



Holiday Installation, Sale, Maintenance and/or Lease Agreement

Parker Holiday, Parker Creative and Parker3D ('trading-as' names of Parker Interior Plantscape, Inc.) (PARKER) agrees to deliver install and/or maintain certain temporary holiday displays as set forth on the front of this form and attached forms numbered consecutively. Holiday displays, hereinafter called 'materials' supplied by PARKER shall meet or exceed the standards set by the industry.

- 1. Delays:** Installation prices are based on one delivery date as agreed to by CLIENT and PARKER, unless otherwise stated on the front of this Agreement. In the event of any rescheduling of the agreed upon installation date, as a result of delay caused by any reason not the fault of PARKER, 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.
- 2. Environmental Conditions:** For installation of material inside, this Agreement assumes that all HVAC is working and 65-degree minimum temperature will be maintained. Live poinsettias must have a minimum of 65 degrees 24 hours a day.
- 3. Maintenance:** Complete installation and maintenance of all live plants and material on this proposal will be provided by PARKER at CLIENT'S premises pursuant to schedule agreed to herein and subject to the terms of this Agreement.
- 4. Parker Personnel:** PARKER personnel will be neat in appearance.
- 5. Details:**
 - A.** All Poinsettias come with pot covers unless specified otherwise.
 - B.** If specific colors are not specified by CLIENT, it shall be by PARKER'S sole option to decide the color of the poinsettias and pots. Any changes, after delivery, from the selected colors or specifications will be charged to CLIENT.
 - C.** Any materials that need to be removed by others and is not done by the time Parker arrives on approved installation date, PARKER shall remove it at \$100.00 per person, per hour, (minimum of one hour) and PARKER shall not be responsible for damage.
 - D.** Material that is lost, damaged or stolen during the display period, through no fault of PARKER, will be replaced by CLIENT at the current retail price plus delivery.
 - E.** Adequate electric power is to be supplied within 15 feet of the display by the CLIENT. PARKER is not responsible for damage due to power surges, GFI problems or loss of electricity. If Parker is dispatched to fix the display & it is discovered that the display was unplugged, or it was not a power issue with the tree, the client will pay Parker a flat fee of \$300.00 per trip.
 - F.** Lights, unless stated otherwise, are non-blinking, clear, green wire.



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- G. This material is being sold as non-fire resistant, unless otherwise stated in this Agreement.
 - H. Whenever materials are quoted as “hanging”, and there is nothing presently to hang the materials on, PARKER will use picture hanging nails. Any holes left by these nails after the holiday season or when the materials are removed, will not be PARKER’S responsibility to repair.
 - I. The materials quoted on the reverse of this Agreement were available at the time of bid. In certain instances, as the holidays approach, manufacturers sell out their stock of these materials. Accordingly, it is recommended that the bid be accepted as early as possible to assure that the requested materials are available. In the event the requested materials are not available, PARKER shall, at its sole discretion, use similar materials of like or greater value in an attempt to provide the same design for CLIENT.
 - J. All materials, other than Poinsettias, are being quoted as artificial, unless stated otherwise.
 - K. Due to the urgent nature to install Christmas decorations, PARKER reserves the right to work any time, day or night or weekends without any chargebacks.
 - L. Materials sold as “fire resistant” are only guaranteed as such for one season and may not be cleaned at any time. Failure to comply with this requirement will void any guaranty or warranty concerning fire resistance.
 - M. Live indoor trees can be sprayed to be fire resistant, but there is no guarantee that the resistance will last the season. PARKER will absolutely assume no responsibility in case of fire and damage to CLIENT’S premises from the use of live materials. CLIENT specifically agrees to assign an individual to water the trees on a daily basis to for live trees. assure their fire resistance. Because of the possibility of fire, PARKER strongly recommends against utilization of live materials indoors.
 - N. Lease includes the delivery, installation, four weeks of maintenance, repacking and removal (except for live materials which will be placed in CLIENT’S dumpster).
 - O. Unless specified, Christmas decorations will be taken down and removed between January 3rd and 15th, depending on PARKER’S schedule. This is on a first request, first served basis.
6. **Guarantee:** During the term of this Agreement, PARKER will replace any dead or dying poinsettias if Parker is providing maintenance, free of charge However, PARKER shall not be responsible for any plants which have deteriorated due to circumstances which are beyond the control of PARKER. In the event the plants’ deterioration is deemed to be beyond the control of PARKER, then the replacement costs of the plants will be borne by CLIENT.
- A. It is specifically understood that there are no guarantees whatsoever on exterior plant material.
7. **Change of Materials:** Materials purchased from or leased through PARKER which CLIENT wants replaced because of design alteration, shall be replaced by PARKER, at CLIENT’S cost and expense at the then current retail price.



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- 8. Containers:** PARKER accepts no responsibility for containers supplied and/or selected by CLIENT: PARKER'S responsibility for water tightness and mechanical properties of containers supplied by PARKER is limited to the manufacturer's warranty. PARKER'S liability shall be expressly limited to the cost or replacement of the containers.
- 9. Miscellaneous:**
 - A.** CLIENT agrees to allow PARKER authorized personnel full access to premises by most convenient elevators and escalators for performing any work required under the terms of this Agreement.
 - B.** CLIENT shall provide parking space for PARKER personnel convenient to entranceways, at no charge to PARKER. (This provision is not applicable to Manhattan CLIENTS).
 - C.** If live material is involved, CLIENT shall provide secured storage areas for watering equipment within a reasonable distance and at an agreeable location, at no charge to PARKER.
 - D.** PARKER reserves the right to dispose of all plants and materials in CLIENT'S facilities, at no charge to PARKER.
 - E.** PARKER reserves the right to take photos of decorations/plantings for marketing purposes.
- 10. PARKER'S Responsibilities:** PARKER will provide all services necessary to maintain materials in good condition. No monies due herein shall be withheld by CLIENT if materials are healthy and in good condition, regardless of the number of service maintenance visits made by PARKER.
- 11. CLIENT'S Responsibilities:** All permits, requirements of the DCA or other officials and unexpected costs not usually associated with Holiday displays will be borne by the client.
- 12. Employees:** PARTIES agree that PARKER personnel are specially trained and skilled in the field of Displays. CLIENT agrees not to hire any of PARKER'S employees for a period of two (2) years after termination of this contract for display work.
- 13. Non-Union Labor:** All prices quoted for installation and/or maintenance are based on all work being done with non-union labor by PARKER.
- 14. Term:** This is a three-year lease and not a sale, unless specifically stated otherwise on the reverse side of this Agreement.
- 15. Ownership:** CLIENT shall have no ownership right, title or interest in and to the materials.



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- 16. Impediments:** Installation and/or Maintenance requiring the removal of architectural barriers and/or special hoisting equipment, inability to use elevators and/or escalators, etc. shall be paid by the CLIENT, unless specifically set forth to the contrary in this Agreement.
- 17. Insurance:** CLIENT shall maintain full liability and hazard insurance coverage for all products, materials and equipment covered by this Agreement naming or designating PARKER as an additional insured and loss payee, and indemnifying PARKER against all claims and losses with respect to all plants, materials and equipment referred to in this Agreement. CLIENT agrees to promptly provide PARKER with a copy of all relevant insurance policies if requested.
- 18. Cancellation:** Lease contracts cannot be cancelled for any reason before the full term of the lease & all other charges are paid for.
- 19. Renewals:** Lease provisions shall automatically renew for similar periods unless either PARTY notifies the other in writing by registered letter, return receipt requested, at least ninety (90) days prior to the termination date of its intent not to renew.
- 20. Price Adjustments:** Maintenance and lease charges shall be subject to modifications annually, increased by the percentage increase in the Consumer Price Index (CPI) as published by The Bureau of Labor Statistics of The United States Department of Labor (all items indexed for the New York, New York-Northeastern, New Jersey region; 1967 equals 100), which occurred during the period commencing the annual anniversary of the installation and/or the month and year maintenance commenced. It is understood by and between the PARTIES that the above described formula is cumulative and shall be calculated on the basis of the entire period of the Agreement. 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 in modifying the charges under this Agreement on the part of PARKER shall not be construed as a waiver of this right. If there is a substantial price hike in fuel costs or fees to enter NYC, Parker has the right to add a surcharge until the increase goes down.
- 21. Additional Plants and Material Requested by Client During Terms of Agreement:** In the event additional materials are leased by CLIENT during the term of this Agreement, such additional materials shall be maintained from the commencement date of such installation and shall run for a minimum of thirty-six (36) months from installation of these items. The cost to CLIENT for said additional materials to be determined when leased.
- 22. Taxes:** Prices quoted are exclusive of any and all taxes, including, but not limited to, Sales, Municipal, State and Use Taxes.
- 23. Payments: Costs of Services**
 - A.** Payments shall be 50% at signing and the remaining 50% upon installation. All payments are net 30.



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- B.** 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 (1½) percent per month, eighteen percent per annum, or the maximum rate allowed by law, whichever is greater.
- C.** All sums unpaid for a period of sixty (60) days shall give PARKER the unilateral right to cancel this Agreement and void all guarantees. No replacement or claims will be made or honored unless all outstanding charges are paid in full. Service and maintenance of plants may be discontinued by PARKER if payments are not made in accordance with the terms hereof, for any reason, and all guarantees shall be void as of such date. In the event service and/or maintenance are cancelled or not accepted, PARKER shall have no liability nor responsibility for any adverse conditions, deteriorations, etc. suffered by the plants and materials.
- D.** If CLIENT terminates this Agreement without material cause, CLIENT shall remain liable for the balance of all payments for sale and installation, maintenance and lease payments through the end of the Agreement (if applicable) plus an administration surcharge of twenty (20%) of the remaining payments. This Agreement cannot be cancelled by CLIENT for any reason other than material breach by PARKER; provided, however, if CLIENT terminates this Agreement for 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, maintenance and lease payments through the end of the Agreement (if applicable) plus an administration surcharge of twenty (20%) of the remaining payments. Lease payments will still be owed until the end of the complete lease term. Should a building be sold and the new owner does not continue the existing lease and PARKER must search for the client who is obligated under the contract, original customer will owe Parker \$4,000.00 for the search plus collection costs. Client agrees that the costs of the original installation are averaged over the full term of this lease. Any attempt to cancel early and not pay for the entire term agreed upon will put undue hardship on Parker.
- E.** Extra labor (non-union) will be charged at \$100.00 per hour, per person, "portal to portal". Overtime rates of time and one half, or \$150.00 per hour, per PARKER employee. All rates are "portal to portal".
- F.** 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, attorney's fees, collection agency fees of 33%, interest and court costs plus 10% of the contract to cover Parker's labor costs.
- G.** A convenience fee of 4% will be added to prices listed on the front of proposal for credit card payments.
- H.** Prices on the reverse side of this agreement are 'per year' for the term of the lease unless specifically stated otherwise.



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- 24. Acceptance:** If CLIENT accepts this Agreement by attaching its own purchase order on the contract form, such document shall incorporate all conditions and terms of this contract verbatim and the terms and conditions of this contract shall control.
- 25. Maintenance:** Should maintenance not be accepted for any live material, payment in full must be received by cash or certified check before materials are shipped, if any additional visits are needed, even at the fault of PARKER, CLIENT will be charged at \$100.00 per person per hour, portal to portal, plus materials. Minimum charge of \$100.00 must be paid in advance. It is highly recommended that plants never be purchased without professional maintenance.
- 26. 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.
- 27. Place of Agreement-Governing Law:** It is agreed that this Agreement has been prepared in Scotch Plains, New Jersey and shall be governed by and interpreted accordingly to the laws of the State of New Jersey.
- 28. Entire Agreement:** CLIENT agrees that the terms herein constitute the PARTIES’ entire Agreement and in the event of a discrepancy in any of CLIENT’S specifications, purchase orders and/or Agreements, the terms of this Agreement are controlling unless the PARTIES agree in writing “terms and conditions of bid do not apply”.
- 29. Notices:** All notices required under this Agreement shall be given in writing to the appropriate PARTY by certified mail, return receipt requested, fax or email at the address set forth on the face of this Agreement.
- 30. Ownership:**
- A. All materials Parker used in the project are leased items and remain PARKER property, except Poinsettias.
 - B. CLIENT makes no claim to ownership of PARKER property.
 - C. 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.
- 31. Insurance:**
- A. PARKER shall be named and designated together with CLIENT as an insured or loss payee on all insurance policies.
 - B. CLIENT shall maintain insurance for all lease plants, materials, and equipment against burglary, theft, fire and vandalism in the sum equal to and arrived at by multiplying the monthly lease amount times the number of months in the lease, plus thirty (30%) percent;



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and 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.

32. Events Constituting Default: PARKER, at its option, may, by written notice to the CLIENT, declare the lease in default on the occurrence of any of the following:

- A. Failure by CLIENT to make payments or perform any of its obligations under this lease.
- B. Institution by or against the CLIENT of any proceeding in bankruptcy or insolvency or the reorganization of the CLIENT under any law, or the appointment of a receiver or trustee for the goods and chattels of the CLIENT, or any assignment by the CLIENT for the benefit of creditors.
- C. Expiration or cancellation of any insurance policy to be paid for by the CLIENT as provided for under the terms of this Agreement, or involuntary transfer of CLIENT'S interest in this lease by operation of law.

33. Rights, Remedies and Obligation Upon Default: Upon default by the CLIENT, PARKER shall have the following options:

- A. To terminate the lease and CLIENT'S rights under the lease;
- B. To declare the balance of all unpaid lease charges to the term of the lease and all other charges of any kind required for the entire remainder of the lease term to be paid by the CLIENT under the lease to be due and payable immediately (together with a twenty (20%) percent surcharge, for administration fees, on any 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. The CLIENT specifically waives any right of action the CLIENT might otherwise have arising out of the entry and repossession, and releases PARKER of any claim for trespass or damage caused by reason of the entry, repossession or removal of the property. CLIENT shall reimburse PARKER the reasonable costs and expenses of repossessing and enforcement of PARKER'S rights under this provision. CLIENT shall still owe all lease charges to date of termination of lease.
- D. In the event repossession is necessary, the leased property shall be in good condition and repair, reasonable wear and tear resulting from the proper use thereof expected. If CLIENT refuses to admit PARKER agents or personnel entry for purposes of repossession, then CLIENT shall be obligated to pay rent to PARKER at the monthly lease rate specified herein, together with damages for unlawful detention and all costs involved with Parker's trip to pick up the materials.
- E. 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.

34. 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



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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.

35. 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.