

## **INDEPENDENT CONTRACTOR AGREEMENT**

This Agreement (the "Agreement") is made on , by and between Miesner Brothers Lawncare & Landscaping LLC, (the "Company"), located at PO Box 22037, Louisville, Kentucky 40252 in the County of Jefferson, and , (the "Independent Contractor" or "Contractor") located at of , ,

### **RECITALS**

The Independent Contractor is secured to provide the services described below at the Company's principal place of business as aforementioned, or from the Contractor's principal place of business, if applicable, as aforementioned. The Independent Contractor represents that s/he has complied with all Federal, State and local laws regarding business permits, licenses, reporting requirements, tax withholding requirements, and other legal requirements of any kind that may be required to carry out said business and the Scope of Work which is to be performed as an Independent Contractor pursuant to this Agreement, and as such, provides his/her Employer Tax ID Number, \_\_\_\_\_ . The Independent Contractor is or shall remain open to conducting similar tasks or services for the Company, which may not be listed or described below, or for entities other than the Company and thus holds himself or herself out to the public to be a separate business entity.

The Company desires to hire and contract the services of the Independent Contractor to perform those tasks as set forth herein. The Independent Contractor assents to this Agreement and to act and perform as an independent contractor for the aforementioned Company and is thus willing to do so on the terms and conditions as set forth herein.

**NOW, THEREFORE**, in consideration of the above recitals and the mutual promises and conditions contained within this Agreement, the Parties agree as follows:

### **INDEPENDENT CONTRACTOR REPRESENTATION**

The implementation of this Agreement does not constitute a hiring by either party. It is therefore the intention of the parties that the Independent Contractor shall maintain an independent contractor status and shall not be considered an employee for any purposes, including, but not limited to, the application of the Federal Insurance Contribution Act, Social Security Act, Federal Unemployment Tax Act, provisions of the Federal Internal Revenue Code, State Revenue and Taxations Code relating to income tax withholding, Workers' Compensation Insurance and other benefit payments and third party liability claims.

Therefore, staying within the Scope of Work, the Independent Contractor shall retain sole and absolute discretion in the manner and means for the carrying out of his/her activities and responsibilities contained herein this Agreement. This Agreement shall not be construed or considered to be a partnership or joint venture, and the Company shall not be held liable for any obligations incurred by the Independent Contractor, unless otherwise specifically authorized as such in writing. The Independent Contractor shall not act as an agent or representative of the Company, superficially or otherwise, nor bind the Company in any manner, unless specifically authorized to do so in writing.

### **RESPONSIBILITIES, DUTIES AND SCOPE OF WORK**

The Independent Contractor herein agrees to devote the necessary amount of time, energy and attention required to satisfactorily complete, conclude and/or archive the following duties/responsibilities:

Lawn & Landscaping Services

It is expected that the above detailed services, tasks and responsibilities shall be completed by , barring any reasonably unforeseeable circumstances.

**FURTHERMORE**, the Independent Contractor shall perform any and all responsibilities and duties that may be associated within the Scope of Work set for above, including, but not limited to, work which may already be in progress or any related change orders. The Independent Contractor shall have full discretion within the Scope of Work but shall not engage in any activity which is not expressly set forth by this Agreement without first obtaining prior written authorization.

### **DOCUMENTS, RECORDS OR BOOKS**

Any and all documents, records or books which may be related to the Scope of Work, as set forth herein this Agreement, shall be maintained by the Independent Contractor at the Independent Contractor's principal place of business and open to inspection by the Company during regular working business hours. The documents, records and/or books to which the Company shall be entitled to inspect and receive copies of include, but are not limited to, any and all contract documents, change/purchase orders and work which has been authorized by the Company on existing or any potential project that are related to this Agreement.

## **WORK SCHEDULE**

The Independent Contractor shall be responsible to the owner(s) and/or manager(s) of the Company.

Any directions or advice provided to the Independent Contractor regarding the Scope of Work shall be considered a suggestion only and not an instruction.

## **COMPENSATION**

The Independent Contractor shall be entitled to full compensation for the performance of those tasks, responsibilities and/or duties related to the Scope of Work as follows:

Compensation Terms: Per Hr wage

Total Compensation Amount: \$0.00

Said compensation shall become due and payable to the Independent Contractor upon receipt of an invoice by the Company and payable pursuant to the following schedule and method:

Compensation Schedule: weekly

Compensation Method: Company Check or direct Deposit

## **TAX WITHHOLDING**

The Independent Contractor acknowledges and recognized that it shall complete and return to the Company an IRS Form 1099 and related tax statements, and shall be required by law to file corporate and/or individual tax returns, and to pay said taxes pursuant to all provisions of applicable Federal, State and Local laws. The Independent Contractor herein pledges and agrees to indemnify the Company for any damages or expenses, including any related attorney's fees, and legal expenses incurred by the Company as a result of Independent Contractor's failure to make such required payments. Upon the Company's reasonable request, the Independent Contract shall provide proof of required tax payments.

## **BENEFIT RIGHTS WAIVER**

The Independent Contractor herein waives and foregoes any and all right to receive any benefits that may be provided by the Company to its regular employees, including, but not limited to, health benefits, vacation, retirement, profit sharing plans, sick leave, and any 401(k) plans. The Independent Contractor acknowledges and agrees that if any government agency or court of law claims that the Independent Contractor is an employee, s/he agrees to waive coverage under these plans. This waiver is applicable to all non-salary benefits which might otherwise be found to accrue to the Independent Contractor by virtue of his/her agreement with the Company. This waiver is effective independently of the Independent Contractor's employment status as adjudicated for taxation purposes or for any other purpose.

## **NON-DISCLOSURE AND NON-COMPETE**

### **Representation and Warranties**

The Independent Contractor represents and warrants that his/her relationship with the Company will not cause or require that s/he breach any obligation to the agreement of or confidence related to any confidential, trade secret and/or proprietary information of any other person, company or entity. Furthermore, the Independent Contractor acknowledges that a condition of the relationship is s/he has not brought and will not bring or use in the performance of his or her duties at the premises of the Company any proprietary or confidential information, whether or not in writing, of a former contracted company without that company's written permission or authorization. The breach of this condition shall result in automatic termination of the relationship as of the time of the occurring breach. Except as otherwise noted on the back of the signature page hereof, there are no inventions heretofore made or conceived by the Independent Contractor that the Independent Contractor deems to be excluded from the scope of this Agreement and Independent Contractor hereby releases the Company from any and all claims by the Independent Contractor by reason of any use by Company from any invention heretofore made or conceived by the Independent Contractor.

### **Proprietary Information**

For the sole purpose of this Agreement, "Proprietary Information" shall include, but is not limited to any information, observation, data, written materials, records, documents, drawings, photographs, layouts, computer programs, software, multi-media, social media, firmware, inventions, discoveries, improvements, developments, tools, machines, apparatus, appliances, designs, work products, logo, system, promotional ideas and material, customer lists, customer files, needs, practices, pricing information, process, test, concept, formulas, method, marketing information, technique, trade secrets, products and/or research related to the actual or anticipated research development, products, organization, marketing, advertising, business or finances of the Company, its affiliates, subsidiaries or other related entities.

All rights, title and interest of any and all kind and nature whatsoever in and to the Proprietary Information made, written,

discussed, developed, secured, obtained or learned by the Independent Contractor during the term of its relationship with the Company or 3 immediately following termination of that relationship, shall be the sole and exclusive property of the Company for any purpose or use whatsoever as it deems necessary or fit, and shall be disclosed promptly by the Independent Contractor to the Company. The covenants set forth in the preceding sentence shall apply regardless of whether any Proprietary Information is made, written, discussed, developed, secured, obtained or learned (i) solely or jointly with others; (ii) during the usual hours of work or otherwise; (iii) at the request and upon the suggestion of Company or otherwise (iv) with Company's materials, tools, instruments, or (v) on Company's premises or otherwise.

The Independent Contractor shall comply with any reasonable rules established from time to time by the Company for the protection of the confidentiality of any Proprietary Information. The Independent Contractor irrevocably appoints the President and all Vice Presidents of the Company to act as the Independent Contractor's agent, representative and attorney-in-fact to perform all acts necessary to obtain and/or maintain patents, copyrights, trade-marks and similar rights to any Proprietary Information assigned by the Independent Contractor to the Company under this Agreement if (i) the Independent Contractor refuses to perform those acts, or (ii) is unavailable, within the meaning of any applicable laws. The Independent Contractor acknowledges that the grant of the foregoing power of attorney is coupled with an interest and shall survive the death or disability of the Independent Contractor.

The Independent Contractor shall promptly and fully disclose to the Company, in confidence, (i) all Proprietary Information that the Independent Contractor creates, conceives or reduces to practice in writing either alone or in conjunction with others during the term of this Agreement, and (ii) all patents applications and copyright registrations filed by the Independent Contractor within 3 after the termination of this Agreement, including, but not limited to materials and methodologies involved.

There is nothing contained within this Agreement that shall be construed to preclude the Company from exercising any and all of its rights and privileges as sole and exclusive owner of all of the Proprietary Information owned by or assigned to the Company under the provisions of this Agreement. The Company, in exercising such rights and privileges with respect to any particular item of Proprietary Information, may decide not to file any patent application or copyright registration on said Proprietary Information, may decide to maintain said Proprietary Information as secret and confidential, or may decide to abandon said Proprietary Information, or dedicate it to the public. The Independent Contractor shall have no authority to exercise any rights or privileges with respect to the Proprietary Information herein contained within this Agreement that is owned by or assigned to the Company.

**Non-Solicitation Clause**

The Independent Contractor shall not, throughout the duration of this Agreement and for a period of immediately following the termination of this Agreement, either directly or indirectly, call on, solicit, take away or attempt to do any of the such that which pertains to any of the customers or clients of the Company on whom the Independent Contractor called, contacted or may have become acquainted with during the fulfillment of the terms of this Agreement, either for his/her own benefit or for the benefit of any other individual, firm, corporation or organization.

**Non-Compete Clause**

The Independent Contractor herein agrees not to participate in any activity or action that may be deemed of a competitive nature with any activity of the Company during the course of their relationship and for a period of 3 after the termination of this Agreement. Therefore, for the purpose of this paragraph, competitive activity thus encompasses forming and/or making plans to form a business entity that may be seen as being competitive with any business of the Company.

**Non-Recruit Clause**

The Independent Contractor shall not throughout the duration of this Agreement and for a period of 3 immediately following the termination of this Agreement, either directly or indirectly, recruit any of the Company's employees, customers, clients or management for the purpose of any outside business.

During and after the Contractor's contract period with the Company, in the State of , and for a period of following termination of employment, however caused, the Contractor, or his/her Subcontractors, shall not seek or gain employment with any newly formed business (business formed after termination of this Agreement) that is in competition with the Company, its subsidiaries or affiliates within described as or within a mile radius of the Company and the aforementioned business location.

**Non-Partnership or Ownership Clause**

Neither the Independent Contractor nor any of his/her representatives, agents or principals shall become or be considered an owner, partner, joint venture with or agent of the Company or any of its subsidiaries, affiliates or related companies or businesses by reason of this Agreement or their relationship with the Company unless otherwise declared or stipulated in a separate written agreement that has been signed and dated by all parties. Neither the Company, Independent Contractor nor any representative, agent, principal, officer or anyone who may be retained by the Independent Contractor shall have any

authority to bind the other in any respect unless otherwise set forth in a separate written agreement which has been signed and dated by all parties.

### **Business Opportunity**

Throughout the duration of the terms of this Agreement, should the Independent contractor become aware of any venture, project, business, investment or other opportunity, collectively known as an "Opportunity," that is similar to, competitive with, in the same field as, or related to the Company, or any aspect which may be related to any project, investment, business or venture of the Company, then the Independent Contractor shall notify the Company immediately in writing of any such Opportunity and shall use the Independent Contractor's good-faith efforts to cause the Company to have the opportunity to explore, invest in, participate in, or otherwise become affiliated with said Opportunity.

### **MARKETING, ADVERTISING AND PROMOTIONAL MATERIAL**

The Independent Contractor shall, at no time, promote or advertise, including such things as conducting marketing surveys, mass marketing, direct mailing programs or use of the internet in such advertising or promotional capacity, any the Company's services and/or products without first obtaining the Company's prior written authorization or consent. The Independent Contractor shall only make use of promotional and informational materials, including, but not limited to, Policy applications, marketing materials, training materials and other Company forms, which have been supplied to the Independent Contractor by the Company or that which has been approved in writing by an authorized agent, representative or official of the Company, collectively known as the "Materials." The Independent Contractor shall use the Materials in compliance and in accordance with the entire Company's Advertising Guidelines then currently in effect. Any such Materials made available to the Independent Contractor and approved by the Company shall in no way be reproduced, modified or altered in any respect or manner without first obtaining prior written approval. Any materials created by the Independent Contractor and approved by the Company shall not be modified or altered without the Company's prior written authorization or consent. The Independent Contractor herein allocates and agrees to allocate to the Company the complete and full copyright in any and all materials created or that may be created by the Independent Contractor throughout the course of this Agreement, and as such, the Independent Contractor agrees to promptly execute any such document(s), if any, that the Company may request and/or require to confirm the allocation of the copyright or to expedite the registration of the copyright in the Materials anywhere necessary. The Company reserves the right to request from the Independent Contractor, at any time, samples of any Materials which the Independent Contractor may be using to verify compliance with the terms and conditions of this paragraph, and furthermore, the Independent Contractor agrees to provide such samples to the Company within 1 days of the Company's written request.

### **USAGE OF COMPANY TRADEMARK OR LOGO**

Any and all allowable use by the Independent Contractor of Company Trademarks and/or Logo shall inure to the Company's benefit, under the Company's control, and may be terminated by the Company at will without notice and for any reason. The Independent Contractor agrees that s/he shall not challenge, directly or indirectly, the validity of the Company's Trademark or Logo or the Company's ownership of said Trademark and/or Logo. The Independent Contractor shall not make use of the Company Trademark and/or Logo on any internet website and, furthermore, shall not register or use any domain names, meta tags, search engine keywords, hidden texts or URLs that may include any of the Company Trademark and/or Logo without first obtaining the Company's prior written approval.

### **RETURN OF COMPANY PROPERTY**

Upon the termination of this Agreement, or as per the request of either party, each party shall promptly and immediately deliver to the other party any and all property in its possession or under its care and control belonging to the other party, including but not limited to, proprietary information, customer names and lists, trade secrets, intellectual property, computers, equipment, pass keys, company identification, tools, documents, plans, recordings, software, and all related records and/or accounting/financial information.

### **EXPENSES**

Both the Independent Contractor and the Company agree to maintain separate financial accounts with regards to all expenses related to performing the Scope of Work. The Independent Contractor shall be solely responsible for payment of all his/her out of pocket expenses incurred pursuant to this Agreement unless otherwise provided in writing by the Company. The Independent Contractor agrees to execute and deliver any agreements and documents prepared by the Company and to do all other lawful acts required to establish, document and protect such rights.

### **WORK PRODUCT – WORK FOR HIRE**

The Independent Contractor herein acknowledges and agrees that all work of authorship performed for the Company shall be subject to the Company's direction and control and that such work constitute Work for Hire Work Product pursuant to *United States Code Title 17 – Chapter 2 – Sections 201 & 202 Ownership of Copyright & Material*.

Any and all property and/or work created, developed, invented, devised, conceived or discovered by the Independent

Contractor shall be subject to current copyright and/or other protections and are explicitly considered by the Independent Contractor and the Company to be "works made for hire" work product and thus shall be considered the sole property of the Company.

The Company, hereinafter, shall be considered the Author of Program pursuant to the U.S. Copyright laws. Any and all works for hire shall be the sole exclusive property of the Company. Furthermore, consistent with the Independent Contractor's recognition of the Company's sole and complete ownership rights in the materials, the Independent Contract agrees to not make use of said proprietary information or any part thereof for the benefit of any party other than the Company.

#### **OWNERSHIP OF SOCIAL MEDIA**

The Company has sole ownership over any social medial contacts, acquired before and/or throughout the Independent Contractor's term of service, including, but not limited to "followers" or "friends" which may be or have been acquired through such accounts as email addresses, blogs, Twitter, Facebook, YouTube or any other social media network that has been used or created on behalf of the Company.

#### **ASSIGNMENT**

The Company shall own, as its sole and full exclusive property, and the Independent Contractor agrees to allocate, transfer and/or convey to its authorized nominees all of the right, title and interest in and to any and all said "ideas" that are generally related to the Company's business, including, but not limited to, any inventions, processes, improvements, ideas, copyrights, patents, trademarks, works of art, formulas, manufacturing technology, developments, designs, documents, writings, discoveries, and trade secrets that the Independent Contractor may create, conceive, or reduce to practice, whether solely or jointly with others, copyrightable, patentable or unpatentable, from the date of this Agreement for the actual first date of employment with the Company, whichever comes first, until the termination of the Independent Contractor's employment. The Independent Contractor shall not be required to assign or allocate any invention where there was no use of Company equipment, supplies, facilities or trade secret information and of which was developed entirely on the Independent Contractor's own time, and is in no way related to the Company's business or to the Company's actual provable and anticipated research or development or; that does not result from work performed for the Company.

The Independent Contractor herein allocates to the Company all releases and discharges the Company, any affiliates of the Company and their respective officers, representatives, directors and employees, from and against any and all claims, demands, liabilities, costs and expenses of the Independent Contractor arising out of, or relating to, any Proprietary Information.

#### **EXECUTION**

During and throughout the course of employment by the Company, and upon the request of and without any compensation other than that which is herein contained and provided, but at no expense to the Independent Contractor, the Independent Contractor shall execute any documents and take action which the Company may deem necessary or appropriate to ensure the implementation of all the provisions of this Agreement, including without limitation, assisting the Company in obtaining and/or maintaining any patents, copyrights or similar rights to any Proprietary Information assigned and allocated to the Company.

The Independent Contractor further agrees that the obligations and undertakings herein stated within this section shall continue beyond termination of employment for any reason by the Company; however, should the Independent Contractor be called upon for any such assistance after termination of employment, then the Independent Contractor shall be entitled to fair and reasonable payment in addition to reimbursement of any expenses which may have been incurred at the request of the Company.

#### **SUSPEND OR ALTER WORK**

The Company reserves the right to inspect, stop and/or alter the work of the Independent Contractor to assure its conformity with this Agreement and the Company's needs.

At any time, the Company may, without cause, order the Independent Contractor, by way providing 2 days prior written notice, to suspend, delay or interrupt work or services pursuant to this Agreement, in whole or in part, for such periods of time as the Company, at its sole discretion, may deem fit or necessary. Any such suspension shall be affected by the delivery of a written notice to the Client of said suspension specifying the extent to which the performance of the work or services under this Agreement is suspended, and the date upon which the suspension becomes effective, which shall be no less than seven (7) calendar days from the date of the notice of suspension is delivered. The suspension of work and/or services shall be treated as an excusable delay.

#### **TERM AND TERMINATION OF AGREEMENT**

This Agreement shall be terminated at the conclusion of the Scope of Work or on . It may be terminated prior to the

completion or achievement of the Scope of Work for reasonable cause by either party. Such termination shall not prejudice any other remedy to which the terminating party may be afforded or entitled, either by law, in equity or in accordance with the terms and conditions contained within this Agreement.

#### **TERMINATION OF AGREEMENT FOR CAUSE**

If at any time the Company believes that the Independent Contractor may not be adequately performing their obligations under this Agreement or may be likely to fail to complete their work/services on time as required by this Agreement, then the Company may request from the Independent Contractor written assurances of performance and a written plan to correct observed deficiencies in the Independent Contractor's performance. Any failure to provide such written assurances constitutes grounds to declare a default under this Agreement.

The Independent Contractor, at such time, shall be deemed to be in default of this Agreement and the Company may, in addition to any other legal or equitable remedies available to the Company, terminate the Independent Contractor's right to proceed under this Agreement, for cause, should the Independent Contractor commit a breach of this Agreement and not cure said breach within ten (10) business days of the date of notice from the Company demanding such cure; or if such failure is curable but not within the ten (10) day period required, within such period of time as is reasonably necessary to accomplish such cure. In addition, in order for the Independent Contractor to avail itself of this time period in excess of ten (10) business days from the date of the notice, the Independent Contractor must provide the Company a written plan acceptable to and by the Company to cure said breach, and then diligently commence and continue such cure in accordance to the written plan provided.

In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a Termination for Convenience, and the Independent Contractor shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered.

#### **TERMINATION FOR CONVENIENCE**

The Company may terminate performance of the Independent Contractor's work and/or services under the Agreement pursuant to this paragraph in whole, or in part, whenever the Company shall determine that termination is in their best interest. Termination shall be effected by delivery of a written notice to the Independent Contractor of termination specifying the extent to which performance of the work and/or services under this Agreement is terminated, and the date upon which termination shall become effective, which shall be no less than twenty-one (21) business days from the date the notice of termination is delivered. The Independent Contractor shall then be entitled to recover any costs expended up to that point plus a reasonable profit, but not other loss, damage, expense or liability may be claimed, requested or recovered.

Except as provided in this Agreement, in no event shall the Company be liable for any costs incurred by or on behalf of the Independent Contractor after the effective date of the notice of termination. The termination pursuant to the provisions contained within this paragraph shall not be construed as a waiver of any right or remedy otherwise available to the Company.

#### **PATENT APPLICATIONS**

The Company herein agrees to cover and pay for any and all expenses related to the preparation, execution and prosecution of any patent applications made in the United States of America and all foreign countries wherein the Company may desire to obtain patents.

The Company herein agrees to compensate and pay to the Independent Contractor a reasonable cash award or bonus upon the successful execution by the Independent Contractor of the application filed with the United States Letters Patent for such invention or improvement and issuance of a patent on said application, together with an assignment thereof to the Company.

Excluded from this Agreement are any inventions and/or improvements which are related to the Company business that were made by the Independent Contractor prior to commencement of employment by the Company as follows:

- i. embodied in the United States Letters Patent or any application for a United States Letters Patent that has been filed prior to commencement of this employment; or
- ii. in the possession of a former company who has applied and who now owns the invention; or
- iii. as set forth in an attachment hereto.

#### **PROFESSIONAL CONDUCT**

The Independent Contractor shall be required to treat all Company employees, customers, clients, business associates and partners and other affiliates with complete respect and responsibility. The Independent Contractor shall be required to comply

with all laws, governing their profession, licensing requirements and other laws or regulations that will permit them to complete the Scope of Work.

#### **LICENSING AND WORKERS' COMPENSATION COVERAGE**

The Independent Contractor herein agrees to promptly provide to the Company proof of the necessary licensing status that may be required to perform the Scope of Work in accordance with the terms and conditions of this Agreement and Workers' Compensation Coverage where required by law.

#### **INDEPENDENT CONTRACTOR EMPLOYEES**

All persons which have been hired by the Independent Contractor to assist in the performance of the duties, tasks and responsibilities that are necessary to complete the Scope of Work, shall be considered the employees of the Independent Contractor, unless otherwise specifically noted in an agreement signed by all parties.

#### **NOTICES**

Any and all notices, which may be required hereunder by any party to the other party, shall be executed by either personal delivery in writing, or by mail, registered or certified, postage pre-paid with a return receipt requested. Mailed notices must be addressed to the parties at the addresses herein contained in this Agreement. However, each party may change their address, thus requiring written notice of such change of address in accordance with this section. Any hand delivered notice shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated after five (5) days of mailing. The Independent Contractor herein agrees to keep the Company informed of any change of business and/or mailing addresses, as well as telephone, facsimile, email, pager number or any other relevant means of contact and communication.

#### **LEGAL FEES**

Should any party initiate litigation, arbitration, mediation or any other legal proceeding ("Proceeding") against another party to enforce, interpret or otherwise seek to obtain legal or judicial relief in connection with this Agreement, the prevailing party in said proceeding shall be entitled to recover from the unsuccessful party any and all legal fees, cost, expenses, attorney's fees and any other cost or expense and fees arising from (a) such proceeding, whether or not such proceeding progresses to judgment, and (b) any post-judgment or post-award proceeding, including without limitation, one to enforce any judgment or award resulting from any such Proceeding. Any such judgment or award shall contain a specific provision for the recovery of all such attorney's fees, costs, and expenses, as well as specific provisions for the recovery of all such subsequently incurred costs, expenses and actual attorney's fees.

#### **MEDIATION AND ARBITRATION**

In the event that a controversy should arise between the parties to this Agreement which would involve the construction or application of any of the terms, provisions or conditions of this Agreement, a written request of either party served on the other, shall be submitted first to mediation and if the issue cannot be resolved, it shall then proceed to binding arbitration. Mediation or binding arbitration proceeding shall comply with and be governed by the provisions of the American Arbitration Association for Commercial Disputes, unless said Parties stipulate otherwise, or in such proportions as the arbitrator shall decide.

#### **INJUNCTIVE RELIEF**

The Independent Contractor herein acknowledges (1) the unique nature of the protections and provisions established and contained within this Agreement, (2) that the Company shall suffer irreparable harm if the Independent Contractor should breach any of said protections or provisions, and (3) that monetary damages would be inadequate to compensate the Company for said breach. Therefore, should the independent Contractor cause a breach of any of the provisions contained within this Agreement, and then the Company shall be entitled to injunctive relief, in addition to any other remedies at law or equity, to enforce such provisions.

#### **INDEMNIFICATION**

The Independent Contractor shall defend, indemnify, hold harmless, and insure the Company from any and all potential damages, expenses or liabilities which may result from or arise out of any negligence or misconduct on part of the Independent Contractor, or from any breach or default of this Agreement which may be caused or occasioned by the acts of the Independent Contractor. The Independent Contractor shall also insure that all of its employees and affiliates take all actions necessary to comply with all herein contained terms and conditions established and set forth in this Agreement.

#### **ENTIRE AGREEMENT**

This Agreement shall be considered a separate and an independent document of which it shall supersede any and all other Agreements, either oral or written, between the parties hereto, except for any separately signed Confidentiality, Trade Secret, Non-Compete or Non-Disclosure Agreements to the extent that these terms are not in conflict with those set forth herein.

#### **REPRESENTATION**

All parties to this Agreement herein acknowledges that no representation, inducements, promises or other agreements, orally or otherwise, have been made by any party hereto, or by anyone action on behalf of any party hereto, which are not included herein, and that no other agreement, statement or promise not contained within this Agreement shall be valid or binding. Any alteration or modification of this Agreement shall be effective only when done so in writing, signed and dated by all parties hereto.

#### **SEVERABILITY**

Should any term, condition, or provision of this Agreement be deemed or held to be invalid or unenforceable for any reason, those remaining terms, conditions and provisions shall remain valid and enforceable. Should a court of law determine that any term, condition or provision of this Agreement is invalid or unenforceable, but that by limiting such term, condition or provision it would become valid and enforceable, then such term, condition and/or provision shall be deemed to be written, construed and enforced as so limited.

#### **CONTINUING EFFECTS**

The Independent Contractor's obligations with regards to all trade secrets and confidential information, shall continue to be in effect beyond the scope of the relationship as aforementioned, and said obligations shall continue to be binding upon not only the Independent Contractor, but the spouse, affiliates, assigns, heirs, executors, administrators and/or other legal representatives as well.

#### **NON-FILING COPYRIGHTS OR FOREIGN PATENTS**

The Independent Contractor herein agrees that the Company's rights granted hereunder shall include the right not to file for copyrights, domestic or foreign patents when such is considered by the Company at its sole discretion appropriate for the business objectives of the Company.

#### **COUNTERPARTS**

This Agreement, at the discretion of the parties herein, may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute a single integrated document.

#### **SEVERABILITY**

In the event that any provision, clause, sentence, section or other part of the Contract is held to be invalid, illegal, inapplicable, unconstitutional, contrary to public policy, void or unenforceable in law to any person or circumstance, the balance of the Agreement shall nevertheless remain in full force and effect so long as the Purpose of the Agreement is not affected in any manner adverse to either party..

#### **MODIFICATIONS**

All parties have the option to modify this Agreement, and as such may be modified in writing and executed by the party to this Agreement against whom such modification is sought.

#### **WAIVER**

If either party fails to enforce any provision contained within this Agreement, it shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

#### **DRAFTING AMBIGUITIES**

All parties to this Agreement have reviewed and had the opportunity to revise this Agreement, have had the opportunity to have legal counsel review and or revise this Agreement. The rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or of any amendments or exhibits to this Agreement.

#### **JURISDICTION AND VENUE**

This Agreement is to be construed pursuant to the current laws of the State of Kentucky. Jurisdiction and venue for any claim arising out of this Agreement shall be made in the State of Kentucky, in the County of Spencer.

#### **COPIES**

Both the Independent Contractor and the Company hereby acknowledges that they have received a signed copy of this Agreement.

***THE UNDERSIGNED HAVE READ, UNDERSTAND and ACCEPT THIS AGREEMENT***, and by signing this Agreement, all parties agree to all of the aforementioned terms, conditions and policies.

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Patrick Miesner  
President of Company Operations  
Miesner Brothers Lawncare & Landscaping LLC

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