



# Hindman Sanchez

## ASSOCIATION'S FORM OF VENDOR AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, by and between \_\_\_\_\_ Association, a Colorado nonprofit corporation (hereinafter referred to as the "Association"), whose addresses are (1) c/o \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, CO \_\_\_\_\_, and (2) c/o the Registered Agent and Office of the Association as maintained with the Colorado Secretary of State; and \_\_\_\_\_, whose address is \_\_\_\_\_, Suite \_\_\_\_\_, CO \_\_\_\_\_ (hereinafter referred to as "Contractor").

### RECITALS:

(i) The Association is a nonprofit corporation comprised of individual owners who own Units at the Common Interest Community administered and managed by the Association.

(ii) The Association desires to contract with the Contractor for \_\_\_\_\_, and contractor desires to contract with the Association to complete the services and supply the materials, all as set forth below.

(iii) The parties deem it in their best interests to set forth all terms and conditions of their relationship.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed to, the parties hereto agree as follows:

1. **TERMS**

1.01 Contractor shall be advanced \$\_\_\_\_\_ for the work to be performed.

1.02 The engagement of the Contractor by the Association commences on the date of this Agreement and shall continue until \_\_\_\_\_, \_\_\_\_\_, at which time, all work must be completed, or this contract is then terminated, unless terminated sooner pursuant to this Agreement.

1.03 Payment shall be due Contractor by the Association upon satisfactory completion of the work, as more fully addressed below.

1.04 Contractor shall be the sole party obligated to pay any subcontractors, and shall indemnify the Association from all compensation claims of all subcontractors.

1.05 In consideration of the deposit held by Contractor set forth above, Contractor waives all mechanic lien rights for any work performed, services provided, or materials supplied, to date.

2. **DUTIES AND RESPONSIBILITIES/THE WORK** Contractor hereby agrees to perform the services and supply any necessary materials for the following repairs:\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

3. **COMPENSATION**

3.01 **Contract Price.** The Association agrees to compensate Contractor with the total sum of \$\_\_\_\_\_, after satisfactory completion of the work, with \$\_\_\_\_\_ deposited hereby, and a balance of \$\_\_\_\_\_ to be paid after satisfactory completion. Contractor shall be solely responsible for payment of all subcontractors.

3.02 **Hold Back.** At the Association's option, ten percent (10%) of the contract price may be withheld from the final payment, for up to ninety (90) days after satisfactory completion of the work.

4. **REPORTS AND PAYMENT** Contractor shall provide the Association with a written report at the completion of the work by Contractor, and by the termination date (as set forth above). Upon receipt, the Association shall make the necessary evaluations. When the Association finds the work of Contractor to be acceptable and determines that the Agreement has been adequately performed to the date of Contractor's report, the Association will then pay Contractor the remaining sums due within ten (10) days, subject to the discretionary withholding rights of the Association.

5. **BEST EFFORTS** So long as this Agreement shall continue in effect, Contractor shall devote sufficient business time and effort to their duties and responsibilities under this Agreement, weather permitting, in order to repair the pool and to promote the best interests of the Association.

6. **TERMINATION OF AGREEMENT**

6.01 The Association shall have the right to terminate this Agreement upon five (5) days prior written notice if: (i) Contractor is guilty of willful misconduct in performing its duties hereunder, which failure directly or indirectly damages or may directly or indirectly damage the Association; (ii) Contractor commits any act while performing duties hereunder which adversely affects the Association's liability, provided said act or acts were not caused by the Association; (iii) Contractor is guilty of gross negligence in performing duties hereunder which gross negligence was not caused directly or indirectly by the Association; (iv) Contractor, while performing duties under this Agreement, violates any federal, state, or local rule, regulation or law; (v) Contractor is not performing duties in a workmanlike fashion in accordance with the standards of the industry or profession within which those parties work and within the locality where the Association is located; (vi) Contractor is adjudged bankrupt, or makes a general assignment for the benefit of creditors, or a receiver is appointed on account of insolvency of either; (vii) Contractor persistently or repeatedly refuses or fails, except in cases where weather does not permit or for which extension of time is provided, to supply enough properly skilled workers or proper materials; or (viii) Contractor fails to make prompt payment to any other subcontractors for material or labor.

6.02 Upon termination of this Agreement for any reason, the Association shall be released from all obligations to pay any portion of the compensation to Contractor and Contractor shall be released from all obligations to perform services for the Association hereunder and the deposit advanced hereunder shall be returned to the Association, less the value of any of the work actually performed.

6.03 In the event that the Association terminates the employment of the Contractor, Contractor shall provide the Association with a release of all rights to receive any compensation under this Agreement and Contractor shall be released from all obligations to perform services for the Association hereunder.

6.04 This Agreement shall automatically terminate when the Contractor completes its responsibilities, as outlined in this Agreement, in a workmanlike manner, to the full satisfaction of the Association, and the Association has paid Contractor.

7. **MISCELLANEOUS PROCEDURAL AND SUBSTANTIVE PROVISIONS**

7.01 **Right to Carry Out Work.** If the Contractor neglects to carry out the work in accordance with this Agreement and fails within three (3) days after receipt of written notice from the Association to commence and continue the work, with diligence and

promptness, the Association may, and without prejudice to any other remedy the Association may have, make good such deficiencies.

7.02 Work by Others. If any part of the Contractor's work depends, for proper execution or results, upon the work of the Association or any separate subcontractor, Contractor shall, prior to proceeding with the work, promptly report to the Association any apparent discrepancies or defects found in such other work that renders the work area unsuitable for the work to be performed.

7.03 Responsibility. Should the Contractor wrongfully delay or cause damage to the work of another contractor of the Association, then Contractor shall, upon due notice, promptly attempt to settle the dispute with the aggrieved contractor by agreement or otherwise.

7.04 Labor and Materials. Contractor shall provide all labor, materials, equipment, tools, construction equipment and machinery, transportation, lodging, and other facilities and services necessary for the proper execution and completion of the work.

7.05 Damage or Loss. Contractor shall promptly remedy all damage or loss to any property which is caused in whole or in part by the Contractor, or anyone directly or indirectly employed by them.

7.06 Taxes. Contractor shall pay all sales, consumer, use and other similar taxes which are legally enacted (whether or not yet effective) at the time work is commenced, for the work or portions thereof. The Association shall not be liable for any federal, state or local taxes with regard to the work.

7.07 Use of Premises. Contractor will not unreasonably interfere with residents of the Community.

7.08 Cleaning Up. Contractor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by the work. At the completion of the work, Contractor shall remove all waste materials and rubbish from and about the premises as well as all tools, equipment, machinery, and surplus materials. If Contractor fails to clean up at the completion of the work, the Association may do so and the costs thereof shall be charged to Contractor.

## **8. PERMITS AND FEES AND COMPLIANCE NOTICES.**

8.01 Unless otherwise provided for in writing, Contractor shall secure and pay for all necessary permits and the Contractor shall secure and pay for all other types of permits and governmental fees, licenses and inspections which are necessary for the proper execution and completion of the work and which are customarily secured.

8.02 Contractor shall give all notices and comply with all laws, ordinances, rules and lawful orders of any public authority bearing on the performance of the work contemplated under this Agreement.

8.03 If Contractor performs any work which is contrary to any such laws, ordinances, rules and regulations, and without having previously given notice of such noncompliance to the Association, that party shall assume full responsibility therefore and shall bear all costs attributable thereto.

**9. TIME**

9.01 All time limits stated in this Agreement are of the essence.

9.02 Contractor shall begin the work as soon as weather permits, and shall cause the same to be satisfactorily completed on or before \_\_\_\_\_, \_\_\_\_\_, or this agreement shall then terminate. Contractor shall carry the work forward expeditiously with adequate forces and shall achieve substantial completion of the work within the time permitted.

**10. SUBCONTRACTS**

10.01 Contractor, as soon as practicable after the signing of this Agreement, shall furnish to the Association in writing for review by the Association, the names of any other persons or entities proposed for any portions of the work contemplated under this Agreement. The Association will promptly reply in writing stating whether or not it, after due investigation, it has reasonable objection to any of the proposed persons or entities.

10.02 Contractor shall not contract with any such proposed person or entity to whom the Association has made reasonable objection under the provisions of this Section.

10.03 If the Association has reasonable objection to any such proposed person or entity, the Contractor shall submit a substitute to whom the Association has no reasonable objection.

10.04 By an appropriate written agreement, the Contractor will require any subcontractors, to the extent of the work to be performed by the subcontractor, to be bound to the Contractor by the terms of this Agreement and to assume toward the Contractor all of the obligations and responsibilities which the Contractor, by these documents, assumes toward the Association. Said agreement shall preserve and protect the rights of the Association under this Agreement. Where appropriate, the Contractor shall require each subcontractor to enter into similar agreements with their subcontractors. The Contractor shall make available to each proposed subcontractor, prior to the execution of their contract, copies of this Agreement and identify to the subcontractor any terms and conditions of the proposed contract which may be at variance with the terms and provisions of this Agreement.

10.06 Contractor expressly agrees to allow the Association to conspicuously post a notice of non-liability on or about the premises where any material men and all subcontractors or material men can see it, which warns any and all subcontractors that the Association shall not be liable for any mechanics lien filed by contractors and material men and stating that any such lien is ineffective as an encumbrance to title.

**11. EMPLOYEES**

11.01 Contractor shall independently supervise and direct the work for which they are responsible, using their best skill and attention. The Contractor shall be solely responsible for all means, methods, techniques, sequences and procedures employed in completing the tasks which are outlined in this Agreement and shall coordinate all portions of the inspection work under this Agreement, subject to the overall approval of the Association.

11.02 Contractor shall be responsible to the Association for the acts and omissions of the Contractor's employees, any subcontractors and their agents and employees, and any other persons performing any of the work under contract or with the Contractor.

11.03 Contractor shall at all times enforce strict discipline and good order among all employees and shall not employ on the work any unfit person or anyone not skilled in the task which is assigned them.

**12. INSURANCE**

12.01 Contractor shall purchase and maintain insurance in the amount of not less than \$1,000,000.00 for protection from the claims in this Agreement set forth below and shall indemnify the Association therefrom, which risks may arise out of or result from the Contractor's operations under this Agreement, whether such operations be by the Contractor, by Subcontractor, or by anyone directly or indirectly employed by any contractor, or by anyone for whose acts Contractor may be liable:

- a) Claims of the Association for damage to or defects in the work or otherwise related to the work caused by the Contractor or as may arise;
- b) Claims under workers compensation, disability benefit, unemployment and other similar employee benefit acts;
- c) Claims for damages because of bodily injury, occupational sickness or disease or death of any employees;
- d) Claims for damages because of bodily injury, sickness or disease, or death of any person other than employees;

- e) Claims for damages insured by any usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person;
- f) Claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and
- g) Claims for damages because of bodily injury or death of a person or property damage arising out of the ownership, maintenance or use of any motor vehicle or other equipment used in the work of the business of Contractor.

Contractor shall supply and maintain evidence or certificates of such insurance with the Association prior to starting the work.

**13. WARRANTIES AND REPRESENTATIONS**

13.01 For the benefit of the Association, and as additional inducement with respect to this Agreement, Contractor represents and warrants the following:

- a) Contractor acknowledge that the terms of this Agreement provide for adequate consideration sufficient to compensate each for all amounts owed to or due from the Association for the work specified.
- b) Contractor acknowledges that the Association has acted in good faith at all times in reaching this Agreement.
- c) Contractor acknowledges that, in signing this Agreement, it is not acting under any misapprehension as to the effect thereof, and that it has acted freely and voluntarily and not under coercion or financial, emotional, or any other form of duress.
- d) Contractor acknowledges that it has been advised that this Agreement is legally binding upon, that it has been advised to seek the aid of legal counsel, and that it has either done so or freely chosen not to do so.
- e) Contractor understands and agrees that this Agreement is made for the protection and benefit of the Association and the Contractor.

**14. INDEMNIFICATION**

14.01 Contractor agrees to and shall indemnify and hold the Association harmless of and from any and all liability, loss, damage (including reasonable attorney's fees incurred by the Association), manner of action, inactions, suits, sums of money, accounts,

reckoning, controversies, variances, damages, judgments, claims and demands or claims of loss whatsoever, in law or equity, against the Association or which the Association may suffer as a result of the Contractor's engagement by the Association or otherwise related to the work.

14.02 In any and all claims against the Association or any of its agents or employees by any employee of the Contractor, a subcontractor, or anyone directly or indirectly employed by the Contractor or anyone for whose acts Contractor may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workers compensation acts, disability benefit or other employee benefit acts.

## 15. GENERAL PROVISIONS

15.01 Notices. All notices required or permitted by this Agreement shall be in writing and, except as may otherwise be provided herein, shall be delivered in person or sent by United States mail, postage pre-paid, addressed as set forth on the first page hereof, except that any party hereto may from time to time give written notice to the other party of a change of address for this purpose.

Unless otherwise herein required, all mailed notices required or permitted by this Agreement shall be considered effective and received seventy-two (72) hours after the date and time the same was transmitted to the recipient.

15.02 Benefits. This Agreement shall extend to and be binding upon the parties, their successors, assigns and legal representatives. This Agreement shall not be assignable by Contractor without the express written consent of the Association.

15.03. Entire Agreement. This Agreement contains the entire agreement of the parties relating to the subject matter hereof and the parties have made no agreements, representations or warranties relating to the subject matter hereof which are not set forth herein. No modification of this Agreement shall be valid unless made in writing and signed by the parties hereto.

15.04 No Waiver. The waiver or breach of a term or condition of this Agreement shall not be deemed to constitute the waiver of any other breach of the same or the waiver of any other term or condition of this Agreement.

15.05 Interpretation/Relationship. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. The Association hereby acknowledges that Contractor is engaged in the business above referenced as an independent contractor providing services for individuals and entities. The parties intend that the relationship created herein shall be that of a nonprofit corporation contracting with an independent contractor for services and/or supplies in exchange for previously agreed upon compensation. The parties do not intend to create, and this Agreement shall not be construed as creating, a partnership, association or joint venture, between or

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among the Association and Contractor. The parties hereby agree to accurately represent the independent contractor relationship created hereby to all third parties and specifically agree not to represent to any third party, by spoken or written words or by conduct, that Contractor is a partner or joint venturer with or in the Association.

15.06 Headings. The paragraph headings as used herein are for reference only and are not intended to be considered in the construction of this Agreement.

15.07 Enforceability. The invalidity or un-enforceability of any particular provision of this Agreement shall not in any way affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision was omitted.

15.08 Remedies. In the event of a default under, or breach of this Agreement by Contractor, the remedies available to the Association shall include specific performance, damages or both. In the event of any legal action arising under this Agreement by reason of any breach, the prevailing party shall be entitled to recover all costs and expenses, including reasonable attorney fees incurred in enforcing or attempting to enforce any of the terms or conditions of the agreement.

15.09 Amendment. This Agreement may not be amended except by written agreement signed by all of the parties hereto.

IN WITNESS WHEREOF, the parties hereby execute this Agreement the day and year above first written.

**ASSOCIATION:**

\_\_\_\_\_ ASSOCIATION

By: \_\_\_\_\_  
Authorized Agent

**CONTRACTOR:**

\_\_\_\_\_

By: \_\_\_\_\_  
Authorized Agent