

## **LANDSCAPE INSTALLATION AND MAINTENANCE AGREEMENT**

This LANDSCAPE INSTALLATION AND MAINTENANCE AGREEMENT (the “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024, by and between the CITY OF WAUKESHA, a Wisconsin municipal corporation (hereinafter referred to as “CITY” or “LICENSOR”) and 707 EXECUTIVE PLACE HOLDINGS, LLC, a Wisconsin limited liability company (hereinafter referred to as “LLC”) and SKY HIGH MARKETING, INC., a Wisconsin corporation (hereinafter referred to as “SHM”). Together, LLC and SHM may be referred to herein as “LICENSEE”. Together, CITY, LLC and SHM shall be referred to as the “PARTIES” or, individually, as a “PARTY”.

**WHEREAS**, the CITY is the owner of certain real property located in the City of Waukesha, Waukesha County, State of Wisconsin, referred to in tax records as WAKC 1382003003 and which legal description is attached hereto, made a part hereof and marked as Exhibit “A” (hereinafter referred to as the “City Property”); and

**WHEREAS**, LLC is the owner of certain real property located in the City of Waukesha, Waukesha County, State of Wisconsin, referred to in tax records as WAKC1382003002 and which legal description is attached hereto, made a part hereof and marked as Exhibit “B” (hereinafter referred to as the “LLC Property”); and

**WHEREAS**, SHM is the tenant of LLC and operates its business on the LLC Property;  
and

**WHEREAS**, the City Property and LLC Property are adjacent to and abut one another;  
and

**WHEREAS**, the City Property is the location of a salt storage facility (hereinafter, the “Salt Shed”) owned and operated by the CITY; and

**WHEREAS**, LLC and SHM desire to, and to the greatest extent possible, install and maintain landscape features on the City Property in order to obscure the Salt Shed from view of SHM’S facility on the LLC Property; and

**WHEREAS**, LLC and/or SHM, their agents, employees and contractors wish to enter upon the City Property for purposes of installing, watering, removing, replacing and otherwise maintaining such landscape features for the above-stated reasons; and

**WHEREAS**, the CITY is willing to permit LLC and/or SHM, their agents, employees and contractors to enter upon the City Property for purposes of installing, watering, removing, replacing and otherwise maintaining such landscape features for the above-stated reasons, but subject to the terms and conditions of this Agreement; and

**WHEREAS**, the PARTIES to this Agreement desire that the Recitals set forth above be incorporated into the terms of this Agreement set forth below.

**NOW, THEREFORE**, it is agreed by and between the above-stated PARTIES, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged as follows:

1. **License.** LICENSOR hereby grants to LICENSEE, their agents, employees and contractors, a right of entry and temporary use license to enter onto the above-described City Property for the purposes and uses set forth herein.
2. **Location.** That LICENSEE'S use of the City Property shall be limited to the area described and/or depicted on the attached Exhibit "C", unless otherwise agreed to by the PARTIES in writing.
3. **Term.** That, subject to the terms and conditions set forth herein, this Agreement shall be for a term of one (1) year, commencing on \_\_\_\_\_, 2024, and shall automatically renew on an annual basis on the anniversary date of this Agreement, unless otherwise terminated, revoked or modified as provided for herein. Any renewal of this Agreement shall be pursuant to the same terms and conditions set forth herein unless otherwise modified by the PARTIES, in writing.
4. **Revocation/Termination.** This Agreement, or any subsequent renewal, may only be revoked by the LICENSOR upon One Hundred Eighty (180) days written notice to the LICENSEE. In the event this Agreement is revoked by LICENSOR, this Agreement shall become null and void, LICENSEE shall have no further obligations hereunder and LICENSEE shall become solely responsible for the care and maintenance of the landscape features installed hereunder. Upon written agreement of the PARTIES, this Agreement may be terminated at such time that the PARTIES agree that the landscape features installed hereunder have become self-sustaining and are no longer in need of ongoing care and/or maintenance. In the event this Agreement is revoked or terminated hereunder, the PARTIES agree to sign and record, as needed, such instrument releasing one another from any further obligations pursuant to this Agreement.
5. **Permitted Activities.** During the term of this Agreement, and any renewal hereof, LICENSEE, its agents, employees and contractors shall be granted a right of entry and temporary use license to conduct the following activities on the City Property:
  - a. Installation, at LICENSEE'S sole cost and expense, of landscape features in the area described and/or depicted on the attached Exhibit "C". Such landscape features may include, but are not necessarily limited to, trees, bushes, grasses and other plants, as consented to and approved by LICENSOR in writing prior their installation, and which consent and approval shall not be unreasonably denied, delayed or conditioned. LICENSEE'S other obligations notwithstanding, upon the installation of all landscape features by LICENSEE, such features shall be considered fixtures on the City Property and become the property of LICENSOR.
  - b. Maintenance, at LICENSEE'S sole cost and expense, of the landscape features installed pursuant to Par. 5(a), above. Maintenance shall include, but not be limited

to, watering, fertilizing, pruning, mowing of grasses and other maintenance activities, as needed and/or recommended by LICENSEE'S contractors. Branches, limbs, leaves and other plant materials which are cut, pruned or otherwise removed from the landscape features installed hereunder shall be promptly removed by LICENSEE or its contractors, at LICENSEE'S sole cost and expense. All water, fertilizer and other materials required for the maintenance of such landscape features shall be supplied by LICENSEE or its contractors, at LICENSEE'S sole cost and expense. LICENSEE'S obligations with respect to maintenance relate only to landscape features installed by LICENSEE on the City Property pursuant to this Agreement. Maintenance of landscape features which exist on the City Property prior to the execution of this Agreement, and all other maintenance of the City Property, shall be the sole obligation of LICENSOR.

- c. Removal, at LICENSEE'S sole cost and expense, of landscape features installed by LICENSEE which die, become blighted or otherwise diseased. Such removal shall occur within a reasonable time after discovery of the condition requiring such removal or upon the reasonable written request of LICENSOR. Under no circumstances shall LICENSEE be required to replace landscape features removed by it pursuant to this paragraph, provided, that LICENSEE restores the location of the feature removed, but not replaced, to substantially that condition that existed prior to the feature's installation.
  - d. Replacement, at LICENSEE'S sole discretion, cost and expense, of landscape features removed pursuant to Par. 5(c), above.
  - e. Such other activities on the City Property, at LICENSEE'S sole cost and expense, required for the proper installation, care, maintenance, removal and/or replacement of the landscape features installed on the City Property by LICENSEE. Such other activities may include, but are not necessarily limited to, periodic inspections by foresters, arborists or other landscaping professionals; cutting or thinning of trees and bushes; and removal of plant material deemed to be a nuisance by LICENSEE or its contractors. The foregoing notwithstanding, LICENSEE may, but is not required to, remove weeds or apply weed control (such as chemicals or other herbicides) on the City Property. In the event LICENSEE elects to engage in weed control activities on the City Property, LICENSEE shall do so at its sole discretion, cost and expense, provided that LICENSOR is notified of such activities prior to their occurrence, and is supplied with documentation regarding such activities and a list of chemicals applied on the City Property, if any.
6. Licensee's Contractor. As of the execution of this Agreement, LICENSEE has entered into an agreement with Reesman Service Corporation for the initial installation and maintenance of the landscape features on the City Property. A General Maintenance Proposal between LICENSEE and Reesman Service Corporation is attached hereto, made a part hereof and marked as Exhibit "D". During the term of this Agreement, and any subsequent renewal periods, LICENSEE shall keep in place, at LICENSEE'S sole cost and expense, an ongoing maintenance agreement substantially similar to Exhibit "D" for the

landscape features installed by it on the City Property. LICENSEE shall provide evidence of such maintenance agreement to LICENSOR upon LICENSOR'S reasonable written request. Upon the revocation, termination or other expiration of this Agreement, or at such time that the PARTIES agree in writing that the landscape features installed hereunder have become self-sustaining and are no longer in need of ongoing care and/or maintenance, LICENSEE'S obligation under this Par. 6 shall cease.

7. Access to City Property. LICENSEE, its agents, employees, and contractors shall be permitted, and are hereby granted a right of entry and temporary use license, to gain access to the City Property for the purposes set forth herein by means of the driveway/entry depicted on the attached Exhibit "E".
8. Storage. LICENSEE shall not store any vehicles and other equipment on a permanent basis on the City Property during the term of this Agreement, or any subsequent renewal hereof. LICENSEE may, however, temporarily store such vehicles and equipment necessary in order to complete the installation, removal, replacement, watering and other maintenance permitted hereunder, provided such vehicles and equipment do not interfere with the CITY'S use of the City Property. LICENSEE further agrees to promptly remove such vehicles and other equipment from the City Property upon the completion of LICENSEE'S activities.
9. Site Preparation. LICENSEE shall be solely responsible for any and all costs associated with the preparation of the City Property necessary for LICENSEE'S uses set forth herein. LICENSOR hereby grants to LICENSEE, its agents, employees and contractors a separate right of entry and temporary use license to enter the City Property for the purpose of allowing said entities to prepare the City Property as necessary. LICENSEE agrees to restore the City Property to substantially that condition that existed prior to said preparatory work to the extent that the City Property is disturbed or altered by said work. LICENSEE shall indemnify, defend and hold the LICENSOR harmless from all damages caused by LICENSEE, its agents, employees or contractors to the City Property and any improvements thereon. LICENSEE shall be solely responsible for any and all hazards created through its conduct on the subject property, and for keeping the performance of its work and the areas in which it is working, and has worked, in compliance with all applicable safety requirements of all governmental entities having jurisdiction over such activities. That under no circumstances shall LICENSEE be required to indemnify LICENSOR as against LICENSOR'S own sole negligence.
10. Other Structures. That LICENSEE shall construct no temporary or permanent structures, lighting, other facilities or signs on the City Property.
11. Permits, Etc. LICENSEE shall be solely responsible for acquiring or otherwise securing all necessary permits and approvals, if any be required, for the installation, removal, replacement, watering and maintenance of the landscape features installed by LICENSEE on the City Property. LICENSOR agrees to cooperate with LICENSEE, as necessary, in regards to obtaining any and all necessary licenses, permits and governmental approvals required for LICENSEE'S uses of the City Property, however, under no circumstance, shall

LICENSOR be obligated to agree to any changes in the zoning, land use classification, use approvals or any other material change to the nature of the City Property.

12. *Liens.* LICENSEE shall indemnify, defend and hold LICENSOR harmless from all mechanic's, laborer's and other liens arising out of its activities on the City Property.
13. *Insurance.* LICENSEE or its contractors shall purchase and maintain commercial general liability insurance to protect from claims for damages because of bodily injury, including death, and from claims for damages to property that may arise out of a result from the activities conducted on the City Property hereunder. This insurance shall be written for limits of not less than One Million & 00/100 Dollars (\$1,000,000.00) per occurrence and with limits of Two Million & 00/100 Dollars (\$2,000,000.00) in the aggregate, and shall include contractual liability. All insurance policies required to be carried by LICENSEE or its contractors hereunder shall be issued by insurers licensed to do business in Wisconsin and which are reasonably acceptable to LICENSOR, shall be in a form satisfactory to LICENSOR and shall name LICENSOR as an additional insured. LICENSEE or its contractors shall provide certificates of insurance in a form satisfactory to LICENSOR contemporaneously with its execution of this Agreement or at such other dates as LICENSOR may reasonably request from time to time. All policies of insurance shall include a provision requiring LICENSEE, its contractors and/or their insurers to give LICENSOR at least thirty (30) days prior written notice before terminating, canceling, reducing coverage or making any changes in any policies.
14. *Local Ordinances.* To the greatest degree possible, during the term of this Agreement, and any subsequent renewal, LICENSEE, its agents, employees and contractors shall keep the City Property neat and orderly and free from trash and other debris. LICENSEE shall obey all ordinances of the City of Waukesha and County of Waukesha, and shall not permit the City Property to be used for any immoral purpose or any purpose that will injure the reputation of LICENSOR. LICENSEE further covenants and agrees that it will not commit, permit, or suffer any violation of any such ordinances, rules, regulations, statutes or laws and will protect, indemnify and forever save and keep harmless LICENSOR from and against any penalty, fine, damage, expense or charge imposed, assessed or incurred for any violation or breach of any such ordinance, regulation, rule, statute or law occasioned by the act, neglect or omission of LICENSEE, its agents, employees or contractors.
15. *Surrender.* LICENSEE agrees that, upon the revocation, expiration or other termination of this Agreement, or as otherwise provided herein, it will quietly and promptly yield and surrender all landscape features installed and/or maintained by LICENSEE on the City Property to LICENSOR in satisfactory condition, reasonable wear and tear and damage by the elements excepted. Upon such surrender, all of LICENSEE'S obligations under this Agreement shall cease and LICENSOR shall thereafter be solely responsible for all care and maintenance of such landscape features installed by LICENSEE hereunder.
16. *Indemnification.* LICENSEE hereby agrees to defend, hold harmless and indemnify the LICENSOR, its officials, staff and employees, and their heirs, personal representatives, or assigns, from any and all liability, claims, demands, damages, actions and costs of every



kind including without limitation, attorney fees and legal costs, for personal injury, death and/or property damage, including without limitation, damage to LICENSOR'S property, LICENSEE'S property and property of LICENSEE'S agents, employees and contractors, arising out of the activities conducted by LICENSEE pursuant to this Agreement. Notwithstanding the foregoing, LICENSEE shall have no obligation to indemnify or hold harmless LICENSOR as against LICENSOR'S own sole negligence or intentional misconduct.

17. Recording. This Agreement shall be recorded against the properties described herein with the Office of the Register of Deeds for Waukesha County, and shall run with such lands and shall be binding on the PARTIES, their respective successors, heirs, personal representatives and assigns, until such time the PARTIES are released from their obligations hereunder. In the event this Agreement is revoked, terminated, expired or otherwise deemed no longer necessary, the PARTIES agree to sign and record, as needed, such instruments which release one another from any further obligations pursuant to this Agreement and which remove this Agreement, as recorded, from the titles to the respective properties.
18. Authorization. Each signatory to this Agreement represents and warrants that he or she has full authority to execute this Agreement on behalf of his or her respective entity. This representation and warranty shall survive the termination of this Agreement.
19. Applicable Law and Venue. This Agreement shall be governed, interpreted and construed under and pursuant to the laws of the State of Wisconsin. The forum for all disputes arising out of or to enforce this Agreement shall be the Circuit Court of Waukesha County, State of Wisconsin.
20. Enforceability. If any portion of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or enforceability shall not affect the other provisions of this Agreement, which provisions shall remain in full force and effect.
21. Assignment. The PARTIES shall not assign this Agreement or any right or interest hereunder without the other PARTY'S prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned.
22. No Ownership or Partnership. The PARTIES understand and affirmatively acknowledge that this Agreement does not grant them any ownership or other property interest in the other PARTY'S property referred to herein, or any portions of said property, nor does this Agreement establish any partnership, joint venture, employer/employee relationship or other relationship between the PARTIES.
23. Complete Understanding. This Agreement represents the complete understanding of the PARTIES with respect to the subject matter stated herein and may not be amended without the mutual written consent of the PARTIES.

24. Notices. Any notices necessary under this Agreement shall be sent to the following addresses:

**To LICENSOR:**

City Clerk  
City of Waukesha  
201 Delafield Street  
Waukesha, WI 53188

With a copy to:

City Attorney Brian Running  
201 Delafield Street  
Waukesha, WI 53188

**To LICENSEE:**

Joshua Kozinski  
Sky High Marketing, Inc.  
707 Executive Place  
Waukesha, WI 53189

With a copy to:

Attorney Thomas G. Schmitzer, Sr.  
Hippenmeyer, Reilly, Blum, Schmitzer & Fabian, S.C.  
720 Clinton Street, P.O. Box 766  
Waukesha, WI 53187

**[SIGNATURE PAGE FOLLOWS]**

LICENSOR and LICENSEE have executed this Agreement in duplicate so as to be effective on the date first set forth above. Taken together, these duplicates shall constitute one original version of this Agreement, signed in counterparts.

**LICENSOR:**

**CITY OF WAUKESHA**

By: \_\_\_\_\_  
Shawn N. Reilly, Mayor

**COUNTERSIGNED BY:**

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Brian Running, City Attorney

**LICENSEE:**

**707 EXECUTIVE PLACE HOLDINGS, LLC**

By: \_\_\_\_\_  
Joshua R. Kozinski, Member/Manager

**SKY HIGH MARKETING, INC.**

By: \_\_\_\_\_  
Joshua R. Kozinski, C.E.O.



**EXHIBIT “A”**

**LEGAL DESCRIPTION OF CITY PROPERTY**

DRAFT

**EXHIBIT "B"**

**LEGAL DESCRIPTION OF LLC PROPERTY**

DRAFT

**EXHIBIT “C”**

**LEGAL DESCRIPTION AND/OR DEPICTION OF PERMITTED PLANTING  
AREA**

DRAFT

**EXHIBIT “D”**

**GENERAL MAINTENANCE PROPOSAL WITH REESMAN SERVICE  
CORPORATION**

DRAFT

**EXHIBIT “E”**

**LEGAL DESCRIPTION AND/OR DEPICTION OF PERMITTED ACCESS TO  
CITY PROPERTY**

DRAFT