



First Landing
LAWN & LANDSCAPE

LANDSCAPE SERVICE AGREEMENT Terms and Conditions

LANDSCAPE SERVICES AGREEMENTS (this “Agreement”) are entered into as of the printed date of the “Agreement for Services” between First Landing Lawn & Landscape and the “Client” as indicated on the “Agreement for Services.” If Client is other than the record owner of each property where goods or services will be delivered under this Agreement, then Client is executing and entering into this Agreement on its own behalf and as duly authorized agent for the record owner(s) of those properties.

NOW, THEREFORE, Client and First Landing Lawn & Landscape mutually agree to the following terms and conditions:

1. Services.

- a.** For purposes of this Agreement: (i) the “Services” consist of the landscape maintenance, construction, irrigation, and other general landscape services described in the Agreement for Services, together with delivery or installation of any associated goods and materials, and (ii) the “Location of Service(s)” consist of the exterior landscaped areas for each of the site(s) identified in the Agreement for Services, where Services will be furnished by First Landing Lawn & Landscape. More than one Agreement for Services may be included in this Agreement, in the event of multiple Locations of Service.
- b.** During the Term (defined below), First Landing Lawn & Landscape shall furnish the Services or arrange for the Services to be furnished in accordance with applicable professional horticulture standards and any local requirements or regulations in effect, using appropriately trained, uniformed, and supervised personnel, and properly maintained equipment.
- c.** All tools, equipment, surplus materials, landscape waste materials and rubbish are the property of First Landing Lawn & Landscape and will be removed from each Location of Service after Services are completed.
- d.** Any regulated substances required to be applied as part of the Services shall be applied in accordance with applicable laws and regulations by properly licensed personnel and First Landing Lawn & Landscape shall not be held liable for the use of such substances if properly applied in accordance with applicable laws and regulations. Other materials shall be applied in accordance with the manufacturer’s directions.

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2. **Term.** The “Initial Term” of the Agreement shall commence as of the printed date on the Agreement for Services. Thereafter, this Agreement may be renewed for successive one-year periods (each, a “Renewal Term”) at the request of the Client and upon signing a new Agreement for Services. Either party may give written notice to the other party of its intent not to renew at least 30 days prior to the next renewal date. The Initial Term together with any Renewal Term, comprises the “Term.”
3. **Work Orders.** If Client requests Services from First Landing Lawn & Landscape that are not set forth in the Agreement for Services or at a worksite for which there is no Agreement for Services, then First Landing Lawn & Landscape may elect in its sole discretion to furnish such additional services and any related goods and materials pursuant to a written work authorization signed by Client (each, a “Work Order”). For services, goods, or materials furnished pursuant to a Work Order, payment shall be due from Client to First Landing Lawn & Landscape as specified by such Work Order or, if unspecified in such Work Order, then upon delivery of the services, goods, and materials identified in the Work Order (the “Work Order Charges”).
4. **Insurance.** During the Term, First Landing Lawn & Landscape will maintain general liability insurance, automobile liability insurance and workers’ compensation insurance covering its activities in connection with the Services and any Work Order. Such insurance shall be in commercially reasonable amounts. Evidence of such insurance will be provided to Client upon request.
5. **Cooperation.**
 - a. Client will cooperate with First Landing Lawn & Landscape to facilitate the Services and will permit or schedule adequate access to the Location of Service as required to perform the services safely, efficiently, and within any specified time frames. Client will notify First Landing Lawn & Landscape in writing of any limitation of access to the Location of Service as soon as possible, and in any event at least 48 hours to any scheduled delivery of services, goods, or materials.
 - b. If required, Client will provide water with adequate spigots or hydrants or such other items as identified on the Agreement for Services.
 - c. Client shall provide written notice to First Landing Lawn & Landscape of any proposed change in the ownership or management of the Location of Service at least 30 days prior to the effective date of any such change. A change in the ownership or management of the Location of Service shall not relieve client of its obligations hereunder, including but not limited to the payment of the Service Fee and any amounts due to First Landing Lawn & Landscape with respect to any Work Order, unless Client shall have given proper notice of termination pursuant to this Agreement.
6. **Service Fee.**
 - a. For Services performed pursuant to this Agreement, Client shall pay First Landing Lawn & Landscape an annual Service Fee equal to the Agreement Total shown on the Agreement for Services, subject to adjustments as described below.
 - b. Client shall pay the Service Fee to First Landing Lawn & Landscape in advance through monthly payments according to the schedule of Monthly Installments as indicated on the Agreement for Services. Service Fee is due upon receipt if Client is invoiced weekly, or payable in advance if Client chooses 9 equal monthly

installments, beginning in the month of February. Monthly invoices will be dated on the 15th of the month prior to the month for which Services are to be performed, and payments are due no later than the 1st calendar day of the month for which Services are to be performed. Overdue Service Fees or Work Order Charges shall be subject to an administrative charge equal to the lower of: (i) 1.5% per month (18% per year) and (ii) The highest rate permitted by law, in either case multiplied by the unpaid balance. In addition to this administrative charge, client shall reimburse First Landing Lawn & Landscape for all costs and expenses (including but not limited to attorneys' fees and court costs) which are reasonably incurred by First Landing Lawn & Landscape in collecting overdue Service Fees, Work Order Charges, and administrative charges.

- c. The parties hereby acknowledge that, notwithstanding the Service Fee, the monthly installment plan, and any billing information schedule hereto, the types and frequency of services, goods, and materials furnished each month throughout the year may vary according to seasonal requirements and best horticultural practices. The monthly installment plan is implemented for Client's convenience of payment only and do not necessarily reflect the actual cost or value of Services performed during any particular month or other billing period. If this Agreement is terminated for any reason on a date other than a renewal date, then all sums paid by Client to First Landing Lawn & Landscape for Services performed since the most recent renewal date shall be subtracted from the time and materials value (as determined in good faith by First Landing Lawn & Landscape) of Services performed since that date and if the result is a positive number (a "Shortfall"), the Shortfall shall become due and payable and Client shall promptly pay such Shortfall to First Landing Lawn & Landscape. A Shortfall is not liquidated or other damages arising from a termination of the Agreement but represents the portion of the charges for Services performed prior to but unpaid by Client as of the Termination Date. For the avoidance of doubt, in no event will a Shortfall invoice to the Client exceed the total amount that would have been received by First Landing Lawn & Landscape had the terminated Agreement continued uninterrupted until the end of its then current term.

7. Termination.

- a. Either First Landing Lawn & Landscape or Client may terminate this Agreement without cause upon 30 day's prior written notice to the other party.
- b. If either party materially breaches the terms of this Agreement and fails to cure such breach within 30 days after written notice from the non-breaching party specifying such breach, then the non-breaching party may elect to immediately terminate this Agreement by written notice to the breaching party. In addition to and without limiting the foregoing, if Client fails to timely pay any Service Fees, Work Order Charges, or administrative fees due under this Agreement, then First Landing Lawn & Landscape may elect in its sole discretion to (i) delay or cancel Services without further notice to Client and/or (ii) immediately terminate this Agreement upon written notice to Client.
- c. Either First Landing Lawn & Landscape or Client may immediately terminate this Agreement upon written notice to the other party if (i) the other party makes an

assignment for the benefit of creditors, (ii) a petition of bankruptcy is filed by or against the other party or (iii) all or substantially all of the other party's property is levied upon or scheduled to be sold in a judicial proceeding.

8. Indemnity.

- a.** First Landing Lawn & Landscape hereby agrees to indemnify, defend and hold harmless Client and its members, agents and affiliates from and against any and all claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgments and awards, and costs and expenses (including without limitation, reasonable attorney's fees and court costs), incurred by Client or its members, agents and/or affiliates, and arising directly or indirectly, in whole or in part, out of (a) the gross negligence or willful misconduct of First Landing Lawn & Landscape in connection with First Landing Lawn & Landscape's performance of the Agreement for Services.
- b.** Client hereby agrees to indemnify, defend and hold harmless First Landing Lawn & Landscape and its members, agents and affiliates from and against any and all claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgments and awards, and costs and expenses (including without limitation, reasonable attorney's fees and court costs), incurred by First Landing Lawn & Landscape or its members, agents and/or affiliates, and arising directly or indirectly, in whole or in part, out of (a) the gross negligence or willful misconduct of Client or any of its members, agents or affiliates in connection with Client's performance of its duties and obligations under this Agreement.
- c.** The provisions of Sections 8a and 8b shall survive completion of First Landing Lawn & Landscape's performance of Services hereunder, the expiration of the Agreement or any Agreement for Services or Work Order, or any earlier termination of this Agreement or any other Agreement for Services or Work Order(s).

9. General Provisions.

- a.** First Landing Lawn & Landscape will at times perform Services and any Work Order in accordance with all applicable workplace safety requirements and standards promulgated by federal and local authorities. First Landing Lawn & Landscape will not at any time provide safety evaluation, inspections, or consulting services under this Agreement or any Work Order for the benefit of Client or any third party and, consequently, Client shall not rely on First Landing Lawn & Landscape to provide such safety related services at any time. Further, First Landing Lawn & Landscape does not and will not at any time provide representations, warranties, or assurances as to the safety, including as it relates to First Landing Lawn & Landscape's use of chemicals during Service, (or lack of safety) of any Location of Service or Work Order site with respect to periods before, during, or after Services are performed or Work Order services are performed and, consequently, Client shall not rely on First Landing Lawn & Landscape to provide any such assurances at any time. If Client desires safety evaluation, inspection, or consulting services, or safety representations, warranties, or assurances, then First Landing Lawn & Landscape and Client may execute and enter into a separate written agreement whereby First Landing Lawn & Landscape will assist Client for

an additional fee only in identifying (without recommending) third party service providers that Client may then, in Client's sole discretion, elect to engage independently to obtain safety services and/or assurances.

- b.** This Agreement shall be governed by the laws of the state where the Services are furnished. If Services are furnished in more than one state, then the laws of the State of Ohio will govern this Agreement, except with regard to its conflicts of laws doctrines. Both parties expressly agree that any and all legal proceedings arising under this Agreement will be brought exclusively in the state and federal courts located in the State of Ohio.
- c.** Neither party may assign this Agreement without the prior written consent of the other party; provided, however, that consent shall not be required to assign this Agreement to any company which controls, is controlled by, or is under common control with First Landing Lawn & Landscape or in connection with assignment to an affiliate or pursuant to a merger, sale of all or substantially all of its assets or equity securities, consolidation, or change of control or corporate reorganization. This Agreement is binding on, and inures to the benefit of, the parties hereto (including the record owner of the Location of Service if other than Client) and their respective heirs, legal representatives, successors and assigns.
- d.** This Agreement, together with any billing information and schedule, scope of work, Services, Work Order(s) hereunder, and any other schedules and exhibits hereto, constitute the entire agreement of the parties with respect to the Services and Work Orders and supersedes all prior contract or agreements with respect to the Services or Work Orders, whether oral or written.
- e.** Except as otherwise provided herein, this Agreement may be amended or modified from time to time only by a written instrument executed and agreed to by both Client and First Landing Lawn & Landscape.
- f.** The waiver by Client or First Landing Lawn & Landscape of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other or subsequent breach by Client or First Landing Lawn & Landscape of such provision or any other provision.
- g.** First Landing Lawn & Landscape's Total liability for any losses, damages, and expenses of any type whatsoever incurred by Client or any of its affiliates, guests, tenants, invitees, and lessees ("Losses"), which are caused by wrongful acts or omissions of First Landing Lawn & Landscape in connection with, or related to, First Landing Lawn & Landscape's performance of the Services, shall be limited solely to proven direct and actual damages in an aggregate amount not to exceed the amounts actually paid to First Landing Lawn & Landscape hereunder. In no event will First Landing Lawn & Landscape be liable for special, indirect, incidental or consequential damages, irrespective of the form or cause of action, in contract, tort or otherwise, whether or not the possibility of such damages has been disclosed to First Landing Lawn & Landscape in advance or could have been reasonably foreseen by First Landing Lawn & Landscape. Further, First Landing Lawn & Landscape shall not be liable for any Losses resulting from the provision of Services or performance of any Work Order hereunder, if such Losses are due to causes or conditions beyond its reasonable control, including but not limited to

Losses in any way related to or associated with state or local water regulations or mandates or First Landing Lawn & Landscape's compliance or good faith efforts to comply with state or local regulations or mandates.

- h.** Any dispute or controversy arising out of or related to this Agreement shall be submitted to binding arbitration in the state of Ohio, upon the delivery by one party to the other of a notice specifying the nature of the dispute or controversy and demanding that the matter be sent to arbitration (the "Arbitration Notice"). The arbitrator will be one person who shall be independent of the parties. The arbitrator shall be selected by agreement of the parties to the dispute from a list of proposed arbitrators. The Arbitrator shall award to the prevailing party, if any, the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration. If the Arbitrator determines a party to be the prevailing party under circumstances where the prevailing party won on some but not all of the claims and counterclaims, the Arbitrator may award the prevailing party an appropriate percentage of the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration. Judgment on the award may be entered in any court having jurisdiction.
- i.** First Landing Lawn & Landscape's performance will be excused without penalty to the extent First Landing Lawn & Landscape is unable to perform as a result of accidents, acts of God, extreme weather conditions, inability to secure labor and/or products, fire, earthquake and rules, regulations or restrictions imposed by any government or governmental agency, or other delays or failure of performance beyond the commercially reasonable control of First Landing Lawn & Landscape. for purposes of this agreement, the parties agree specifically that water conservation regulations or guidelines are specifically included within the above referenced regulations or restrictions, and that First Landing Lawn & Landscape shall not be liable for any failure to perform as a direct or indirect result of First Landing Lawn & Landscape's compliance with or good faith efforts to comply with state or local regulations or mandates.

First Landing Lawn & Landscape and Client agree to all the terms and conditions set forth in this Agreement, including any schedules and exhibits, as of the date set forth in the Agreement for Services.

By signing the Agreement for Services, the Client signatory hereby represents and confirms that it has full power and authority to enter into this Agreement on its own behalf and on behalf of the record owner of each Location of Service, and that this Agreement is a legally binding obligation of the undersigned and the record owner of each Location of Service.