

CONTRACT FOR SERVICES

The Parties to This Contract for Services (This "Contract") Are

BellaVita at Green Tee Homeowners' Association  
(The "Association")  
(A Texas Non-Profit Corporation)

and

Michael Miller Corporation d/b/a Miller Pools  
(Contractor)

By this Contract, the Association engages Contractor, and Contractor agrees to perform, the following work (the "Work"), for the payment stated below, in accordance with the General Conditions, attached.

ARTICLE 1  
THE WORK

- 1.1 The Contractor shall perform the following Work as detailed in Schedule A – Statement of Work. All Work to be completed in a professional workmanlike manner and subject to approval of the Association's Facilities Committee representative.
- 1.2 Any work not outlined in Schedule A – Statement of Work will be subject to a separate Purchase order or Change Order to this contract.
- 1.3 Emergency repairs are defined as the Contractor will provide all necessary repairs to main pool, spa and/or fountains as needed for proper operation based on a 24-hour response time.

ARTICLE 2  
TIME: OF COMMENCEMENT

- 2.1 The Work to be performed under this Contract shall be commenced on May 19, 2017 and shall continue until October, 2019.

ARTICLE 3  
CONTRACT SUM

- 3.1 The owner shall pay the contractor for the performance of the Work, subject to additions and deductions by change Order as provided in the Contract Documents, the Contract Sum of \$23,273.75 annually broken into 12 monthly payments as outlined in Article 4.

- 3.2 Unscheduled as well as emergency repairs will be billed at \$125.00/hour plus applicable parts cost markup as noted in Article 3.4.
- 3.3 Contractor will charge a flat rate on equipment repairs/replacements. For example, if Contractor replaces a 300 Watt light bulb the flat rate charged to the Association will include the cost of the bulb, the labor to install it and sales tax. Contractor won't charge by the hour for these types of replacement repairs.
- 3.4 Minor equipment repairs – Customer authorizes Michael Miller Corporation d/b/a Miller Pools to replace, as needed, miscellaneous parts and labor costing \$150.00 or less per month in order to keep the pool operating properly and safely.

ARTICLE 4  
PAYMENTS

- 4.1 The Parties agree to the following monthly payment schedule for Work completed:
  - April through October: Weekly service consisting of 2 full visits a week @ \$2,165.00 per month
  - November through March: Weekly service consisting of 1 full visit and 1 abbreviated visit @ \$1623,75 per month
- 4.2 Contractor will send an invoice both through email and USPS ten calendar days prior to the 1st day of the next month of service. Payment is due on the 1st calendar day of the service month and not considered late until the 15th calendar day of service month.

ARTICLE 5  
CONTRACTOR'S DUTIES

- 5.1 Contractor shall furnish at its own cost and expense all materials, crews, tools, machinery, and equipment for, and begin and press with due diligence until completion in accordance with plans and specifications agreed to by Contractor and Association and in a good and workmanlike manner, the Work.
- 5.2 In connection with the Work, Contractor shall (i) protect the Work and repair or pay for the repair of any damage caused by Contractor, its agents, invitees, or employees to property of Association or third parties; (ii) provide periodic and final clean-up of all debris resulting from the Work to the satisfaction of the Association or its designated representative, and (iii) provide any items not specifically mentioned, but reasonably required for completion of the Work.
- 5.3 Contractor shall apply for and obtain all permits and licenses required for the Work at its expense and be responsible for securing inspections and approval of the Work from all authorities having jurisdiction over the Work.
- 5.4 Contractor shall pay off and satisfy all claims for labor and materials employed or used in any manner in connection with the Work, permit no liens of any kind to be fixed upon or against Association's property by Contractor's laborers, mechanics, or material men, and indemnify, protect, and save Association harmless from and against all such claims and liens.

- 5.5 The Work shall be performed in accordance with a schedule approved in advance by Association. Changes to the approved schedule shall be approved in writing by all parties. Association and its duly authorized representatives shall have the right to inspect the Work at all reasonable times.

ARTICLE 6  
PAYMENT TERMS

- 6.1 Payments to the Contractor shall include all applicable taxes and are not subject to any escalation.
- 6.2 Contractor shall submit duplicate invoices to Association each month for partial payments or as otherwise stated in payment terms due hereunder, and Association shall pay each invoice within thirty (30) days after receipt, unless a portion of the invoice is in question at which point the parties will proceed diligently and in good faith to resolve the question.
- 6.3 The payment provisions of this Contract are subject, however, to the withholding provisions of Sections 53.081 and 53.101 of the Texas Property Code and all other applicable laws and to Contractor's furnishing proof satisfactory to Association that all claims for labor and materials including liens have been satisfied and that there are no unsatisfied claims for injuries or damages.

ARTICLE 7  
INDEPENDENT CONTRACTOR

- 7.1 All Work performed hereunder shall meet with Association's approval, but the detailed manner and method of doing the Work shall be under the control of Contractor, Association being interested only in the result obtained. Contractor is an independent contractor as to the Work performed hereunder. All persons employed by Contractor shall be Contractor's employees paid by Contractor for labor supplied under this Contract. Contractor shall pay, and indemnify and save Association harmless from the payment of, all taxes and contributions imposed by all applicable federal and state laws with respect to Contractor's employees, including all interest and penalties payable under said laws as the result of non-compliance.

The Contractor shall supervise and direct the Work, using his best skill and attention and he shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the contract.

Unless otherwise specifically provided in the Contract Documents, the Contractor shall pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent or whether incorporated or to be incorporated in the Work.

- 7.2 In connection with the Work, Contractor shall (i) at all times enforce strict discipline and good order among his employees or subcontractors and shall not employ any unfit person or anyone not skilled in the task assigned to him; (ii) give Association a full one-year warranty unless otherwise specified on all materials, equipment, and workmanship; (iii) warranty that all materials and equipment incorporated in the Work shall be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not conforming to these requirements may be considered defective; (iv) inspect the site of the Work and accept its existing conditions and shall give all notices and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the Work, and shall notify the Association if the drawings and specifications are at variance therewith; and (v) comply with reasonable dress code as directed by the Association.

ARTICLE 8

## COMPLIANCE WITH LAW

- 8.1 Contractor shall comply with all laws and lawful regulations applicable to any activities carried out in the name of or on behalf of Association under the provisions of this Contract and/or any amendments to it and shall notify Association promptly upon discovery of any instance where Contractor fails to so comply.

## ARTICLE 9

### ACCURACY OF RECORDS

- 9.1 All financial settlements, billing, and reports rendered by Contractor to Association as provided for in this Contract and/or any amendments to it shall, to the best of Contractor's knowledge and belief, reflect properly the facts about all activities and transactions handled for the account of Association. Such data may be relied upon by Association as being complete and accurate in any further recording and reporting made by Association for whatever purpose. Contractor shall notify Association promptly upon discovery of any instance where Contractor has reason to believe such data are no longer accurate and complete.

## ARTICLE 10

### SUBCONTRACTORS; ASSIGNMENT

- 10.1 Contractor shall neither assign this Contract nor subcontract out any part of the work without the prior written consent of Association. In the event a subcontractor is employed with the prior written consent of the Association; Contractor agrees to hold harmless the Association from all claims arising from the use of said subcontractor. By submitting its invoices as provided for hereunder Contractor warrants that any such subcontractor has been paid and can make no claim on the Association.

## ARTICLE 11

### DEFAULT BY CONTRACTOR; TERMINATION BY ASSOCIATION

- 11.1 If, in the opinion of Association, Contractor should fail at any time during the performance hereof to provide the necessary crews, tools, or equipment for the proper performance of the Work; or breach this Contract in whole or in part; or fail to use due diligence in the performance thereof; or not be performing this Contract in the manner herein provided; or be adjudged a bankrupt; or be placed in receivership, then, and in any of such events, Association may, at its election, either immediately terminate this Contract or take over and perform either through its own employees or another contractor all or any part of the Work remaining unperformed. In the event Association takes over the Work, Contractor shall not be entitled to any payment or further payment for Work performed or material, equipment, or supplies furnished prior to such taking over until the Work required under this Contract is completed and accepted by Association, at which time Association's total costs and expenses in completing the Work shall be deducted from the amount which otherwise would have accrued to Contractor and the difference, if any, shall be paid by Association to Contractor. Association's exercise of its rights hereunder shall not constitute a waiver of its rights in law or equity to pursue damages or any other claim it may have against Contractor.

## ARTICLE 12

### TERMINATION

- 12.1 In addition to Association's rights under Paragraph 11 above and 13 below, this Contract may be terminated in whole or in part at any time without cause by either Association or Contractor by written notice to the other party at least thirty (30) days prior to termination. Upon termination, Association shall pay Contractor compensation earned for the Work actually performed under this Contract to the date of termination. In no event, shall Association be liable to Contractor for any damages on account of such termination or for anticipated profits with respect to future work, nor shall Contractor be liable to Association for any damages on account of such termination.

ARTICLE 13  
BUSINESS STANDARD

- 13.1 Each party, in performing its obligations under this Contract, shall establish and maintain appropriate business standards, procedures, and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the other party. The parties shall, with reasonable frequency during the term of this Contract, review such business standards and procedures with each other, including, without limitation, those related to the activities of employees, representatives, and agents in their relations with each other's employees, agents, and representatives, vendors, subcontractors and with other third parties, and those relating to the placement and administration of purchase orders and subcontracts.

ARTICLE 14  
RECORDS AND AUDIT

- 14.1 Contractor shall keep adequate books and records supporting its charges and its work generally under this Contract, and all such books and records shall be available at reasonable times to Association or its designated representatives during a period ending three (3) years following the date of final payment made under this Contract. Association's representatives shall have the right to reproduce all such books and records. If any audit by Association shall reveal errors or exceptions, Association and Contractor shall meet to review the audit report. If appropriate, Contractor shall adjust the relevant invoice(s) or refund overpayments promptly.

ARTICLE 15  
INSURANCE

- 15.1 For as long as this Contract shall be in effect, Contractor shall maintain types of insurance with companies satisfactory to Association and at minimum limits as follows:
- (a) Workers' Compensation Insurance to cover full liability under the Texas Workers' Compensation laws and Employer's Liability insurance;
  - (b) Contractor's normal and customary comprehensive general liability insurance coverage, with limits of not less than \$1,000,000 for bodily and personal injury, death, or property damage resulting from each occurrence; and
  - (c) Comprehensive automobile liability insurance coverage covering all owned, non-owned, and rented automotive equipment used in connection with the Work, with limits of not less than \$300,000 per occurrence for bodily and personal injury, death, or property damage.

Certificates of all insurance shall be furnished to Association and shall provide for thirty (30) days' written notice to Association prior to cancellation or material change of the policy or policies. Certified copies of each policy shall be furnished to Association upon Association's request. Contractor shall not violate or knowingly permit to be violated any condition of the insurance policies required by this Contract. Nothing contained in this Paragraph 15. INSURANCE shall limit or waive Contractor's legal or contractual responsibilities to Association or others.

ARTICLE 16  
INDEMNITY

- 16.1 Contractor agrees to and shall indemnify, protect, and hold handlers Association, its officers, directors, members, agents, and employees from and against any and all claims, demands, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorneys' fees, and including injury to or death of any person, or for damage to any property, in any way arising out of or in connection with acts or omissions of Contractor and/or persons operating under Contractor in connection with the Work done by Contractor under this Contract.

Where such claims, demands, losses, damages, causes of action, suits, or liability have been caused, in whole or in part, by the joint or concurrent acts or omissions of Association and Contractor, Contractor's duty of indemnification shall be in proportion to Contractor's allocable share of such joint or concurrent acts or omissions. Contractor shall not be liable for claims, demands, or causes of action arising solely out of Association's acts or omissions.

It is the expressed intention of the parties hereto, both Contractor and Association, that each of them shall be liable for the consequences of the acts or omissions of their own officers, directors, members, agents, employees, or subcontractors whether those acts or omissions are the sole, joint, or concurring cause of any claims, demands, losses, damages, causes of action, or other liabilities.

Contractor shall be responsible for all damage and loss sustained by it by its tools and equipment utilized in the performance of the Work.

ARTICLE 17  
SAFETY

- 17.1 Contractor shall develop a safety program applicable to each work site and to the Work, review such program with Association in advance of beginning the Work, obtain Association's approval, and enforce such program at all times. Further, Contractor shall comply with all applicable laws and regulations promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970 (OSHA), and any other legislation enacted for the safety and health of Contractor's employees. Association shall have the right, but not the obligation, to review Contractor's operations periodically for the purpose of securing compliance by Contractor with the safety program, but such reviews shall not diminish Contractor's complete responsibility for protecting the safety and health of its employees and subcontractors.
- 17.2 Contractor shall notify Association immediately, by telephone with prompt confirmation in writing, of lost-time injuries and fatalities that occur on the work site in connection with the Work being performed under this Contract and shall provide Association with such reports of injuries and fatalities as Association shall deem necessary, including, but not limited to, copies of all reports and other documents filed or provided to Contractor's insurers and the State of Texas in connection with such injuries or fatalities.
- 17.3 These safety and health terms are agreed by both Association and Contractor to be of the highest importance, and a breach or violation of any of the terms of this Paragraph by Contractor will be considered a material and substantial breach of this Contract. In the event that Association shall determine that Contractor has breached or violated the terms of this Paragraph, then Association shall have the right to suspend the Work or terminate this Contract, as Association shall determine, immediately upon written notice to Contractor. Work shall not recommence until Association shall be satisfied that these safety provisions shall not be breached or violated thereafter.
- 17.4 Nothing contained herein shall be interpreted as enlarging Association's legal duty to Contractor or to Contractor's agents, employees, subcontractors, or third parties, or altering the status of Contractor as an independent contractor as set forth in Article 7 above.

ARTICLE 18  
ALCOHOL, ILLEGAL DRUGS, WEAPONS

- 18.1 The use of alcohol or illicit or un-prescribed controlled substances, or the misuse of legitimate drugs by any person on the work site, or remaining on the work site while under the influence of such substances, is strictly prohibited. In addition, possession of alcohol, illicit or un-prescribed controlled substances, firearms, explosives, weapons, or hazardous substances or articles without proper authorization is not permitted on the work site. Entry onto Association's property is deemed, to the extent allowable by law, to be consented to and recognition of the right of Association and its authorized representatives to search the person, motor vehicle, and other property of each individual while entering, on, or departing the work site.

ARTICLE 19  
EQUAL OPPORTUNITY

- 19.1 Contractor shall comply with all applicable federal and state laws and regulations with respect to nondiscrimination and equal opportunity in employment.

ARTICLE 20  
NOTICES AND ADDRESSES

- 20.1 All notices required or permitted to be given under this Contractor shall be considered properly given upon delivering the notice in writing to the party to be notified, or mailing the notice by registered or certified mail, return receipt requested, to the party to be notified at such party's address as set forth above, or such other address as the party to be notified may have designated by previous written notice to the other.

ARTICLE 21  
ENTIRE AGREEMENT

- 21.1 This Contract contains the entire agreement between the parties as to the work to be pursuant to this Contract, and this instrument shall govern over and supersede all other bid letters, proposals, correspondence, discussions, and communications between the parties.

ARTICLE 22  
GOVERNING LAW

- 22.1 This Contract and the services rendered under it shall be governed by and construed in accordance with the laws of the State of Texas.

ARTICLE 23  
SEVERABILITY

- 23.1 If any provision of this Contract or of any amendment shall be held to be invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect any of the remaining provisions.

ARTICLE 24  
TIME OF THE ESSENCE

24.1 Time is of the essence in the performance of all obligations in this Contract.

ARTICLE 25  
GENERAL

25.1 In the event there is a conflict between any of the provisions hereof and any proposals, general conditions, specifications, or other Contract in connection with the subject matter of this Contract, whether or not attached hereto, the provisions of this Contract shall be controlling. This Contract shall not be modified or amended in any manner except by written Contract signed by the parties.

ARTICLE 26  
NON-WAIVER

26.1 The failure of Association to insist upon or enforce, in any instance, strict performance by Contractor of any terms of this contract or to exercise any rights herein conferred shall not be construed as a waiver or relinquishment, to any extent, of its rights to assert or rely upon such terms or rights on any future occasion.

ARTICLE 27  
CHANGE ORDERS

27.1 All additional work or change orders outside of the agreed specification and or proposal shall have prior written approval from the Association. Any work done without an executed change order shall be deemed at the contractor's expense.

ARTICLE 28  
EFFECTIVE DATE

28.1 This Contract has been executed on the dates shown by the signatures below, to be effective on the 19 day of May, 2017, which shall be the date of this Contract for all purposes.

**Michael Miller Corporation d/b/a Miller Pools**

**BellaVita at Green Tee Homeowners'**

Contractor

Association

By Michael A. Miller

By Diane Clement

FELF

Name Michael A. Miller

Name Diane Clement

F. E. King

Title OWNER-President

Title President, BellaVita HOA

Board member

Date 6/26/17

Date July 10, 2017

BellaVita at Green Tee HOA



Contractor Employer Vendor Number \_\_\_\_\_

**STATEMENT OF WORK (Schedule A)**  
**SWIMMING POOL, SPA and FOUNTAINS MAINTENANCE SERVICE**  
**BELLAVITA AT GREEN TEE HOA**

1. Provide all materials, crews, tools, machinery, equipment, engineering, drawings and other services necessary to carry out this Statement of Work and other attached documents.
2. MAINTENANCE: Provide scheduled maintenance service for the main swimming pool, spa, fountain between clubhouse and main pool and fountain located in front of clubhouse at 1548 N. Riviera Circle, Pearland Texas 77581. There are to be two service schedules as follows:
  - A. April thru October - full service for twice a week on Tuesday and Friday.
  - B. November thru March - Full service once a week on Friday plus partial service once a week on Monday herein referred to as Abbreviated Service.
  - C. Physical Description of pool, spa and fountains.

Pool volume--160,000 Gallons

SPA volume---3,500 Gallons

Front Fountain---4,000 Gallons

Pool Fountain---3,200 Gallons

D. DECRPTION OF WORK FOR FULL SERVICE:

- 1) Provide service, chemicals and maintenance equipment as needed to maintain a clean, efficient and safe pool operation.
- 2) Skim pool, SPA and fountain surface water at each visit.
- 3) Vacuum leaves and other foreign materials from the bottom of the Pool, SPA, Fountains and Pool Overflow Reservoir at each visit.
- 4) Empty all skimmers and pump baskets at each visit.
- 5) Brush Pool, SPA and Fountain and Pool Overflow Reservoir Tiles, Walls and Pool Overflow Reservoir walls and bottom once per week or sooner if found necessary.
- 6) Backwash all filters at least 1 per month or sooner if found necessary.
- 7) Test chlorine, pH and alkalinity at each visit.
- 8) Adjust chlorine, pH and alkalinity levels with the use of industry approved chemicals or blow-down as necessary.
- 9) Perform complete water analysis in lab every 3 months, or more frequent if necessary. Provide results to project manager.
- 10) Check all Pool, SPA, Fountain equipment for any leaks and malfunctions.
- 11) Pool Technician will provide a complete equipment check 1 per month and will provide owner with a record of their checks noting any deficiencies found. Technician will provide such records to the project manager.

12) Bag any trash and debris generated by Contractor and remove from site.

13) Contractor will not store any of their chemicals or materials to be used in the service of the Pool, SPA or Fountains on-site.

#### E. DESCRIPTION OF WORK FOR ABBREVIATED SERVICE

1) . Check Chemical Levels of Pool, SPA and Fountains

2) Add Chemicals as needed

3) Empty all skimmer baskets on the Pool and SPA as well as all equipment strainer baskets

4) Brush and vacuum sweep spa/pool and fountains as needed.

#### 3. INVOICE PROCEDURES:

4. CONTACTS: A representative of the Facilities Committee will oversee the work on behalf of the Association. The current representative is: TBD.