

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

_____ Rockin' D Fence Company _____
(The "Contractor")
(A Texas Corporation/Partnership/Individual)

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.

This document consists of the written contract, map of the entire community identifying fence types, drawings of cedar cap top fence, party fence, wood gate with steel tube frame, metal fences, and 8' cedar non-capped fence.

ARTICLE 1 THE WORK

- 1.1 The Contractor shall perform all of the following Work as required by the Contract Documents including Exhibits:
 - 1.1.1 Replace all capped wood fences per BellaVita standards with 1-year labor warranty. Contractor will use stainless steel nails for assembly. See Exhibit A.
 - 1.1.2 Replace all party wood fences per BellaVita standards with 1-year labor warranty. Contractor will use stainless steel nails for assembly. See Exhibit B.
 - 1.1.3 Replace all 8' party wood fences (as noted on map) per BellaVita standards with 1-year labor warranty. Contractor will use stainless steel nails for assembly. See Exhibit E.
 - 1.1.4 Replace wood gates with 48" wood gate per BellaVita standards. See Exhibit C.
 - 1.1.5 Replace the "Scarsdale" fence with non-capped party fence the entire length. The finished side faces the street. The "Scarsdale" fence is located on the west side of the community from Scarsdale Road to the Nature Reserve.
 - 1.1.6 Replace wood fence around detention pond with non-capped fence except that portion parallel to the street (N. Riviera). The finished side should face the street.
 - 1.1.7 Install 4' metal fence and gate at the dead end of Ameno Dr. and connect to metal fence at 2433 Ameno and to metal fence at 2428 Monaldo Dr. and around the rear sides of the Reserve B at 2435 Ameno Dr. See Exhibit H.
 - 1.1.8 Install 6' metal fence and gate upgrades as individually ordered by homeowners. The upgrade is a replacement of wood fences/gates with metal. The Association will pay the contractor the cost of wood replacement. Upgrade is responsibility of homeowner. The number of upgrades will be known by January 1, 2015 and identified on the map. These upgrades are not considered change orders.
 - 1.1.9 Fences that have been replaced by homeowners are not part of this contract. These fences/gates are identified on the map.
 - 1.1.10 Demolish and haul away existing fences and dirt. Clean dirt may be deposited at the end of South Riviera Circle.
- 1.2 Change orders shall be in writing and must be agreed to and signed by both parties.
 - 1.2.1 No change orders are expected. The scope of work will be outlined as the work proceeds to identify fences to be replaced, installed, or excluded.

ARTICLE 2
TIME OF COMMENCEMENT

- 2.1 The Work to be performed under this Contract shall be commenced in January 2015 and shall continue until completion.
- 2.1.1 HOURS AVAILABLE TO CONTRACTOR:
 - 2.1.1.1 Available hours to perform the contract shall be Monday through Saturday 7:00 AM to 7:00 PM.
 - 2.1.1.2 Request for additional hours and/or deviations will require approval from the Board.

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.
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3.2 The Contract Sum is determined as follows:

3.2.1 Linear foot charges:

- 3.2.1.1 Cedar capped wood fence 24.50/LF – approximately 8,300 linear feet
- 3.2.1.2 Non-capped wood party fence 21.50/LF – approximately 36,150 linear feet
- 3.2.1.3 8' Cedar non-capped fence 29.50/LF – approximately 300 linear feet
- 3.2.1.4 6' metal fence 30.00/LF –
- 3.2.1.5 Tear down/haul off included in linear foot price

3.2.2 Unit prices

- 3.2.2.1 48" Wood gate w/steel frame 175.00 EA – approximately 435 + \$8.00 for tear down
- 3.2.2.2 48" 6' metal gate 450.00 EA
- 3.2.2.3 48" 4' metal gate 400.00 EA

ARTICLE 4
PAYMENTS

- 4.1 Based upon invoices for Payment submitted to the Association by the Contractor, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided in the Contract Documents as follows:

Payment of invoices upon receipt based on linear feet on fencing installed and number of gates installed as confirmed by Association representative.

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 and attached Exhibits hereto 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 is responsible for contacting all utility companies for digging requirements, including any permits required. Contractor shall be liable for repairs for any damage to underground utilities and any damage resulting from damaged underground utilities.

5.5 Contractor shall pay off and satisfy all claims for labor and materials employed or used in any manner by it 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.

5.6 The Work shall be performed in accordance with a schedule approved by Association. The schedule shall be posted on the Association website. Changes to the 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. Contractor communication with homeowners should be coordinated with the Association representatives prior to fence construction.

5.7 PROTECTION OF HOMEOWNERS AND ASSOCIATION PROPERTY:

5.7.1 Contractor shall endeavor to perform the work with a minimum amount of interference to the Homeowners and Association.

5.7.2 Preservation and Restoration of Homeowner and Association Property: Contractor shall be responsible for the preservation of Homeowners and Association property on the surface or underground along and adjacent to the work and shall conduct his operations in a manner that will ensure against injury and/or damage.

5.7.3 Where any direct or indirect damage has been done to Homeowner or Association property by or on account of any act, omission, neglect or misconduct in the execution of the work, or because of non-execution thereof on the part of the Contractor, such property shall be restored by the Contractor at his expense to a condition equal to that existing before the damage was done by repairing, rebuilding or otherwise restoring in a manner acceptable to the Association.

5.7.4 Contractor shall box around existing trees and provide for future growth.
Existing trees are not to be removed.

5.7.5 Contractor shall not park vehicles or equipment on or otherwise use homeowner's driveways. Any cracking or damage to driveways will be repaired by the Contractor at his expense. Parking for trailers will be provided by the Association.

5.7.6 Create and maintain file for each lot identifying fence type and measurements for the purposes of warranty, future maintenance, and payment.

ARTICLE 6

BELLAVITA HOMEOWNER'S ASSOCIATION (BVHOA) RESPONSIBILITIES:

6.1 BVHOA shall provide Contractor with the names, addresses and phone numbers of all homeowners so Contractor can notify Homeowners of construction plans.

6.2 BVHOA will notify Homeowners that it is their responsibility to provide the Contractor at least one foot of clearance between existing fences and the landscaping next to all fences in their yard. Contractor will NOT be liable for damage to furniture, landscaping etc., if this clearance is not provided.

6.3 BVHOA will be responsible for providing clearance of one foot between landscaping and fences that face streets.

6.4 BVHOA will notify Homeowners that Contractors' workers might require electricity for tools and water for cleanup. Homeowners are expected to cooperate.

ARTICLE 7

PAYMENT TERMS

7.1 Payments to the Contractor shall include any and all applicable taxes and are not subject to any escalation.

7.2 Contractor shall submit duplicate invoices to Association each week for partial payments or as otherwise stated in payment terms due hereunder, and Association shall pay each invoice within 10 business 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.

- 7.3. 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 any 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 8
INDEPENDENT CONTRACTOR

8. 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 or not incorporated or to be incorporated in the Work.

- 8.1 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; (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. All work not conforming to these requirements may be considered defective

ARTICLE 9
COMPLIANCE WITH LAW

9. 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 10
ACCURACY OF RECORDS

10. All financial settlements, billings, 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 11
SUBCONTRACTORS; ASSIGNMENT

11. 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 any and 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 12
DEFAULT BY CONTRACTOR;
TERMINATION BY ASSOCIATION

12. 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 13
TERMINATION

13. In addition to Association's rights under Paragraph 12 above and 14 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 14
BUSINESS STANDARD

14. 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 15
RECORDS AND AUDIT

15. 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 four (4) 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 16 INSURANCE

16. 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 prior to commencing work 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 17 INDEMNITY

17. Contractor agrees to and shall indemnify, protect, and hold harmless 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 to its tools and equipment utilized in the performance of the Work.

ARTICLE 18 SAFETY

- 18.1 Contractor shall provide and maintain all necessary temporary fences, barricades and other reasonable safeguards required to insure the safety of all persons, homeowners and public.
- 18.2 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.
- 18.3 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.
- 18.4 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 to be 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.
- 18.5 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 Paragraph 3 above.

ARTICLE 19
ALCOHOL, ILLEGAL DRUGS, WEAPONS

19. The use of alcohol or illicit or unprescribed 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 unprescribed 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 20
EQUAL OPPORTUNITY

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

ARTICLE 21
NOTICES AND ADDRESSES

21. All notices required or permitted to be given under this Contract 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 22

ENTIRE AGREEMENT

22. This Contract contains the entire agreement between the parties as to the work to be done 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 23
GOVERNING LAW

23. 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 24
SEVERABILITY

24. 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 25
TIME OF THE ESSENCE

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

ARTICLE 26
GENERAL

26. 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 27
NON-WAIVER

27. 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 28
CHANGE ORDERS

28. 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 29
EFFECTIVE DATE

29. This Contract has been executed on the dates shown by the signatures below, to be effective on the _____, which shall be the date of this Contract for all purposes.

Mockin D Fencing
As Contractor

By Alan Deplinter

Name Alan Deplinter

Title owner

Date 12-22-2014

480 11 2927
Employee Identification Number

FSR Vendor Number

BellaVita at Green Tee
As Association

By Marc R Wormser

Name MARC R WORMSER

Title TREASURER

Date 12-22-2014

By Ruth Southard

Name Ruth Southard

Title President

Date 12-22-2014

CONTRACT FOR SERVICES
ADDENDUM

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

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

And
Rockin' D Fence
(The "Contractor")
(A Texas Corporation/Partnership/Individual)

ARTICLE 5
CONTRACTOR'S DUTIES

5.4 Contractor is responsible for contacting all utility companies for digging requirements, including any permits required. ~~Contractor shall be liable for repairs for any damage to underground utilities and any damage resulting from damaged underground utilities caused by the Contractor.~~ Contractor shall report any damage to underground utilities and any damage repairs will be shared with the Association as determined on an individual basis.

ARTICLE 29
EFFECTIVE DATE

29. This Contract addendum has been executed on the dates shown by the signatures below, to be effective on the 7th day of January, 2015.

As Contractor

By Adam Desplinter

Name Adam Desplinter

Title owner

Date 1-9-2015

Employee Identification Number 480 11 2927

FSR Vendor Number

As Association

By Ruth K. Southard

Name Ruth K. Southard

Title President

Date 1-9-2015

By Ronald H. Gerlach

Name RONALD H. GERLACH

Title V. PRESIDENT

Date 1-9-2015