taken all corporate action necessary to authorize the execution, delivery and performance of the Agreement.

3. The authorized capital of LandCare consists of _____ shares of Common Stock, par value $.01 per share (the "Common Stock"); and _____ shares of Preferred Stock, par value $.01 per share (the "Preferred Stock"). As of _____, 1998, there were outstanding ____ shares of Common Stock and _____ shares of Preferred Stock, all of which were validly issued, fully paid and nonassessable and, to our knowledge, all such shares were issued free of preemptive rights of any stockholder of LandCare. Each share of Common Stock to be issued to the Stockholders, the stockholders of the Founding Companies other than the Company and to the Underwriters has been duly and validly authorized; upon issuance on consummation of the transactions set forth in the Agreement and the Other Agreements, and upon payment by the Underwriters as set forth in the Underwriting Agreement dated _____ between the Underwriters and LandCare, all such shares will be validly issued, fully paid and nonassessable and, to our knowledge, none of such shares will have been issued in violation of the preemptive rights of any person.

4. To our knowledge, except as set forth in the Prospectus of LandCare dated _____, 1998 (the "Prospectus"), there are no securities convertible into or exercisable or exchangeable for shares of capital stock of LandCare or any other contract or commitment of any kind to which LandCare is a party obligating LandCare to issue or sell any of its capital stock.

5. To our knowledge, except as set forth in the Prospectus, (a) neither LandCare nor Acquisition Corp. is in violation of any order issued by any court or governmental agency and (b) there is no action, suit or proceeding pending or threatened against or LandCare or Acquisition Corp. before any court, arbitrator or governmental authority.

6. To our knowledge, neither LandCare nor Acquisition Corp. is in default, or has received any notice of default, under any contract or agreement to which it is a party, except where such default would not have a material adverse effect on LandCare.

7. To our knowledge, no notice to, consent, authorization, approval or order of any court or governmental agency or body or of any other Person is required in connection with the execution, delivery or performance by LandCare or Acquisition Corp. of the Agreement, except for such notices, consents, authorizations, approvals or orders as have already been made or obtained.

8. The execution of the Agreement and the performance by LandCare and Acquisition Corp. of their respective obligations thereunder will not violate any of the terms or provisions of their respective Certificates of Incorporation or By-laws or, to our knowledge, violate or result in any breach of or default under any lease, instrument, license, permit, any other agreement to which either of them is a party, except where such violation, breach or default would not have a material adverse effect on LandCare and its subsidiaries, taken as a whole.

The opinions expressed herein are, with your concurrence, predicated on and qualified in their entirety by the following:

(i) This opinion is limited to the laws of the State of Texas, the General Corporation Law of the State of Delaware, and the relevant law of the United States of America (other than laws applicable to patents, copyrights and trademarks).

(ii) Our opinion in paragraph 2. above regarding the enforceability of the Agreement is subject to applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and to principles of equity. Furthermore, the enforceability of indemnity and contribution obligations contained in the Agreement may be limited under applicable law or public policy.

(iii) In rendering the opinion herein related to the absence of any litigation, suits or proceedings, we express no opinion with respect to the possible effect of administrative and legislative actions and proceedings as to which neither LandCare or Acquisition Corp. is a named party.

(iv) Whenever our opinion is based on circumstances "to our knowledge," we have relied exclusively on certificates of officers of LandCare or Acquisition Corp. or certificates of others as to the existence or nonexistence of the circumstances upon which such opinion is predicated.

(v) We express no opinion as to the legality, validity, binding effect, or enforceability or unenforceability of provisions of the Agreement which may (a) purport to establish evidentiary standards; (b) relate to the effect of any delay or omission or enforcement of

rights or remedies; (c) purport to establish time periods for or waive rights to notice or hearing; (d) purport to waive, release, or restrict access to legal or equitable rights, remedies, defenses, or benefits that cannot be so limited under applicable law; (e) purport to require waivers or amendments to be in writing or signed by all parties; or (f) relate to severability of any material invalid provision or provide for exculpation or indemnification (to the extent exculpation or indemnification may be limited by public policy, or which may purport to exculpate or indemnify a party from the consequences of its own negligence, gross negligence, recklessness, willful misconduct, or unlawful conduct).

We understand that we have no obligation to update this opinion to reflect any facts or circumstances occurring after the date hereof, provided however, that unless we otherwise notify you on or prior to the Funding and Consummation Date that this opinion may no longer be relied upon, you shall be entitled to rely on this opinion as of the Funding and Consummation Date if it were dated on such date.

This opinion is delivered to you solely as a party to the Agreement and may not be quoted, circulated or published in whole or in part, or furnished to any other Person without our express written consent. The opinions set forth are limited to matters expressly set forth and no opinion is to be implied or may be inferred beyond the matters expressly stated.

Very truly yours,

BRACEWELL & PATTERSON, L.L.P.

ANNEX IV

**TO THE AGREEMENT
AND PLAN OF ORGANIZATION
BY AND AMONG
LANDCARE USA, INC.
AND THE OTHER PARTIES
NAMED THEREIN**

**FORM OF OPINION OF COUNSEL TO COMPANY
AND STOCKHOLDERS**

March 17, 1998

LandCare USA, Inc.
Three Riverway, Suite 630
Houston, Texas 77057

Ladies and Gentlemen:

We have acted as special counsel to Ground Control Landscaping, Inc., a Florida corporation (the "Company"), in connection with the transactions contemplated by the Agreement and Plan of Organization (the "Agreement") dated as of _____, 1998, among LandCare USA, Inc., Ground Control Acquisition Corp., the Company, and the stockholders named therein (the "Stockholders"). This opinion is being delivered to you pursuant to Section 9.8 of the Agreement. All capitalized terms used herein, unless expressly defined herein, shall have the meanings ascribed to such terms in the Agreement.

We have examined originals, or copies certified or otherwise of the Agreement and such documents and records as provided to us by the officers, directors, and shareholders of the Company. With respect to such examination, we have assumed the genuineness of all signatures appearing on all documents presented to us as originals, and the conformity to the originals of all documents presented to us as conformed or reproduced copies. We also have assumed the due execution and delivery of the Agreement by all parties thereto other than the Company and the Stockholders. In addition, we have relied on certificates of officers of the Company and certificates of public officials as to certain matters of fact relating to this opinion.

Based upon the foregoing, and subject to the qualifications and assumptions set forth herein, we are of the following opinion:

1. The Company is a corporation validly existing and in good standing under the laws of the State of Florida.

2. The Company is duly qualified to do business as a foreign corporation in each of the jurisdictions set forth in Schedule 5.1 of the Agreement.

3. The authorized capital stock of the Company is as represented in the Agreement and, based solely on our review of the stock records of the Company, the outstanding capital stock of the Company is as represented in the Agreement; each share of such stock has been duly and validly authorized and issued and, to our knowledge, is fully paid and nonassessable and was not issued in violation of the preemptive rights of any person.

4. To our knowledge, there are no securities convertible into or exercisable or exchangeable for shares of capital stock of the Company or any other contact or commitment of any kind to which the Company is a party, obligating the Company to issue or sell any of its capital stock.

5. The Agreement has been duly authorized, executed and delivered by the Company and the Stockholders, and constitutes a valid and binding agreement of the Company and the Stockholders, enforceable against the Company and such Stockholders in accordance with its terms. The Company and the Stockholders have taken all corporate actions necessary to authorize the execution, delivery and performance of the Agreement.

6. To our knowledge, except as set forth on Schedules 5.13 and 5.21 to the Agreement, (a) the Company is not in violation of any order issued by any court or governmental agency, and (b) there is no action, suit or proceeding pending or threatened against the Company before any court, arbitrator or governmental authority.

7. To our knowledge, except as set forth in Schedule 5.23 to the Agreement, no notice to, consent, authorization, approval or order of any court or governmental agency or body or any other person is required in connection with the execution, delivery or performance of the Agreement by the Company or any of the Stockholders, except for such notices, consents, authorizations, approvals or orders as have already been made or obtained.

8. The execution of the Agreement and the performance by the Company and the Stockholders of their respective obligations thereunder will not violate any of the

terms or provisions of the Company's Articles of Incorporation or the Bylaws of the Company.

We express no opinion except as expressly set forth in the numbered paragraphs above, and no opinions shall be implied. The opinions expressed herein are predicated on and qualified in their entirety by the following:

(i) This opinion is limited to the laws of the State of Florida. To the extent that any matter as to which our opinion is expressed herein would be governed by any jurisdiction other than the State of Florida, we do not express any opinion on such matter.

(ii) The opinions in Paragraphs 1 and 2 above are based solely upon documents provided by the applicable state authorities.

(iii) Our opinion in Paragraph 5 above regarding the enforceability of the Agreement is subject to applicable bankruptcy, insolvency, reorganization, moratorium, and other laws relating to or affecting creditors' rights generally and to principles of equity. Furthermore, the enforceability of any indemnity and contribution obligations or noncompetition provisions contained in the Agreement may be limited under applicable law or public policy.

(iv) In rendering the opinion herein related to the absence of any litigation, suits or proceedings, we express no opinion with respect to the possible effect of administrative and legislative actions and proceedings as to which the Company is not a named party.

(v) Whenever our opinion is based on circumstances "to our knowledge," we have relied exclusively on certificates of officers of the Company or certificates of others as to the existence or nonexistence of the circumstances upon which such opinion is predicated. We have no reason to believe, however, that any such certificate is untrue or inaccurate in any material respect. Moreover, where matters are stated "to our knowledge," our knowledge is limited to the actual knowledge of those attorneys in our office who have directly participated in this engagement. We have not independently verified the accuracy of the matters set forth in the written statements or certificates upon which we have relied, including the organization, existence, good standing, assets, business or affairs of the Company, nor have we undertaken any intellectual property, suit or judgment searches or searches of court dockets in any jurisdiction.

(vi) We express no opinion as to the legality, validity, binding effect, or enforceability or unenforceability of provisions of the Agreement which may (a) purport to

establish evidentiary standards; (b) relate to the effect of any delay or omission or enforcement of rights or remedies; (c) purport to establish time periods for or waive rights to notice or hearing; (d) purport to waive, release, or restrict access to legal or equitable rights, remedies, defenses, or benefits that cannot be so limited under applicable law; (e) purport to require waivers or amendments to be in writing or signed by all parties; or (f) relate to severability of any material invalid provision or provide for exculpation or indemnification (to the extent exculpation or indemnification may be limited by public policy, or which may purport to exculpate or indemnify a party from the consequences of its own negligence, gross negligence, recklessness, willful misconduct, or unlawful conduct).

We understand that we have no obligation to update this opinion to reflect any facts or circumstances occurring after the date hereof, provided however that unless we otherwise notify you on or prior to the Funding and Consummation Date that this opinion may no longer be relied upon, you shall be entitled to rely on this opinion as of the Funding and Consummation Date as if it were dated on such date.

This opinion is solely for the information of the addressee and is not to be relied upon in any other context. This opinion is delivered to you solely as a party to the Agreement and may not be disclosed, quoted, circulated or published in whole or in part, or furnished to any other person without our express written consent. The opinions set forth herein are limited to matters expressly set forth, and no opinion is to be implied or may be inferred beyond the matters expressly stated.

Very truly yours,

POHL & SHORT, P.A.

Frank L. Pohl, President

FLP/mrw

ANNEX V

FOUNDER'S EMPLOYMENT AGREEMENT

This Founder's Employment Agreement (this "Agreement") is by and between [_____], a [_____] corporation (the "Company") which, on the Effective Date (as defined below), will be a wholly-owned subsidiary of LandCare USA, Inc., a Delaware corporation ("LandCare USA"), and [_____] ("Executive"), and is dated [_____], but shall become effective only on the date of the consummation of the initial public offering of the common stock of LandCare USA (the "Effective Date").

RECITALS

A. As of the Effective Date, the Company and the other subsidiaries of LandCare USA are or will be engaged primarily in the business of providing landscaping services, including design, installation, construction and mainenance, and related services businesses (collectively, the "Business").

B. Executive is employed by the Company in a confidential relationship pursuant to which Executive has become and will continue to become familiar with and aware of information as to the Company's and LandCare USA's customers, specific manner of doing business (including the processes, techniques and trade secrets utilized by the Company and LandCare USA), and future plans with respect thereto, all of which have been and will be established and maintained at significant expense to the Company and LandCare USA. This information includes trade secrets and constitutes a valuable asset of the Company and of LandCare USA.

C. The parties hereto desire to agree to the various matters described herein and to memorialize their agreements as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, it is hereby agreed as follows:

AGREEMENT

1. Employment and Duties.

(a) The Company hereby employs Executive as [_____] of the Company. Executive shall have responsibilities, duties and authority reasonably accorded to,

expected of, and consistent with such position and will report directly to the Board of Directors of the Company (the "Board") or its designee. Executive hereby accepts this employment upon the terms and conditions herein contained and agrees to devote substantially all of his business time, attention and efforts to promote and further the business of the Company. Executive shall not, during the term of his employment hereunder, be engaged in any other business activity pursued for gain, profit or other pecuniary advantage if such activity interferes in any material respect with Executive's duties and responsibilities hereunder. The foregoing limitations shall not be construed as prohibiting Executive from making passive personal investments in such form or manner as will neither require his services in the operation or affairs of the companies or enterprises in which such investments are made nor violate the terms of paragraph 3 hereof.

(b) Executive shall faithfully adhere to, execute and fulfill all lawful policies established from time to time by the Company.

(c) Executive shall only be required to perform Executive's duties in, and shall not be required to relocate from, the area in which the Company is headquartered on the date of this Agreement unless otherwise agreed by Executive.

2. Compensation. For all services rendered by Executive, the Company shall compensate Executive as follows:

(a) *Base Salary.* Commencing on the Effective Date or, at the option of the Company, the first day of the month during which the Effective Date occurs or the first day of the month immediately following the date on which the Effective Date occurs, the base salary payable to Executive shall be $ _____ per year, payable on a regular basis in accordance with the Company's standard payroll procedures but not less frequently than monthly. On at least an annual basis, the Board will review Executive's performance and may make increases, but not decreases, to such base salary if, in its discretion, any such increase is warranted.

(b) *Executive Perquisites, Benefits and Other Compensation.* Executive shall be entitled to receive additional benefits and compensation from the Company in such form and to such extent as specified below:

(i) Coverage, subject to contributions required of executives of the Company generally, for Executive and his dependent family members under health, hospitalization, disability, dental, life and other insurance plans that the Company may have in effect from time to time for the benefit of its executives; provided, however, that the Company shall not modify the plans in effect on the date hereof in a manner that would decrease the benefits afforded thereby to the Executive in any material respect unless (a) the Executive consents to such changes, or (b) such changes result in plans that provide benefits to the Executive

that are substantially similar to those afforded to similarly situated executives employed by the other subsidiaries of LandCare.

(ii) Reimbursement for all business travel and other out-of-pocket expenses reasonably incurred by Executive in the performance of his services pursuant to this Agreement. All reimbursable expenses shall be appropriately documented in reasonable detail by Executive upon submission of any request for reimbursement, and in a format and manner consistent with the Company's expense reporting policy.

(iii) The Company shall provide Executive with such other executive perquisites as may be deemed appropriate for Executive by the Board, and Executive shall be entitled to participate in all other Company-wide employee benefits as are available from time to time.

3. Non-Competition Agreement.

(a) Executive shall not, during the period of his employment by or with the Company, and for a period of two (2) years immediately following the termination of his employment under this Agreement, for any reason whatsoever, except as provided herein, directly or indirectly, for himself or on behalf of or in conjunction with any other person, company, partnership, corporation or business of whatever nature:

(i) engage, as an officer, director, shareholder, owner, partner, joint venturer, or in a managerial capacity, whether as an employee, independent contractor, consultant or advisor, or as a sales representative, in any business in direct competition with the Company or LandCare USA or any of their respective subsidiaries, within 100 miles of where the Company or any of LandCare USA's other subsidiaries has a physical location (the "Territory");

(ii) call upon any person who is, at that time, an employee of the Company or LandCare USA (including the respective subsidiaries thereof) in a sales or managerial capacity for the purpose or with the intent of enticing such employee away from or out of the employ of the Company or LandCare USA (including the respective subsidiaries thereof);

(iii) call upon any person or entity which is, at that time, or which has been, within one (1) year prior to that time, a customer of the Company or LandCare USA (including the respective subsidiaries thereof) for the purpose of soliciting or selling products or services in direct competition with the Company or LandCare USA;

(iv) call upon any prospective acquisition candidate, on Executive's own behalf or on behalf of any competitor, which candidate was, to Executive's actual knowledge, either

called upon by the Company or LandCare USA (including the respective subsidiaries thereof) or for which the Company or LandCare USA made an acquisition analysis, for the purpose of acquiring such entity or all or substantially all of such entity's assets.

Notwithstanding the above, the foregoing covenant shall not be deemed to prohibit Executive from (i) participating in the activities as and to the extent described on Schedule 13.1 to the Agreement and Plan of Organization dated as of March 17, 1998 to which the Company, LandCare and the Executive are parties, or (ii) acquiring as a passive investment not more than two percent (2%) of the capital stock of a competing business the stock of which is traded on a national securities exchange or on an over-the-counter or similar market.

(b) Because of the difficulty of measuring economic losses to the Company and LandCare USA as a result of a breach of the foregoing covenant, and because of the immediate and irreparable damage that could be caused to the Company and LandCare USA for which they would have no other adequate remedy, Executive agrees that the foregoing covenant may be enforced by LandCare USA or the Company in the event of breach or threatened breach by Executive, by injunctions, restraining orders and other appropriate equitable relief.

(c) It is agreed by the parties that the foregoing covenants in this paragraph 3 impose a reasonable restraint on Executive in light of the activities and business of the Company or LandCare USA, as the case may be (including LandCare USA's other subsidiaries) on the Effective Date of this Agreement and the current plans of LandCare USA (including LandCare USA's other subsidiaries); but it is also the intent of the Company and Executive that such covenants be construed and enforced in accordance with the changing activities, business and locations of the Company and LandCare USA, as the case may be (including LandCare USA's other subsidiaries) throughout the term of these covenants, whether before or after the date of termination of the employment of Executive. For example, if, during the term of these covenants, the Company or LandCare USA, as the case may be (including LandCare USA's other subsidiaries) engage in new and different activities related to the Business, enter a new business related to the Business or establish new locations for their current activities or businesses in addition to or other than the activities or businesses enumerated under the Recitals above or the locations currently established therefor, then Executive will be precluded from soliciting the customers or employees of such new activities or businesses or from such new locations and from directly competing with such new businesses within 100 miles of all then-established operating location(s) through the term of these covenants.

It is further agreed by the parties hereto that, in the event that Executive shall cease to be employed hereunder, and shall enter into a business or pursue other activities not in competition with the Company or LandCare USA (including LandCare USA's other subsidiaries), or similar activities or business in locations the operation of which, under such circumstances, does not violate clause (i) of paragraph 3(a), Executive shall not be chargeable with a violation of this paragraph 3 if the

Company or LandCare USA (including LandCare USA's other subsidiaries) shall thereafter enter the same, similar or a competitive (i) business, (ii) course of activities or (iii) location, as applicable.

(d) The covenants in this paragraph 3 are severable and separate, and the unenforceability of any specific covenant shall not affect the provisions of any other covenant. Moreover, in the event any court of competent jurisdiction shall determine that the scope, time or territorial restrictions set forth herein are unreasonable, then it is the intention of the parties that such restrictions be enforced to the fullest extent which the court deems reasonable, and this Agreement shall thereby be reformed.

(e) All of the covenants in this paragraph 3 shall be construed as an agreement independent of any other provision in this Agreement, and the existence of any claim or cause of action of Executive against the Company or LandCare USA, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by LandCare USA or the Company of such covenants. It is specifically agreed that the period of two (2) years following termination of employment stated at the beginning of this paragraph 3, during which the agreements and covenants of Executive made in this paragraph 3 shall be effective, shall be computed by excluding from such computation any time during which Executive is in violation of any provision of this paragraph 3.

4. Term; Termination; Rights on Termination.

(a) The term of this Agreement shall begin on the Effective Date and continue for five (5) years (the "Term"), unless terminated sooner as herein provided, and shall continue thereafter on a year-to-year basis on the same terms and conditions contained herein in effect as of the time of renewal. This Agreement and Executive's employment may be terminated in any one of the followings ways:

(i) *Termination as a Result of Employee's Death.* The death of Executive shall immediately terminate this Agreement with no severance compensation due to Executive's estate.

(ii) *Termination on Account of Disability.* If, as a result of incapacity due to physical or mental illness or injury, Executive shall have been absent from his full-time duties hereunder for six (6) consecutive months, then thirty (30) days after receiving written notice (which notice may occur before or after the end of such six (6) month period, but which shall not be effective earlier than the last day of such six (6) month period), the Company may terminate Executive's employment hereunder provided Executive is unable to resume his full-time duties with or without reasonable accommodation at the conclusion of such notice period. Also, Executive may terminate his employment hereunder if his health should become impaired to an extent that makes the continued performance of his duties

hereunder hazardous to his physical or mental health or his life, provided that Executive shall have furnished the Company with a written statement from a qualified doctor to such effect and provided, further, that, at the Company's request made within thirty (30) days of the date of such written statement, Executive shall submit to an examination by a doctor selected by the Company who is reasonably acceptable to Executive or Executive's doctor and such doctor shall have concurred in the conclusion of Executive's doctor. In the event this Agreement is terminated as a result of Executive's disability, Executive shall receive from the Company, in a lump-sum payment due within thirty (30) days of the effective date of termination, the base salary at the rate then in effect for whatever time period is remaining under the Initial Term (as defined below) or for one (1) year, whichever amount is greater; provided, however, that any such payments shall be reduced by the amount of any disability insurance payments payable to the Executive as a result of such disability to the extent such disability insurance is provided by the Company or LandCare USA or any of their affiliates.

(iii) *Termination by the Company for Cause.* The Company may terminate this Agreement immediately for "Cause", which shall be: (1) Executive's willful and material breach of this Agreement, which breach either cannot be cured or, if capable of being cured, is not cured within ten (10) days after receipt of written notice of the need to cure; (2) Executive's gross negligence in the performance or intentional nonperformance (continuing for ten (10) days after receipt of written notice of need to cure) of any of Executive's material duties and responsibilities hereunder; (3) Executive's willful dishonesty, fraud or misconduct with respect to the business or affairs of the Company or LandCare USA; (4) Executive's conviction of a felony crime; or (5) Executive's confirmed positive illegal drug test result. In the event of a termination for Cause, Executive shall have no right to any severance compensation.

(iv) *Termination Without Cause or For Good Reason.* At any time after commencement of employment, the Company may terminate Executive's employment hereunder without Cause, and Executive may terminate his employment hereunder for Good Reason (as defined below), in either case effective thirty (30) days after written notice. If Executive is terminated by the Company without Cause or if Executive terminates Executive's employment hereunder for Good Reason during the first three (3) years of the Term (the "Initial Term"), Executive shall receive from the Company, in a lump-sum payment due on the effective date of termination, the base salary at the rate then in effect for whatever time period is remaining under the Initial Term of this Agreement or for one (1) year, whichever amount is greater. If Executive is terminated by the Company without Cause or should Executive terminate for Good Reason after the Initial Term, Executive shall receive from the Company, in a lump-sum payment due on the effective date of termination, one year's salary at the base salary rate then in effect. Further, any termination without Cause by the Company or by the Executive for Good Reason shall operate to shorten the

period set forth in paragraph 3(a) and during which the terms of paragraph 3 apply to one (1) year from the date of termination of employment. If Executive resigns or otherwise terminates his employment hereunder without Good Reason, Executive shall receive no severence compensation, and the provisions of paragraph 3 hereof shall apply. If Executive is terminated by the Company without Cause or if Executive terminates his employment hereunder for Good Reason, (1) the Company shall make the insurance premium payments contemplated by COBRA for a period of 12 months after such termination, and (2) the Executive shall be entitled to receive a pro rated portion of any annual bonus to which the Executive would have been entitled for the year during which the termination occurred had the Executive not been terminated.

(b) *Definition of "Good Reason".* Executive shall have "Good Reason" to terminate this Agreement and his employment hereunder if, without Executive's consent, (i) Executive is demoted by means of a reduction in authority, responsibilities, duties or title to a position of materially less stature or importance within the Company than the position described in Section 1 hereof, or (ii) the Company breaches this Agreement in any material respect and fails to cure such breach within ten days after Executive delivers written notice and a written description of such breach to the Company, which notice shall specifically refer to this section of this Agreement.

(c) *Change in Control of LandCare USA.* In the event of a "Change in Control of LandCare USA" (as defined below) during the Initial Term, paragraph 11 below shall apply.

(d) *Effect of Termination.* Upon termination of this Agreement for any reason provided above, Executive shall be entitled to receive all compensation earned and all benefits and reimbursements due through the effective date of termination. Additional compensation subsequent to termination, if any, will be due and payable to Executive only to the extent and in the manner expressly provided herein. All other rights and obligations of the Company and Executive under this Agreement shall cease as of the effective date of termination, except that the Company's obligations under paragraph 8 herein and Executive's obligations under paragraphs 3, 5, 6, 7 and 9 herein shall survive such termination in accordance with their terms.

(e) *Breach by Company.* If termination of Executive's employment arises out of the Company's failure to pay Executive on a timely basis the amounts to which Executive is entitled under this Agreement or as a result of any other breach of this Agreement by the Company, as determined by a court of competent jurisdiction or pursuant to the provisions of paragraph 15 below, the Company shall pay all amounts and damages to which Executive may be entitled as a result of such breach, including interest thereon and all reasonable legal fees and expenses and other costs incurred by Executive to enforce his rights hereunder. Further, none of the provisions of paragraph 3 shall apply in the event this Agreement is terminated as a result of a breach by the Company.

5. Return of Company Property. All records, designs, patents, business plans, financial statements, manuals, memoranda, lists and other property delivered to or compiled by Executive by or on behalf of the Company, LandCare USA or their representatives, vendors or customers which pertain to the business of the Company or LandCare USA shall be and remain the property of the Company or LandCare USA, as the case may be, and be subject at all times to their discretion and control. Likewise, all correspondence, reports, records, charts, advertising materials and other similar data pertaining to the business, activities or future plans of the Company or LandCare USA which is collected by Executive shall be delivered promptly to the Company without request by it upon termination of Executive's employment.

6. Inventions. Executive shall disclose promptly to the Company any and all significant conceptions and ideas for inventions, improvements and valuable discoveries, whether patentable or not, which are conceived or made by Executive, solely or jointly with another, during the period of employment or within one (1) year thereafter, and which are directly related to the business or activities of the Company and which Executive conceives as a result of his employment by the Company. Executive hereby assigns and agrees to assign all his interests therein to the Company or its nominee. Whenever requested to do so by the Company, Executive shall execute any and all applications, assignments or other instruments that the Company shall deem necessary to apply for and obtain Letters Patent of the United States or any foreign country or to otherwise protect the Company's interest therein.

7. Trade Secrets. Executive agrees that Executive will not, during or after the Term of this Agreement with the Company, disclose the terms of the Company's or LandCare USA's relationships or agreements with their respective vendors or customers or any other significant or material trade secret of the Company or LandCare USA, whether in existence or proposed, to any person, firm, partnership, corporation or business for any reason or purpose whatsoever, except and only to the extent required by law or legal process following notice to the Company and LandCare USA.

8. Indemnification. In the event Executive is made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by the Company or LandCare USA against Executive), by reason of the fact that Executive is or was performing services under this Agreement, then the Company shall indemnify Executive against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement, as actually and reasonably incurred by Executive in connection therewith to the maximum extent permitted by applicable law. The advancement of expenses shall be mandatory to the extent permitted by applicable law. In the event that both Executive and the Company are made a party to the same third-party action, complaint, suit or proceeding, the Company agrees to engage counsel, and Executive agrees to use the same counsel, provided that if counsel selected by the Company shall have a conflict of interest that prevents such counsel from representing Executive, Executive may engage separate counsel and the Company shall pay all reasonable attorneys' fees of

such separate counsel. The Company shall not be required to pay the fees of more than one law firm except as described in the preceding sentence, and shall not be required to pay the fees of more than two law firms under any circumstances. Executive cannot be held liable to the Company or LandCare USA for errors or omissions made in good faith or where Executive has not exhibited gross, willful, and wanton negligence in connection with such conduct, error or omission.

9. No Prior Agreements. Executive hereby represents and warrants to the Company that the execution of this Agreement by Executive and his employment by the Company and the performance of his duties hereunder will not violate or be a breach of any agreement with a former employer, client or any other person or entity. Executive hereby indemnifies the Company against any and all liability, expenses and other costs and amounts incurred by the Company, including, but not limited to, attorneys' fees and expenses of investigation, as a result of any claim by any third party that such third party may now have or may hereafter come to have against the Company based upon or arising out of any non-competition agreement, invention or secrecy agreement between Executive and such third party which was in existence as of the date of this Agreement.

10. Assignment; Binding Effect. Executive understands that the Company has selected Executive for employment by it on the basis of Executive's personal qualifications, experience and skills. Executive agrees, therefore, that Executive cannot assign all or any portion of Executive's performance under this Agreement. Subject to the preceding two (2) sentences and the express provisions of paragraph 12 below, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective heirs, legal representatives, successors and assigns.

11. Change in Control.

(a) Executive understands and acknowledges that LandCare USA and/or the Company may be merged or consolidated with or into another entity and that such entity shall automatically succeed to the rights and obligations of LandCare USA and/or the Company hereunder or that the Company may undergo another type of Change in Control. In the event such a merger or consolidation or other Change in Control is initiated prior to the end of the Initial Term, then the provisions of this paragraph 11 shall be applicable.

(b) In the event of a pending Change in Control wherein LandCare USA and/or the Company and Executive have not received written notice at least five (5) business days prior to the anticipated closing date of the transaction giving rise to the Change in Control from the successor to all or a substantial portion of LandCare USA's and/or the Company's business and/or assets that such successor is willing as of the closing to assume and agree to perform LandCare USA's and/or the Company's obligations under this Agreement in the same manner and to the same extent that LandCare USA and/or the Company is hereby required to perform, then Executive may elect to terminate his employment and shall be entitled to receive in one lump sum on the effective date of

such termination, an amount equal to three times his annual base salary then in effect, and the non-competition provisions of paragraph 3 shall apply for a period of one (1) year from the effective date of termination.

(c) In any Change in Control situation, if Executive is terminated by the Company without Cause at any time during the twelve (12) months immediately following the closing of the transaction giving rise to the Change in Control, or Executive terminates for Good Reason at any time during the twelve (12) months immediately following the closing of the transaction giving rise to the Change in Control, Executive shall be entitled to receive in one lump sum on the effective date of such termination an amount equal to three (3) times his annual base salary then in effect, and the non-competition provisions of paragraph 3 shall apply for a period of one (1) year from the effective date of termination.

(d) For purposes of applying paragraph 4 under the circumstances described in (b) and (c) above, the effective date of termination will be the closing date of the transaction giving rise to the Change in Control and all compensation, reimbursements and lump-sum payments due Executive must be paid in full by the Company at or prior to such closing. Further, Executive will be given sufficient time and opportunity to elect whether to exercise all or any of Executive's vested options to purchase LandCare USA common stock, such that Executive may convert the options to shares of LandCare USA common stock at or prior to the closing of the transaction giving rise to the Change in Control, if Executive so desires.

(e) A "Change in Control" shall be deemed to have occurred if:

(i) any person, other than LandCare USA or an employee benefit plan of LandCare USA, acquires directly or indirectly the beneficial ownership (as defined in Section 13(d) of the Securities Exchange Act of 1934, as amended) of any voting security of the Company and immediately after such acquisition such person is, directly or indirectly, the Beneficial Owner of voting securities representing 50% or more of the total voting power of all of the then-outstanding voting securities of the Company;

(ii) the following individuals no longer constitute a majority of the members of the Board of Directors of LandCare USA: (A) the individuals who, as of the closing date of LandCare USA's initial public offering, constitute the Board of Directors of LandCare USA (the "Original Directors"); (B) the individuals who thereafter are elected to the Board of Directors of LandCare USA and whose election, or nomination for election, to the Board of Directors of LandCare USA was approved by a vote of at least two-thirds (2/3) of the Original Directors then still in office (such directors becoming "Additional Original Directors" immediately following their election); and (C) the individuals who are elected to the Board of Directors of LandCare USA and whose election, or nomination for election, to the Board of Directors of LandCare USA was approved by a vote of at least two-thirds (2/3)

of the Original Directors and Additional Original Directors then still in office (such directors also becoming "Additional Original Directors" immediately following their election);

(iii) the stockholders of LandCare USA shall approve a merger, consolidation, recapitalization, or reorganization of LandCare USA, a reverse stock split of outstanding voting securities, or consummation of any such transaction if stockholder approval is not obtained, other than any such transaction which would result in at least 75% of the total voting power represented by the voting securities of the surviving entity outstanding immediately after such transaction being Beneficially Owned by at least 75% of the holders of outstanding voting securities of LandCare USA immediately prior to the transaction, with the voting power of each such continuing holder relative to other such continuing holders not substantially altered in the transaction;

(iv) the stockholders of LandCare USA shall approve a plan of complete liquidation of LandCare USA or an agreement for the sale or disposition by LandCare USA of 50% or more of the total assets of LandCare USA; or

(v) LandCare USA shall approve a plan of complete liquidation of the Company or an agreement for the sale or disposition by the Company of 50% or more of the total assets of the Company.

(f) If it shall be determined that any payment or distribution by LandCare USA or the Company or any other person to or for the benefit of the Executive (a "Payment") would be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the "Excise Tax"), as a result of the termination of employment of the Executive in the event of a Change in Control, then the Company, LandCare USA or the successor to LandCare USA shall pay an additional payment (a "Gross-Up Payment") in an amount such that after payment by the Executive of all taxes, including, without limitation, any income taxes and Excise Tax imposed on the Gross-Up Payment, the Executive retains an amount of the Gross-Up Payment equal to the Excise Tax imposed on the Payments. Such amount will be due and payable by the Company, LandCare USA or the successor to LandCare USA within ten (10) days after the Executive delivers written request for reimbursement accompanied by a copy of the Executive's tax return(s) showing the Excise Tax actually incurred by the Executive.

12. Complete Agreement. This Agreement sets forth the entire agreement of the parties hereto relating to the subject matter hereof and supersedes any other employment agreements or understandings, written or oral, between the Company and Executive. This Agreement is not a promise of future employment. Executive has no oral representations, understandings or agreements with the Company or any of its officers, directors or representatives covering the same subject matter as this Agreement. This written Agreement

is the final, complete and exclusive statement and expression of the agreement between the Company and Executive and of all the terms of this Agreement, and it cannot be varied, contradicted or supplemented by evidence of any prior or contemporaneous oral or written agreements. This written Agreement may not be later modified except by a further writing signed by a duly authorized officer of the Company and Executive, and no term of this Agreement may be waived except by writing signed by the party waiving the benefit of such term.

13. Notice. Whenever any notice is required hereunder, it shall be given in writing addressed as follows:

To the Company:

_____
_____
_____
_____

with a copy to:

General Counsel
LandCare USA, Inc.
Three Riverway, Suite 630
Houston, Texas 77056
Telephone: 713/965-0331
Fax: 713/965-0579

To Executive:

_____
_____

Notice shall be deemed given and effective on the earlier of three (3) days after the deposit in the U.S. mail of a writing addressed as above and sent first class mail, certified, return receipt requested, or when actually received by means of hand delivery or delivery by Federal Express or other courier service. Either party may change the address for notice by notifying the other party of such change in accordance with this paragraph 13.

14. Severability; Headings. If any portion of this Agreement is held invalid or inoperative, the other portions of this Agreement shall be deemed valid and operative and, so far as is reasonable and possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The paragraph headings herein are for reference purposes only and are not intended in any way to describe, interpret, define or limit the extent or intent of the Agreement or of any part hereof.

15. Arbitration. With the exception of the provisions hereof providing for enforcement by means of equitable remedies, any unresolved dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by arbitration, conducted before a panel of three (3)

arbitrators in Houston, Texas, in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association ("AAA") then in effect, provided that the parties may agree to use arbitrators other than those provided by the AAA. The arbitrators shall not have the authority to add to, detract from, or modify any provision hereof nor to award punitive damages to any injured party. A decision by a majority of the arbitration panel shall be final and binding. Judgment may be entered on the arbitrators' award in any court having jurisdiction. The direct expenses of any arbitration proceeding shall be borne by the Company; however, each party shall be responsible for payment of its counsel fees and related expenses. The arbitrator shall, however, have the right and discretion to award counsel fees and expenses (including reasonable travel expenses) to either party as part of the arbitrator's final judgment.

16. Governing Law. This Agreement shall in all respects be construed according to the laws of the State in which the Company's headquarters are located on the date hereof as shown in the Company's address for notices set forth in Section 13 hereof.

17. Counterparts. This Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

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

[ ]

By:_____
[ ]
President

EXECUTIVE

_____
[Name]

LANDCARE USA, INC.

By:_____

ANNEX VI

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease"), made and entered into by and between _____, a _____ _____ hereinafter referred to as "Landlord," and GROUND CONTROL LANDSCAPING, INC., a Florida corporation, hereinafter referred to as "Tenant";

W I T N E S S E T H:

1. Premises. Landlord hereby leases unto Tenant and Tenant hereby leases from Landlord, subject to the terms, covenants and conditions of this Lease, that certain tract of land (the "Land") located at 2169 N. Forsyth Road, Orlando, Orange County, Florida, and more particularly described on Exhibit "A" attached hereto, together with all buildings, improvements and fixtures located thereon (the "Improvements") and the non-exclusive use of all rights, easements, privileges and appurtenances thereto (said Land, Improvements and appurtenances being hereinafter sometimes collectively referred to as the "Premises").

2. Term.

a. The initial term of this Lease shall commence _____ _____, 1998 (the "Commencement Date") and end one hundred twenty (120) months thereafter (the "Term"), unless earlier terminated or extended in accordance with the terms hereof.

b. Landlord hereby grants to Tenant the right, privilege and option to extend the initial term of this Lease for two (2) periods of five (5) years each, beginning on the day following the expiration of the initial term or then current extension term hereof, upon the same terms and conditions as herein contained. Provided that Tenant is not in default under the terms of this Lease and provided that Tenant has exercised any earlier option to renew hereunder, Tenant may exercise each such option by delivering written notice to Landlord of Tenant's exercise of such option at least ninety (90) days prior to the expiration of the initial term or then current extension term hereof. As used herein, "Term" shall mean the initial term of this Lease as described in item a. above, as extended and renewed by any of the renewal options exercised by Tenant hereunder.

3. Rent. Commencing on the Commencement Date and continuing thereafter throughout the Term, Tenant agrees to pay to Landlord as initial base rental for the Premises (the "Rent") an amount equal to Two Hundred Seventeen Thousand Four Hundred Seventy-six and No/100 Dollars ($217,476.00) per year (plus applicable sales or use taxes). Monthly installments in the initial amount of Eighteen Thousand One Hundred Twenty-three and No/100 Dollars ($18,123.00) per month (plus applicable sales or use taxes) shall be due and payable in advance on the Commencement Date and on or before the fifth (5th) day of each calendar month during the Term, except that all payments due hereunder for any fractional month at the commencement or end of this Lease shall be prorated based upon the number of days in such fractional month during the Term. For the purposes of this Lease, "Lease Year" shall mean each twelve (12) month period throughout the Term, commencing on the first day of the first full month following the Commencement Date and expiring on the last day of the twelfth full

calendar month following such date, except that the first Lease Year also includes the partial month in which the Commencement Date occurs and the last Lease Year shall expire at midnight on the date of termination or expiration of this Lease, as the case may be. Tenant shall pay all sales or use taxes arising from the rental of the Premises.

At the commencement of the second Lease Year and each Lease Year thereafter during the Term, the Rent for such Lease Year shall be adjusted and shall be an amount equal to the Rent for the prior Lease Year (the "Prior Lease Year") adjusted by an amount calculated by multiplying such Rent by the percentage change in the Consumer Price Index, comparing the Consumer Price Index for all Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, U.S. City Average, All Items (1982 - 1984=100) for the month immediately preceding the date of adjustment to such Index for the month immediately preceding the commencement of the Prior Lease Year; provided however, in no event shall the Rent during any Lease Year increase by more than five percent (5%) over the Rent for the Prior Lease Year; and provided further that in no event shall Rent for any Lease Year decrease from the Rent payable during the Prior Lease Year. In the event the Consumer Price Index of the United States Bureau of Labor Statistics is discontinued, the parties mutually shall select comparable statistics on the purchasing power of the Consumer's dollars as published at the time of said discontinuation by a responsible periodical of recognized authority.

For the purposes of this Lease, "Lease Year" shall mean each twelve (12) month period throughout the Term, commencing on the first day of the first full month following the Commencement Date and expiring on the last day of the twelfth full calendar month following such date, except that the first Lease Year also includes the partial month in which the Commencement Date occurs and the last Lease Year shall expire at midnight on the date of termination or expiration of this Lease, as the case may be.

Rent shall be payable to Landlord at _____, or to such other person or persons at such address or addresses as Landlord may designate from time to time in writing in accordance with Paragraph 23 hereof.

4. Use. The Premises may be used for any lawful use related in any way to the provision of landscaping or similar services. Tenant shall comply with all governmental laws, ordinances and regulations applicable to the use of the Premises, and shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances, in or upon, or connected with, Tenant's use of the Premises. Tenant will not permit the Premises to be used for any purpose or in any manner which would render the insurance thereon void. Tenant shall, at its own expense, obtain all licenses and permits required for Tenant's use. Tenant shall not use the Premises in a disreputable, ultra-hazardous or unlawful manner, or in any manner that would constitute a public or private nuisance; and Tenant shall promptly comply with all governmental directives for abatement or correction of a nuisance on or about the Premises. Tenant shall comply in all respects with all laws, ordinances, regulations and orders applying to the Premises and to Tenant's use thereof.

5. Representations of Landlord. Landlord represents that as of the Commencement Date, the Premises complies with all applicable laws, ordinances, statutes, regulations, orders, rules and restrictions relating thereto (the "Applicable Laws"), and that the Premises and the existing and prior uses thereof (including any uses by its former tenants) have not prior to the

Commencement Date and do not currently violate the provisions of any Applicable Laws relating thereto. Moreover, Landlord represents that all water, electricity and telephone connections into the Premises are active and in good working order as of the Commencement Date. Landlord hereby indemnifies Tenant and agrees to defend and hold Tenant harmless from and against any and all third party obligations, liabilities, claims, suits, debts, accounts, liens or encumbrances, and all costs and expenses, including reasonable attorneys' fees relating thereto, that Tenant may suffer or incur and that result from the ownership, leasing, operation, or prior use by Landlord (or any former tenant of Landlord) of the Premises prior to the Commencement Date. If during the Term of this Lease the Premises at any time fails to be in compliance with the Applicable Laws, Tenant shall notify Landlord of such lack of compliance and, within seven (7) days of such notice, Tenant shall take all necessary measures to bring the Premises into compliance with the Applicable Laws.

6. Taxes. Tenant agrees to pay before they become delinquent all taxes, assessments and governmental charges of any kind and nature whatsoever lawfully levied or assessed against the Premises. Tenant may contest the assessment of such taxes by appropriate proceedings diligently conducted without being in default hereunder. Landlord agrees to cooperate with any such tax contest conducted by Tenant.

7. Tenant's Maintenance and Repairs. From and after the Commencement Date and during the Term, Tenant shall, at Tenant's cost and expense: (i) make all necessary repairs, replacements and renewals, interior and exterior, structural and non-structural, necessary to keep the Premises in as good condition, order and repair as the same are in as of the Commencement Date, reasonable wear and tear and damage by fire or other casualty or condemnation excepted including, but not limited to, (i) keeping the roofs of all Improvements free of leaks and maintaining the foundation, floor slabs, walls, doorways, windows and all other structural supports of such Improvements in good and sound condition, (ii) keeping all electrical, mechanical, heating, ventilating and air conditioning, plumbing and any other systems serving the Premises in good order and repair; and (iii) keeping the lawns and landscaped areas of the Premises watered, fertilized and trimmed. In the event Tenant shall fail to fulfill its obligations to repair and maintain the Premises, Landlord, notwithstanding anything herein to the contrary, shall have the right, upon not less than ten (10) days' prior written notice to Tenant, to make such repairs and maintain the Premises at the expense of Tenant, and such expenses shall be considered additional rent.

8. Net Rent. The Rent to be paid by Tenant hereunder is the minimum net monthly yield to be realized by Landlord, less those costs that Landlord has specifically agreed to pay in this Agreement. Tenant agrees to pay as additional rent, without demand, set-off or reduction, all sales, use, documentary, intangible personal property and other taxes arising from this Lease and from the payments due hereunder, all owner's association dues and assessments, and all general and special assessments and governmental charges of every kind imposed on the Premises during the term of this Agreement, or as a result of Tenant's use thereof. Tenant shall pay all such taxes, assessments and other governmental charges no later than the last day that such may be paid without increase, penalty or interest, and shall give Landlord satisfactory proof that such have been paid. Tenant's failure to make payment of any item listed herein shall entitle Landlord to all rights and remedies provided herein or by law for non-payment of rent. In the event any costs associated with the Premises shall arise hereafter that are not specifically assumed by Landlord, Tenant shall be obligated to pay for such additional costs.

9. Alterations. Tenant shall not make any alterations to the Premises without first obtaining the written consent of Landlord, such consent not to be unreasonably withheld. Tenant may, however, without obtaining such consent of Landlord, make non-structural alterations to the Premises of the same general quality and character existing on the Premises, provided that no such alterations include alteration of floor coverings, wall coverings, plumbing fixtures, electrical fixtures, and built-in cabinetry. Any alterations so approved by Landlord shall (a) be made in a good and workmanlike manner; (b) be paid for in full by Tenant; (c) be made with materials of comparable or better quality than are already in place; and (d) not weaken the structure of the Premises or cause a reduction in the fair market value of the Premises. All alterations, additions, improvements and partitions erected by Tenant shall be and remain the property of Tenant during the Term of this Lease, but at the end of such Term remain at the Premises and become the property of Landlord (other than Tenant's trade fixtures and removables).

10. Signs. Tenant shall have the right to install signs upon the Premises, subject to any applicable governmental law, ordinances, regulations and other requirements. Tenant shall remove all such signs by the termination of this Lease. Such installations and removals shall be made in such manner as to avoid injury or defacement of the Improvements, and Tenant shall repair any injury or defacement caused by such installation and/or removal.

11. Inspection. Landlord and Landlord's agents and representatives shall have the right to enter and inspect the Premises at any reasonable time during business hours for the purpose of ascertaining the condition of the Premises or in order to make such repairs as may be required or permitted to be made by Landlord under the terms of this Lease. During the period that is six (6) months prior to the end of the Term hereof, Landlord and Landlord's agents and representatives shall have the right to enter the Premises at any reasonable time during business hours for the purpose of showing the Premises and shall have the right to erect on the Premises a suitable sign indicating the Premises are available. Notwithstanding anything stated herein to the contrary, Landlord agrees not to unreasonably interfere with Tenant's use of the Premises or operations of Tenant's business during the Term.

12. Utilities. Tenant shall pay for all water, gas, heat, lights, power, telephone, sewer, trash collection, sprinkler charges and other utilities and services used on or from the Premises, together with any taxes, penalties, surcharges or the like pertaining thereto and any maintenance charges for utilities and shall furnish all electric light bulbs and tubes. All applications and connections for utility services for the Premises shall be in Tenant's name only.

13. Assignment and Subletting.

a. Tenant shall not assign this Lease Agreement, or any of Tenant's rights hereunder, nor sublet the Premises or any portion thereof, without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld; provided, however, that Tenant may assign this Lease Agreement, without such written consent of Landlord, to any affiliate of Tenant (controlled by a common parent entity), any entity controlling Tenant, or any subsidiary of Tenant. In consenting to any assignment or sublease, Landlord may impose reasonable conditions, restrictions and obligations, including, but not limited to the condition that all outstanding or unfulfilled obligations be performed or made current, that the proposed assignee or subtenant agree in writing

fully and timely to perform this Lease and to comply herewith, and that the proposed assignee or subtenant meet certain financial criteria and other reasonable criteria prescribed by Landlord. No assignment or subletting with Landlord's approval shall relieve Tenant of its covenants and obligations hereunder, but Tenant shall remain the primary obligor under this Lease. No consent to an assignment or sublease shall be deemed freely to allow subsequent assignments or subleases. Upon the occurrence of an Event of Default by Tenant, defined in Paragraph 19 herein, if the Premises or any part thereof are then assigned or sublet, Landlord, in addition to any remedy herein provided or provided by law, may at its option collect directly from such assignee or subtenant all Rent becoming due to Tenant under such assignment or sublease and apply such Rent against any sums due to Landlord from Tenant hereunder. No such collection shall be construed to constitute a novation or a release of Tenant from the further performance of Tenant's obligations hereunder.

b. Upon any transfer of the Premises by Landlord, Landlord shall have the right to assign this Lease without the prior written consent of Tenant so long as such transfer does not have the purpose or effect of avoiding specific liability under this Lease.

c. With respect to a party's assignment or subletting permitted hereunder without the other party's consent, the assigning party shall provide written notice of such assignment to the other party within thirty (30) days of the effective date of such assignment or subletting.

14. Insurance.

a. Tenant agrees to maintain standard fire and extended coverage insurance covering the Improvements in an amount not less than 100% (or such greater percentage as may be necessary to comply with the provisions of any co-insurance clauses of the policy) of the replacement costs thereof, insuring against the perils of fire, lighting, and other perils as now or hereafter may be included in "All Risk" insurance coverage, such coverages and endorsements to be as defined, provided and limited in the standard bureau forms prescribed by the insurance regulatory authority for the State in which the Premises are situated for use by insurance companies admitted in such state for the writing of such insurance on risks located within such state.

b. If the Improvements should be damaged or destroyed by fire, tornado or other casualty, Tenant shall give immediate written notice thereof to Landlord.

c. If the Improvements should be totally destroyed by fire, tornado or other casualty, or if they should be so damaged thereby that restoration thereof cannot, in Landlord's reasonable judgment, be completed within 180 days after the date upon which Landlord is notified by Tenant of such damage, this Lease shall, at the option of Landlord or Tenant, terminate and the Rent shall be abated during the unexpired portion of this Lease, effective upon the date of the occurrence of such damage, provided that Landlord or Tenant shall provide the other party with written notice of such termination within thirty (30) days after the date upon which Landlord is notified by Tenant of such damage.

d. If the Improvements should be damaged by any casualty and this Lease is not terminated pursuant to the foregoing provisions of this Paragraph 14, Landlord shall at its sole cost and expense thereupon proceed with reasonable diligence to rebuild and repair such Improvements to substantially the condition in which they existed prior to such damage. If all or a part of the Premises are untenantable, Rent shall be reduced based on the percentage of the Premises that is not usable. In the event that Landlord should fail to complete such repairs and rebuilding within 180 days after the date upon which Landlord is notified by Tenant of such damage, Tenant may at its option terminate this Lease prior to completion of such repairs and rebuilding, by delivering written notice of termination to Landlord as Tenant's exclusive remedy, whereupon all rights and obligations hereunder shall cease and terminate.

e. Each party hereto waives all rights of recovery, claims, actions or causes of actions arising in any manner in its (the "Injured Party's") favor and against the other party for loss or damage to the Injured Party's property located within or constituting a part or all of the Premises, to the extent the loss or damage: 1) is covered by the Injured Party's insurance; or 2) would have been covered by the insurance the Injured Party is required to carry under this Lease, whichever is greater, regardless of the cause or origin, including the sole, contributory, partial, joint, comparative or concurrent negligence of the other party. This waiver also applies to each party's directors, officers, employees, shareholders, partners, representatives and agents. All insurance carried by either Landlord or Tenant covering the losses and damages described in this Paragraph 14.e. shall provide for such waiver of rights of subrogation by the Injured Party's insurance carrier to the maximum extent that the same is permitted under the laws and regulations governing the writing of insurance within the State of Florida. Both parties hereto are obligated to obtain such a waiver and provide evidence to the other party of such waiver. The waiver set forth in this Paragraph 14.e. shall be in addition to, and not in substitution for, any other waivers, indemnities or exclusions of liability set forth in this Lease.

f. Tenant agrees to maintain during the life of the Lease, public liability, personal injury liability, products liability, and property insurance against claims for bodily injury, death and property damage occurring on or about the Premises or arising from Tenant's use of the Premises or from the use thereof by Tenant's agents, employees, invitees, or any other person upon the Premises. Such insurance shall provide coverage with a minimum single limit of $2,000,000.00 liability coverage and $250,000.00 property damage coverage.

g. All insurance policies required in this Lease shall be issued by insurers reasonably acceptable to Landlord. Landlord shall have the right from time to time to review the insurance policies required of the Tenant under this Lease and (1) to require increases in the amounts of insurance coverage to reflect increases in the value of the Premises, or of the building in which the Premises are located, and to reflect increased or addition risks of loss or damage to the Premises and (2) to require additional types of coverage or different types of policies to protect against additional risks or to reflect changes in the insurance industry or in leasing practices. Notwithstanding the foregoing, should any mortgagee of the Premises require insurance additional to or different from that to be provided herein by Tenant, Tenant shall purchase and maintain insurance

meeting the commercially reasonable requirements of that mortgagee necessary to protect its interests. Upon the commencement of this Lease, Tenant shall deliver to Landlord proof of the insurance procured by Tenant in accordance with this Lease, and Tenant shall deliver to Landlord proof of insurance renewal under all required polices not later than fifteen (15) days before the expiration of the term of each policy. All insurance policies provided by Tenant in accordance herewith shall, to the extent obtainable, contain the insurer's agreements that (1) any loss shall be payable to Landlord notwithstanding any act or negligence of Tenant that might otherwise cause the insurance to forfeit, (2) such policies shall not be cancelled except upon thirty (30) days' prior notice to each named loss-payee and insured, provided that giving such notice is reasonably feasible, (3) the coverage afforded by the policies shall not be affected by the performance of any construction on the Premises. All insurance policies required in this Lease shall name Landlord as an additional insured party. Such policies shall also provide, if applicable, for loss to be payable to the holder of any mortgage in the premises. Tenant shall make no adjustment with the insurance company for any loss insured by an insurance policy provided hereunder without Landlord's reasonable approval. All insurance policies required hereunder may contain loss deductible clauses in such maximum amounts as Landlord shall approve.

15. Liability.

a. Except for the claims, rights of recovery and causes of action that Landlord has released and waived pursuant to Paragraph 14.e. hereof, Tenant shall be liable to Landlord for and shall indemnify and hold harmless Landlord and Landlord's partners, venturers, directors, officers, agents, employees, invitees, visitors and contractors from all claims, losses, costs, damages or expenses (including but not limited to attorney's fees) resulting or arising or alleged to result or arise from any and all injuries to or death of any person or damage to or loss of any property arising from occurrences on or about the Premises or from Tenant's activities in the Premises or caused by any breach, violation or non-performance of any covenant of Tenant under this Lease other than any injury or damage arising (or alleged to arise) out of any negligence, intentional misconduct or breach of the term of this Lease by Landlord or Landlord's partners, venturers, directors, officers, agents, or employees. If any action or proceeding should be brought by or against Landlord in connection with any such liability or claim, Tenant, on notice from Landlord, shall defend such action or proceeding, at Tenant's expense, by or through attorneys reasonably satisfactory to Landlord.

b. Except for the claims, rights of recovery and causes of action that Tenant has released and waived pursuant to Paragraph 14.e. hereof, Landlord shall be liable to Tenant for and shall indemnify and hold harmless Tenant and Tenant's partners, venturers, directors, officers, agents, employees, invitees, visitors and contractors from all claims, losses, costs, damages or expenses (including but not limited to attorney's fees) resulting or arising or alleged to result or arise from any and all injuries to or death of any person or damage to or loss of any property caused by any negligence or intentional misconduct of Landlord or Landlord's partners, venturers, directors, officers, agents, or employees, or by any breach, violation or non-performance of any covenant of Landlord under this Lease other than any injury or damage arising (or alleged to arise) out of any negligence, intentional misconduct or breach of the term of this Lease by

Tenant or Tenant's partners, venturers, directors, officers, agents, or employees. If any such action or proceeding should be brought by or against Tenant in connection with any such liability or claim, Landlord, on notice from Tenant, shall defend such action or proceeding, at Landlord's expense, by or through attorneys reasonably satisfactory to Tenant.

c. Tenant shall procure and maintain throughout the Term of this Lease a policy or policies of insurance, at its sole cost and expense covering Tenant's personal property and any leasehold improvements, alterations and additions in excess of the leasehold improvements existing on the Commencement Date.

16. Condemnation.

a. If the whole or any substantial part of the Premises should be taken for any public or quasi-public use under governmental law, ordinance or regulation, by right of eminent domain or by purchase in lieu thereof, and the taking would prevent or materially interfere with the use of the Premises for the purpose for which they are being used, this Lease shall, at Tenant's option, terminate and the Rent shall be abated during the unexpired portion of this Lease, effective when the physical taking of said Premises shall occur, provided that Tenant shall provide Landlord with written notice of such termination within thirty (30) days after the date of such physical taking.

b. If part of the Premises shall be taken for any public or quasi-public use under any governmental law, ordinance or regulation, by right of eminent domain or by purchase in lieu thereof, and this Lease is not terminated as provided in Paragraph 16.a. above, this Lease shall not terminate but the Rent payable hereunder during the unexpired portion of this Lease shall be reduced based on the percentage of the Premises that is not usable.

c. In the event of any such taking or purchase in lieu thereof, Landlord and Tenant shall each be entitled to receive and retain such separate awards and/or portion of lump sum awards as may be allocated to their respective interests in any condemnation proceedings.

17. Holding Over. Tenant will, at the termination of this Lease by lapse of time or otherwise, yield up immediate possession to Landlord. Should Tenant fail promptly to vacate and redeliver possession of the Premises to Landlord on or before the expiration or termination of this Lease, Tenant is hereby notified of Landlord's intent to require, and demand is hereby made, that Tenant pay during the period of Tenant's holdover double the rental charged Tenant during the month immediately preceding the expiration or termination of this Lease. If Landlord agrees that Tenant may hold over after the expiration or termination of this Lease, unless the parties hereto otherwise agree in writing on the terms of such holding over, the hold over tenancy shall be subject to termination by Landlord at any time upon not less than thirty (30) days advance written notice, or by Tenant at any time upon not less than thirty (30) days advance written notice, and all of the other terms and provisions of this Lease shall be applicable during that period, including Tenant's obligation to pay the rental in effect on the termination date, computed on a daily basis for each day of the hold over period. No holding over by

Tenant, whether with or without consent of Landlord, shall operate to extend this Lease except as otherwise expressly agreed.

18. Quiet Enjoyment. Landlord covenants that it now has good title to the Premises, free and clear of all liens and encumbrances, excepting only any lien for current taxes not yet due, zoning ordinances and other conditions of record set forth on Exhibit "B". Landlord represents and warrants that it has full right and authority to enter into this Lease and that Tenant, upon paying the Rent herein set forth and performing its other covenants and agreements herein set forth, shall peaceably and quietly have, hold and enjoy the Premises for the Term hereof without hindrance or molestation from Landlord, subject to the terms and provisions of this Lease.

19. Tenant's Default. The following occurrences shall be deemed to be "Events of Default" by Tenant under this Lease:

a. Tenant shall fail to pay any installment of the Rent when due, or any other payment or reimbursement to Landlord required herein when due, and such failure shall continue for a period of ten (10) days after written notice by Landlord; however, Landlord shall not be required to give Tenant such written notice hereunder more than two (2) times during any calendar year;

b. Tenant shall file a petition under any section or chapter of the United States Bankruptcy Code, as presently constituted and hereinafter amended, or Tenant shall be adjudged bankrupt or insolvent by final order issued at the conclusion of proceedings filed against Tenant thereunder or shall make an assignment for the benefit of all of its creditors;

c. A receiver or trustee shall be appointed for all or substantially all of the assets of Tenant and not repealed within thirty (30) days; and

d. Tenant shall fail to comply with any term, provision or covenant of this Lease (other than those otherwise described in this Paragraph 19), and shall not cure such failure within thirty (30) days after written notice thereof to Tenant; provided, however, if the nature of the default is such that it cannot be cured with the exercise of Tenant's reasonable and good faith efforts within the thirty (30) day period, Tenant shall have up to ninety (90) days from the date of Landlord's notice to cure such default, provided Tenant undertakes such curative action within the thirty (30) day period and diligently and continuously proceeds with such curative action using Tenant's reasonable and good faith efforts.

20. Remedies. Upon the occurrence of any of such Events of Default by Tenant, Landlord shall have the option to (a) terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails so to do, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in Rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying such Premises or any part thereof; (b) Landlord may reenter the Premises, by summary proceedings or otherwise, and attempt to relet the Premises, or any part thereof, as Tenant's agent, in the name of Landlord, or otherwise to any tenant and upon such

terms and conditions and for any use or purpose and for a term shorter or longer than the balance of the term of this Lease, all as Landlord may deem appropriate. Landlord shall have no such obligation to relet the Premises, and Landlord's failure or refusal to do so, or failure to collect rent on reletting, shall not affect Tenant's liability hereunder; however, any rent collected as a result of any such reletting shall be credited by Landlord against Tenant's liability for all rent due hereunder. Tenant shall pay Landlord monthly, as it is determined, any deficiency between such rent and the net amount of any rents collected by Landlord for the remaining term of this Lease from such reletting, but to the extent permitted by law, Tenant shall not be entitled to any surpluses from such reletting. In computing the net amount of rents collected through such reletting, Landlord may deduct all expenses incurred in obtaining possession of or reletting the Premises, including legal expenses, attorneys' fees through the appellate level, brokerage fees, the costs of restoring the Premises to good order, and the cost of all alterations and decorations deemed necessary by Landlord to facilitate reletting. Should Landlord retake possession of the Premises on Tenant's account as this provision permits, Landlord shall not be deemed to have rescinded or terminated this Lease, nor to have accepted surrender of the leasehold; (c) Landlord may retake possession of the Premises, or any part thereof, on its own behalf, without thereby relieving Tenant from any liability for damages accruing prior to or after such retaking; (d) Landlord may elect not to seek to reenter any portion of the Premises, without waiving its right to do so at any future time or its right to collect the rent due hereunder as and when it shall become due and to continue to hold Tenant fully liable for all of its obligations hereunder; (e) Landlord may treat the default as an anticipatory breach of this Lease and, in addition to retaking possession, may bring an action immediately for all damages resulting therefrom; (f) Landlord may accelerate and claim and demand immediate payment of all rent due (as reasonably estimated) for the remainder of the term of this Lease and any extensions thereof which may have been exercised by Tenant prior to termination; and (g) In the event of a breach or threatened breach of any of the covenants or provisions hereof, Landlord shall have the further right to seek an injunction.

The pursuit by Landlord of any particular remedy, whether specified herein or otherwise, shall, to the extent permitted by law, not preclude Landlord from pursuing any additional or alternative remedy or remedies available to it at law or in equity, all of which shall be deemed to be cumulative.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedies provided by law, nor shall pursuit of any of the remedies herein provided constitute a forfeiture or waiver of any Rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions and covenants herein contained. No act or thing done by the Landlord or its agents during the Term hereby granted shall be deemed to imply a termination of this Lease or an acceptance of the surrender of the Premises, and no agreement to terminate this Lease or accept a surrender of said Premises shall be valid unless in writing signed by Landlord. Forbearance by Landlord to enforce any of the remedies herein provided upon an Event of Default shall not be deemed or construed to constitute a waiver of such Event of Default or of Landlord's right to enforce any of its remedies with respect to any subsequent Event of Default.

21. Landlord's Default. Except where the provisions of this Lease grant Tenant an express, exclusive remedy, or expressly deny Tenant a remedy, if:

a. Landlord fails to pay any amount payable by Landlord hereunder and such failure to pay continues and remains unremedied for a period of thirty (30) days after written notice thereof given by Tenant to Landlord; or

b. Landlord fails to perform or observe any covenant, term, provision or condition of this Lease that interferes in any material respect with Tenant's use and enjoyment of the Premises, and such failure continues for a period of thirty (30) days after written notice thereof given by Tenant to Landlord; provided, however, if the nature of the default is such that it cannot be cured with the exercise of Landlord's reasonable and good faith efforts within the thirty (30) day period, Landlord shall have up to ninety (90) days from the date of Tenant's notice to cure such default, provided Landlord undertakes such curative action within the thirty (30) day period and diligently and continuously proceeds with such curative action using Landlord's reasonable and good faith efforts;

then, Tenant may deliver a second notice to Landlord, and if such default shall continue uncured by Landlord and/or its mortgagee for an additional thirty (30) days after the delivery of such second notice, Tenant shall have the right to pursue all remedies at law or in equity to which Tenant may be entitled. Tenant specifically agrees that the cure of any default by any Landlord mortgagee shall be deemed a cure by Landlord under this Lease.

22. Construction Liens. Tenant shall have no authority, express or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of Landlord in the Premises or to charge the rentals payable hereunder for any claim in favor of any person dealing with Tenant, including those who may furnish materials or perform labor for any construction or repairs, and each such claim shall affect and each such lien shall attach to, if at all, only the leasehold interest granted to Tenant by this instrument. Tenant covenants and agrees that it will pay or cause to be paid all sums legally due and payable by it on account of any labor performed or materials furnished in connection with any work performed on the Premises on which any lien is or can be validly and legally asserted against its leasehold interest in the Premises or the improvements thereon and that it will save and hold Landlord harmless from any and all loss, cost or expense based on or arising out of asserted claims or liens against the leasehold estate.

23. Notices. Each provision of this instrument or of any applicable governmental laws, ordinances, regulations and other requirements with reference to the sending, mailing or delivery of any notice or the making of any payment by Landlord to Tenant or with reference to the sending, mailing or delivery of any notice or the making of any payment by Tenant to Landlord shall be deemed to be complied with when and if the following steps are taken:

a. All Rent and other payments required to be made by Tenant to Landlord hereunder shall be payable to Landlord at the address hereinbelow set forth or at such other address as Landlord may specify from time to time by written notice delivered in accordance herewith.

b. All payments required to be made by Landlord to Tenant hereunder shall be payable to Tenant at the address hereinbelow set forth, or at such other address as Tenant may specify from time to time by written notice delivered in accordance herewith.

c. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered (whether actually received or not) when deposited in the United States Mail, postage prepaid, certified or registered mail, addressed to the parties hereto at the respective addresses set out below, or at such other address as they have theretofore specified by written notice delivered in accordance herewith:

Landlord: Mr. Mark S. Yahn
c/o Ground Control Landscaping, Inc.
2169 N. Forsyth Road
Orlando, Florida 32807

with a copy to: Frank L. Pohl, Esq.
Pohl & Short, P.A.
Post Office Box 3208
Winter Park, Florida 32790

Tenant: _____
_____
_____
_____

with a copy to: _____
_____
_____
_____

All parties included within the terms "Landlord" and "Tenant" respectively, shall be bound by notices given in accordance with the provisions of this Paragraph 23 to the same effect as if each had received such notice.

24. Subordination, Non-Disturbance and Attornment. This Lease shall be subordinate to all mortgages, deeds of trust and related security instruments which may now or hereafter encumber the Premises and to all renewals, modifications, consolidations, replacements and extensions thereof and to each advance made or hereafter to be made thereunder; provided, Tenant hereby agrees to enter into a subordination, non-disturbance and attornment agreement with Landlord and Landlord's lender(s) on terms reasonably acceptable to Tenant, Landlord and such lender.

25. Hazardous Substances. Tenant represents and warrants to Landlord that the activities Tenant will conduct on the Premises will not violate any applicable federal, state or local laws, ordinances, rules or regulations pertaining to Hazardous Materials (to be hereinafter defined) or industrial hygiene or environmental conditions ("Environment Laws"). Tenant shall not cause or permit the Premises to be used for the generation, handling, storage, transportation, disposal or release of any Hazardous Materials except as exempted or permitted under applicable Environmental Laws; and Tenant shall not cause or permit the Premises or any activities conducted thereon to be in violation of any applicable Environmental Laws. Tenant shall acquire and maintain all permits, approvals, licenses and the like required by Environmental Laws for Tenant's activities on the Premises; and Tenant shall keep those permits, approvals,

licenses, and the like current, and shall comply with all regulations, rules and restrictions relating thereto. Tenant shall indemnify, protect and hold harmless Landlord and each of its respective subsidiaries from and against all costs and damages incurred by Landlord in connection with the presence, emanation, migration, disposal, release or threatened release of any Hazardous Materials on, within, or to or from the Premises as a result of (i) the operations of the Tenant after the Commencement Date and (ii) the activities of third parties affiliated with Tenant or invited on the Premises by Tenant. Landlord shall indemnify, protect and hold harmless Tenant and each of its respective subsidiaries from and against all costs and damages incurred by Tenant in connection with the presence, emanation, migration, disposal, release or threatened release of any Hazardous Materials on, within, or to or from the Premises as a result of (i) any activity or action by any party prior to the Commencement Date or after the expiration of the Term, (ii) the condition of the Premises prior to the Commencement Date or after the expiration of the Term, including any future manifestations of such conditions, or (iii) the activities of Landlord or the activities of any third party not affiliated with Tenant and not invited on the Premises by Tenant. Each party agrees that such party will promptly give written notice to the other party of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Premises and any Hazardous Materials or Environmental Laws of which such party has actual notice. These indemnity provisions shall survive the full performance and expiration of this Lease and shall inure to the benefit of any transferee of title to the Premises. For purposes of this Lease, the term "Hazardous Materials" shall include any substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "toxic substances", "contaminants" or other pollution under any applicable federal, state, or local laws, ordinances, rules or regulations now or hereafter in effect.

26. Miscellaneous.

a. Words in the singular number shall be held to include the plural, unless the context otherwise requires.

b. The terms, provisions, covenants and conditions contained in this Lease shall apply to, inure to the benefit of and be binding upon, the parties hereto and upon their respective heirs, legal representatives, successors and permitted assigns.

c. The captions inserted in this Lease are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Lease or any provision hereof, and in no way affect the interpretation of this Lease.

d. Tenant agrees from time to time within ten (10) days after request of Landlord, to deliver to Landlord, or Landlord's designee, an estoppel certificate stating that this Lease is in full force and effect, the date of which Rent has been paid, the unexpired Term of this Lease and such other matters pertaining to this Lease as may be requested by Landlord.

e. This Lease may not be altered, changed or amended except by an instrument in writing signed by both parties hereto.

f. If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the Term of this Lease, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added as a part of this Lease a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

27. Late Charge. There shall be a late payment penalty of five percent (5%) of the payment due and payable for each month that Tenant fails to make a rental payment or fails to make a full rental payment on or before the fifth day of that month.

28. Re-delivery. Tenant covenants that at the termination of this Lease, whether by expiration, default or other, Tenant will promptly re-deliver the Premises to Landlord free from subtenancies and in the condition the Premises are presently in, reasonable use and wear excepted. Within three (3) days from the termination hereof (unless such termination is the result of Tenant's default), Tenant shall remove all of Tenant's personal property and moveable trade fixtures from the Premises, and Tenant shall make all repairs to the Premises arising from such removal. Any personal property or trade fixtures remaining on the Premises three (3) days after termination shall be deemed abandoned by Tenant, and, at Landlord's election, shall become the property of Landlord. If Landlord elects not to take ownership of such personal property and trade fixtures, Landlord may, at Tenant's expense and risk, remove such to be stored elsewhere, and Tenant shall be obligated for all storage costs. If this Lease is terminated for Tenant's default, then Landlord shall have a lien upon all personal property, trade fixtures and the like belonging to Tenant, and Tenant shall not remove such from the Premises without first obtaining Landlord's written consent.

29. Acceptance of Premises. Tenant acknowledges that Landlord has made no representation or warranty that the Premises are fit for Tenant's intended use. Tenant has inspected the Premises, and Tenant accepts the Premises "as is" except as otherwise provided in this Lease.

30. Bankruptcy. If Tenant becomes insolvent or if bankruptcy proceedings are begun by or against Tenant before the end of the term, Landlord is hereby irrevocably authorized at its option to cancel this Agreement as for default. Landlord may elect to accept rent from receiver, trustee or other judicial officer during the term of its occupancy in fiduciary capacity without affecting Landlord's rights as contained in this Lease; but no receiver, trustee or other judicial officer shall ever have any right, title, or interest in or to the Premises by virtue of this Agreement.

31. Landlord's Right to Cure Tenant's Default. If Tenant at any time (1) fails to pay Rent, additional rent, or any other imposition or monitory obligation, (2) fails to procure and maintain any insurance policies required herein, (3) fails to discharge any lien attaching to the Property, or (4) fails to perform any other act required herein to be performed by Tenant, then Landlord may, after three (3) days written notice to Tenant (unless such notice is not feasible in light of imminent harm (financial or physical) to the Premises or Landlord), at its election, without thereby waiving any of Tenant's obligations or releasing Tenant from any default, cure

Tenant's default in whatever manner Landlord in its reasonable discretion deems proper. All reasonable sums paid and expenses incurred by Landlord in so curing Tenant's default shall be payable to Landlord within ten (10) days of demand therefor accompanied by evidence reasonably demonstrating that the expenditure was made or incurred. Any amount becoming due to Landlord under this paragraph shall constitute additional rent.

32. Waste. Tenant shall not cause or permit any waste, damage, or injury to the Premises.

33. Attorneys' Fees. In the event of legal proceedings between the parties, the prevailing party in such proceedings shall be entitled to have its costs and attorneys' fees including costs and attorneys' fees for appellate proceedings, paid by the non-prevailing party.

34. Additional Rent. All payments required of Tenant hereunder, including, but not limited to, sales taxes, insurance, real estate taxes, utilities, penalties, interest, and assessments, shall constitute additional rent, for which, in the event of Tenant's failure to pay or Tenant's failure to timely pay, Landlord may pursue all remedies available upon a failure to pay the base rental.

35. Broker's Commission. Each of the parties represents and warrants that there are no claims for brokerage commission or finder's fees in connection with the execution of this Lease and each of the parties agrees to indemnify the other against, and to hold it harmless from, all liabilities arising from any such claim.

36. Waiver. No act of Landlord shall be deemed a waiver of any of Landlord's rights hereunder, unless such waiver is specifically made in writing. Landlord's forbearance to enforce any rights hereunder or to exercise any available remedy, or to insist upon strict compliance herewith, shall not be deemed a waiver or forfeiture of such rights, remedies or strict compliance, nor shall such forbearance stop Landlord from exercising any available rights or remedies or from requiring strict compliance in the future. Landlord's acceptance of any late or inadequate performance, including, but not limited to, late or insufficient payments of rental, shall not constitute a waiver or forfeiture of Landlord's right to treat such performance as an event of default or to require timely and adequate performance in the future.

37. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

38. Interest. Any amount due hereunder shall bear interest from the due date to the time that payment thereof is made in full at the highest lawful rate.

39. Survivability. The parties agree that all of the indemnities, representations and warranties made herein, shall survive the termination or expiration of this Lease and that the termination or expiration hereof shall not release the parties from any accrued, unfulfilled, or unsatisfied liabilities or obligations.

40. Merger. No prior or present agreements or representations shall be binding upon the parties hereto unless incorporated into this Lease.

41. Waiver of Jury Trial. Tenant hereby waives all right to a jury trial in any action brought to enforce the terms of this Lease or otherwise arising from this Lease. This waiver is a material inducement for Landlord's entering into this Lease and has been an express point of negotiation. Tenant understands that, as a result of this waiver, any judicial action brought in connection with this Lease will be decided by a judge and Tenant shall have no right to request or require that the action be decided by a jury.

42. Radon Gas. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

43. Security Measures. Tenant hereby acknowledges that the rental and other amounts payable to Landlord hereunder do not include the cost of guard service or other security measures, and that Landlord shall have no obligation whatsoever to provide such security. Tenant assumes all responsibility for the protection of Tenant, its agents and invitees from acts of third parties.

44. Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent herein stipulated shall be deemed to be other than on account of the earlier Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or Rent payment be deemed an accord and satisfaction. Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Lease.

45. Time Periods. Time is of the essence of this Agreement. Any reference herein to time periods of less than six (6) days shall exclude Saturdays, Sundays and legal holidays; and any time period provided for herein that ends on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. of the next full business day.

46. Recording. Tenant agrees that it will not record, or permit to be recorded, this Lease or any memorandum hereof; violation of this covenant by Tenant shall constitute a default, and at Landlord's option, this Agreement shall become null and void and all of the rights of Tenant hereunder shall terminate.

47. Right of First Refusal. If at any time during the Term Landlord shall receive a bona fide offer to purchase or a proposed purchase contract which is acceptable to Landlord (the "Offer") with regard to all or any portion of the Premises, Landlord shall serve upon Tenant a true copy of such Offer. The service by Landlord upon Tenant of a copy of an Offer shall constitute an offer to sell to Tenant the Sale Tract described in the Offer in accordance with the terms of this Lease and the Offer. Tenant shall have thirty (30) days after such copy of the Offer is given to Tenant within which to serve upon Landlord a notice (the "Purchase Notice") setting forth Tenant's agreement to purchase the Sale Tract upon the terms and conditions contained in said Offer. The Purchase Notice shall constitute Tenant's acceptance of, and binding agreement to purchase, the Sale Tract in accordance with the Offer. If Tenant shall fail to properly serve a Purchase Notice within such thirty (30) day period, or if Tenant shall properly serve such Purchase Notice but shall (except as a result of Landlord's fault) fail to close

the purchase of the Sale Tract within the time prior provided in such Offer (or, absent a closing date set forth in such Offer, within ninety (90) days following the date on which the Purchase Notice was given to Landlord), then in either event Landlord shall be free at any time thereafter to sell the Sale Tract to a third party without offering tenant the opportunity to purchase the Sale Tract, provided the consideration to be paid by such third party shall not be less than the price set forth in the Offer, and further provided the other terms of such sale (including, without limitation, the description of the Sale Tract) shall not differ in any material respect from the terms set forth in the Offer.

EXECUTED this ____ day of _____, 1998.

LANDLORD:

_____, a
_____

By:_____
Name:_____
Title:_____

Attest:

By:_____
Name:_____
Title:_____

(SEAL)

TENANT:

GROUND CONTROL LANDSCAPING, INC., a Florida corporation

By:_____
Name:_____
Title:_____

Attest:

By:_____
Name:_____
Title:_____

(SEAL)

EXHIBIT "A"

DESCRIPTION OF LAND

EXHIBIT "B"

TITLE EXCEPTIONS