

# UNOFFICIAL COPY

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## ASSIGNMENT

THIS INDENTURE made July 14, 1994, by and between Hoschl Landscape Co., a division of Jackson Rose Corp., a corporation duly organized and existing under the laws of the State of Illinois and having a usual place of business at 525 Pflingsten Road, Northbrook, IL 60062, (hereinafter called the debtor), party of the first part, and PERCAM, LTD., (hereinafter called the assignee), party of the second part, and the others who may become parties to this instrument, in accordance with the terms thereof (hereinafter called the assenting creditors), parties of the third part.

### WITNESSETH:

The said debtor does hereby grant, bargain, sell, convey, assign, transfer and "set" over unto the said assignee, all and singular, the property and estate of whatever nature, both real and personal, wherever situated, to which the debtor is entitled, and not exempt from attachment by the law of its locus, including all land, buildings, machinery, merchandise, fixtures, office equipment and supplies, patents, trade-marks, licenses, trade names, secret processes and formulae, stock, bills, notes, assets, judgments, suits at law or in equity, accounts receivable, or other choses in action, and all deeds, books of account, evidence of title and papers relating to the business dealings and property of the debtor. All mail of all classes, all parcels, post and express material, all telegrams, radiograms and other communications otherwise deliverable to the assignor shall be delivered to the assignee or as it may in writing direct.

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Perres & Campanale 1  
19 S. LaSalle St. #603  
Chicago, IL  
60603

5/150  
DJP

PROPERTY OF COOK COUNTY CLERK'S OFFICE  
JUL 14 1994  
1994 JUL 14 10 21 AM '94  
#21720

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11/10/20

Property of Cook County Clerk's Office

DEPT-01 RECORDING \$51.50  
105555 TRAM 3691 08/19/94 11:31:00  
#5031 & GV #9\*-736194  
COOK COUNTY RECORDER

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To Have and to Hold the said real and personal estate and choses in action (hereinafter called the trust property) to the said assignee, its successors and assigns, to his and their own use and behoof forever, in trust, nevertheless, for the purposes of and subject to the provisions hereinafter set forth.

And the said debtor does hereby covenant with the said assignee that it will, whenever requested, give him all information in its power concerning the property hereby assigned, and will execute, acknowledge and deliver to the assignee, at the cost of said assignee, whenever requested, any further instrument or instruments that said assignee may think necessary or proper to carry out the true intent and purpose of these presents.

The assignee, by writing recorded where this Indenture is recorded; as an amendment hereto, may at any time refuse to accept any property or right hereunder which in his opinion is by law exempt from attachment or is onerous, unprofitable or burdensome, rather than beneficial, to the trust estate; thereupon all title thereto by him hereunder acquired shall revert in the assignor as though never included herein, and as to that property or right the assignee shall have no right or obligation.

And the said debtor does hereby constitute the said assignee, and his successors under this trust, the attorney and attorneys irrevocable of said debtor, with power irrevocable and coupled with an interest with power of substitution, in the name of the debtor, but to the use and at the cost of the assignee, to begin or carry on any suit, execute, seal, acknowledge and deliver any instrument,

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and do any other act or thing necessary or proper to obtain legal title to or possession of or to realize on, manage, pledge, mortgage and dispose of the trust property or any part thereof, or to carry out the true intent and purpose of this instrument.

This assignment is made upon the trusts and subject to the provisions following: to-wit:

First. The assignee, primarily in the interest of creditors, shall hold and manage the trust property, receive and collect the rents, income and proceeds thereof, and convert the said trust property into money as rapidly as he may think expedient, and in such manner as he may think best.

Second: The assignee shall have the power, in the execution of his trust, from time to time, to sell, lease, mortgage or pledge all or any part or parts of the trust property and/or to grant licenses thereunder at public or private sale, for cash or on credit or for any other good and valuable consideration, on such terms as he may think fit, and to convey and transfer the same by good and sufficient deeds or other instruments to the purchaser or purchasers, free from any trust, and no such purchaser shall in any event be responsible for the application of the purchase money or other consideration; and the said assignee may buy in, rescind or vary any such contract of sale, and resell any such property, without being answerable for any loss occasioned thereby.

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Third: Said assignee may, if and so far as he may deem it advisable for the orderly liquidation of the trust estate as a going business, as well as to ensure reasonable liquidation value thereof, continue and carry on the business of the debtor or any part thereof, and for that purpose only use any part of the trust property, and make any payments therefrom or from the proceeds thereof, and purchase any goods or materials and pay therefor with any money in his hands as such assignee, or purchase the same on credit, and render said trust property liable for the price thereof.

Fourth: Said assignee may pay from said trust property from time to time any sums that he may deem expedient to protect and preserve said trust property, including payment for repairs, balances due for property purchased by the debtor under conditional sales, premiums for fire and other insurance, interest or encumbrances, wages of watchmen and caretakers, charges for storage, and other expenses which he may deem for the benefit of said trust property and including any wages due to employees entitled to a priority under the provisions of the Bankruptcy Act at the time of the making of this assignment so far as said assignee may, in his discretion, deem said payments reasonable to protect and preserve said business, or any part of the trust estate.

Fifth: Said assignee may institute and prosecute all suits or

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legal proceedings which he may think proper for the recovery of any property belonging or supposed to belong to or any debt or debts due or supposed to be due to the debtor and may defend all suits or legal proceedings brought to recover any property hereby transferred to him, and may compromise, compound or refer to arbitration any such suit or legal proceeding or claim or demand by or against him or arising out of the execution of this trust, on such terms as he may think fit, and may pay all costs, charges, expenses and liabilities so incurred from said trust property.

Sixth: Said assignee may in his discretion, from time to time, from said trust property or the proceeds thereof pay and discharge any claim for taxes whether Municipal, State or Federal, existing, and may pay to any person having a mortgage, lien, attachment or other security upon said trust property, or any part thereof, any sum he may deem expedient in order to secure the relinquishment thereof, and may cause such mortgage lien attachment or other security to be discharged or to be assigned to, or otherwise kept in force.

Seventh: Said assignee may make payment or do or omit any other act upon such evidence of the existence of any fact necessary to authorize such act or omission as he may deem satisfactory, and shall incur no liability thereby. Any receipt or acquittance given by said assignee shall be a sufficient discharge in favor of the person to whom it is given, and no person dealing with said

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assignee shall under any circumstances be bound to ascertain or inquire as to any fact or event or purpose justifying the exercise of any power herein conferred upon said assignee, or the propriety or regularity of any exercise of or act purporting to be an exercise of any such power.

Eighth: Any person having any debt or claim that would be provable in bankruptcy against the estate of said debtor, under the bankruptcy laws of the United States, may become a party to this instrument to the extent of such debt or claim as an assenting creditor, by executing the same or any copy thereof, or by specifically assenting to the same in writing in form satisfactory to the assignee within ninety (90) days after the date hereof, or within such further time as said assignee may fix; and said assignee may from time to time as often as he may think fit extend such time by notice in writing, and may at any time in his discretion permit any creditor to become a party hereto though no such extension of time has been made by him. No creditor not so executing or accepting this instrument shall be entitled to any benefit herefrom.

Ninth: Any creditor assenting hereto, filing a claim hereunder, or participating herein in any manner, and notwithstanding that such creditor may be a member of a creditor's committee or have a representative thereon, shall have the right, notwithstanding such assent, filing or participation, to become a

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petitioning creditor in any proceedings in bankruptcy which may be filed against the debtor, and allege and use this assignment as an act of bankruptcy in any such proceedings.

Tenth: Any person secondarily liable as endorser or otherwise on any note, draft, acceptance or other obligation in which any assignor is primarily liable may become a party to this instrument as an assenting creditor, according to the terms hereof, provided such person has taken up and become the legal holder and owner of such note, draft, acceptance or obligation, not less than thirty days before any dividend shall be declared hereunder, and provided that no prior holder or owner of such note, draft, acceptance or other obligation has, in respect thereto, become a party to this instrument as an assenting creditor.

Eleventh: Said assignee shall determine the amounts of the debts or claims of each of the several assenting creditors, respectively due from the debtor, that would have been provable in bankruptcy against the said debtor. Such amounts shall be computed as if payable on the day of the date hereof, adding or deducting interest, as the legal requirements of the case may be. Said assignee may for this purpose require the several assenting creditors to verify their respective claims by affidavit or other evidence satisfactory to the assignee, and may refer any disputed claim to arbitration in such manner as he may think fit, and make any compromise or agreement as to the amount thereof as he may

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think expedient.

**Twelfth:** In case any assenting creditor has any security for his debt by lien or incumbrance, except by attachment upon any part of the trust property made less than four months before the date of this instrument, said assignee shall deduct the value of such security, determined by sale or otherwise, from such debt or claim, and the balance shall be deemed for the purposes of this instrument the amount due such creditor; or said assignee may accept a surrender of such security, and ascertain the amount due without any such deduction. In case of security by attachment made less than four months before the date of this instrument upon any part of said trust property, such assenting creditor shall relinquish said attachment, or continue the same for the benefit of said assignee, and permit him to enforce the same for the benefit of the trust estate; otherwise no part of the claim secured by said attachment shall be allowed by said assignee, and such creditor shall not be entitled to any rights hereunder in respect thereof; but said assignee may, pursuant to Article Sixth above, pay any sum, for costs or otherwise, necessary to secure the relinquishment of such attachment.

**Thirteenth:** After paying from said trust property, or the proceeds thereof, all the costs, charges and expenses incurred in the execution of this trust, including counsel fees and a reasonable compensation for his own services (such compensation, in



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creditors, if any shall be made.

Fifteenth: In case a petition in bankruptcy is filed by or against said debtor within four months after the date of this instrument, and an adjudication is had in the proceedings therein, or in case a receiver is appointed therein by the Bankruptcy Court prior to adjudication, or if proceeding for relief under the bankruptcy laws hereof, and the court accepts and retains control of said proceedings, the assignee hereunder shall deliver and transfer to any such receiver or to the trustee or trustees or other person entitled thereto so much of the trust property in his hands as such receiver or trustee or trustees or such other person may be law be entitled to such sums as are necessary to pay all reasonable expenses then already incurred in the execution of this trust, including a compensation for said assignee, and to indemnify said assignee against all liabilities then outstanding arising from this trust. And thereupon the trust hereby created shall cease except as to the property, if any, not so transferred.

Sixteenth: If the debtor is a corporation, then in the event of the entry of an order within four months from the date hereof approving the filing by the debtor of a petition or answer in proceedings under the provisions of the bankruptcy laws of the United States, as amended, the assignee shall transfer and deliver such property and proceeds as may then be in his hands, excepting any property which he cannot effectually transfer, to the debtor or

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trustee or trustees or person or persons entitled thereto, reserving, however, such sums as are necessary to pay all reasonable expenses then already incurred in the execution of this trust, including compensation for said assignee, and to indemnify said assignee against all liabilities then outstanding arising from this trust. Thereupon the trust hereby created shall cease, except as to the property, if any, not so transferred.

**Seventeenth:** No assignee under this instrument, whether named herein or afterwards appointed as hereinafter provided shall be liable for more money or property than he shall actually receive, or for any act or omission of a co-assignee, if any, or of any agent or servant employed by said assignee, or in any event be liable except for his own personal and willful acts and omissions, nor shall any assignee be bound to give any bond or security for the performance of this trust.

**Eighteenth:** Any assignee under this instrument may at any time, by instrument in writing and under seal, resign his trust and, upon such resignation taking effect, as hereinafter provided, shall be relieved of all further duties, and cease to have any further powers as assignee hereunder. Any sole assignee hereunder shall, before resigning his trust, appoint a co-assignee as hereafter provided. In case of such resignation, or of a vacancy arising by death or inability to act, the remaining assignee or assignees, and, if none, then a majority in value of the assenting

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creditors, may, by instrument in writing under seal, appoint a successor to fill such vacancy. The assignee hereunder may at any time, in his discretion, in like manner appoint one or more co-assignees to act with him. Every resignation of an assignee and appointment of a new assignee shall be recorded wherever this instrument is recorded, and shall not take effect until so recorded. Upon the appointment of any person as an assignee as above provided, such person shall forthwith upon written acceptance of this trust become entitled to all the estates, interests, rights, privileges and powers, and subject to all the liabilities and duties, herein provided, solely or jointly with any other person or persons then entitled as assignee or assignees hereunder, as the case may be, without any further conveyance or deed; but any assignee ceasing to act, and the heirs, executors and administrators of any deceased assignee, shall upon written request execute any further instrument that may be deemed expedient completely to vest title in any newly appointed assignee.

**Nineteenth:** The said assignee hereby accepts the trust created by this instrument, and hereby covenants for himself and his successors and assigns, with the other parties hereto, that he will faithfully perform said trust, and that, upon ceasing to act as such assignee, he or his heirs, or executors, or administrators, will, if requested, execute at the expense of said trust estate any instruments that may be deemed expedient completely to vest their title in any newly appointed assignee or assignees.

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Twentieth: Each of the assenting creditors, becoming such as provided in Articles Eighth and Ninth above, by becoming a party hereto, and in consideration of the terms thereof, covenants to accept and take, and does accept and take, in full satisfaction and discharge of all debts and claims provable or allowable under the terms of this instrument, the sum or sums that may become payable to him hereunder, and releases said debtor from every such debt or claim, and these presents may be pleaded in bar of any proceeding to enforce any such debt or claim; and covenants, upon request from said assignee, to discontinue any suit or proceeding pending against said debtor, or to permit the assignee to prosecute the same for the benefit of his trust if he shall so elect; provided, however, that this covenant and release shall in no wise affect the liability to such creditor of any person other than the debtor liable for any such debt or claim contingently or absolutely or jointly with said debtor, or the right of said creditor to proceed or continue proceedings against such other person, but, in case the debtor is a necessary party to such proceeding, satisfaction therein shall be taken only against such other person; and provided, further, that in case of proceedings in bankruptcy as provided in Articles Fifteenth and Sixteenth above, this release and these covenants shall be void except as to the amount of any sum actually received hereunder. And each of said assenting creditors further covenants as aforesaid not to transfer, after accepting this assignment, any negotiable instrument on which the debtor is liable, without endorsing thereon a memorandum that the

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same is subject to this assignment.

Twenty-First: Addenda, if any, to this indenture, signed by the debtor and assignee are incorporated herein by reference and made part hereof. All the provisions of this instrument shall be binding on and in favor of the several heirs, administrators, successors and assigns of the several persons, partnerships, corporations, or other entities, parties hereto. In the construction of this instrument the words "debtor", "assignee" and "assenting creditors", and the pronouns referring thereto, shall be read in the singular or plural number, and in the masculine or feminine gender, or as referring to a corporation, as the facts and context may require or admit.

The word "assignee", wherever written or referred to, although expressed in singular number, shall apply to two or more assignees, and their respective heirs, executors, administrators, successors and assigns, and, in the event a corporation is assignee, shall apply to such corporation, its successors and assigns.

The word "debtor", wherever written or referred to, shall include an individual, individuals or a firm or a corporation or any other legal entity as the facts and context may require, although now in the singular number and referred to an impersonal.

IN WITNESS WHEREOF the said Hoschl Landscape Co., a division

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of Jackson Rose Corp., (debtor), and the said PERCAM, LTD., (assignee) and the assenting creditors executing this instrument have, except such as are corporations, hereunto set their hands and common seal as their own, and each of said parties that is a corporation has caused these presents to be signed in its name and behalf, by the officer of said corporation named as executing the same for it, such officer being thereunto duly authorized, this instrument being an original instrument, all of like tenor, and together constituting one indenture.

By: *Len J. Petty*  
Len J. Petty, President

STATE OF ILLINOIS )  
COUNTY OF C O O K ) SS.

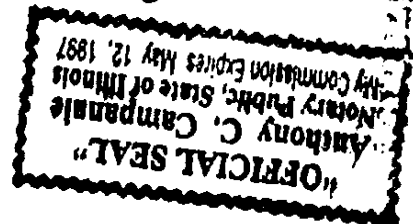
Len J. Petty, being first duly sworn on oath, and personally know by me to be the president of Hoschl Landscape Co., a division of Jackson Rose Corp., has signed this document in his capacity as president of said corporation, having been duly authorized by the Board of Directors of Hoschl Landscape Co., a division of Jackson Rose Corp., to execute this assignment.

*Anthony C. Campanale*  
Notary Public

ACCEPTED THIS 1<sup>st</sup> DAY OF JULY, 1994.

PERCAM, LTD.

BY: *[Signature]*  
Agent





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Property of Cook County Clerk's Office

525 Pfingsten

The north 100 feet of the south 1880 feet of the west 627 feet of the southwest quarter (1/2) of section four, township 42 north, range 12 east of the third principal meridian in Cook County, IL.

P.I.N. 04-04-302-036

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The last real estate appraisal we had access to did not contain the legal description of the property. The above description came from the Village of Northbrook from a 1957 document on microfilm.

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