



**THE FOLLOWING TERMS ARE APPLICABLE IF THIS IS A SALE-
MAINTENANCE AGREEMENT OR LEASE-MAINTENANCE AGREEMENT
Referred to herein as the "Agreement"**

- 1. Agreement:** Parker Interior Plantscape Inc. ("PARKER") Agrees to sell, install, lease and/or maintain certain living interior plants, exterior plants, cut flowers and/or silk arrangements and related accessories ("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.
- 2. Delays:** Installation prices are based on one delivery date agreed to by CLIENT and PARKER. If there is a delay or multiple deliveries and delivery must be rescheduled CLIENT shall pay all costs incurred by PARKER including, but not limited to, transportation, storage and maintenance fees. Maintenance fees must be paid as if installation were not delayed, as Parker will be required to provide the plants the same care.
- 3. Maintenance:** If CLIENT elects PARKER's maintenance option, maintenance will include watering, feeding, dusting, cleaning, pruning, fertilizing, trimming, spraying for insects and disease control at regular intervals as reasonably required to maintain an aesthetically pleasing appearance of plants listed. There will be an extra charge to remove dust from construction work. Tree washing shall be done at clients request at an extra charge.
- 4. Guarantee:** During the term of this Agreement, if the maintenance option is selected by CLIENT, PARKER will replace dead or visibly dying interior plants free of charge, within fourteen (14) days from receipt of written notice from CLIENT or PARKER's awareness of the problem, but only if the conditions that caused the plants to deteriorate were under the reasonable control of PARKER in Parker's sole discretion. PARKER shall not be responsible for plants deteriorating due to circumstances beyond Parker's control, including, but shall not be limited to, inadequate temperature or light, affects from H.V.A.C. (heat, cold, direct air), vandalism, theft, lack of access, use of toxic liquids or gasses, acts of God, power failures, use of fresh paint containing mercury, and negligence of third parties, etc. In the event the plants' deterioration is beyond the control of PARKER, then PARKER will replace the deteriorated plant(s) at PARKER's then-current retail selling prices of the plants, which will be invoiced to and paid by CLIENT. If CLIENT does not select the maintenance option, there is absolutely no guarantee regarding deteriorating plants or insects given to the CLIENT, and this paragraph is not applicable. It is specifically understood that even if maintenance is selected by CLIENT, there are no guarantees whatsoever on exterior plant material. If CLIENT has elected for PARKER to provide maintenance services, CLIENT shall indicate in writing to PARKER if it desires maintenance services for CLIENT's existing plants. PARKER reserves the right to evaluate the condition and quality of existing plants at the time of takeover. Plants marked as old or in poor condition will not be guaranteed. After a two (2) month period from when PARKER commenced maintenance, CLIENT's plants for which PARKER has assumed the maintenance shall become part of PARKER's guarantee at the condition they were in after the



2 month trial maintenance period. Plants purchased from or leased through PARKER which CLIENT wants replaced, for any reason (other than deterioration for which Parker is not responsible) shall be replaced by PARKER, at CLIENT'S cost and expense, at PARKER's then current retail price.

5. **Containers:** PARKER accepts no responsibility for containers supplied and/or selected by CLIENT. PARKER's responsibility for containers, including water tightness and mechanical properties, supplied by PARKER is limited to the manufacturer's warranty. PARKER'S liability shall be expressly limited to the cost or replacement of the defective containers.
 - A. CLIENT acknowledges and agrees that wicker baskets and clay/ceramic pots are known to leak after a period of time, and CLIENT agrees PARKER is not responsible for any damage occasioned thereby, including replacement costs.
 - B. Special order containers cannot be canceled once manufacturer has started production.
6. **Parker's Responsibilities:** If the maintenance option is selected by CLIENT, PARKER will provide all services necessary to maintain plants in good, healthy condition.
7. **Number of Visits:** CLIENT agrees that the number of service/maintenance visits necessary to maintain the plants in good condition will be determined by PARKER based on PARKER'S expertise and discretion. CLIENT shall not withhold any payment due herein if plants are healthy and in good condition regardless of the number of service/maintenance visits made by PARKER.
8. **Client's Responsibilities:** CLIENT shall provide, at CLIENT's sole expense: (i) parking space for PARKER personnel convenient to entrance ways (in all areas except Manhattan); (ii) water and convenient water outlet; (iii) secured storage areas for watering equipment within a reasonable distance and at an agreeable location; and (iv) appropriate trash facilities for PARKER to dispose of all plants and materials. CLIENT agrees to cause each plant and/or live material in its premises to have a minimum amount of light covering all areas of foliage 8-10 hours per day. Minimum lighting shall be in accordance with the "ALCA Guide to Interior Landscape Specifications 2003" (or update). CLIENT agrees to keep the temperature between 60 degrees and 80 degrees Fahrenheit at all times to avoid injury to the plants.
9. **Employees:** The Client agrees that PARKER personnel are specially trained and skilled in the field of Horticulture and other relevant areas. CLIENT agrees not to hire any of PARKER's employees for a period of two (2) years after termination of this agreement for Horticultural related work.
10. **Non-Union Labor:** All prices quoted on all work is based on nonunion labor by PARKER. If Union labor is required, CLIENT shall be responsible for all increased costs.



- 11. Unit Prices:** Unit prices for additions and deletions do not relate directly to base price but will be quoted individually.
- 12. Credit Approval:** This Agreement is subject to continuous credit approval and may be rescinded by PARKER if PARKER reasonably believes CLIENT to be non-credit worthy.
- 13. Christmas Materials:** If this Agreement involves artificial Christmas materials, they are deemed to be leased and not a sale, unless specifically stated otherwise on the reverse side of this Agreement.
- 14. Impediments:** Installation, replacements and/or maintenance requiring the removal of architectural barriers and/or special hoisting equipment, scaffolding, inability to use elevators and/or escalators, special floor/wall protection etc., shall be paid by the CLIENT, unless specifically set forth to the contrary in this Agreement.
- 15. Insurance:** CLIENT shall maintain general liability insurance for its premises covering all products, material and equipment covered by this Agreement, which policy shall name PARKER as an additional insured and indemnify PARKER against all claims and losses arising out of all plants, materials and equipment referred to in this Agreement. CLIENT agrees to promptly provide PARKER with a copy of all relevant insurance policies.
- 16. Term:** In the event this is a Sale-Maintenance Agreement, the Term shall be five (5) years commencing upon the initial installation date. In the event of a Lease-Maintenance Agreement, the Term shall be for a minimum of (3) years from initial installation date.
- 17. Renewals:** Sale-Maintenance Agreement and Lease-Maintenance Agreement provisions shall automatically renew for renewal periods equal to the original Term 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 the then-current Term of an intent not to renew.
- 18. 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 (1967 equals 100). However, in no event shall there be any decrease in the payments to PARKER. Any delay by PARKER in modifying the charges under this Agreement based on delays in the publication of the CPI 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 prices go back down. Should an 'extra' fee be added to enter NYC be imposed, Parker reserves the right to impose a surcharge onto the price to cover the extra costs.



19. Payments; Costs of Services:

- A. All maintenance and lease payments are payable on the first day of each month in advance. Installation payments are due after project is installed. If this is a Lease Agreement, the last month's maintenance and lease charges shall be paid upon execution of Agreement.
- B. Prices quoted are exclusive of any and all taxes, including, but not limited to: Sales, Municipal, State and Use Taxes, which shall be CLIENT's sole responsibility.
- C. CLIENT agrees to pay PARKER all amounts due within thirty (30) days of billing date, without discount. If payment is not received within thirty (30) days of the 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.
- D. 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, cease or reduce maintenance service, and void all guarantees in its sole discretion. No replacement or claims will be made or honored unless all outstanding charges are paid in full plus interest.
- E. In the event 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 (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 breach by PARKER; provided, however, that CLIENT must first give PARKER prior written notice of an alleged breach and at least 30 days to cure the alleged breach. If CLIENT terminates without notice and opportunity to cure to PARKER, CLIENT 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.
- F. CLIENT shall pay all costs incurred by PARKER in the collection of any unpaid amount, including, but not limited to, reasonable attorney or collection agency fees in the amount of thirty-three and one third (33 1/3%) percent of the amount claimed together with interest and court costs. Regular rates of \$80.00 per hour and overtime rates of time-and-one-half, 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.
- G. 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.
- H. The prices quoted are discounted for cash payments. Credit card use will revert the price to the undiscounted rate which is 4% more than listed.

20. Acceptance: CLIENT cannot accept this Agreement by attaching its own purchase order or other document to this Agreement or PARKER's order form, such document shall be deemed null and void. CLIENT cannot handwrite, insert or add in any manner any terms into this Agreement.



- 21. Place of Agreement-Governing Law:** This Agreement shall be governed by and interpreted according to the laws in the State of New Jersey, excluding its conflict of laws provisions. In the event a controversy arises, any action must be brought only in New Jersey. The CLIENT expressly agrees to exclusive venue in the County of Union, State of New Jersey.
- 22. 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.
- 23. Notices:** All notices required under this Agreement shall be given in writing and delivered to the appropriate party by a nationally recognized overnight courier, in person, or by certified mail, return receipt requested or email with a confirmation of receipt, in each case at the address set forth on the face of this Agreement. Notice shall be deemed received upon actual receipt by the party to whom notice is sent.
- 24. 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 relieved by PARKER, in writing.
- 25. Photos:** PARKER may take photos of plantings for marketing purposes.
- 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. 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;
 - C.** If this is a Lease Agreement, the expiration or cancellation of any insurance policy CLIENT is obligated to maintain, or involuntary transfer of CLIENT'S interest in this Lease Agreement by operation of law; or the assignment of this Lease Agreement and/or the plants and materials without the prior written consent of PARKER.



28. 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 purchase price, maintenance fees, rent, lease and all other charges of any kind required to be paid by CLIENT for the entire remainder of this Agreement to be due and payable immediately (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, any leased 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;
- 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.
- F. EARLY CANCELLATION OR TERMINATION OF LEASE FOR ANY REASON SHALL NOT RELIEVE CLIENT OF PAYING THE REMAINING LEASE CHARGES.

29. 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.

30. 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.**31. Property:** 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.

**THE FOLLOWING PROVISIONS APPLY ONLY IF THIS IS A LEASE-
MAINTENANCE AGREEMENTS:**

31L. 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.

32L. Cancellation:

A. In the event CLIENT cancels this Agreement without material cause at any time during the initial or any 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 material 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 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.

B. Extended Payment Option Cancellations - Any purchases, installation, or exterior maintenance or flower rotation that had their cost divided equally for a specified period of months as a payment option, which is cancelled mid-contract will have the outstanding payments for the contract length included in the final invoice regardless whether the work is ongoing. By way of example if a contract term is Jan 1-Dec 1 on an exterior landscape project which is scheduled to be maintained from May 1 -September 31 for a total of \$1200.00 per month, the invoice would be \$100.00 per month for a total of 12 months; if contract is cancelled as of October 1 the CLIENT will still be responsible for Oct, Nov, and Dec payments to complete the payment cycle and will be included in the final invoice.

33L. Insurance:

- A. PARKER shall be named and designated together with CLIENT as an insured or loss payee on all CLIENT insurance policies.
- B. 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 times 130%. CLIENT shall also maintain Public Liability Insurance with minimum limits of \$1,000,000.00 and personal injury and property damage insurance with minimum limits of \$300,000.00 each occurrence.