

LANDSCAPE MAINTENANCE AGREEMENT

THIS AGREEMENT ("Agreement"), is made and entered into by and between Wyndham Ridge Homeowners Assoc. a registered Missouri non-profit corporation ("Landscape") and the **City of Columbia, Missouri**, a municipal corporation of the State of Missouri ("City") and will be effective the date of signature by the Party last executing this Agreement ("Effective Date"). The City and Landscape may be collectively referred to as the Parties and individually as a Party.

WITNESSETH:

WHEREAS, City is the owner of certain right-of-way or public lands within the corporate city limits of Columbia, Missouri located at Scott Blvd, Leighton Dr to Abbington Terrace ("Public Space"); and

WHEREAS, Landscape seeks to beautify the Public Space by designing, installing, and maintaining certain landscape and irrigation systems; and

WHEREAS, Landscape does not seek any property interest in the Public Space; and

WHEREAS, Landscape requested access to the Public Space solely to beautify it for the public benefit, and has submitted landscape and irrigation construction documents prepared by a licensed landscape architect for City review incorporated herein as Exhibit A; and

WHEREAS, the Parties seek to have Landscape, at the Landscape's cost and expense, provide the Public Space improvements and or services as shown on Exhibit A, pursuant to the applicable Codes and Regulations of the City;

NOW, THEREFORE, in consideration of the mutual covenants, promises, declarations and conditions herein provided the Parties agree as follows:

1. **Right to Access Public Space.** Subject to the issuance of all necessary permits required by City Code, City hereby grants Landscape the right to access those portions of the Public Space fully described in Exhibit A for the exclusive purpose of designing, installing, and maintaining certain landscape and irrigation systems ("Improvements"). Landscape shall not construct, reconstruct, repair, alter or grade any sidewalk, curb, curb cut, driveway or street on the public streets or rights-of-way without first obtaining and complying with any permits and conditions required by City Code. This Agreement does not grant Landscape any property interest in the Public Space.
2. **Landscape Obligations.** The Landscape agrees to construct and maintain the Improvements as approved by the City and set forth in Exhibit A at its sole cost and expense, until such time as the City executes a release from indemnification as discussed herein. Nothing herein shall interfere with the City's rights to restrict the time, place, and manner of work within the Public Space.

3. **Notice of Deficiency.** If City in its sole discretion finds that Landscaper failed to construct or maintain the Improvements in accordance with Exhibit A or law, the City may provide written notice to Landscaper listing the deficiency.
4. **Corrective Action at Landscapers Cost.** Landscaper at its sole cost and expense shall take corrective action to repair or cure any listed deficiencies within three (3) business days following receipt of any notice under section 3. In the event damage to, or failure to maintain the Improvements results in a risk to public safety, health, or welfare, (1) Landscaper shall make the repairs at its sole cost and expense within twenty-four (24) hours of receipt of City's written notice, or (2) City may choose to make repairs to the Improvements without giving any prior notice to Landscaper and will promptly invoice Landscaper for all actual costs incurred in making the repairs. Landscaper shall reimburse City for such costs within thirty days (30) of receipt of City's invoice or receipts.
5. **Duration of Agreement and Termination.** This Agreement shall remain in full force and effect in perpetuity from the Effective Date and shall be binding upon the parties and all their successors in interest. The Agreement may be freely terminated by either Party, with or without cause, at any time upon written notice to the other Party. If either Party chooses to terminate this Agreement, then Landscaper, at its sole cost and expense, shall remove the Improvements and will restore the Public Space to the condition that existed immediately prior to the Effective Date of this Agreement. City reserves the right to remove Improvements upon termination and waive any costs it deems appropriate. Termination of the Agreement under this section shall not relieve Landscaper of their duty to indemnify and hold harmless the City until released as described herein.
6. **Hold Harmless and Indemnification.** Landscaper, at its sole cost and expense, hereby agrees to indemnify, protect, release, defend (with counsel acceptable to the City) and hold harmless the City, its municipal officials, elected officials, boards, commissions, officers, employees, attorneys, and agents from and against any and all causes of action, claims, demands, all contractual damages and losses, economic damages and losses, all other damages and losses, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising out of Landscaper's use of the Public Space for the purposes set forth in this Agreement or any breach of this Agreement which results in injury to any third party, except to the extent such injury arises from or is caused by the sole or gross negligence of City, its elected officials, officers, employees, agents or contractors.
7. **Duration of Indemnification.** The indemnity, duty to defend and hold harmless provided for by this Agreement will extend from the Effective Date of this Agreement until such time as the City releases Landscaper from indemnification. Landscaper may request a release from indemnification in writing at any time. Following receipt of the Landscaper's written request, the City may execute a release from indemnification in favor of the Landscaper if in its sole discretion it determines that the Public Space is no longer being used by Landscaper, has been

restored to the condition that existed immediately prior to the Effective Date of this Agreement, and all costs to City are paid. Landscaper shall not be released under this section until the City provides written notice of release. Landscaper's obligation to indemnify, duty to defend and hold harmless shall continue for any injuries or causes of actions that occur or arise while Landscaper used the Public Space under this Agreement.

8. **Notice of Claims.** City agrees to give Landscaper written notice of any claims filed against the City in connection with this Agreement, within thirty (30) days of the date that City is aware of such claim.
9. **No Waiver for Failure or Delay to Enforce.** Exercise or waiver by City of any enforcement action under this Agreement or the City's Code does not waive or foreclose any other or subsequent enforcement action whatsoever.
10. **Amendments or Modifications.** This Agreement may be amended from time to time provided that such amendment be mutually agreed upon in writing and signed by all Parties hereto, including any future Landscaper of any part of the Property who might otherwise be obligated to perform any of the requirements imposed upon the Landscaper by this Agreement. Oral modifications or amendments of this Agreement are of no force or effect and Landscaper will not be released from any obligation to construct the Improvements by sale of any portion of the Property without the express written consent of the City and the execution of a surety which will, in the sole determination of City, adequately protect the interest of the public in the required construction and maintenance of the Improvements.
11. **Designation.** The Landscaper is an independent contractor, and nothing contained herein will constitute designation of the Landscaper or any of its employees, agents, or subcontractors as an agent or employee of the City.
12. **Notices.** All notices between the parties hereto must be in writing and will be sent by certified or registered mail, return receipt requested, by personal delivery against receipt or by overnight courier, will be deemed to have been validly served, given or delivered immediately when delivered against receipt or three (3) business days after deposit in the mail, postage prepaid, or one (1) business day after deposit with an overnight courier, and must be addressed as follows:

If to the City:
City of Columbia
City Manager
701 E. Broadway
Columbia, MO 65205

with a copy to:
City of Columbia
Director of Public Works
701 E. Broadway
Columbia, MO 65205

If to Landscaper:

with a copy to:

Each party will have the right to specify that notice is to be addressed to another address by giving to the other party ten (10) days written notice thereof.

13. **Insurance.** Any Party performing construction of improvements under this Agreement must provide, at its sole expense, and maintain during construction of any improvements related to this Agreement, commercial general liability insurance with a reputable, qualified, and financially sound company licensed to do business in the State of Missouri. The insuring company, unless otherwise approved by the City, must have a rating of not less than "A," and it must protect the insured Party, the City, and the City's officials, officers, and employees from claims which may arise from the construction operations, whether such operations are by the insured Party, its officers, directors, employees and agents, or any of its subcontractors. This liability insurance must include, but will not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from all insured Party operations, products, services or use of automobiles, or construction equipment. The amount of insurance for required herein must be in no event less than the individual and combined sovereign immunity limits established by § 537.610 RSMo., for political subdivisions; provided that nothing herein will be deemed to waive the City's sovereign immunity. An endorsement must be provided which states that the City is named as an additional insured and stating that the policy will not be cancelled or materially modified so as to be out of compliance with the requirements of this Section, or not renewed without 30 days advance written notice of such event being given to the City.
14. **Sovereign Immunity.** Nothing in this Agreement shall constitute or be construed as a waiver of the City's governmental or official immunity or its officers or employees from liability or suit pursuant to Section 537.600 RSMo.
15. **No Third Party Beneficiaries.** There are no third party beneficiaries to this Agreement.
16. **Power of the City.** Notwithstanding anything set forth in this Agreement to the contrary, no provision contained herein shall in any manner diminish or usurp the inherent rights and powers of the City to act in its capacity as a public body. All financial obligations of the City shall be subject to future appropriation of the City in accordance with applicable laws and requirements. Further, nothing herein shall relieve Landscaper from complying with all applicable laws and requirements.
17. **Authorized Employees.** Landscaper acknowledges that Section 285.530, RSMo, prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the State of Missouri. Landscaper therefore covenants that it is not knowingly in violation of Section 285.530(1), RSMo, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work on any project which is the subject of this Agreement, and that its employees are lawfully eligible to work in the United States.
18. **Inspection.** Upon reasonable prior notice, the City may conduct such periodic inspections of the Improvements herein, as may be generally provided in the applicable law or regulation for inspection thereof pursuant to comply with the

terms of this Agreement. The Landscaper shall not deny the City and its officers, employees, agents and independent contractors the right to inspect upon reasonable prior written request, all engineering or construction contracts or documents pertaining to the construction, installation, or maintenance of the Improvements.

19. **Governing Law.** This Agreement will be construed according to the laws of the State of Missouri. The Parties must comply with all local, state, and federal laws and regulations relating to the performance of this Agreement.
20. **Venue.** Any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, must be instituted only in the Circuit Court located in Boone County, Missouri.
21. **Entire Agreement.** This Agreement contains the entire and complete agreement between the City and the Landscaper with respect to the requirements imposed upon the Landscaper for the providing of the construction, installation, and maintenance of the Improvements, as described in this Agreement unless contained in a prior agreement and not expressly modified herein. Parties agree that this Agreement constitutes a lawful contract between the Parties and the Landscaper hereby acknowledges and agrees that this Agreement and the City's ordinances and regulations applicable to this Agreement constitute lawful exercises of the City's authority and police power.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day set forth below each of their signatures.

CITY OF COLUMBIA, MISSOURI

By:

John Glascock, Interim City Manager

ATTEST:

Date: _____

Sheela Amin, City Clerk

APPROVED AS TO FORM:

Nancy Thompson, City Counselor /JSC 

STATE OF MISSOURI)
) ss
COUNTY OF BOONE)

On this _____ day of _____, 2018, before me appeared John Glascock, to me personally known, who, being by me duly sworn, did say that he is the Interim City Manager of the City of Columbia, Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of the City and that this instrument was signed and sealed on behalf of the City by authority of its City Council and the Interim City Manager acknowledged this instrument to be the free act and deed of the City.

IN TESTIMONY WHEREOF, I have hereunto set by hand and affixed my official seal, at my office in Columbia, Boone County, Missouri, the day and year last above written.

Notary Public

My commission expires: _____.

LANDSCAPER:

Wyndham Ridge Homeowners Association

By: Herb Watchinski Jr

Name Printed: HERB WATCHINSKI JR

Title: PRESIDENT

STATE OF MISSOURI)
) ss
COUNTY OF Boone)

On this 5th day of November, 2018, before me, a Notary Public in and for said state, personally appeared Herb Watchinski Jr an authorized member of Wyndham Ridge Homeowners Association, Inc known to me to be the person(s) described in and who executed the above agreement and acknowledged to me that such agreement was executed as the free act and deed of such person(s) or that such person(s) executed the same as the free act and deed of such company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and state aforesaid the day and year last above written.

Pat Bess
Notary Public PAT BESS

My commission expires: June 8, 2021.

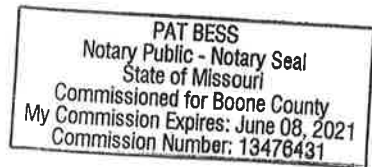


Exhibit A.

Location. The Public Space subject to the Landscape Maintenance Agreement includes the grass area between the road and sidewalk on the east side of Scott Blvd. that begins from north of Leighton Dr. and ends at Abbington Ter., as depicted in Figure 1.



Figure 1.

Landscaper obligations:

- **Seeding.** The City will seed the Public Space outlined in Figure 1 with Kentucky 31 Fescue one time in Fall 2019. Each subsequent seeding will be the exclusive responsibility of the Landscaper.
- **Maintenance.** All maintenance responsibilities in the Public Space are the responsibility of the Landscaper. Maintenance includes but is not limited to mowing the turf grass so that it does not exceed twelve (12) inches in height, trimming along the edges of the sidewalk, and complying with other City Code landscape maintenance requirements.