

## LANDSCAPING SERVICES AGREEMENT

This **LANDSCAPING SERVICES AGREEMENT** (this “Agreement”) is entered into on this 26 day of January, 2023, by and between **NEWELL PLACE HOMEOWNERS’ ASSOCIATION, INC.**, having an address of 74 Honeysuckle Way, Glenmont, New York 12077 (the “Owner”) and **ADVANTAGE LANDSCAPING**, having an address of 207 Maple Avenue, Selkirk, New York 12158 (the “Contractor”). Owner and Contractor agree to the following:

1. **SCOPE OF WORK.** Contractor shall perform all work and provide all labor, supervision, materials, and equipment necessary to complete, in a good and workmanlike manner, the scope of work set forth in **Schedule A** attached hereto and made a part hereof (the “Work”). Contractor shall supply all labor, materials and equipment necessary to perform the Work in accordance with this Agreement. Contractor warrants that the Work shall be free and clear of liens, claims, security interest or encumbrances. The Contractor shall be solely responsible for establishing, supervising and maintaining all safety precautions in connection with the Work.

2. **TERM.** Owner hereby retains Contractor to provide the Work for a period of five (5) years, commencing on April 1, 2023 and terminating on March 31, 2028 (the “Term”).

3. **CONSIDERATION.** In consideration of the services to be provided, the Owner shall pay Contractor in accordance with the payment schedule set forth in **Schedule A** attached hereto and made a part hereof.

### 4. **INSURANCE**

a. The Contractor shall procure and maintain throughout the Term of this Agreement, at its sole cost and expense, the following insurance policies in the amounts indicated, or other amounts as required by law, whichever is greater, and naming Owner as additional insured:

- i. Worker’s Compensation Insurance: A policy complying with the requirements of the laws of the State of New York.
- ii. NYS Disability Insurance: A policy complying with requirements of the laws of the State of New York.
- iii. Comprehensive General Liability and Property Damage Insurance: A standard comprehensive general liability insurance policy, with contractual and completed operations coverage, issued to and covering the liability of the Contractor for all work and operations under this Agreement and all obligations assumed by the Contractor under this Agreement. The coverage under such policy shall not be less than the following limits:

Bodily Injury and Property Damage Liability  
\$1,000,000 Each Occurrence  
\$2,000,000 Aggregate

- iv. Automobile Liability and Property Damage Insurance: A policy covering the use in connection with the Work of all owned, non-Owner and hired vehicles bearing, or under the circumstances under which they are being used, required by the Motor Vehicle Laws of the State of New York to bear license plates. The coverage under such policy shall not be less than the following:

Bodily Injury and Property Damage Liability  
\$1,000,000 Combined single limit each occurrence

- v. Umbrella Excess Liability. An umbrella policy providing excess limits over the primary policies described herein, in an amount not less than one million dollars (\$1,000,000.00).

b. Upon request by Owner, Contractor shall furnish Owner with certificates evidencing the above insurance. All insurance policies shall insure performance by the Contractor of the indemnity provisions of this Agreement; shall be primary, not contributory with, and not in excess of coverages which the Owner may carry; shall state that the Owner, is entitled to recovery for negligence of the Contractor even though the Owner, is named as an additional insured; shall provide for severability of interest; shall provide that an act or omission of one of the insureds or additional insureds shall not void or reduce coverages as to the other insured or additional insureds; and shall provide that the insurance shall not be cancelled or changed without thirty (30) days written notice of such cancellation or changes being mailed and received by the Owner.

5. **INDEMNIFICATION.** To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the Owner, its members, directors, officers, agents and employees harmless from and against any and all claims, demands, causes of action, administrative actions, demands of governmental agencies, judgments, costs or expenses (including, but not limited to, reasonable attorneys' fees, and any and all costs, fees and expenses incurred in representation and defense of Owner), liabilities, damages or losses which may be asserted by or against Owner arising out of or related to (i) the negligence, intentional acts or omissions of Contractor, its members, employees, agents, or invitees, (ii) the performance or non-performance of Contractor's obligations under this Agreement, or (iii) any breach by Contractor of the terms of this Agreement.

6. **TERMINATION.** This Agreement shall be terminable by either party upon no less than sixty (60) days written notice to the other party. In the event of such termination, the annual (or monthly) fee paid by the Owner to Contractor shall be prorated through the date of termination. If the Owner has prepaid compensation to Contractor prior to termination, Contractor shall refund to the Owner the amount so prepaid from the effective date of termination through the date of such prepayment.

7. **MISCELLANEOUS**

a. Contractor and the Work performed by Contractor shall at all times comply in all respects with applicable federal, state, county and local regulations, laws and codes. Any required licenses and permits shall be obtained by Contractor prior to commencing the Work.

b. In performing the Work herein specified, Contractor acknowledges and agrees that it is acting as independent contractor. This Agreement shall not be construed as creating an employer-employee relationship, joint venture, partnership or other cooperative corporate undertaking as between the Owner and Contractor.

c. If the Contractor defaults or neglects to carry out the Work in accordance with this Agreement, or fails within a five (5) day period of the receipt of written notice of default from the Owner, or its agent, to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies, correct such deficiencies and the cost thereof shall be charged to the Contractor and shall be payable upon demand. The rights stated in this paragraph and elsewhere in this Agreement are cumulative and not in limitation of any rights of the Owner granted in this Agreement, at law or in equity.

d. The Contractor shall take care in working near other structures or areas to protect them from damage. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the property and all adjacent areas. The Contractor shall be solely responsible for any damage to existing structures or areas and will repair such damage, at its expense, to the Owner's satisfaction.

e. The Contractor shall keep the property and surrounding areas free from waste materials and rubbish which results from the Work. Removal, containerization (if applicable), hauling and disposal of rubbish and waste materials shall be the responsibility of the Contractor. If the Contractor fails to keep the property and surrounding areas free from waste materials and rubbish, the Owner may do so and the cost thereof shall be charged to the Contractor and shall be payable upon demand.

f. The Contractor shall be held solely responsible for all damages resulting from its, or its subcontractors and agents, errors, misconduct, omissions or negligence in the performance of the Work.

g. Contractor acknowledges that it has assumed the risk and that the consideration includes such provisions as it deems proper for any unforeseeable obstacles or difficulties, which it may encounter in the performance of the Work.

h. Contractor represents that it is familiar with the property and has received all information it needs concerning the conditions of the property. The Contractor represents it has inspected the location of the Work and has satisfied itself as to the condition thereof, including, without limitation, all structural, surface or subsurface conditions. The Contractor shall be solely responsible for providing a safe place for the performance of the Work.

i. Neither the Contractor nor any entity for which the Contractor is responsible, shall erect any sign on the property without the Owner's prior written consent, which may be withheld in the Owner's sole and absolute discretion.

j. Contractor shall not store any equipment or materials at the property without the prior written consent of Owner.

k. This Agreement shall be governed by and interpreted and construed in accordance with the laws of the State of New York, without giving effect to any conflict of laws or choice of law rules that would defeat the application of New York law. Any dispute arising out of this Agreement shall be venued in the Supreme Court, Albany County.

l. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by operation of law or otherwise by either party without the prior written consent of the other party.

m. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

[Signature Page Follows]

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the day and year indicated below.

**NEWELL PLACE HOMEOWNERS'  
ASSOCIATION, INC.**

By: Jane Craig  
Name: Jane Craig  
Its: President

**ADVANTAGE LANDSCAPING**

By: Michael Waterman  
Name: Michael Waterman  
Its: CEO & Owner

## **SCHEDULE A**

### **SCOPE OF WORK**



**Newell Place Homeowner's Association**  
**Maintenance Service Agreement**  
For Period from 4/1/2023 – 3/31/2028 (5 years)

Below are the terms outlined for the grounds maintenance services for Newell Place Homeowners Association located on Wemple Road in the Town of Bethlehem.

**Payment Specifications**

|                                                                               | Total Annual Amount | Monthly Payment                          | Due by:                                   |
|-------------------------------------------------------------------------------|---------------------|------------------------------------------|-------------------------------------------|
| Total Yearly Price for Individual Lawn Services (sales tax included):         | \$49,440.00         | Eight (8) monthly payments of \$6,180.00 | The 30th of each month (April – November) |
| Total Yearly Price for Rain Garden Maintenance Services (sales tax included): | \$8,070.00          | Eight (8) monthly payments of \$1,008.75 | The 30th of each month (April – November) |
| Total Yearly Price for Snow Removal Services (sales tax included):            | \$24,720.00         | Four (4) monthly payments of \$6,180.00  | The 30th of each month (December – March) |
| <b>Total</b>                                                                  | <b>\$82,230.00</b>  |                                          |                                           |

***\*Prices to increase 2% annually starting April 1, 2024.***

**Service Specifications for Individual Lawns, Snow Removal and Rain Garden Maintenance**

**Individual Lawns**

1. Spring Clean-up (April)
  - a. Remove yard debris from winter. This includes areas in and around the Newell Place sign at the entrance;
  - b. Re-edge and mulch all front yard beds, front trees, trees along the deeded Tree Protection Area\*, and areas in and around the Newell Place sign at the entrance with black mulch before Memorial Day Weekend to maintain 2 to 3 inches depth

**Advantage Landscaping**  
207 Maple Avenue, Selkirk, NY, 12158  
Main: 518-478-9552  
John Myers (VP of Commercial Sales): 518-577-8603  
Michael Waterman (Owner): 563-343-9079



of mulch. Spring and summer flowers to be planted in flower beds at Newell entrance.

## 2. Mowing Season

- a. All turf areas, including the deeded Tree Protection Area, will be mowed once every week, when necessary, with not less than 28 mowing occurrences during the mowing season from April 1<sup>st</sup> to November 30<sup>th</sup>;
- b. Mowing height to stay at 3 inches unless the weather is unusually hot and damaging. In case of hot or dry weather, mowers may be raised to 3.5 inches;
- c. All turf areas are to be mowed perpendicular (when possible) each week to control grain of the plant and slow compaction of the soil;
- d. All heights will be uniform throughout;
- e. Grass clippings will be removed by the contractor. Any remaining grass clumps will be blown clean or removed;
- f. All sidewalks, driveways, roadways and mulch beds will be blown free of clippings;
- g. All finished grass edges will be string trimmed weekly;
- h. Weed all front yard planting beds biweekly;
- i. All front yard planting beds, including areas in the Newell Place sign area at the entrance shall be cultivated (turned) one-time mid-season (July/August);
- j. Shrub pruning to be performed in late June/early July and then maintained for the remainder of the season as needed. Flowering ornamental shrubs to be pruned during the appropriate season to promote ideal flowering conditions. All shrub pruning includes the areas in and around the Newell Place sign at the entrance.

## 3. Fall Clean-up

- a. Remove leaves from lawn areas prior to winter and as needed, including areas in and around the Newell Place sign at the entrance;
- b. Remove all yard debris from property;

## 4. Fertilizations

- a. There will be five lawn fertilizations per year to all lawns to include two broadleaf weed control applications that will be performed in conjunction with fertilization applications: one during the early spring application and two during the early fall application. Fertilizations include deeded Tree Protection Areas;
- b. The contractor may offer homeowners an option to replace normal lawn treatment applications with organic applications. Agreements to replace normal applications with organic applications will be exclusively between the individual homeowner and the contractor and will not in any way affect costs to the HOA.

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## Snow Removal

1. Plowing
  - a. All driveways and 1 (one) sidewalk per house and mail box area are areas under contract. **Contract will run from the first snowstorm of 2 inches or more.** Plowing and snow blowing should be performed for clearing driveway, if possible, by 7:00 am. Walkways to be cleared by 4:00 pm;
  - b. Return service for clearing driveways and walkways of additional accumulation through the day;
  - c. Driveway aprons from Town plowing and drifting snow will be re-plowed and shoveled by 4:00 pm when applicable.
  - d. **Calcium or salt is not part of the snow removal contract**, although problem areas may be treated. Homeowners are encouraged to have a bag of calcium or salt on hand;
  - e. All areas will be cleared by snowblowers, shovels, and approved equipment. **Snow plows and trucks will not be used unless previously agreed to by the HOA Board.** Any damages that may occur will be fixed to existing condition no later than May 1<sup>st</sup> of that year.

Note: The Grounds Maintenance Contractor should always attempt to limit scratches caused by snow removal equipment, but minor surface scratches are normal and can be remedied by seal coating. Seal coating is a homeowner's responsibility, not the Grounds Maintenance Contractor.

## Rain Garden Maintenance

**The following are specifications for routine maintenance of 29 rain gardens:**

1. Self-educate on the purpose, construction, appropriate plant material, and proper maintenance, and inspection of rain gardens as bio-retention areas;
2. Monitor plants regularly for pests, disease, and to ensure proper root growth. Remove diseased plants, and areas for pests to thrive;
3. Remove dead stems, seed heads, weeds, and leaves as they accumulate;
4. Clean out any debris, yard wastes (branches, etc.) and litter;
5. Divide plants that are crowded and plant them elsewhere, and fill gaps left by plants that have failed to thrive. New plants should be placed in the same location or close to the original location of the plant being replaced unless they were improperly placed originally. Any new plants needed will be procured by the contractor and should be from a plant list approved by the HOA;
6. Prune and thin plants as necessary, and cut back in the fall (plant height not less than design water depth);

# **ADVANTAGE LANDSCAPING**

7. Replenish mulch layer to a depth of two to three inches (including existing mulch) when it decomposes to less than one inch. Use shredded hardwood mulch that is less likely to float away in rainstorms;
8. Remove layers of silt or sediment that accumulate in the depression, to maintain the depth of the ponding area and the rate that water filters through the garden;
9. Inspect the earthen berm and spillway for possible erosion and failures and ensure bottom of the cell is flat. Repair as necessary;
10. Check and maintain proper functioning of inlet (where water enters) and overflow devices. Make sure there is no blockage and remove all debris as required.

## Documentation Requirements

The contractor will provide to the HOA, detailed work descriptions acceptable to the HOA, including photos, if needed, and logs of work performed, no later than seven days after the work is completed. These will be submitted to the Town, when requested, to provide evidence of proper rain garden maintenance and inspections. A level 1 inspection will be performed by the HOA or its representative, each year, using the checklist form from the Storm Water Pollution Prevention Plan for Newell Place prepared by Ingalls & Associates, LLP Appendix G, Page G-10.

\*Tree Protection Area along Wemple Road includes the rear of yards: 6, 8, 12, 14, 16, 18, 20 on Twinflower Ct. and the side of 106 Honeysuckle Way.

## **AGREED TO AND ACCEPTED BY:**

  
\_\_\_\_\_  
Association Signature

Name: JANE CRAIG Date: 1/26/23

  
\_\_\_\_\_  
Contractor Signature

Name: Michael Waterman Date: 1-9-2023

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