

STATE OF ALABAMA  
COUNTY OF MONTGOMERY

**SERVICE AGREEMENT**

This agreement (herein “Agreement”) made this \_\_\_ day of \_\_\_\_\_, by and between the Wynlakes Residential Homeowners Association, Inc. (herein after referred to as “HOA”) and Wynlakes Golf & Country Club, LLC (herein after referred to as the “Company”).

**WITNESSETH THAT:**

**WHEREAS,** HOA is a residential homeowners association for the Wynlakes subdivision (herein “Wynlakes”) located on Vaughn Road in Montgomery, AL, which subdivision is more specifically shown on the map attached hereto as Exhibit “A”; and

**WHEREAS,** Company is experienced in the business of landscape maintenance and related services; and

**WHEREAS,** HOA and Company desire to enter into this Agreement whereby Company will perform specific landscape maintenance services at Wynlakes.

**NOW, THEREFORE,** for and in consideration of the sum of Ten and 00/100 Dollars (\$10.00) and of the covenants, terms and conditions hereinafter contained, the parties hereto understand and agree as follows:

- 1. Services.** Company shall provide to HOA those specific services (herein referred to as “Services”) more specifically described and detailed in Exhibit “B” entitled “Services”, attached hereto, made a part hereof and incorporated herein.
- 2. Compensation.** Company’s compensation for the Services during the Term (as hereinafter defined) shall be paid monthly by the HOA as follows:

January 1, 2017 through March 30, 2017	\$24,408.00/month
April 1, 2017 through June 30, 2018	\$27,240.00/month
July 1, 2018 through December 31, 2019	\$28,057.00/month

All payments shall be due on the last business day of the month.

Notwithstanding anything to the contrary contained herein, Company and HOA understand and agree that services by Company not included within the scope of Exhibit B shall be defined as “Additional Services” and Company will be compensated separately for those in accordance with Section 21 of this Agreement.

3. **Term and Commencement Date.** The term (herein “Term”) of this Agreement shall be thirty six (36) months commencing on January 1, 2017 (herein Commencement Date) and expiring on December 31, 2019.
4. **Independent Contractor.** The parties hereto understand and agree the relationship between HOA and Company is contractual and that the Company is an independent contractor. Company shall not become, by reason of its performance hereunder, an agent or employee of HOA and no joint enterprise or partnership is intended by this Agreement. Company, its agents and employees, and the agent and employees of its subcontractors, subsidiaries and affiliates shall not become agents, servants or employees of HOA by virtue of this Agreement.
5. **Insurance.** Company agrees to obtain, pay for and maintain at Company’s expense the following insurance:
  - a. Coverage at least broad as the current ISO Commercial General Liability form CG0001 with combined single limits not less than \$1,000,000, including, but not limited to, blanket contractual liability, HOA’s and contractor’s protective liability, personal injury, products liability, completed operations and broad form property damage.
  - b. Automobile Liability Insurance with combined single limits not less than \$1,000,000 for owned, non-owned, leased and hired vehicles.
  - c. Workmen’s Compensation Insurance in the statutory amount and employer’s liability in an amount not less than \$500,000.

All such insurance shall be in the name of the Company and such insurance shall be issued by a financially responsible company or companies licensed to do business in the State of Alabama with an A.M. Best Company rating of at least A-VIII. The insurance shall not be subject to cancellation except after ten (10) days prior written notice to HOA. Certificates evidencing the above insurance coverage and conditions must be furnished by Company to HOA prior to commencing the Services hereunder. HOA shall be named as an additional

insured for the above referenced liability insurance. Such insurance shall be primary and noncontributory and contain a waiver of subrogation in favor of HOA.

In the event that any policy furnished by Company provides for coverage on a “claims made” basis, the retroactive date of the policy shall be the same as the effective date of the Agreement, or such other date, as to protect the interest of HOA. Furthermore, for all policies furnished on a “claims made” basis, Company’s providing of such coverage shall survive the termination of the Agreement and the expiration of any applicable warranty period, until the expiration of maximum statutory period of limitations in the State of Alabama for actions based in contract or in tort. If coverage is on an “occurrence” basis, such insurance shall be maintained by Company during the entire term of the Agreement.

6. **Indemnification.** To the fullest extent permitted by law, the Company agrees to protect, defend, hold harmless, and indemnify the HOA, its directors, officers, and employees (hereinafter referred to as “indemnitees”) from and against all claims, actions, liabilities, damages, losses, costs and expenses (including attorney’s fees) arising out of or resulting from the performance of work of the Company, provided that any such claim, damage, loss or expense (a) attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (b) is caused in whole or in part by the negligent act or omission of the Company. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.
7. **Default.** A failure by Company to observe and perform any provision of this Agreement and if such failure continues for fifteen (15) business days after written notice thereof to Company by HOA, shall constitute a default and breach of this Agreement.

In the event of any such default, then, in addition to any other remedies, HOA shall have the option to terminate this Agreement and all rights of the defaulting party hereunder, by giving written notice of such termination. If any early termination shall occur as herein provided, Company shall only be entitled to the compensation earned up to the date of such termination. Notwithstanding the above, in the event Company cures said default within fifteen (15) business days after receipt of said notice, or, if the default cannot be cured within fifteen (15)

business days, then provided the Company has promptly commenced curative measures, then the default shall be deemed cured and HOA shall not have the right to cancel this Agreement.

8. **Notice.** All notices, statements, demands or other communications (hereinafter) referred to as “notices” to be given under or pursuant to this Agreement shall be in writing addressed to the parties at their respective addresses as provided below, and shall be delivered in person, by certified or registered U.S. Mail, postage prepaid, or by a nationally recognized overnight courier and such notice shall be deemed to have been given twenty-four hours after the date of mailing. The addressess of the parties to which such notices are to be sent are as follows:

If to HOA: Wynlakes Residential Homeowners Association, Inc.  
Park Place Center, Suite 114  
8650 Minnie Brown Road  
Montgomery, Alabama 36117  
Attn: Linda Morgan, General Manager

If to Company: Wynlakes Golf & Country Club, LLC  
7900 Wynlakes Boulevard  
Montgomery, Alabama 36117  
Attn: Brent Krause, General Manager

With Copy to: Jim Wilson & Associates  
2660 Eastchase Lane, Suite 100  
Montgomery, Alabama 36117  
Attn: Carl Bartlett

Any party may from time to time change its address for receipt of notices by sending a notice to the other party specifying the new address.

9. **Assignability.** This Agreement shall not be sold, assigned, transferred, mortgaged, hypothecated, encumbered or otherwise alienated or anticipated or otherwise disposed of, by operation of law or otherwise by Company.
10. **Successors.** The provisions of this Agreement, subject to the terms and conditions hereof, shall be binding upon and inure to the benefit of the permitted successors and assigns of the parties.

11. **Modifications.** There shall be no modification to this Agreement except in writing signed by the parties hereto.
12. **Extent of Agreement.** This Agreement represents the entire and integrated Agreement between the parties and supercedes all prior negotiations, arrangements, representations or agreements whether written or oral.
13. **Captions.** The captions set forth herein are for convenience only and do not affect the meaning of any of the terms of this Agreement.
14. **Compliance with Legal Requirements.** Company shall take all action necessary to comply with all laws, ordinances, orders or requirements affecting its service hereunder by any federal, state, county or municipal authority having jurisdiction there over. Company, upon request by HOA, shall provide HOA with copies of required business licenses.
15. **No Waiver.** The failure of HOA to insist upon the strict performance of any provision of this Agreement, or the failure of HOA to exercise any right or remedy hereby reserved shall not be construed as a future waiver of any such provision, right, option or remedy or as a waiver of a subsequent breach thereof.
16. **HOA Cooperation.** HOA agrees that it will act diligently and in good faith and will cooperate fully with Company in all matters relating to Wynlakes. HOA will act as expeditiously as possible on all requests by Company for approvals required hereunder. In exercising its right or approval, HOA agrees to act reasonably and in good faith.
17. **Authorized Representative.** Any consent, approval, authorization or other action required or permitted to be given or taken under this Agreement by HOA or Company, as the case may be, shall be given or taken by one or more authorized representatives of each. For purposes of this Agreement, the authorized representatives of the HOA shall be any one or more of the following:

**General Manager of the Association**  
**President of the Board**

and the authorized representatives of the Company shall be any one of the following:

**Golf Course Superintendent  
General Manager of Wynlakes Golf & Country Club**

Any party hereto may from time to time designate other or replacement authorized representatives by written notice from one of its authorized representatives to the other party hereto. The written statements and representations of any authorized representative of the HOA or Company shall be binding upon the party for whom such person is the authorized representative, and the other party hereto shall have no obligation or duty whatsoever to inquire into the authority of any such representative to take any action which he proposes to take.

18. **Severability.** If any term, covenant, or condition of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, other than those as to which has been held invalid or unenforceable, shall not be effected thereby and each remaining term, covenant, or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

19. **Construction.** This Agreement shall be interpreted and construed in Accordance with the laws of the State of Alabama. The titles of the sections and the subsections herein have been inserted as a matter of reference only and shall not control or affect the meaning or construction of any of the terms or provision herein.

20. **Exhibits.** Attached hereto and made a part hereof are the following exhibits:

- a. Exhibit A- Exhibit A is a map of the Wynlakes subdivision. Common areas owned by the HOA are highlighted in yellow and referred to in this Agreement as “Common Areas.”
- b. Exhibit B- Exhibit B is the Schedule of Services to be undertaken and performed by the Company pursuant to this Agreement. Also shown in detail are the HOA Common Areas subject to specific landscape requirements and a brief description of work associated with each.

21. **Additional Services.** The parties hereto contemplate that additional services over and above the scope of Exhibit B may be requested by HOA. For purposes of this Agreement, “Additional Services” shall be defined as work requested by HOA that is not specifically included in the scope of services outlined in Exhibit B. Such Additional Services shall include, but is not limited to, repairing seasonal décor, storm clean-up, and lake clean-up due to “fish kills.” When the need occurs for Additional Services, HOA shall request the assistance of Company and specify

the Additional Services requested. Company shall provide a good faith estimate of the cost of said Additional Services for review and approval by HOA. Upon confirmation of HOA approval of cost, Company shall commence the Additional Services requested. Upon completion, Company shall invoice HOA for the Additional Services, said invoice is to be due and payable within thirty (30) days.

**IN WITNESS THEREOF**, the parties hereto have caused this Agreement to be executed on the day and year first above written.

**HOA:** Wynlakes Residential Homeowners Association, Inc.

**BY:** \_\_\_\_\_

**ITS:** \_\_\_\_\_

**COMPANY:** Wynlakes Golf & Country Club, LLC

**BY:** \_\_\_\_\_

**ITS:** \_\_\_\_\_

## Exhibit B

### SPECIFICATIONS

#### SECTION 1- GENERAL

1. Services provided will include labor, material, and equipment for the care and maintenance of all planted trees, shrubs, ground covers, lawn areas, seasonal color, and mulch/pine straw areas within the Common Areas of Wynlakes as shown in Exhibit A of the Agreement. Maintenance service requests of Company by HOA beyond the scope of Exhibit B will be considered additional *services* as defined in Section 21 of the Agreement, the costs of which shall be invoiced to HOA in accordance with pricing agreed upon in writing by both parties. Company will provide new landscaping or renovation of existing landscaping after receipt of written acceptance from HOA of a formal proposal describing work required and cost of work to be performed.
2. Policing, as defined in Section 7 of this Exhibit B, of the Wynlakes neighborhood will be provided so as to include the streets, sidewalks, retention ponds, detention ponds, lakes and Common Areas of Wynlakes as shown in Exhibit A of the Agreement.

#### SECTION 2- MOWING and EDGING

1. Bermuda lawn areas shall be mowed generally to a height of 2"-3" commensurate with the health and overall vitality of the turf with respect to seasonality. Excessive grass clippings are to be removed from turf areas. No grass clippings or windrowing is to be visible upon completion of mowing.
2. Rotary type mowers designed for commercial use shall be used unless conditions require smaller sized equipment to be used.
3. All grassed Common Areas shall be mowed at a frequency necessary to maintain the specified height(s).
4. Mowing patterns shall be changed periodically during the growing season.
5. Contiguous to Common Areas of Wynlakes, the Company shall neatly edge along adjacent sidewalks, beds, and lakes in concert with mowing operations. Flower beds and mulch or pine straw mounds shall be edged no less than bi-weekly (every other week/twice a month). Company shall edge and trim around trees, mounds, and building structures. All shapes and configurations of plant beds shall be maintained. A clean trench line shall be provided between grass and mulch or pine straw areas.



### **SECTION 3- SEASONAL COLOR**

1. The Company shall be responsible for bed preparations and the furnishing, and installing of the seasonal color with coordination with the HOA General Manager.
2. Color changes shall occur two (2) times per year—in the Spring and Fall.
3. The Company shall be responsible for annual color maintenance operations including pinching back, deadheading, fertilization, plant replacement, and fungicide and pesticide applications. Monthly drenching will be performed as necessary.
4. Annual color plants lost due to lack of proper maintenance will be replaced with no additional cost to the HOA.
5. Annual plants used in seasonal color installations shall be 80% in bloom upon delivery, free of insects and disease, uniform in height, size and with a fully developed root system.
6. The Company will provide a detailed description of the proposed seasonal planting schedule/plan one (1) month prior to installation for HOA approval.

### **SECTION 4- SAFETY**

1. All materials and performance of work shall meet all current federal, health, and safety laws.
2. All chemicals used in performance of this Agreement will carry an EPA approval number and be applied by certified employees when required.
3. The Company shall provide and require protective clothing and gear during any operation as required or directed by applicable laws, regulations or ordinances, and directions of the manufacturers of the material and/or the equipment being utilized.
4. All equipment shall be properly maintained.
5. The Company shall adequately protect workers, adjacent property, and the public.

### **SECTION 5- FERTILIZATION AND WEED CONTROL**

1. Fertilizer shall be commercial grade with a WIN (water insoluble nitrogen) value of not less than 60% unless approved otherwise by HOA.
2. Turf shall be fertilized two (2) times per year and shall be accomplished by uniformly distributing the materials with a mechanical spreader while using a cross pattern.
3. Shrubs and trees shall be fertilized two (2) times each year.
4. Weed control will be included with the fertilization program and shall include both pre- and post-emergent applications.
5. This Agreement contains no provisions for aquatic vegetation management or eradication/control of various forms of aquatic algae. Application(s) of aquatic weed control shall be applied if requested as an “Additional Service” by the HOA.

## **SECTION 6- PRUNING**

1. All trees and shrubs shall be pruned or thinned once per year to adequately maintain vigor, health and attractive shape with respect to the intended character of the plant.
2. Trees shall be pruned to a height of twelve (12) feet as part of this Agreement during the winter months to remove diseased, dying or dead branches, crossing branches, low hanging branches, or any branches that might present a safety hazard.
3. Suckers and water sprouts shall be removed as many times as necessary to maintain trunks free of extraneous growth.

## **SECTION 7- POLICING**

1. The streets and Common Areas of Wynlakes shall be policed seven days (7) days per week (except on national, state, and local holidays).
2. All storm drains, ditches, culverts, etc. within the limits of work will be kept free of litter which could obstruct proper water flow.
3. Policing is defined as pick-up and removal of leaves, litter, trash, and debris.
4. Blowers may be used by the Company to clear streets, sidewalks, curbs, and gutters of organic matter accumulation caused by Company's maintenance operations.
5. Leaf season clean-up shall be conducted by the Company from the beginning of Fall through the winter months. This process may be performed by blowing the leaves into a collection area and then vacuuming (removing) them with the appropriate equipment.
6. Clean-up of fallen trees, debris, etc. will be conducted as soon as practicable following severe weather. The Company agrees to coordinate with the City of Montgomery and the HOA to minimize expense to the HOA. Further, the Company shall be exempt from any cost to repair damage caused by Acts of Nature, such as wind, storm, hail, fire, flood and freezing. Vandalism and theft are considered some other willful acts over which the Company has no control and shall be exempt. Storm clean-up and vandalism are considered Additional Services beyond the scope of Exhibit "B" of this Agreement. This work will be billed at a rate of \$15 per hour per employee pending approval of labor cost estimates by HOA.
7. Clean-up of vandalism, storm, and accidents will be performed promptly after HOA approval of the Additional Service.

## **SECTION 8- MISCELLANEOUS SERVICES**

1. Mulching will be applied to all trees, shrubs, beds, ground cover, and seasonal color areas; heretofore identified in Exhibit "A" of this Agreement. Pine straw may be substituted around trees, shrubs and in beds or mounds with trees only. Common Areas

will have mulch or pine straw applied twice a year. Mulch will be applied at a minimum depth of three (3) inches and pine straw applied at a depth of four (4) inches.

2. Any mulch or pine straw build-up will be removed from beds during new applications, and the old material will be removed from the HOA property.
3. Beds with seasonal color will receive monthly touch up applications during required maintenance outlined in SECTION 3.
4. The Company shall be responsible for the operation and management of the HOA irrigation systems. All trees, shrubs, ground covers, seasonal color, and lawns shall be checked weekly for dryness. The Company shall thoroughly water each plant or planted area until the area is thoroughly saturated, either by hand watering or manual adjustment of the site irrigation system(s). If the irrigation system is used for this operation, or adjustments made to the system, the Company must notify the HOA.
5. The Company is responsible for setting, monitoring, and performing periodic inspections of irrigation time clock(s) and system(s).
6. The Company will monitor seasonal variations in precipitation and soil moisture content. The Company will ensure the function of the irrigation system is providing the necessary coverage and volume to preclude issues with HOA Common Areas and plantings therein.
7. The Company will notify the HOA for approval prior to repairing, or making changes to the irrigation system(s) that might cause additional costs to be incurred by the HOA.
8. The Company agrees to observe and report any malfunctioning fountains to the HOA for repair.
9. Lake island vegetation will be cut as necessary to maintain a maximum of six (6) inches in height and a uniform appearance.
10. Bush Hogging shall be conducted in the following locations:
  - a. Common Area at the end of Rosalie Drive (Rosalie)
  - b. Common Area adjacent to the Wyndridge subdivision at Old Marsh Road (Lake 4)
  - c. Common Area near Pinecrest Entrance (Pinecrest Entrance)Bush hogging shall be performed in April, June, August, and October at the above locations. Specifications will be as indicated on the Detail Diagrams (identified in parentheses above).
11. The company will install provided Holiday décor as part of this Agreement at locations determined by HOA. These decorations are to be installed and operational the day after Thanksgiving and removed no later than ten (10) days after Christmas. Any additional cost or expenses related to installation or take-down of these decorations must have prior approval of the HOA.
12. The Company agrees to clean/pressure wash the neighborhood Monument signs. This service is to be performed to remove volunteer plant growth, dirt, mold and mildew only. Efflorescence treatment/removal is not a specification for this Agreement. The monument signs addressed in this item are as follows:
  - a. Vaughn Road Entrance

- b. Brittany Place- clean/pressure wash columns (2) on each side of entrance
  - c. Oak Alley
  - d. Seven Oaks
  - e. Wynchase
  - f. Wyncrest (additionally spray brick entrance road)
  - g. Heathrow Downs- spray brick pavers and columns (2) at entrance to roundabout
13. The Company agrees to provide an annual schedule of work items to be conducted under this Agreement within thirty (30) days of execution, and no later than the first Tuesday in December of succeeding years through the term of this Agreement.
14. The Golf Superintendent agrees to meet weekly with the HOA Manager April through September; and bi-monthly October through March to review schedules and performance. Additionally, superintendent agrees to submit weekly work reports to the HOA Manager for work confirmation and quality assurance.
15. The General Manager of the Wynlakes Golf & Country Club agrees to meet monthly with the President of the HOA to address any issues regarding performance or enhancements of this Agreement.