

## LANDSCAPE SERVICES AGREEMENT *Terms and Conditions*

THIS LANDSCAPE SERVICES AGREEMENT (this "Agreement") is entered into as of January 26, 2021 between BrightView Landscape Services, Inc. ("BrightView"), and Portside Resort ("Client"). 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 BrightView 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 "Scope of Landscape Services" attached hereto, together with delivery or installation of any associated goods and materials, and (ii) the "Landscape Site(s)" consist of the exterior landscaped areas for each of the site(s) identified in the attached Scope of Landscape Services, where Services will be furnished by BrightView in accordance with the Scope of Landscape Services. More than one Scope of Landscape Services may be attached hereto, in the event of multiple Landscape Sites.
- (b) During the Term (defined below), BrightView 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 will be removed from each Landscape Site 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 BrightView 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.

2. **Term.** The "Initial Term" of this Agreement shall start on March 1, 2021 and end on February 28, 2022.

3. **Work Orders.** If Client requests services from BrightView that are not set forth on the Scope of Landscape Services or at a worksite for which there is no attached Scope of Landscape Services, then BrightView 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 BrightView 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, BrightView 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 BrightView to facilitate the Services, and will permit or schedule adequate access to the Landscape Site(s) as required to perform the Services safely, efficiently, and within any specified timeframes. Client will notify BrightView in writing of any limitation on access to Landscape Site(s) 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 Scope of Landscape Services.
- (c) Client shall provide written notice to BrightView of any proposed change in the ownership or management of the Landscape Site(s) at least 30 days prior to the effective date of any such change. A change in the ownership or management of the Landscape Site(s) shall not relieve Client of its obligations hereunder, including but not limited to the payment of the Service Fee and any amounts due to BrightView 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 BrightView an annual service fee of \$56,780.00 plus any Per Occurrence Service Fee set forth herein (The "Service Fee").
- (b) Client shall pay the Service Fee to BrightView in advance through monthly payments according to the attached Billing Information and Schedule ( See attached Billing Schedule). If no Billing Information and Schedule is attached to this Agreement or if the attached Billing Information and Schedule does not specify the months and amounts due, then the Service Fee shall be payable in advance in 12 equal monthly installments, beginning in the month of MONTH). Monthly invoices will be dated the 1<sup>st</sup> of each month for which service is to be performed, and payments are due no later than the 15<sup>th</sup> calendar day of the month. 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 BrightView for all costs and expenses (including but not limited to attorneys' fees and court costs) which are reasonably incurred by BrightView 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 attached 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 and Billing Information and Schedule are implemented for Client's convenience of payment only and billings 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 an Anniversary Date, then all sums paid by Client to BrightView for Services performed since the most recent Anniversary Date shall be subtracted from the time-and-materials value (as determined in good faith by BrightView) 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 BrightView. 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 invoiced to the Client exceed the total amount that would have been received by the Service Provider had the terminated Agreement continued uninterrupted until the end of its then current term.

(d) Client must provide at least 10 days' prior written notice to BrightView, Attn.: Legal Department/Contracts, 980 Jolly Road, Suite 300, Blue Bell, PA 19422 if: (i) Service Fees required to be paid pursuant to this Section 6 are subject to a bona fide dispute and (ii) Client intends to pay, in full satisfaction of such disputed Service Fees, less than the amount invoiced by BrightView.

#### **7. Termination.**

(a) Either BrightView or Client may terminate this Agreement without cause upon 30 day's prior written notice to the other party. If Client terminates this Agreement without cause prior to end of the then current term, Client will, within fifteen (15) days of the Termination Date, pay BrightView (i) all amounts owed to date for Services performed; (ii) reimbursement of any partner incentives such as, but not limited to, Enhancement Credits; discounts, rebates, etc. and (iii) to compensate BrightView for having to allocate employees and resources to the Landscapes Sites, an amount equal to what BrightView would have earned if the Agreement remained in effect through the end of the then current term (as calculated in accordance with Section 6(a)).

(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 BrightView may elect, in its sole discretion, to (i) delay, withhold, suspend or cancel Services without further notice to Client, and BrightView shall have no responsibility whatsoever for any consequences thereof, in respect of which the Client hereby indemnifies BrightView, and fees (as set out

hereunder) shall continue to accrue and any extra expenses resulting from such withholding shall be for the Clients' responsibility and/or (ii) immediately terminate this Agreement upon written notice to Client.

(c) Either BrightView 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. General Provisions.**

(a) BrightView will at all times perform the Services and any Work Order in accordance with all applicable workplace safety requirements and standards promulgated by federal and local authorities. BrightView will not at any time provide safety evaluation, inspection, 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 BrightView to provide such safety-related services at any time. Further, BrightView does not and will not at any time provide representations, warranties, or assurances as to the safety, including as it relates to BrightView's use of chemicals during Service, (or lack of safety) of any Landscape Site(s) 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 BrightView to provide any such assurances at any time. If Client desires safety evaluation, inspection, or consulting services, or safety representations, warranties, or assurances, then BrightView and Client may execute and enter into a separate written agreement whereby BrightView 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) During the Term of this Agreement and for a period of 12 months following this Agreement's termination, the Client shall not, without the written permission of BrightView or an affected affiliate, directly or indirectly (i) solicit, employ or retain, or have or cause any other person or entity to solicit, employ or retain, any person who is employed by BrightView and performing Services hereunder, or (ii) encourage any such person not to devote his or her full business time to the Client, or (iii) agree to hire or employ any such person. Recognizing that compensatory monetary damages resulting from a breach of this section would be difficult to prove, Client agrees that such breach will render it liable to BrightView for liquidated damages in the amount of \$10,000 for each such employee.

(c) This Agreement shall be governed by the law of the state where the Services will be furnished. If the Services will be furnished in more than one state, then the law of the State of Florida 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 Florida.

(d) Unless otherwise specifically set forth in the Scope of Landscape Services or a Work Order, BrightView is not providing design or landscape architecture services under this Agreement and it is the Client's sole responsibility to ensure that (i) the directions provided to BrightView for Services are in compliance with all

applicable laws, ordinances, rules, regulations, and orders and (ii) the height and location of the hedges, foliage, and/or other plant matter on the Landscape Sites do not obstruct a person's line of sight of proximate roadways, private or public.

- (e) 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 BrightView 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, 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 Landscape Site(s) if other than Client) and their respective heirs, legal representatives, successors and assigns.
- (f) This Agreement, together with any attached Billing Information and Schedule, attached Scope of Landscaping Services, Work Order hereunder, and any other schedules and exhibits attached hereto, constitute the entire agreement of the parties with respect to the Services and Work Orders and supersedes all prior contracts or agreements with respect to the Services or Work Orders, whether oral or written.
- (g) 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 BrightView.
- (h) The waiver by Client or BrightView 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 BrightView of such provision or any other provision.
- (i) BrightView'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 BrightView in connection with, or related to, BrightView'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 BrightView hereunder. In no event will BrightView 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 BrightView in advance or could have been reasonably foreseen by BrightView. Further, BrightView 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 BrightView's compliance or good faith efforts to comply with state or local water regulations or mandates.

- (j) BrightView's performance will be excused without penalty to the extent BrightView 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 BrightView. 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 BrightView shall not be liable for any failure to perform as a direct or indirect result of BrightView's compliance with or good faith efforts to comply with state or local water regulations or mandates.

BrightView and Client agree to all of the terms and conditions set forth in this Agreement, including any schedules and exhibits attached hereto, as of the date first set forth above.

**By signing this Agreement in the space provided below, the undersigned 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 Landscape Site, and that this Agreement is a legally binding obligation of the undersigned and the record owner of each Landscape Site.**

**BRIGHTVIEW (as defined in the first paragraph)**

By: Todd Chesnut

Name: Todd Chesnut

Title: VPGM

Date: 02/02/2021

**CLIENT**

By: Sarah J. Hunt, CAM

Name: SARAH J. HUNT, CAM

Title: CAM, GM

Date: 02/01/2021

BrightView Landscapes, LLC and each of its subsidiaries ("BrightView") is committed to taking care of each other, our clients and communities. The BrightView Code of Conduct, which is located at [https://www.brightview.com/sites/default/files/bv\\_code\\_of\\_conduct.pdf](https://www.brightview.com/sites/default/files/bv_code_of_conduct.pdf) keeps us true to our values.

If you become aware of a violation of the BrightView Code, we encourage you to report it by:

- Filing a report at [www.brightviewconcerns.com](http://www.brightviewconcerns.com); or
- Calling our 24-hour, 7-day per week compliance hotline at (800) 461-9330.

Thank you for your confidence in partnering with BrightView.

This Billing Information and Schedule document is incorporated into the Landscape Services Agreement by this reference upon execution by Client and Service Provider. In the event multiple Statements of Work or Work Orders are attached to this Services Agreement as provided herein, each such Statement of Work or Work Order shall be mutually exclusive of each other.

**Billing Information and Schedule**

Landscape Site Name:*	Portside Resort	Landscape Site Location:	17620 Front Beach Rd. Panama City Beach, FL 32408
Client Business Name:	Portside Resort	Client Contact Name:	Sarah Hunt
Client Contact Telephone:	850.234.9930	Client Contact Email:	<a href="mailto:Gm@PortsideResortPCB.com">Gm@PortsideResortPCB.com</a>
Billing Business Name:	Portside Resort	Billing Contact Name:	Sarah Hunt
Billing Contact Telephone:	850.234.9930	Billing Contact Address:	17620 Front Beach Rd. Panama City Beach, FL 32408
BrightView Contact Name:	Danny Willcox	BrightView Contact Telephone:	850.974.3620

Note: If this Agreement applies to multiple sites, then mark here  and attach a list of the sites with this information and pricing.

**Recurring Services Billing Schedule:**

Term	
March	\$ 4,731.66
April	\$ 4,731.66
May	\$ 4,731.66
June	\$ 4,731.66
July	\$ 4,731.66
August	\$ 4,731.66
Sept	\$ 4,731.66
Oct	\$ 4,731.66
Nov	\$ 4,731.66
Dec	\$ 4,731.66
Jan	\$ 4,731.66
Feb	\$ 4,731.74
<b>Total Service Fee*</b>	<b>\$ 56,780.00</b>

**\*Select one:**

Plus sales tax where applicable

Includes sales tax. If tax laws change increasing applicable taxes, BrightView may adjust the Service Fee to reflect such increase.

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**Additional notes on Billing Information and Schedule**

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**Scope of Landscape Services**

Landscape Site Name:*	Portside Resort	Landscape Site Location:	17620 Front Beach Rd. Panama City Beach, FL 32408
Client Business Name:	Portside Resort	Client Contact Name:	Sarah Hunt
Client Contact Telephone:	850.234.9930	Client Contact Email:	<a href="mailto:Gm@PortsideResortPCB.com">Gm@PortsideResortPCB.com</a>

**Description of Services at this Landscape Site (attach diagrams if necessary):**

## COMPETITIVE PRICING PORTSIDE RESORT

We are committed to fulfilling the specific landscape needs of Portside Resort while providing the service you expect at a price point that fits your budget. BrightView Landscape Services will provide the following competitive pricing per specifications as noted in attached Scope of Work.

SERVICE DESCRIPTION	Monthly	Yearly Total
<b>Base Management Monthly Price</b>	<b>\$4,084.00</b>	<b>\$48,771.00</b>
<ul style="list-style-type: none"> <li>• Mow, trim, edge, and blow</li> <li>• Shrub pruning and bed weed control</li> <li>• Tree pruning up 12'</li> <li>• Debris and litter removal</li> <li>• Irrigation controller programming</li> </ul>		
<b>Turf and Ornamental Chemical Program</b>	<b>\$457.41</b>	<b>\$5,849.00</b>
<ul style="list-style-type: none"> <li>• Fertilizer, insect and disease control</li> <li>• Pre and Post-emergent weed control</li> <li>• FL Green Industries BMP compliant program</li> </ul>		
<b>Irrigation Technical Inspections</b>	<b>\$180.00</b>	<b>\$2,160.00</b>
<ul style="list-style-type: none"> <li>• (12) Inspections of operating components</li> <li>• Adjustments to controller, valves, and heads</li> <li>• Detailed, written report of inspection</li> <li>• Proposals for repairs and/or improvements</li> </ul>		
<b>TOTAL BASE SERVICE</b>	<b>\$4,731.00</b>	<b>\$56,780.00</b>

### OPTIONAL VALUE-ADD SERVICE

The following optional service can be provided at the pricing as noted below. This service will be billed for per occurrence.

SERVICE	FREQUENCY PER YEAR	PRICE PER OCCURRENCE	PRICE PER YEAR	CLIENT INITIALS
Seasonal Color	N/A	N/A		
Hardwood Mulch – 210 Cubic Yards (67,807 SQFT)	1	\$11,340.00		
Palm Pruning – 420 Sabal Palms	1	\$9,430.00		

**BrightView**  
Landscape Services

# SCOPE OF SERVICES

## PORTSIDE RESORT

### **Scope of Work**

Contractor shall furnish all horticultural supervision, labor, material, equipment and transportation required to maintain the landscape throughout the contract period, as specified herein.

### **Lawn Care**

#### Mowing and Edging:

Lawns shall be mowed more frequently during the active growing season and as needed during other seasons. During extended rainy or dry periods mowing will take place as conditions dictate. Mowing height will be based on what is horticultural correct for the turf variety taking into account the season. Clippings shall not be caught and removed from lawn area unless they are lying in swaths which may damage the lawn. Edges shall be trimmed to maintain a neat appearance.

#### Fertilization:

Lawns shall be fertilized as warranted with a commercial fertilizer. The number of applications will be dependent on the type of nitrogen used and the type of turf grass.

#### Disease control:

Disease control is maintained through proper fertilization, mowing and water management. In the event that disease problems occur Contractor will use treatments to stop or slow progression of disease. This program does not include the prevention of disease with weekly or monthly applications of disease control products although such protection is available at substantial additional cost.

#### Insect control:

Contractor will provide control of turf damaging insects using Federal and State registered insect control products as needed to prevent or mitigate turf damage.

Disease caused by infestation of nematodes (microscopic round worms that feed on roots) is not included. Currently, there is no effective nematode control product registered for use on landscapes. Contractor will recommend additional treatments and procedures to minimize damage should nematodes become a problem. Nematode control is available for some sports turf locations and will be quoted separately if required.

**Alternatives will be discussed and mutually agreed upon in the event turf insects build resistance to chemicals available to Contractor. Such alternatives may include additional cost to Owner.**

#### Weed control:

Contractor will use proper fertilization, mowing and watering practices to promote the growth of weed resistant turf. Additionally, applications of pre and post emergence weed controls will be applied at times if warranted to control weeds without damaging desirable turf. Recent changes in Federal regulations have resulted in our loss of ability to selectively control some weeds including crabgrass when they are present in St Augustine. The only control of these weeds is to treat infested turf with non-selective products such as Roundup. **These treatments require the re-sodding which will be quoted at additional charge.**

## **Ground Cover Area/ Shrub Areas**

### Edging:

Edge ground cover to keep within bounds and away from obstacles.

### Pruning:

Shrubs shall be pruned only to maintain the natural form of the plant, to maintain growth within space limitations, and to eliminate damage or diseased wood. This excludes pruning necessitated by storm damage, disease, neglected overgrowth or winterkill.

### Weed Control:

Keep beds reasonably free of broadleaf or grassy weeds, preferably with pre-emergent and/or selective post-emergent/contact herbicides.

Pre-emerge: This type of control should be used only if a known weed problem warrants its use.

Post-emerge: Control broadleaf weeds with selective herbicides.

The chosen chemical will be recommended and legally approved for the specific weed problem.

## **Tree Care**

### Pruning:

Height limitation for tree pruning covered in the specification is no higher than 12 feet. Pruning of trees higher than 12 feet in height only low-hanging branches that present a hazard to pedestrian or vehicular traffic will be raised. Trees under 12 feet in overall height are scheduled to be pruned in the winter months except for safety-related pruning, which will be done only if necessary. Crape Myrtles will only have deadwood and cross-branching removed one time during the winter months. If client request topping Crape Myrtles a price will be provided upon request for this service. Evergreen trees under 12 feet in overall height shall be thinned out and shaped only if necessary to minimize wind and storm damage.

### Staking:

Stakes are to be inspected and adjusted or removed as necessary. When trees attain a trunk caliper of 4" or substantial root development stability, removal will be discussed with client.

## **Mulched Areas**

Mulched areas will be inspected on our days of service. Weeds and grasses shall be controlled with recommended, legally approved herbicides only if necessary. In those areas with excessive mulch build-up alternatives will be discussed with the client.

## **Debris Cleanup**

All landscape areas shall be inspected on days of service and excess debris removed. Gardening debris, generated from our work, shall be removed from paved areas on days of service.



**Irrigation System**

Watering shall be scheduled with automatic controllers to supply quantities and frequencies consistent with seasonal requirements of the plant materials in the landscape. In some circumstances, water scheduling may be limited by local watering restrictions. Where practical, watering shall be done at night or early morning if the system is automatic, unless notified otherwise by the owner. Any damages to the irrigation system caused by the Contractor while carrying out maintenance operations shall be repaired without charge. Where practical, repairs shall be made within one watering period. Faulty equipment, vandalism or accidental damage caused by others shall be reported promptly to owner. Cost of labor and material to perform repair is an extra and shall be paid for by the owner upon authorization. Whenever possible, owner's representative shall be instructed on how to turn off system in case of emergency. Our office is to be advised at once or by next business day.

**Shrub Bed Area****Mulching:**

Pine straw beds will be replenished with fresh pine straw mulch. In those areas with excessive mulch build up, alternatives will be discussed with the client. Pine straw mulched beds will be top dressed with 1 - 2 inches of fresh mulch two (2) times annually.

**Palm Pruning****Fronde Removal:**

Dead or dying fronds should be removed. It is best to leave healthy fronds when possible. Remove fronds that are less than 45°. When pruning is finished, the palm fronds remaining should droop over enough to reach a horizontal plane.