

Automatic Snow and Ice Removal Agreement

This AGREEMENT, made this 1st day of December 2003, at 3355 Bald Mountain Rd., Suite 55, Auburn Hills, MI, by and between Hills of Waterford Condominium Association of Michigan, a Michigan Non-Profit Corporation, (hereinafter referred to as "Association") and Durocher Landscape, Inc (hereinafter referred to as contractor).

WITNESSETH:

WHEREAS, Association desires to engage Contractor for Automatic Snow and Ice Removal.

Now Therefore, Association and Contractor mutually agree as follows:

1. **Consideration:** Upon the terms and conditions hereinafter set forth, association, hereby agrees to pay to Contractor the sum of \$31,500.00 over the next 3 years (\$10,500.00 for 03/04, \$10,500.00 for 04/05 & \$10,500.00 for 05/06) the following services set forth hereinbelow.
2. **Duties of the Contractor:**

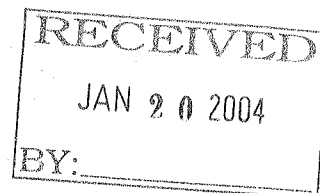
During the term of this agreement, (December 1, 2003 through April 30, 2006) Contractor shall perform the following services for the Association.

 - A. Contractor agrees and promises to provide the following services for Association: Automatic Snow and Ice Removal on all roadways and subdivision entrances. Salting application at contractor's discretion to assure against slip and fall injuries, unless notified otherwise in writing by Association. Rock Salt will be included on asphalt surfaces. Calcium Chloride will be included on cement surfaces. Contractor will regularly inspect the property and notify management of any problems beyond contractor control. Snow removal to begin after 1 1/2" inches of snow has fallen. Snow and ice removal to be completed before 6:00 a.m. Snow Removal Service Tickets (SRST) must be completed and left on site at location specified by the Association.
 - B. Contractor shall provide said services in accordance with Contractor's proposal and Association's specification requirements (if any) attached hereto which are incorporated by reference and are specifically made a part hereof. In the event that any terms of the Contractor's proposal are in conflict with the Association's specification requirements, the Association's specification requirements shall be controlling.
 - C. Contractor promises and agrees to perform and furnish all services, materials, labor, tools, equipment, transportation and all other items reasonably required to undertake and complete all services required thereunder according to the general conditions of this Agreement and specifications attached, prepared or approved by the Association.
 - D. Contractor shall obtain all necessary approvals, permits, bonds, inspections, and licenses from the appropriate governmental bodies and shall promptly pay any and all fees so required there under to fulfill its contract with the Association: and any violations, or the failure to obtain such approval or licensing or failure to pay fees including, but not limited to regulatory or inspection fees, fines, bonding or insurance requirements shall be the sole responsibility of the Contractor in which Contractor agrees and promises to indemnify and hold harmless Association therefore.
 - E. Contractor shall not commence work under this Agreement until obtaining all insurance required under this Paragraph and such insurance has been approved by the Association, nor shall contractor allow any sub-contractor to commence on his sub-contract until all similar insurance required of the sub contractor has been so obtained and approved by the Association.
 - a. The Contractor shall take out and maintain, during the life of this Agreement, Worker's compensation Insurance for all his employees employed at the site of the project, and in case work is sublet, the Contractor shall require sub-contractors to similarly provide Worker's compensation Insurance for all latter employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous work under this Agreement at the site of the project is not protected under the Worker's Compensation Statute, the Contractor shall

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cause each sub-contractor to provide contingent liability for the protection of these employees not otherwise protected.

- b. Contractor shall take out and maintain during the life of this Agreement such public liability and property damage insurance as shall protect him and any sub-contractor, performing work covered by this agreement, from claims for property damage which may arise from operations under this Agreement, whether such operation be performed by himself or any sub-contractor or by anyone directly or indirectly employed by either of them, and the amount of such insurance shall be as follows: Public Liability Insurance in an amount not less than \$500,000.00 the same limit for each person in an amount not less than \$500,000.00 on account of one accident and property damage insurance in an amount of not less than \$500,000.00
- c. The Contractor shall require sub-contractors, if any are not protected under Contractor's insurance policies, to take out and maintain insurance as follows:
 - i. **Public Liability Property Damage Insurance**-Public Liability Insurance in an amount not less than \$500,000.00 for injuries, including accidental death by any person, and subject to the same limits for each person, in an amount not less than \$500,000.00 on account of one accident and property damage insurance in an amount not less than \$500,000.00.
 - ii. Insurance covering special hazards. In the event the work contemplated in this Agreement requires insurance covering special hazards, the Contractor shall furnish same in an amount satisfactory to the Association.
 - iii Contractor shall furnish Association with satisfactory proof of the insurance required.
- F. Contractor agrees and understands that the performance of all the conditions and specifications herein made reference to must be completed to the satisfaction of Association or its agents. Failure to perform in accordance with said satisfaction shall entitle Association to terminate the Agreement without liability upon 14 days written notice to Contractor, subject to the provisions of Paragraph 3c herein (infra).
- G. Contractor shall indemnify and hold Association harmless from any and all costs, damages, expenses and claims that may arise by reason of any actions or omissions in performance of this Agreement on the part of Contractor, its agents, sub-contractors, or employees. In case any action is brought therefore against Association or its agents, Contractor shall assume full responsibility for the defense thereof, and upon its failure to do so on written notice, Association reserves the right to defend each action and to charge all costs thereof to Contractor.
- H. Contractor agrees that in the event that performance of this Agreement entails services to be provided in the late evening or early morning hours, said services will be performed in a manner so as to not unreasonably interfere with the peace and quiet of the co-owners and not constitute a nuisance to same.
- I. During the term of this agreement or upon completion of the provision of services, Contractor promises and agrees to forthwith clean-up all work areas, remove all debris and restore the premises as near

Paragraph 2E herein) as soon as reasonably possible, and shall be completed on or before April 30, 2004, unless otherwise terminated according to the provisions of this Agreement.

- N. Contractor acknowledges and agrees that all tax liabilities of Contractor or any sub-contractor thereunder are solely the responsibility of the respective Contractor.
- O. Contractor warrants and covenants that Contractor has good and sufficient capacity and ability to render or perform the services required thereunder.

3. Duties of the Association

- A. For **Automatic Snow & Ice Removal** and related activities the Association agrees to pay Contractor the sum of \$31,500.00 over the next 3 years for services defined in paragraph 2A thru E.
- B. Payment Schedule to be as follows: Payments will be made in 6 equal installments for each season within (30) days after receipt of an invoice by the Association from the contractor, said invoice to be submitted by Contractor on or before the tenth day of each month. First payment is dependent upon receipt of this signed contract, applicable certificates of insurance and completed pre-inspection report.
- C. It is understood and agreed that all final payments will be made only after 1) Association or its agents have inspected and approved the work performed during that billing period. 2) That if the work performed fails to be approved in accordance with the specifications hereto attached the Association may terminate the Contract without liability upon 14 days written notice to the Contractor. In the event of such termination, the Contractor shall be entitled to payment of all reasonable charges for material and labor of Contractor through date of termination subject to any claims for damages by the Association against the Contractor. Any extension of the time period shall be submitted in writing and signed by both parties. **Note: The last invoice will be held as a retainer until the Snow Removal Post Service Inspection is completed and settlement is made on any damages to the Site that are the Responsibility of the Contractor.**
- D. **Additional Conditions or Provisions by the Association:** Contractor will repair or replace any and all damage caused by its equipment, employees or operations on the premises without cost to Hills of Waterford Condominium Association.

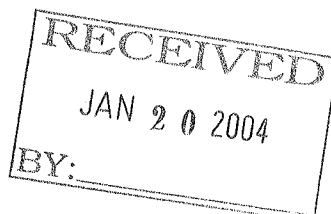
4. Mutual Conditions

- A. Termination
 - a. This agreement shall be automatically terminated on the expiration of its terms as set forth herein.
 - b. Notwithstanding the above, this Agreement is terminable upon 14 days written notice by either party. If the Association terminates it is subject to the provisions of Paragraph 3c herein (supra) If the Contractor terminates or fails to timely complete or perform the services required under this Agreement, or is terminated by the Association, said Contractor shall reimburse the Association for any damages, expenses, or costs reasonably related to the termination by either party or the failure to timely complete or perform the services required under this Agreement. Against any sums due the Contractor at termination, the Association may set off any and all costs of completion which exceed the amounts remaining available for the entire project.
- B. Binding on Successors, Use of Terms:

The parties hereto have read and agree to the terms and conditions of this Agreement. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, administrators, personal representatives, executors, grantees, successors, and assigns. Words used in this Agreement in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; and the word "person" includes a corporation as well as a natural person.
- C. Merger Clause and Additional or Omitted Performance Provisions:
 - a. This Agreement constitutes the entire understanding between the parties hereto and shall not be modified in any respect except as by written instrument duly executed by the authorized parties hereto.
 - b. Association may from time to time by written notice issue additional instruction, require additional work or direct omissions of work previously ordered. No such orders, whether for extras or

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otherwise, shall be valid unless authorized by the Association or the Association's representative in writing and acknowledged by the signature of the Contractor or its representative. In the event such additional work involves extra cost or expense to the Contractor, Association shall pay the costs or expenses applicable in the month following the month such additional work was ordered. Absent written approval from the Association, no payment for extra work will be made, or be due. The Contractor shall be at full and sole risk for any extra work performed without such written approval.

D. Acknowledgment and Warranty Clause:

The parties hereto attest that they have read and agree to the terms and conditions herein; and further that parties hereto warrant and represent that they are duly authorized to execute this Agreement in behalf of the respective parties and that execution of same is their free act and deed.

E. Grant of Access:

Permission is hereby granted by the Association to the Contractor to enter upon the common elements or such limited common elements as Association has authority to permit entry upon the Condominium to complete the work to be performed under the terms of this Agreement. Access to individual units shall not be made without prior written consent of the owner of such unit. The Managing Agent for this Condominium project is **LandArc, Inc., located at 3355 Bald Mountain Rd., Suite 55, Auburn Hills, MI 48326**. Contractor agrees to notify LandArc, Inc. of its presence on the project before the commencement of work and upon its completion of the work on the project.

F. Notices Clause:

Any notices required under the terms of this Agreement shall be deemed sufficient if given to the other in writing by depositing same in a United States Mail Receptacle with proper postage affixed thereto and addressed to the address of the respective parties as listed at the bottom of this service agreement.

G. Construction and Savings Clause:

This Agreement shall be construed in accordance with the laws of the State of Michigan. In the event that a provision of this Agreement shall be held invalid or unenforceable by any Court of competent jurisdiction of the State of Michigan, such holding or action shall not negate the enforceability or validity of any other provision herein.

H. Contractor is obligated to transfer to the Association any manufacturer's warranties on materials or items used in the construction, and attests that Contractor has used these materials and/or items as specified by the manufacturer.

I.

Association:

By: [Signature]

Its: Bosco

Dated: 12-4-03

Contractor:

By: [Signature]

Its: MD - OWNER

Dated: 12-04-03

Address: Hills of Waterford Condominium Assoc.
Hatchery Rd.
Waterford, MI

Billing Address:
3355 Bald Mountain Rd. Suite 55
Auburn Hills, MI 48326

Durocher Landscape, Inc.
3179 Warren Dr.
Waterford, Mi. 48329
248-674-1168
Fax 248-674-1138

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