

MEDIAN AND BOULEVARD MAINTENANCE AGREEMENT

This Agreement dated for reference January _____, 2017, is made:

BETWEEN:

TOWER RANCH COMMUNITY ASSOCIATION, having its registered and records offices located at 301, 1665 Ellis Street, Kelowna, BC, V1Y 2B3

(the "Association")

AND:

CITY OF KELOWNA, 1435 Water Street, Kelowna, British Columbia, V1Y 1J4

(the "City")

WHEREAS:

- A. The Association is responsible for the maintenance and repair of certain amenities constructed, erected or installed at developments located near the Tower Ranch Golf Course;
- B. The City owns dedicated road, called Tower Ranch Boulevard, leading to the Tower Ranch Golf Course, which road includes shrubbery, irrigation systems and trees installed on medians contained on Tower Ranch Boulevard and shrubbery, excluding grassed areas and trees, installed on boulevards adjacent to the road (hereinafter collectively referred to as the "Median and Boulevard Landscaping");
- C. The City and the Association have agreed that the Association will maintain the Median and Boulevard Landscaping on the terms and conditions set out in this Agreement;

THIS AGREEMENT is evidence that in consideration of \$1.00 paid by the City to the Association and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Association, the City and the Association covenant and agree as follows:

Maintenance of Median and Boulevard Landscaping

1. The Association covenants and agrees, at its sole cost and expense, to carry out the maintenance of the Median and Boulevard Landscaping as is presently installed on Tower Ranch Boulevard.
2. The Association covenants and agrees to maintain the Median and Boulevard Landscaping as follows:

- (a) maintain the Median and Boulevard Landscaping so it is safe for the passage of the public;
- (b) to keep the Median and Boulevard Landscaping free from litter, weeds and other noxious plants;
- (c) cut and prune the Median and Boulevard Landscaping as necessary or as may be required by the City of Kelowna; and
- (d) to keep the Median and Boulevard Landscaping irrigated;
- (e) to maintain the irrigation system servicing the Median and Boulevard Landscaping in the state it is at the date of this Agreement.
- (f) maintenance shall be in accordance with all applicable rules and regulations, including Worksafe BC regulations;

No City Contribution for Works

3. The Association acknowledges and agrees that the Association will perform the maintenance of the Median and Boulevard Landscaping at its own cost and expense on the terms and conditions contained in this Agreement. Except as set out in this Agreement, the City has no obligation to install or maintain the Median and Boulevard Landscaping or to make a contribution to the Association for the Association's performance of the terms and conditions in this Agreement. The foregoing does not relieve the City from any of its obligations to repair and maintain Tower Ranch Boulevard other than as set out in this Agreement, including, but not limited to, the repair and maintenance of the curbs and asphalt road.

Access

4. So long as this Agreement is in force and effect, the City shall permit the Association to access Tower Ranch Boulevard to maintain the Median and Boulevard Landscaping as contemplated in this Agreement.

Association's Risk

5. The Association acknowledges and agrees that the City does not, by its approvals, inspections or acceptance of the Median and Boulevard Landscaping warrant or represent that the Median and Boulevard Landscaping are in compliance with any enactment or other law or as to the quality, fitness for purpose, adequacy or safety of the Median and Boulevard Landscaping, or that the Median and Boulevard Landscaping are without fault or defect, and the Association acknowledges and agrees that all approvals and inspection of the Median and Boulevard Landscaping given or made by the City are for the sole benefit of the City and in no way relieve the Association from maintaining the Median and Boulevard Landscaping in accordance with this Agreement.

Termination

In the event that the Association terminates this Agreement, the Association shall remove the Median and Boulevard Landscaping in the locations shown on Schedule A forming part of this Agreement and leave the site in a safe and maintenance-free condition by replacing vegetation with hard surfacing (e.g. pavers).

Indemnity and Hold Harmless

6. The Association shall:
- (a) defend, indemnify and hold harmless the City, its elected officials, officers, employees and agents from and against all claims, demands, actions, proceedings, and liabilities whatsoever and all costs and expenses incurred in connection therewith and resulting from the non-performance of the obligations of the Association pursuant to this Agreement;
 - (b) be liable for all loss, costs, damages, and expenses whatsoever incurred or suffered by the City, its elected officials, officers, employees and agents including but not limited to damage to or loss of property and loss of use thereof, and injury to or death of a person or persons resulting from or in connection with the non-performance of the obligations of the Association pursuant to this Agreement;

This indemnity will survive the termination of this Agreement in relation to any matter arising out of or caused by any action taken or not taken before the termination of the Agreement.

Indemnity and Hold Harmless

7. The City shall:
- (a) defend, indemnify and hold harmless the Association, its directors, officers, employees and agents from and against all claims, demands, actions, proceedings, and liabilities whatsoever and all costs and expenses incurred in connection therewith and resulting from the non-performance of the obligations of the City pursuant to this Agreement;
 - (b) be liable for all loss, costs, damages, and expenses whatsoever incurred or suffered by the Association, its directors, officers, employees and agents including but not limited to damage to or loss of property and loss of use thereof, and injury to or death of a person or persons resulting from or in connection with the non-performance of the obligations of the City pursuant to this Agreement;

This indemnity will survive the termination of this Agreement in relation to any matter arising out of or caused by any action taken or not taken before the end of this Agreement.

Assignment

8. The Association must not assign its rights under this Agreement without the prior written consent of the City

General

9. This Agreement will bind and benefit each party to this Agreement, and its respective successors, administrators, employees, agents, and contractors.

10. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and a decision that it is invalid shall not affect the validity of the remainder of this Agreement.

11. This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia.

12. Waiver by the City of any breach of any term, covenant or condition of this Agreement by the Association must not be deemed to be a waiver of any subsequent default by the Association. Failure by the City to take any action in respect of any breach of any term, covenant or condition of this Agreement by the Association must not be deemed to be a waiver of such term, covenant or condition.

13. Time is of the essence of this Agreement.

As evidence of their Agreement to be bound by the above terms, the parties each have executed this Agreement on the respective dates written below:

TOWER RANCH COMMUNITY ASSOCIATION

CITY OF KELOWNA

Per: [Signature]
Authorized Signatory

Per: [Signature] March 10, 2017
Authorized Signatory

Per: [Signature]
Authorized Signatory

Per: _____
Authorized Signatory

Schedule A. Map showing the area covered by this agreement, including four landscaped medians on Tower Ranch Boulevard (median locations indicated with a star)



