

INSTALLATION TERMS

Owner and O'Neill Landscape Group LLC ("OLG") enter this agreement ("Agreement") for the completion of the work ("Project") reflected on the reverse, as follows:

- 1. PROJECT COST AND DEPOSIT.** Owner agrees to pay OLG the amount outlined on agreement in consideration for completion of the Project. Owner agrees to submit a deposit of 50% to be applied toward the total cost of the Project.
- 2. INCLUSIVE OF MATERIALS AND LABOR.** OLG agrees to furnish the materials and labor for the Project and complete the same to OLG's professional standards. OLG reserves the right to make substitutions of equal or better quality than those specified in the Project where necessary due to availability or other circumstances beyond OLG's reasonable control.
- 3. TIMING AND TERMS OF PAYMENT.** Payment from Owner is due immediately upon notification from OLG that Project is completed ("Completion Date"), and payment by check is preferred. Payment by credit or debit card is permitted, provided that Owner pays all processing fees. Post-Completion Date corrective or repair work is not grounds for delaying payment, and Owner has no right of offset.
- 4. ARBITRATION OF DISPUTES (ONLY IF INITIALED BY OWNER AND OLG). THIS SECTION 4 IS A PART OF THIS AGREEMENT ONLY IF INITIALED BY BOTH OWNER: _____, AND OLG: _____, RESPECTIVELY, IN THE IMMEDIATELY PRECEDING BLANKS.**

In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement, or the breach thereof, Owner and OLG shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to all parties. If such a resolution cannot be reached within a period of 30 days, then **AT THE OPTION OF EITHER OWNER OR OLG EXERCISED THEREAFTER, ALL DISPUTES, CLAIMS, QUESTIONS, OR DISAGREEMENTS ARISING FROM OR RELATING TO THIS AGREEMENT, OR THE BREACH THEREOF, SHALL BE FINALLY SETTLED BY ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION IN ACCORDANCE WITH THE PROVISIONS OF ITS COMMERCIAL ARBITRATION RULES.**

5. EXCLUSIVE VENUE AND SELECTION OF FORUM. The exclusive venue for all disputes arising out of or related to this Agreement shall be Cherokee County, Georgia. Owner and OLG expressly consent to personal jurisdiction and venue in that forum, and hereby irrevocably waive all procedural defenses, other than service and process, to any action initiated in that forum.

6. LIMITED WARRANTY. OLG offers Owner a non-transferrable limited warranty on all materials and workmanship for various periods from the Completion Date ("Limited Warranty") as outlined below. OLG will furnish watering instructions upon Owner request. Watering instructions are available on OLG website- <http://www.oneilllandscapes.com/watering-instructions/>
- **90 day plant warranty-** 1 replacement per plant-Excludes Hinoki Cypress and annual color. Please follow watering instructions.

- **No Warranty On Sod and Seeding-** No warranty on sod, or seed germination written or implied. It Owners responsible for reporting any issues with sod immediately to contractor for property treatment solutions to be proposed at additional cost to Owner. It is owners responsibility to comply with watering instructions. If professional irrigation system is not in place, a rigorous hose watering system must be followed.

- **Hardscapes-** 90 Day warranty- covering settling of pavers- cracking from freezing weather or abuse not included- Does not cover damage from pressure washing or polymeric sand.

- **Irrigation-** 90 Day warranty on equipment on proper functionality of (valves, rotors, clock)- Does not cover lightning strikes- Does not cover start up and shut down or timer chagnes beyond initial set up. Irrigation repairs needed due to freezing weather or abuse (ie vehicle or lawn mowers etc) are not covered. It is owner responsibility to understand clock and irrigation operation at time of completion payment- OLG not responsible for water usage due to malfunctions, incorrect programing, or leaks. Owner is responsible for reporting any issues to OLG. 90 Day warranty does not cover cracked pipes due to freezing weather. Irrigation items which require addressing by client that are not included under warranty items such as start up and shut down, clock timing and functions and irrigation head repair from abuse will be billed at \$50 per hour;minimum \$50. Owner acknowledges that running an irrigation system will increase property water bill substantially.

As a condition of coverage under the Limited Warranty, Owner must adhere to general care, operating instructions, and watering schedules furnished or established by OLG, and the Limited Warranty shall be void in the event of physical abuse or neglect, including failure to properly water as directed by OLG. The sole and exclusive remedy under this Limited Warranty is repair or replacement, as determined by OLG in its sole discretion, of defective materials or workmanship. All other damages, including incidental, consequential, special, or any other form of loss or harm are excluded from this Limited Warranty, and OLG expressly disclaims any and all other warranties other than the Limited Warranty, and expressly disclaims the warranties of merchantability and fitness for a particular purpose. Owner's original plants being transplanted, relocated (whether permanent or temporarily), grass work by seeding or sod, annual flower installations, and/or flowering bulbs are all excluded under this Limited Warranty and are provided "AS IS" with no warranty whatsoever. Notwithstanding the foregoing, certain equipment, assemblies, or units purchased by OLG included in this contract are sold or installed subject to the respective manufacturer's or processor's guarantee or warranties ("Third-Party Warranty"), not those of OLG. In such cases, the remedy provided by a Third-Party Warranty shall be exclusive, and not cumulative, to that provided by OLG. Any product or materials provided by owner are not covered by warranties or guarantees of OLG.

Contractor will not warranty for damage or issues from the following reasons: failure of the issuance of all necessary building permits, as determined by OLG; inspections or changes ordered by inspectors or governmental entities; negligence or omission by Owner or Owner's agents, contractors, or employees; acts of God or nature; weather, including storms, inclement weather, saturating rain, or heavy runoff and wash resulting in erosion, unavailability of materials through OLG's customary channels and rates; or other factors beyond OLG's reasonable control.

The availability of the Limited Warranty provided by this section is expressly conditioned on, and becomes available only after, Owner's full payment as provided by Sections 1 and 3. If, for any reason, all monies due and owing to OLG are not paid within fourteen (14) days of the Completion Date, no Limited Warranty shall arise all under this Agreement regardless of the time of Payment, and any other warranties available by law shall be null and void, being expressly disclaimed by OLG, understanding that the warranties of merchantability and fitness for a particular purpose are also expressly disclaimed.

7. PROPERTY BOUNDARIES AND EASEMENTS. Owner represents and warrants that the site for the Project is under Owner's ownership and control, and that no easement, right-of-way, or other property rights or restrictions conflict with the Project. Owner must conspicuously mark, or contract at Owner's expense for a surveyor to mark, all property boundary lines, and Owner is solely responsible for the accuracy of such markings and drawings. OLG reserves the right to require Owner to have the Project site professionally surveyed and marked at Owners' expense.

8. DRIVEWAY OR PAVED SURFACES. Owner grants OLG permission to operate trucks and equipment on driveways and all other paved surfaces owned by Owner, which may result in cracks, soiling, discoloration, or other permanent damage. Owner assumes all risk of damage to driveways and all other paved surfaces, and agrees to release, waive, and not hold OLG responsible for any damage, harm, or losses to driveways, paved surfaces, or other locations OLG deems it reasonably necessary to utilize trucks and equipment to complete the Project. Owner's desire to restrict operational area of OLG's trucks and equipment must be designated on reverse and involve payment of an additional fee as agreed in writing.

9. UTILITIES. Owner shall furnish, at Owner's expense, potable water and standard electrical supply to OLG at the Project site. Once utilities have been marked by any provider, Owner agrees not to disturb lines, markings, flags, stakes, or other means used for delineating public utilities. Owner acknowledges sole responsibility for informing OLG of any private or other utility line, pipes, other underground or buried objects (e.g., as lighting, invisible fences, and irrigation), or items not marked by Georgia 811, including private lines connecting to public utility systems. OLG will not be responsible for damage to any unmarked item (whether the failure to mark was caused by Georgia 811, utility provider, or Owner), and Owner agrees to indemnify and hold OLG harmless from same. All due care will be taken to avoid disruption of utilities, telephone, cables, and natural gas lines. Due to the nature of phone, light fiber optic cables, and coaxial cables and dog fences being buried close to the surface, OLG will not be responsible for incidental line breaks during the installation or matenance processes.

10. CANCELLATION, LIQUIDATED DAMAGES, AND DELAYS. Owner may cancel Project without penalty until OLG notifies Owner that the Project start date has been scheduled ("Scheduling"), which may occur without further notice to Owner. After Scheduling, Owner may cancel the Project, but either becomes liable for or authorizes OLG to deduct from any deposit an amount calculated as follows: i) 10% of the total price of the Project, plus ii) OLG's cost of all materials specifically ordered by OLG in contemplation of the Project, regardless of whether placed prior to or after Scheduling (collectively, the "Cancellation Fee"). Owner and OLG understand and agree that the amount provided for in this Paragraph provides for liquidated damages, without which the loss to OLG would be difficult or impossible to estimate accurately in advance, are intended to compensate OLG for the extent of its losses and are not imposed not as a penalty, and constitute a reasonable pre-Agreement estimate of the amount of damages or loss that would be sustained by OLG in the event of Owner's post-Scheduling cancellation of the Project.

Contractor agrees to start and diligently pursue Project work to completion starting on the date specified during Scheduling, but shall not be responsible for delays or rescheduling. Due to the nature of working out of doors, project delays may occur for any number of reasons which include but aren't limited to; WEATHER, unavailability of materials through OLG's customary channels and rates; independent contractors; holidays; or other factors beyond OLG's reasonable control, failure of the issuance of all necessary building permits, as determined by OLG; inspections or changes ordered by inspectors or governmental entities; negligence or omission by Owner or Owner's agents, contractors, or employees; acts of God; including storms, inclement weather, or saturating rain; Extra Work (as defined below) or other factors beyond OLG's reasonable control.

11. PERMITTING AND GOVERNMENTAL FEES AND ASSESSMENTS. OLG will obtain all required building permits, but the costs of such permits will be invoiced to Owner as an additional expense not included in this Agreement. Owner further agrees to pay any assessments or charges required by public bodies and utilities for financing or repaying the cost of sewers, storm drains, water service, or other utilities including sewer and storm drain reimbursement charges, use fees, revolving fund charges, hookup charges and the like, which shall not first be paid by OLG for subsequent reimbursement by Owner.

12. DELIVERY OF MATERIALS AND OLG-OWNED EQUIPMENT. OLG may deliver equipment and materials to the Project site in advance of the date such items will be installed or utilized by OLG. Owner will not disturb or relocate such materials without the express direction of OLG. After delivery of such materials, Owner must provide for the protection of such materials and is solely responsible for cost of replacing materials vandalized, stolen, or otherwise rendered unusable or unavailable to OLG. Neither Owner, nor anyone acting at the direction of or with consent of Owner, may enter, use, drive, or operate any equipment on the Project site without OLG's advance, written consent.

13. PROJECT SITE ACCESS. Owner agrees to keep means of access to Project site, e.g., driveway and sidewalk, clear and available for movement and parking of trucks and other equipment during normal working hours. Owner's denial or refusal of access to any worker or material supplier during the working hours constitutes a material breach of this Agreement. Owner is solely responsible for obtaining access rights through neighboring or adjoining landowners, if deemed necessary in OLG's sole discretion. Owner permits OLG to photograph the project and use photography for advertizing purposes before, during, and after the project is completed.

14. MATERIAL REMOVED AND DEBRIS. All materials and debris removed from structures or the Project site become the sole and exclusive property of OLG.

15. DAMAGE OR DESTRUCTION. If the Project or any portion of the Project is destroyed or damaged prior to the Completion Date, including by fire, storm, flood, other contractor, theft, or other disaster or accidents, all corrective work by OLG shall be treated as Extra Work (as defined below). Owner's abandonment of the Project shall constitute a post-Scheduling cancellation of the Project, and in addition to other remedies provided by the Agreement, shall entitle OLG to full compensation for its costs expended through the date of Owner's abandonment. Owner hereby assigns all insurance proceeds and rights under applicable insurance policies, to the extent of the damage or destruction, to OLG.

16. EXISTING VIOLATIONS AND CONDITIONS. OLG shall not be held responsible for any existing illegal conditions or violations of applicable building regulations or ordinances, whether or not previously cited by the appropriate authority. OLG is not responsible for any abnormal or unusual preexisting conditions or any unusual or abnormal concrete footings, foundations, retaining walls, or piers required, or any unusual depth required for same, such as, but not limited to that condition caused by poor soil, lack of compaction, hillside, or other slope conditions. Correction of such violations or abnormal conditions by OLG shall be considered and treated as Extra Work (as defined below).

17. EXTRA WORK AND MODIFICATION OF THIS AGREEMENT. Owner agrees to pay OLG an additional sum for any work performed beyond the scope of the Project or at Owner's request following execution of this Agreement ("Extra Work"). Due to the nature of the Project, Owner understands and agrees that Extra Work may become necessary to complete the Project as initially agreed due to unforeseen circumstances, the risk of which is borne solely by Owner. Owner acknowledges the Work performed by owner or contractor other than OLG prior to or during construction may result in "Extra Work" and may not result in a credit towards the contract. Contract credit request must be submitted in writing within 1 business day of last full day of work on site. Contract credits are given at the sole discretion of OLG. Upon discovery of such unforeseen circumstances, OLG will notify owner of the extent and cost of Extra Work required to facilitate completion of the Project. Owner's refusal to authorize Extra Work deemed required by OLG, in its sole discretion, may at OLG's option constitute a post-Scheduling cancellation of the Project, and in addition to other remedies provided by the Agreement, shall entitle OLG to full compensation for its costs expended through the date of Owner's refusal to authorize said required Extra Work.

As the exclusive means of modifying this Agreement, including the specification of the scope and cost of Extra Work, Owner and OLG must execute or ratify a written change order or otherwise express acceptance of the modification of this Agreement in writing, including communication by email. No portion of this Section may be modified by any oral communication, representation, or waiver by either Owner or OLG.

18. APPROXIMATION OF PLANS. Measurements, sizes and shapes in plans and specifications are approximate and subject to field verification. Unless otherwise specified, all dimensions are exterior dimensions. In the event of a conflict between i) the plans, specifications, or elsewhere and ii) this Agreement, this Agreement is controlling. Designs and concepts are sales tools designed to show overall concept. Results will vary with maintenance, soil quality and overall plant health which will vary based on site conditions, insects and diseases, and client care. Changes to "concepts" and plant materials may be made by designer and crew due to availability and site conditions. Plant selection may vary based on conditions and availability of plant materials. Actual plant selection and layout are accepted by client upon completion payment.

19. COLLECTION & LEGAL REMEDIES. All monies that remain due and owing to OLG fourteen (14) days after the Completion Date shall accrue interest at the rate of sixteen percent (16%) per year, not exceed the maximum allowable rate or amount under Georgia law. If any payment from Owner is returned for non-sufficient funds or otherwise dishonored by the relevant financial institution, OLG will charge Owner a service fee of the greater of i) \$30.00 or ii) 5% of the face amount of the check; plus the amount of any fees charged to OLG by its financial institution as a result of the instrument not being honored.

Owner shall be liable for all reasonable collection costs, attorneys' fees, arbitration or court costs, or other expenses incurred by OLG in the collection of monies owed under this Agreement. Owner expressly consents to the filing of a lien to secure all amounts owed to OLG, and expressly grants OLG a security interest, to the extent not otherwise secured by real property lien rights, in all goods (including fixtures and materials) furnished to Owner under this Agreement.

20. SUBCONTRACTORS & ASSIGNMENT. OLG, without further consent of Owner, may subcontract all or any portion of the Project. Owner may not assign or delegate any portion of this Agreement with the advance, written consent of OLG.

21. DISCRETION FOR GOVERNMENTAL REQUIREMENTS. OLG may modify the Project to the extent required to comply with governmental requirements, including building, zoning, and other codes and regulations. OLG, in its discretion, may alter the Project to comply with such requirements, with any alterations being considered Extra Work under this Agreement, for which Owner is additionally liable.

22. ENTIRE AGREEMENT. This Agreement contains and represents the entire agreement between and among Owner and OLG, and supersedes all previous understandings and agreements between the parties, whether oral or written. Owner and OLG hereby acknowledge and represent that neither has relied on any representation, assertion, guarantee, warranty, or assurance except for those expressly set forth in this Agreement.