

**DESIGN, INSTALLATION, SALE, OR LEASE AGREEMENT WITH MAINTENANCE OPTION (collectively, the "AGREEMENT")**

**1. Agreement:** Parker Interior Landscape Inc. T/A Parker Urban Greenscapes ("PARKER") agrees to design, sell, install, or lease certain Green Roofs or Green Walls ("plants and materials") which are set forth on the front of this Agreement, or consecutively numbered forms, at CLIENT'S or other agreed upon premises. All plants and materials supplied by PARKER shall meet or exceed the standards set by the industry. Whether a Sale Agreement or Lease Agreement, CLIENT may elect on the front of this Agreement for PARKER to provide maintenance services for the Green Roof or Green Wall.

**2. Delays:** Installation prices are based on one delivery date as agreed to by CLIENT and PARKER. If there is a delay, or multiple deliveries and delivery must be rescheduled, due to client not being ready, CLIENT shall pay all costs incurred by Parker as a result of the rescheduling including, but not limited to, transportation, storage and maintenance fees as per this Agreement. Maintenance fees must be paid as if installation were not delayed, inasmuch as plants will still need the same care. PARKER shall not be held responsible for delays or failure to perform hereunder if caused by disease or insect infestations, quarantines, acts of God or any causes beyond the control of the PARKER, however occurring.

**3. Maintenance:** Maintenance is essential to the long-term performance of the Green Roof or Green Wall. Failure to maintain a healthy planting may result in the loss of media to wind and reduction in runoff management function. Preservation of a healthy planting will require ongoing and regular maintenance. If CLIENT does not elect PARKER'S professional maintenance, the Green Roof and Green Wall warranty will be voided, and damage or deterioration of the Green Roof or Green Wall assembly resulting from the failure to maintain the healthy planting will not be PARKER'S responsibility or liability. Maintenance includes watering, feeding, pruning, moderating nutrient levels of media and manual weeding.

**4. Number of Visits:** CLIENT agrees that the number of service/maintenance visits necessary to maintain the plants in good condition is to be determined by PARKER based on PARKER'S expertise and discretion. No monies due herein shall be withheld by CLIENT if plants are healthy and in good condition regardless of the number of service/maintenance visits made by PARKER.

**5. Guarantee:** During the Term of this Agreement and ONLY IF THE MAINTENANCE OPTION IS ELECTED AND PAID FOR BY CLIENT, PARKER will replace dead or visibly dying plants free of charge, within fourteen (14) days of receipt of written notice from CLIENT weather permitting, but only if the conditions that caused the plants to deteriorate were under the reasonable control of PARKER. PARKER shall not be responsible for plants deteriorating due to circumstances beyond PARKER'S control including, but not limited to, inadequate temperature or low light, affects from HVAC systems (heat, cold, direct air), vandalism, theft, lack of access, use of toxic liquids or gasses, acts of God, power failures, use of fresh point, and negligence of CLIENT or third parties. This guarantee shall apply only to installations where (A) the plant list is approved by PARKER, (B) the installation density is according to PARKER'S recommendations, (C) installation occurs within the recommended planting window for the specified plant varieties and climatic conditions, and (D) maintenance is provided exclusively by PARKER. It is specifically understood that there are no guarantees whatsoever on exterior plant. Plants listed in poor or old condition on a takeover of an existing job shall not be included in the guarantee. PARKER reserves the right to re-inventory and reevaluate quality of the plant material, components and irrigation at time of takeover. Plants & materials in poor condition will not be guaranteed. PARKER does not guarantee existing components and irrigation. If Parker is installing the irrigation, PARKER'S responsibility is limited to the manufacturers' warranty on components. PARKER at PARKER'S option may change plant varieties to ones that will do better in PARKER'S sole determination. Parker is not responsible for leaks or drips or damage therefrom.

**6. Client's Responsibilities:** Client will supply water, access to water and convenient water outlets near plantings, provide secured storage areas for watering equipment, provide ladders and equipment necessary for service within a reasonable distance and at an agreeable location at no charge. PARKER may dispose of plants and materials in Client's facility. For interior applications, temperature must be maintained between 60 and 80 degrees. Minimum lighting must be maintained at 200 foot-candles covering all areas of foliage for a minimum of 10 hours per day. CLIENT must provide electrical source and adequate drainage at Green Wall or Green Roof. CLIENT must ensure no one walks on green roof surfaces except PARKER personnel. Client must maintain drains in good working order, unclogged and free flowing, at all times. Prior to installation by PARKER, CLIENT must provide PARKER with written documentation that the area being planted has been tested and approved as waterproof. Once order is placed it cannot be cancelled and must be paid in full.

**7. Containers:** PARKER accepts no responsibility for exterior containers provided by others. PARKER'S responsibility for containers supplied by PARKER, including water tightness and mechanical properties, is limited to the manufacturer's warranty. PARKER'S liability shall be expressly limited to the cost or replacement of the defective containers. Special order containers cannot be canceled once manufacturer has started production.

**8. Waterproofing:** PARKER shall have absolutely no liability or responsibility as to any waterproofing, leaks, water damage or drainage issues. Any damage due by water proofers, roofers or any other reason other than PARKER'S fault will be billable to CLIENT.

**9. Employees:** The CLIENT agrees that PARKER personnel are specially trained and skilled in the field of Green Wall and Green Roofs, horticulture and other relevant and important areas. CLIENT agrees not to hire any of PARKER'S employees during or for a period of four (4) years after termination of this maintenance contract for Green Wall, Green Roof or other horticultural related work.

**10. Non-Union Labor:** All prices quoted on all work are based on it being done with non-union labor by PARKER during normal working days and hours. If union labor or overtime is required, additional labor costs will be billed to CLIENT.

**11. Structural:** PARKER shall not be held liable for any structural failures of the building in which the Green Wall or Green Roof is installed. Prior to installation, CLIENT to provide certified structural engineer's approval, not limited to structural capacity and load bearing walls and roofs.

**12. Impediments:** If any of PARKER'S services require the removal of architectural or other barriers, lifts or special hoisting equipment, or if PARKER is unable to use reasonably proximate elevators and/or escalators, etc., PARKER shall invoice CLIENT for all additional costs incurred by PARKER, unless specifically set forth to the contrary in this Agreement.

**13. Permits:** CLIENT is responsible for all permits, fee, local code compliance and inspections required to install the Greenroof or Greenwall.

**14. Falling plants:** PARKER will not be held responsible for any plantings that fall or are blown over. Repairs will be chargeable.

**15. Winds:** PARKER will not be held responsible for soil or mulch that is blown out of the planter. Replacement of soil or mulch will be chargeable to CLIENT.

**16. Insurance:** CLIENT shall maintain full insurance coverage for general liability insurance for all products, material and equipment covered by this Agreement naming or designating PARKER as an additional insured. CLIENT shall indemnify PARKER against all claims and losses with respect to all plants, materials and equipment referred to in this Agreement not caused by PARKER'S negligence. CLIENT agrees to promptly provide PARKER with a copy of all relevant insurance policies. CLIENT will also obtain general liability and hazard insurance covering the Green Wall or Green Roof.

**17. Term:** If this is a Sale-Maintenance Agreement, the term of this Agreement shall be for five (5) years commencing upon the installation date. If this is a Lease-Maintenance Agreement, the term of this Agreement shall be for a minimum of (3) years commencing upon the installation date. In either case, this shall be referred to as the "Initial Term."

**18. Renewals:** If this Agreement is a Sale-Maintenance Agreement or a Lease-Maintenance Agreement, the term of this Agreement shall automatically renew for successive renewal terms equal to the Initial Term of such Agreement (each a "Renewal Term"), unless either party notifies the other in writing by registered letter, return receipt requested, of its intent not to renew at least ninety (90) days prior to the termination of the Initial Term or Renewal Term.

**19. Price Adjustments:** Maintenance, plant prices and lease charges shall be increased annually by PARKER'S actual cost but in no event less than the percentage increase in the Consumer Price Index ("CPI") as published by the Bureau of Labor Statistics of the US Department of Labor for the New York, Northeastern New Jersey region for the period commencing on the annual anniversary of the date of installation or commencement of maintenance (if no installation); provided, however, in no event shall there be any decrease in the payments to PARKER. Moreover, CLIENT acknowledges that it may take several months for the CPI report to be published and a commensurate period of time before PARKER is in a position to revise the charges. Any delay by PARKER in modifying the charges under this Agreement shall not be construed as a waiver of this right. If there is a substantial price hike in fuel costs, PARKER has the right to add a fuel surcharge until fuel costs decrease. Should any 'extra' fees be imposed to enter NYC, PARKER reserves the right to impose a surcharge onto the price to cover the extra costs.

**20. Payments, Costs of Services, Collections:**

A. Installation shall be paid 50% upon signing and 50% on substantial completion of installation.

B. All maintenance and lease payments are payable on the first day of each month in advance. If this is a Lease-Maintenance Agreement, the last month's maintenance and lease charges will be paid upon execution of this Agreement.

C. Prices quoted are exclusive of any and all taxes, including, but not limited to: Sales, Municipal, State and Use Taxes, which shall be the CLIENT'S sole responsibility.

D. CLIENT agrees to pay PARKER all amounts due within thirty (30) days of billing date, without discount. If payment is not received by the following month's billing date, the outstanding balance will be subject to service charges at a rate of one and one-half (1 1/2%) percent per month, 18% per annum, or the maximum rate allowed by law; whichever is greater.

E. If any sum referred to in this Agreement is not paid when due, CLIENT shall pay all costs incurred by PARKER in the collection thereof, including, but not limited to, reasonable attorney or collection agency fees in the amount of thirty-three and one-third percent (33 1/3%) of the amount collected together with interest and court costs.

F. If any amount shall remain unpaid for a period of sixty (60) days after the invoice date, PARKER shall have the unilateral right to cancel this Agreement, reduce or discontinue maintenance services and void all guarantees. No replacement claims will be made or honored unless and until all outstanding charges are paid in full. PARKER shall not be responsible for deterioration of plants that occurs during a period when maintenance services have been reduced or discontinued because of CLIENT nonpayment.

G. In the event of early termination of the Maintenance Agreement for any

reason other than a material breach by PARKER, CLIENT shall remain liable for all payments for sale and installation, maintenance and lease payments up to and including the date of cancellation, in addition to a surcharge of twenty (20%) of the remaining maintenance charges. This Agreement cannot be cancelled by CLIENT for any reason other than material breach by PARKER; provided, however, if CLIENT terminates this Agreement for a material breach by PARKER without giving PARKER prior written notice and at least 30 days to cure the alleged breach, CLIENT will be in breach of this Agreement and will be liable for the balance of all payments for sale and installation charges, lease payments and maintenance payments (if applicable) plus an administration surcharge of twenty (20%) of all remaining payments.

**21. Wage Rates:** Regular rates of \$80.00 per hour and overtime rates of time-and-one-half the regular rate, or \$120.00 per hour, per PARKER employee, "portal-to-portal" shall be charged when work is required after normal working hours, weekends, holidays or in the event CLIENT requests services of PARKER in addition to those specifically set forth in this Agreement. There will be an additional charge for work required to remove excessive dust due to construction. Tree washing shall be at an extra charge at CLIENT'S request.

**22. Credit Cards:** The prices quoted are discounted for cash payments. If CLIENT uses a credit card for payment, the price will revert to the undiscounted rate, which is 4% more than listed.

**23. Acceptance:** If CLIENT accepts this Agreement by attaching its own signed purchase order, or other document to this Agreement, such document shall be deemed to incorporate all conditions and terms of this Agreement verbatim and the terms and conditions of this Agreement shall control. If there are any inconsistent clause or clauses, this Agreement shall govern.

**24. Place of Agreement; Governing Law:** It is agreed that this Agreement shall be governed by and interpreted according to the laws in the State of New Jersey. In the event a controversy arises, any action brought shall be brought only in New Jersey. The CLIENT expressly agrees to jurisdiction within the State of NJ, County of Union.

**25. Entire Agreement:** CLIENT agrees that the terms herein constitute the parties' entire Agreement with regard to the subject matter hereof. This Agreement shall not be modified unless such modification is in writing executed by CLIENT and the President or Vice President of PARKER. No other modifications signed by any other PARKER representative shall be deemed to be binding upon PARKER.

**26. Notices:** All notices required under this Agreement shall be given in writing and shall be sent to the appropriate party at its address set forth on the front of this Agreement. Notice shall be deemed delivered when received if delivered in person, two days after being sent by a nationally recognized overnight courier, or five days after being sent by certified mail, return receipt requested.

**27. Assignment:** This Agreement may not be assigned by CLIENT without the written consent of PARKER. CLIENT shall remain specifically responsible for all obligations of this Agreement unless explicitly waived by PARKER, in writing.

**28. Photos:** PARKER may take photos of plantings for marketing purposes

**29. Lease:** All leased material remains the property of PARKER.

**30. Security Interest.** CLIENT hereby grants a first priority security interest to PARKER in the plants and materials and all proceeds therefrom (the "Collateral") to secure prompt, full and complete payment of all amounts due by CLIENT and to secure the performance of CLIENT'S obligations hereunder. CLIENT hereby authorizes PARKER to file UCC-1 financing statements, amendments, assignments, continuations, and termination statements as PARKER may reasonably desire to perfect and maintain the priority of this security interest.

**31. Events Constituting Default:** PARKER, at its option, may by written notice to the CLIENT, declare this Agreement in default on the occurrence of any of the following: (a) failure by CLIENT to make any payment or perform any of its obligations hereunder in a timely manner; (b) institution by or against the CLIENT of any proceeding in bankruptcy, insolvency or reorganization under any law, or the appointment of a receiver or trustee for CLIENT'S goods and chattels, or assignment for the benefit of creditors; or (c) the expiration, cancellation or failure to renew any insurance policy CLIENT is obligated to maintain.

**32. Rights, Remedies and Obligations Upon Default:** Upon default by the CLIENT, PARKER shall be entitled to all legal and equitable rights and remedies, including, but not limited to, the following: (a) to terminate this Agreement and CLIENT'S rights hereunder; (b) to declare the balance of all unpaid sale, installation, lease, maintenance and all other charges of any kind required to be paid by CLIENT for the entire remainder of this Agreement to be immediately due and payable (together with an administrative surcharge equal to twenty (20%) percent of the remaining charges); (c) to repossess property without legal process, free of all rights of the CLIENT in and to the property. CLIENT authorizes PARKER, or PARKER'S agent, to enter upon any premises where the property is located and repossess and remove it. CLIENT shall reimburse PARKER the reasonable costs and expenses of repossessing and enforcement of PARKER'S rights under this provision; (d) in the event of repossession, the property shall be in good condition and repair, reasonable wear and tear resulting from the proper use thereof excepted. If CLIENT refuses to admit PARKER'S agents or personnel entry for purposes of repossession, then CLIENT shall be obligated to pay rent to PARKER at two times the monthly lease rate specified herein, together with damages for unlawful detention. It is understood that the above remedies of PARKER shall be cumulative to the extent permitted by law, and may be exercised partially, concurrently or separately. The exercise of one remedy shall not be deemed to

preclude the exercise of any other remedy.

**DISCLAIMER OF WARRANTY:** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE DISPLAY AND MATERIALS PROVIDED BY PARKER HEREUNDER ARE PROVIDED "AS IS" WITHOUT WARRANTIES, CONDITIONS, REPRESENTATIONS OR GUARANTIES OF ANY KIND, EITHER EXPRESSED, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, TITLE, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE EXCEPT AS MAY BE EXPRESSLY STATED HEREIN. PARKER DOES NOT WARRANT THAT THE DISPLAY AND MATERIALS WILL BE ERROR FREE OR WITHOUT BLEMISH, NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY A PARKER OR ITS REPRESENTATIVE SHALL CREATE A WARRANTY. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

**LIMITATION OF LIABILITY:** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT AND UNDER NO LEGAL THEORY SHALL PARKER, ITS OFFICERS, DIRECTORS, AGENTS, EMPLOYEES OR AFFILIATES BE LIABLE TO CLIENT OR ANY OTHER PERSON FOR ANY GENERAL, DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR OTHER DAMAGES OF ANY CHARACTER ARISING OUT OF THE DISPLAY AND MATERIALS PROVIDED BY PARKER HEREUNDER, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, DAMAGE TO PROPERTY, LOSS OF PROFITS, DAMAGES FOR LOSS OF GOODWILL, BUSINESS INTERRUPTION, OR ANY AND ALL OTHER DAMAGES OR LOSSES OF WHATEVER NATURE, EVEN IF PARKER HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

**THE FOLLOWING PROVISIONS APPLY ONLY IF THIS IS A LEASE-MAINTENANCE AGREEMENT: 33. Ownership of Leased Materials:**

All plants, materials, containers and all miscellaneous items covered or referred to in this Agreement are leased items and shall remain the sole and exclusive property of PARKER; CLIENT makes no claim to ownership of PARKER property. CLIENT shall not pledge, encumber, create a security interest in or permit any lien to become effective on any of the leased plants or materials. If any of these events take place, the CLIENT shall be deemed to be in default at the option of PARKER. Any controlled watering systems and any other materials utilized by PARKER, if not purchased or leased by the CLIENT, will remain the sole property of PARKER.

**34. Cancellation:** In the event CLIENT cancels this Agreement without material cause at any time, either during the initial or any subsequent renewal terms, CLIENT shall remain liable for all remaining payments through the end of the Agreement plus an administrative surcharge equal to twenty percent (20%) on all remaining charges. Also, CLIENT will be responsible to pay all maintenance and other related charges, which are due and owing up to and including the date of early termination. This Agreement cannot be cancelled by CLIENT for any reason other than breach by PARKER of its obligations; provided, however, if CLIENT terminates this Agreement for cause without giving PARKER prior written notice and at least 30 days to cure the alleged breach, CLIENT will be in breach of this Agreement and will be liable for the balance of all payments for sale and installation, maintenance and lease payments (if applicable) plus an administration surcharge of twenty (20%) of the remaining payments. Early termination of this Agreement by CLIENT will be deemed a default entitling PARKER to all legal and equitable rights and remedies set forth elsewhere in this Agreement.

**35. Insurance:** CLIENT shall maintain insurance for all leased plants, materials, and equipment against burglary, theft, fire, flood, casualty, and vandalism in the sum equal to multiplying the product of (i) the monthly lease amount and (ii) the number of months in the lease terms 130%. CLIENT shall also maintain Public Liability Insurance with minimum limits of \$100,000.00 and personal injury and property damage insurance with minimum limits of \$300,000.00 each occurrence. PARKER shall be named and designated together with CLIENT as an insured or loss payee on all CLIENT insurance policies.

**37. Electronic Signatures:** This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which taken together constitutes one and the same instrument. Facsimile execution and delivery (including via ".pdf" document delivered by electronic transmission) of this Agreement by a party hereto will constitute a legal, valid, and binding execution and delivery of this Agreement by such party.

**38. Additional Charges.** If CLIENT requires PARKER to incur any additional charges (i.e., without limitation, vendor screening charges), PARKER will pass such charges through to CLIENT with a five percent (5%) administrative charge. **Construction/Renovations:** Parker strongly recommends that Green Wall installation be one of the very last installations for any construction and/or renovations. Parker will not be liable for any debris causing damage or affecting the live plants. Parker reserves the right to reevaluate the plants to see if such damage has voided the warranty. Parker will charge an additional fee for any clean up or dusting of plants required due to other's Contractor's residual rubbish.

If there is any changes to the agreed upon inspection date (two (2) weeks prior to the installation date) caused by Customer, or if there are delays as a result of the installation site not being prepared and ready, Parker shall have the right to delay the installation at Parker's sole discretion without penalty. 9/13/18