

Last Updated: April 21, 2023

Sean Romero will be referred to as Designer throughout this agreement.

Certified Landscape Design will be referred to as Company throughout this agreement.

Designer agrees to complete for Owner the Work identified in this agreement as the Landscape Design

Design Process

“Landscape Design” Conceptual Plan will be sent to homeowner in “Revision” portal. Once Landscape Plan is received, please make any necessary modifications to the plan and a **“Detailed List”** of all changes.

Please upload the revised concept plan in the my reviews revision portal and use the “Approve” or “Revise” button when finished.

What’s Included with Landscape Design

(1) Preliminary/Concept Plan

(2) 1st Revision FREE

FREE Revisions when a HOA makes changes to the plan

What’s NOT Included

(3rd revision + billed at \$400.00 per hour).

Charges incurred in 15-minute increments. (15 minutes = \$100)

Preliminary Design Phase

(Also referred to as the concept design or concept plan)

Preliminary Design: means the submission of documents which comprise the initial stage of the design phase.

Preliminary/Concept Plan Description - In the preliminary design phase, a first pass analysis is typically done to inspect the overall scope of work in order to further develop the design into the second design phase also known as the “Final Design Phase”. In a preliminary design the initial layout and general overview of the scope of work is conceived based upon discussion and feedback from the homeowner. The preliminary design may have many factors that have not been introduced or may have been added, removed, modified, altered, re-arranged, or changed by the Designer. For this reason, the homeowner has (2) free revisions during the “Detailed Design Phase” which they can then modify, revise, correct, redact, and make changes to at no additional cost.

(1) **Revised Design Phase (Revisions #1-#2 FREE)**

“Revise - re-examine and make alterations to”

Revised Design: means and includes all design documents which shall describe the conceptual design and the Revised concept renderings of the project for its intended purpose. This DOES NOT include compliance with permitting and/or obtaining regulatory approvals by any applicable regulatory authorities required to render the scope of work and its components operational, functional and legally usable for its intended purpose.

Final Plan Design - The “Final Design Phase”. The Homeowner has reviewed and assessed all the necessary corrections, alterations, revisions, addendums, modifications & redactions to the revised design and made the necessary adjustments to be revised. The final design will include outputs, such as quantities, photographs, dimensions, numbers and finalized specifications for the concept and planting plan. Dimensions are not guaranteed to be accurate and it is the responsibility of the homeowner or contractor to field verify all dimensions before starting any work.

(3) **Additional Revision Phase (Revisions #3+ Additional Cost)**

Additional revisions will be billed in 15-minute increments

Revision Billing Rate = (15 minutes x \$100.00) or \$400.00 Per Hour

TERMINATION

This agreement may be terminated for convenience by either party effective immediately upon notice, or the mutual agreement of the parties prior to any work being commenced. If Owner or Designer terminates this Agreement Designer shall be paid for Design services provided to date at the rate of (\$100 per 15 minute increments.)

PROPERTY LINES

Owner shall locate point the property lines to Designer/ Designer may at his option require owner to provide a licensed land surveyors map of the property.

OWNERSHIP OF PLANS

Plans, Drawings, Specifications and copies prepared for use in conceptual landscape design under this agreement are the property of Landscape Designer. Designer retains all common Law and statutory rights to these Plans, Drawings and Specifications. Ambiguities, inconsistencies and omissions in the Landscape Design shall be at the expense of Owner.

DEALING WITH LANDSCAPE PLAN DEFECTS

Landscape Designer has no obligation to detect ambiguities, inconsistencies or omissions in the Landscape Design

DISCLAIMER BY OWNER, RELIANCE BY DESIGNER

Owner has provided Designer with information on subsurface or concealed conditions at the Job Site. Except to the extent that Designer knows this information to be false, Designer is entitled to rely on the accuracy of this information

DISCREPANCY BETWEEN LANDSCAPING PLANS AND FIELD CONDITIONS

Designer has no obligation to find discrepancies between Job Site conditions and representations or Requirements in the Landscape Design. Designer shall not be liable for discrepancies between representations or Requirements in the Landscape Design and conditions at the Job Site.

RELEASE OF LIABILITY

You agree to indemnify, defend and hold us harmless from and against claims, liabilities, suits, demands, losses, costs and expenses, including, but not limited to, reasonable attorneys' fees and all legal expenses and fees incurred on appeal, and all interest thereon, accruing or resulting to any and all persons, firms or any other legal entities on account of any damages or losses to property or persons, including injury or death, or economic losses, arising out of the plans drawn by landscape designer.

OWNERSHIP OF TANGIBLE DOCUMENTS

Upon making of final payment to the Designer, the Owner shall not receive ownership of the property rights, except for copyrights, of all documents, drawings, specifications, electronic data and information (hereinafter "Documents") prepared, provided or procured by the Designer.

COPYRIGHT

The Parties agree that Owner shall not obtain the copyright of any Documents.

OWNER'S USE

The Owner shall not have no right to use, reproduce or make derivative works of the Designers Documents for other projects without the written authorization of the Designer

CONFIDENTIALITY

Design-Builder shall treat as confidential and not disclose to third-persons, nor use for its own benefit ("Treat as Confidential"), any of Owner's confidential information, know-how, discoveries, production methods, and the like disclosed to Designer or which Designer may acquire in performing the Work. To the extent necessary to perform the Work, Designers confidentiality obligations do not apply to disclosures to Subcontractors, Subcontractors, and Suppliers. Owner shall Treat as Confidential information all of Designers estimating systems and historical and parameter cost data disclosed to Owner in performing the Work. Except for information that Owner obtains through ownership of the copyright, Owner shall treat as confidential information all design systems that may be disclosed to Owner in connection with the performance of this Agreement. Each Party shall specify and mark confidential items as "Confidential." Confidentiality obligations do not supersede compulsion by Law, a governmental agency or authority, an order of a court of competent jurisdiction, or a validly issued subpoena. In such event, a Party shall promptly notify the other Party to permit that Party's legal objection.

WORKSITE INFORMATION

To the extent Owner has obtained, or is required in the Contract Documents to obtain, then Owner shall provide the following Worksite information to Designer: information describing the physical characteristics of the site, including surveys, Worksite evaluations, legal descriptions, data, or drawings depicting existing conditions, subsurface conditions, and environmental studies, reports, and investigations; tests, inspections, and other reports dealing with environmental matters, Hazardous Material, and other existing conditions, including structural, mechanical, and chemical tests, required by the Contract Documents or by Law; any other information or services requested in writing by Designer which are required for Design performance of the Work and under Owner's control.

DELAYS AND EXTENSIONS OF TIME

If Designer is delayed at any time in the commencement or progress of the Work by any cause beyond the control of Designer, Designer shall be entitled to an equitable extension :Examples of causes beyond the control of Designer include, but are not limited to, the following: (a) acts or omissions of Owner or Others; (b) changes in the Work or the sequencing of the Work ordered by Owner, or arising from decisions of Owner that impact the time of performance of the Work; (c) encountering Hazardous Materials unanticipated by Design-Builder, or concealed or unknown conditions; (d) delay authorized by Owner pending dispute resolution or suspension by Owner (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving Design-Builder; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics; (k) adverse governmental actions; (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated.

ARBITRATION

The Parties choose binding arbitration for any claim or dispute arising out of or relating to this Agreement. EACH PARTY WAIVES THEIR RIGHT TO BE HEARD IN A COURT OF LAW, with or without a jury. Arbitration does not involve a judge or jury. Instead, an arbitrator with the power to award damages and other appropriate relief will decide claims and disputes. An arbitrator's award shall be final and binding upon the Parties, and judgment may be entered upon it in any court having jurisdiction.

Neither Party may commence arbitration if the claim or cause of action would be barred by the applicable statute of limitations had the claim or cause of action been filed in a state or federal court. Receipt of a demand for arbitration by the person or entity administering the arbitration shall constitute the commencement of legal proceedings for the purposes of determining whether a claim or cause of action is barred by the applicable statute of limitations. If, however, a state or federal court exercising jurisdiction over a timely filed claim or cause of action orders that the claim or cause of action be submitted to arbitration, the arbitration proceeding shall be deemed commenced as of the date the court action was filed, provided that the Party asserting the claim or cause of action files its demand for arbitration with the person or entity administering the arbitration within thirty (30) Days after the entry of such order.

The arbitration shall use the following rules:

the current AAA Construction Industry Arbitration Rules and AAA administration. AAA Construction Fast Track Rules shall apply to all two-party cases when neither Party's disclosed claim or counterclaim exceeds \$250,000. If arbitration is selected but no rules are selected, then this subsection shall apply by default.

the current JAMS Engineering and Construction Arbitration Rules and Procedures and administered by

Welcome to ("**Certified Landscape Design**") website located at [https://Certified Landscape Design.com](https://CertifiedLandscapeDesign.com) (the "**Site**"). Please read these Terms of Service (the "**Terms**") and our Privacy Policy [[https://Certified Landscape Design.com/privacy-policy](https://CertifiedLandscapeDesign.com/privacy-policy)] ("**Privacy Policy**") carefully because they govern your use of our Site and our online landscape design services accessible via our Site. To make these Terms easier to read, the Site and our services are collectively called the "**Services**."

1. Agreement to Terms. By using our Services, you agree to be bound by these Terms. If you don't agree to be bound by these Terms, do not use the Services. If you are accessing and using the Services on behalf of a company (such as your employer) or other legal entity, you represent and warrant that you have the authority to bind that company or other legal entity to these Terms. In that case, "you" and "your" will refer to that company or other legal entity.

2. Privacy Policy. Please refer to our Privacy Policy for information on how we collect, use and disclose information from our users. You acknowledge and agree that your use of the Services is subject to our Privacy Policy.

IMPORTANT NOTICE REGARDING ARBITRATION: WHEN YOU AGREE TO THESE TERMS YOU ARE AGREEING (WITH LIMITED EXCEPTION) TO RESOLVE ANY DISPUTE BETWEEN YOU AND CERTIFIED LANDSCAPE DESIGN THROUGH BINDING, INDIVIDUAL ARBITRATION RATHER THAN IN COURT. PLEASE REVIEW CAREFULLY SECTION 16 "DISPUTE RESOLUTION" BELOW FOR DETAILS REGARDING ARBITRATION (INCLUDING THE PROCEDURE TO OPT OUT OF ARBITRATION).

3. Changes to Terms or Services. We may update the Terms at any time, in our sole discretion. If we do so, we'll let you know either by posting the updated Terms on the Site or through other communications. It's important that you review the Terms whenever we update them. If you continue to use the Services after we have posted updated Terms, you are agreeing to be bound by the updated Terms. If you don't agree to be bound by the updated Terms, then, except as otherwise provided in Section 16(f) "Effect of Changes on Arbitration," you may not use the Services anymore. Because our Services are evolving over time, we may change or discontinue all or any part of the Services, at any time and without notice, at our sole discretion.

4. Who May Use the Services?

(a) Eligibility. You may use the Services only if you are 18 years or older and capable of forming a binding contract with Certified Landscape Design and are not barred from using the Services under applicable law.

(b) Registration and Your Information. If you want to use certain features of the Services, you'll have to create a design profile ("**Design Profile**"). You can do this by completing your Design Profile on the Site by providing certain information about you, including your name, address, and design preferences.

(c) Accuracy of Design Profile Information. It's important that you provide us with accurate, complete and up-to-date information for your Design Profile and you agree to update such information to keep it accurate, complete and up-to-date. If you don't, we might have to suspend or terminate your use of the Services. You agree that you won't disclose your Design Profile password to anyone and you'll notify us immediately of any unauthorized use of your Design Profile. You're responsible for all activities that occur under your Design Profile, whether or not you know about them.

5. Feedback. We welcome feedback, comments and suggestions for improvements to the Services (“**Feedback**”). You can submit Feedback by emailing us at Certified Landscape Design You grant to us a non-exclusive, transferable, worldwide, perpetual, irrevocable, fully-paid, royalty-free license, with the right to sublicense, under any and all intellectual property rights that you own or control to use, copy, modify, create derivative works based upon and otherwise exploit the Feedback for any purpose.

6. Payments. Certified Landscape Design offers different design packages, Certified Landscape Design requires different one-time payments for use of the Services, depending on which Design Package is selected by the user. More information on the different Design Packages and pricings can be found at <https://www.certifiedlandscapedesign.com/category/landscape-design-packages>

(a) General. When you make a one-time payment (a “**Transaction**”), you expressly authorize us (or our third-party payment processor) to charge you for such Transaction. We may ask you to supply additional information relevant to your Transaction, including your credit card number, the expiration date of your credit card and your email and postal addresses for billing and notification (such information, “**Payment Information**”). When you initiate a Transaction, you authorize us to provide your Payment Information to third parties so we can complete your Transaction and to charge your payment method for the type of Transaction you have selected (plus any applicable taxes and other charges). You may need to provide additional information to verify your identity before completing your Transaction (such information is included within the definition of Payment Information).

(b) Cancelling a One-Time Payment. If no work has been completed on your project, you may cancel a Transaction for a full refund within ten (10) calendar days of your initial purchase. If no work has been completed on your project, you may cancel a Transaction for a full refund, less a processing fee of 10% of the total purchase amount, after ten (10) calendar days of your initial purchase. You may cancel a Transaction for a 50% refund if only the grayscale concept design has been completed. AFTER THAT, YOUR PURCHASE IS FINAL AND YOU WILL NOT BE ABLE TO CANCEL THE PURCHASE AND/OR RECEIVE A REFUND OF YOUR ONE-TIME PAYMENT AT ANY TIME. But if something unexpected happens in the course of completing a Transaction, we reserve the right to cancel your Transaction for any reason; if we cancel your Transaction, we’ll refund any payment you have already remitted to us for such Transaction. To cancel, you can send an email to Certified Landscape Design. If you cancel, your right to use the Services will terminate immediately.

7. Content Ownership, Responsibility and Removal.

(a) Definitions. For purposes of these Terms: (i) “**Content**” means text, graphics, images, music, software, audio, video, works of authorship of any kind, and information or other materials that are posted, generated, provided or otherwise made available through the Services; (ii) “**User Content**” means any Content that users who have created Design Profiles provide to be made available through the Services; and (iii) “**Deliverables**” means any work product that Certified Landscape Design specifically creates for users who have purchased a Design Package, including a landscape plan, install plan, 3D renderings of the landscape design, and any other materials provided by Certified Landscape Design to users in connection with a Design Package.

(b) Our Content Ownership. Certified Landscape Design does not claim any ownership rights in your User Content and nothing in these Terms will be deemed to restrict any rights that you may have to use and

exploit your User Content. Subject to the foregoing, Certified Landscape Design and its licensors exclusively own all right, title and interest in and to the Services and Content, including all associated intellectual property rights. You acknowledge that the Services and Content are protected by copyright, trademark, and other laws of the United States and foreign countries. You agree not to remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices corporate in or accompanying the Services or Content.

(c) Rights in User Content Granted by You. By making User Content available through the Services, you hereby grant to Certified Landscape Design a non-exclusive, transferable, worldwide, royalty-free license, with the right to sublicense, to use, copy, modify, distribute copies of, publicly display, and publicly perform your User Content in connection with operating, promoting, Including through advertising, and providing the Services, and delivering any Deliverables to you.

(d) Your Responsibility for User Content. You are solely responsible for all your User Content. You represent and warrant that you own all your User Content or you have all rights that are necessary to grant us the license rights in your User Content under these Terms. You also represent and warrant that neither your User Content nor any use of your User Content by Certified Landscape Design on or through the Services will infringe, misappropriate or violate a third party's intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

(e) Rights in Content Granted by Certified Landscape Design. Subject to your compliance with these Terms, Certified Landscape Design grants to you a limited, non-exclusive, non-transferable license, with no right to sublicense, to access and use the Content solely in connection with your permitted use of the Services and solely for your personal and non-commercial purposes.

(f) Rights to Use Deliverables. Subject to your compliance with these Terms, you may use the Deliverables provided by Certified Landscape Design to you in any manner in connection with your personal landscaping purposes, but you agree that you will not (a) sell the Deliverables or (b) license the Deliverables to any third party for commercial gain. We reserve the right to post any Deliverables to our public gallery on the Site.

8. General Prohibitions and Certified Landscape Design's Enforcement Rights. You agree not to do any of the following:

(a) Post, upload, publish, submit or transmit any User Content that: (i) infringes, misappropriates or violates a third party's patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy; (ii) violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability; (iii) is fraudulent, false, misleading or deceptive; (iv) is defamatory, obscene, pornographic, vulgar or offensive; (v) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; (vi) is violent or threatening or promotes violence or actions that are threatening to any person or entity; or (vii) promotes illegal or harmful activities or substances;

(b) Use, display, mirror or frame the Services or any individual element within the Services, Certified Landscape Design's name, any Certified Landscape Design trademark, logo or other proprietary information, or the layout and design of any page or form contained on a page, without Certified Landscape Design's express written consent;

- (c)** Access, tamper with, or use non-public areas of the Services, Certified Landscape Design's computer systems, or the technical delivery systems of Certified Landscape Design's providers;
- (d)** Attempt to probe, scan or test the vulnerability of any Certified Landscape Design system or network or breach any security or authentication measures;
- (e)** Avoid, bypass, remove, deactivate, impair, descramble or otherwise circumvent any technological measure implemented by Certified Landscape Design or any of Certified Landscape Design's providers or any other third party (including another user) to protect the Services or Content;
- (f)** Attempt to access or search the Services or Content or download Content from the Services through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers, data mining tools or the like) other than the software and/or search agents provided by Certified Landscape Design or other generally available third-party web browsers;
- (g)** Send any unsolicited or unauthorized advertising, promotional materials, email, junk mail, spam, chain letters or other form of solicitation;
- (h)** Use any meta tags or other hidden text or metadata utilizing a Certified Landscape Design trademark, logo URL or product name without Certified Landscape Design's express written consent;
- (i)** Use the Services or Content, or any portion thereof, for any commercial purpose or for the benefit of any third party or in any manner not permitted by these Terms;
- (j)** Forge any TCP/IP packet header or any part of the header information in any email or newsgroup posting, or in any way use the Services or Content to send altered, deceptive or false source-identifying information;
- (k)** Attempt to decipher, decompile, disassemble or reverse engineer any of the software used to provide the Services or Content; Interfere with, or attempt to interfere with, the access of any user, host or network, including, without limitation, sending a virus, overloading, flooding, spamming, or mail-bombing the Services;
- (l)** Collect or store any personally identifiable information from the Services from other users of the Services without their express permission;
- (m)** Impersonate or misrepresent your affiliation with any person or entity;
- (n)** Violate any applicable law or regulation; or
- (o)** Encourage or enable any other individual to do any of the foregoing.

Although we're not obligated to monitor access to or use of the Services or Content or to review or edit any Content, we have the right to do so for the purpose of operating the Services, to ensure compliance with these Terms and to comply with applicable law or other legal requirements. We reserve the right, but are not obligated, to remove or disable access to any Content or User Content, at any time and without notice,

Including, but not limited to, if we, at our sole discretion, consider any Content to be objectionable or in violation of these Terms. We have the right to investigate violations of these Terms or conduct that affects the Services. We may also consult and cooperate with law enforcement authorities to prosecute users who violate the law.

9. DMCA/Copyright Policy. Certified Landscape Design respects copyright law and expects its users to do the same. It is Certified Landscape Design's policy to terminate in appropriate circumstances account holders who repeatedly infringe or are believed to be repeatedly infringing the rights of copyright holders. Please see [Certified Landscape Design's Copyright Policy](#) below for further information.

10. Links to Third Party Websites or Resources. The Services may contain links to third-party websites or resources. We provide these links only as a convenience and are not responsible for the content, products or services on or available from those websites or resources or links displayed on such websites. You acknowledge sole responsibility for and assume all risk arising from, your use of any third-party websites or resources.

11. Termination. We may terminate your access to and use of the Services, at our sole discretion, at any time and without notice to you. However, if you have already purchased a Design Package and we terminate, we will refund to you the purchase price of the Design Package you have ordered. Upon any termination, discontinuation or cancellation of the Services or your Design Profile, the following Sections will survive: 7(a), 7(b), 7(c), 7(g), 12, 14, 15, 16, and 17.

12. Warranty Disclaimers. THE SERVICES ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, WE EXPLICITLY DISCLAIM ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. We make no warranty that the Services will meet your requirements or be available on an uninterrupted, secure, or error-free basis. We make no warranty regarding the quality, accuracy, timeliness, truthfulness, completeness or reliability of any Content or the Deliverables.

13. Indemnity. You will indemnify, defend and hold harmless Certified Landscape Design and its officers, directors, employees and agents, from and against any claims, disputes, demands, liabilities, damages, losses, and costs and expenses, Including, without limitation, reasonable legal and accounting fees arising out of or in any way connected with (i) your access to or use of the Services or Deliverables, (ii) your User Content, or (iii) your violation of these Terms.

14. Limitation of Liability.

(a) NEITHER CERTIFIED LANDSCAPE DESIGN NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICES WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOST PROFITS, LOST REVENUES, LOST SAVINGS, LOST BUSINESS OPPORTUNITY, LOSS OF DATA OR GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE SERVICES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL

THEORY, AND WHETHER OR NOT CERTIFIED LANDSCAPE DESIGN OR ANY OTHER PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

(b) IN NO EVENT WILL CERTIFIED LANDSCAPE DESIGN'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SERVICES EXCEED THE AMOUNTS YOU HAVE PAID OR PAYABLE BY YOU TO CERTIFIED LANDSCAPE DESIGN FOR USE OF THE SERVICES.

(c) THE EXCLUSIONS AND LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN CERTIFIED LANDSCAPE DESIGN AND YOU.

15. Governing Law and Forum Choice. These Terms and any action related thereto will be governed by the Federal Arbitration Act, federal arbitration law, and the laws of the State of California, without regard to its conflict of laws provisions. Except as otherwise expressly set forth in Section 16 "Dispute Resolution," the exclusive jurisdiction for all Disputes (defined below) that you and Certified Landscape Design are not required to arbitrate will be the state and federal courts located in the Northern District of California, and you and Certified Landscape Design each waive any objection to jurisdiction and venue in such courts.

16. Dispute Resolution.

(a) Mandatory Arbitration of Disputes. We each agree that any dispute, claim or controversy arising out of or relating to these Terms or the breach, termination, enforcement, interpretation or validity thereof or the use of the Services or Content (collectively, "**Disputes**") will be resolved **solely by binding, individual arbitration and not in a class, representative or consolidated action or proceeding**. You and Certified Landscape Design agree that the U.S. Federal Arbitration Act governs the interpretation and enforcement of these Terms, and that you and Certified Landscape Design are each waiving the right to a trial by jury or to participate in a class action. This arbitration provision shall survive termination of these Terms.

(b) Exceptions and Opt-out. As limited exceptions to Section 16(a) above: (i) you may seek to resolve a Dispute in small claims court if it qualifies; and (ii) we each retain the right to seek injunctive or other equitable relief from a court to prevent (or enjoin) the infringement or misappropriation of our intellectual property rights. In addition, **you will retain the right to opt out of arbitration entirely and litigate any Dispute** if you provide us with written notice of your desire to do so by email at [Certified Landscape Design.com](mailto:CertifiedLandscapeDesign.com) or by regular mail at 34146 Carissa Drive, Lake Elsinore CA, 92532

(c) Conducting Arbitration and Arbitration Rules. The arbitration will be conducted by the American Arbitration Association ("**AAA**") under its Consumer Arbitration Rules (the "**AAA Rules**") then in effect, except as modified by these Terms. The AAA Rules are available at www.adr.org or by calling 1-800-778-7879. A party who wishes to start arbitration must submit a written Demand for Arbitration to AAA and give notice to the other party as specified in the AAA Rules. The AAA provides a form Demand for Arbitration at www.adr.org.

If your claim is for U.S. \$10,000 or less, you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic or video-conference hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds U.S. \$10,000, the right to a hearing will be determined by the AAA Rules. Any arbitration hearings will take place in the county (or parish) where you live, unless we both agree to a different location. The parties agree that the arbitrator shall have exclusive authority to decide all issues relating to the interpretation, applicability, enforceability and scope of this arbitration agreement.

(d) Arbitration Costs. Payment of all filing, administration and arbitrator fees will be governed by the AAA Rules. We'll pay for all filing, administration and arbitrator fees and expenses if your Dispute is for less than \$10,000, unless the arbitrator finds your Dispute frivolous. If we prevail in arbitration, we'll pay all of our attorneys' fees and costs and won't seek to recover them from you. If you prevail in arbitration, you will be entitled to an award of attorneys' fees and expenses to the extent provided under applicable law.

(e) Class Action Waiver. YOU AND CERTIFIED LANDSCAPE DESIGN AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, if the parties' dispute is resolved through arbitration, the arbitrator may not consolidate another person's claims with your claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this Dispute Resolution section shall be null and void.

(f) Effect of Changes on Arbitration. Notwithstanding the provisions of Section 3 "Changes to Terms or Services" above, if Certified Landscape Design changes any of the terms of this Section 16 "Dispute Resolution" after the date you first accepted these Terms (or accepted any subsequent changes to these Terms), you may reject any such change by sending us written notice (Including by email to Certified Landscape Design.com) within 30 days of the date such change became effective, as indicated in the "Last Updated" date above or in the date of Certified Landscape Design's email to you notifying you of such change. By rejecting any change, you are agreeing that you will arbitrate any Dispute between you and Certified Landscape Design in accordance with the terms of this Section 16 "Dispute Resolution" as of the date you first accepted these Terms (or accepted any subsequent changes to these Terms).

(g) Severability. With the exception of any of the provisions in Section 16(e) of these Terms ("Class Action Waiver"), if an arbitrator or court of competent jurisdiction decides that any part of these Terms is invalid or unenforceable, the other parts of these Terms will still apply.

17. Mobile Marketing Program Terms & Conditions.

Certified Landscape Design llc. (hereinafter, "We," "Us," "Our") is offering a mobile messaging program (the "Program"), which you agree to use and participate in subject to these Mobile Messaging Terms and Conditions and [Privacy Policy](#) (the "Agreement"). By opting in to or participating in this Program, you accept and agree to these terms and conditions, including, without limitation, your agreement to resolve any disputes with us through binding, individual-only arbitration, as detailed in the "Dispute Resolution" section below. This Agreement is limited to the Program and is not intended to modify other Terms and Conditions or Privacy Policy that may govern the relationship between you and Us in other contexts.

(a) User Opt In: The Program allows Users to receive SMS/MMS mobile messages by affirmatively opting into the Program, such as through online or application-based enrollment forms. Regardless of the opt-in method you utilized to join the Program, you agree that this Agreement applies to your participation in the Program. By participating in the Program, you agree to receive autodialed or prerecorded marketing mobile messages at the phone number associated with your opt-in, and you understand that consent is not required to make any purchase from Us. While you consent to receive messages sent using an auto dialer, the foregoing shall not be interpreted to suggest or imply that any or all of Our mobile messages are sent using an automatic telephone dialing system (“ATDS” or “auto dialer”). Message and data rates may apply. Message frequency varies.

(b) User Opt Out: If you do not wish to continue participating in the Program or no longer agree to this Agreement, you agree to reply STOP, END, CANCEL, UNSUBSCRIBE, or QUIT to any mobile message from Us in order to opt out of the Program. You may receive an additional mobile message confirming your decision to opt out. You understand and agree that the foregoing options are the only reasonable methods of opting out. You acknowledge that our text message platform may not recognize and respond to unsubscribe requests that alter, change, or modify the STOP, END, CANCEL, UNSUBSCRIBE or QUIT keyword commands, such as the use of different spellings or the addition of other words or phrases to the command, and agree that Certified Landscape Design and its service providers will have no liability for failing to honor such requests. You also understand and agree that any other method of opting out, including, but not limited to, texting words other than those set forth above or verbally requesting one of our employees to remove you from our list, is not a reasonable means of opting out.

(c) Program Description: Without limiting the scope of the Program, users that opt into the Program can expect to receive messages concerning the marketing, payment, delivery, updates and sale of landscape and exterior design services, and contractor communications. Messages may include checkout reminders.

(d) Cost and Frequency: Message and data rates may apply. You agree to receive messages periodically at Our discretion. Daily, weekly, and monthly message frequency will vary. The Program involves recurring mobile messages, and additional mobile messages may be sent periodically based on your interaction with Us.

(e) Support Instructions: For support regarding the Program, text “HELP” to the number you received messages from or email us at CertifiedLandscapeDesign.com. Please note that the use of this email address is not an acceptable method of opting out of the program. opt outs must be submitted in accordance with the procedures set forth above.

(f) MMS Disclosure: The Program will send SMS TMs (terminating messages) if your mobile device does not support MMS messaging.

(g) Our Disclaimer of Warranty: The Program is offered on an “as-is” basis and may not be available in all areas at all times and may not continue to work in the event of product, software, coverage or other changes made by your wireless carrier. We will not be liable for any delays or failures in the receipt of any mobile messages connected with this Program. Delivery of mobile messages is subject to effective transmission from your wireless service provider/network operator and is outside of Our control. Carriers are not liable for delayed or undelivered mobile messages.

(h) Participant Requirements: You must have a wireless device of your own, capable of two-way messaging, be using a participating wireless carrier, and be a wireless service subscriber with text messaging service. Not all cellular phone providers carry the necessary service to participate. Check your phone capabilities for specific text messaging instructions.

(i) Eligibility and Change in Phone Number: By opting into Certified Landscape Design's text messaging program(s) or by otherwise providing your cell phone number to Certified Landscape Design, you warrant that you are 18 years of age or older. You further warrant that you are the current subscriber or authorized user of the phone number you have provided. You agree that you will not initiate messages to the mobile phone of any other person or entity without authorization. If you change, forfeit, or deactivate the phone number you have provided to Certified Landscape Design, you agree to notify Certified Landscape Design immediately. Failure to do so constitutes a material breach of these SMS Terms and Certified Landscape Design's Terms of Use. Mobile carriers are not liable for delayed or undelivered messages.

(j) Prohibited Content: You acknowledge and agree to not send any prohibited content via the Program. Prohibited content includes:

- Any fraudulent, libelous, defamatory, scandalous, threatening, harassing, or stalking activity;
- Objectionable content, including profanity, obscenity, lasciviousness, violence, bigotry, hatred, and discrimination on the basis of race, sex, religion, nationality, disability, sexual orientation, or age;
- Pirated computer programs, viruses, worms, Trojan horses, or other harmful code;
- Any product, service, or promotion that is unlawful where such product, service, or promotion thereof is received;
- Any content that implicates and/or references personal health information that is protected by the Health Insurance Portability and Accountability Act ("HIPAA") or the Health Information Technology for Economic and Clinical Health Act ("HITEC" Act); and
- Any other content that is prohibited by Applicable Law in the jurisdiction from which the message is sent.

(k) Dispute Resolution: In the event that there is a dispute, claim, or controversy between you and Us, or between you and any third-party service provider acting on Our behalf to transmit the mobile messages within the scope of the Program, arising out of or relating to federal or state statutory claims, common law claims, this Agreement, or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, such dispute, claim, or controversy will be, to the fullest extent permitted by law, determined by arbitration in Sausalito, CA before one arbitrator.

The parties agree to submit the dispute to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then in effect. Except as otherwise provided herein, the arbitrator shall apply the substantive laws of the Federal Judicial Circuit in which Certified Landscape Design's principal place of business is located, without regard to its conflict of laws rules. Within ten (10) calendar days after the arbitration demand is served upon a party, the parties must jointly select an

arbitrator with at least five years' experience in that capacity and who has knowledge of and experience with the subject matter of the dispute. If the parties do not agree on an arbitrator within ten (10) calendar days, a party may petition the AAA to appoint an arbitrator, who must satisfy the same experience requirement. In the event of a dispute, the arbitrator shall decide the enforceability and interpretation of this arbitration agreement in accordance with the Federal Arbitration Act ("FAA"). The parties also agree that the AAA's rules governing Emergency Measures of Protection shall apply in lieu of seeking emergency injunctive relief from a court. The decision of the arbitrator shall be final and binding, and no party shall have rights of appeal except for those provided in section 10 of the FAA. Each party shall bear its share of the fees paid for the arbitrator and the administration of the arbitration; however, the arbitrator shall have the power to order one party to pay all or any portion of such fees as part of a well-reasoned decision. The parties agree that the arbitrator shall have the authority to award attorneys' fees only to the extent expressly authorized by statute or contract. The arbitrator shall have no authority to award punitive damages and each party hereby waives any right to seek or recover punitive damages with respect to any dispute resolved by arbitration.

THE PARTIES AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN AN INDIVIDUAL CAPACITY VIA ARBITRATION AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ARBITRATION PROCEEDING. Further, unless both parties agree otherwise in a signed writing, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

Except as may be required by law, neither a party nor the arbitrator may disclose the existence, content, or results of any arbitration without the prior written consent of both parties, unless to protect or pursue a legal right. If any term or provision of this Section is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Section or invalidate or render unenforceable such term or provision in any other jurisdiction. If for any reason a dispute proceeds in court rather than in arbitration, the parties hereby waive any right to a jury trial. This arbitration provision shall survive any cancellation or termination of your agreement to participate in any of our Programs.

(l) Florida Law: We endeavor to comply with the Florida Telemarketing Act and the Florida Do Not Call Act as applicable to Florida residents. For purposes of compliance, you agree that we may assume that you are a Florida resident if, at the time of opt-in to Program, (1) your shipping address, as provided is located in Florida or (2) the area code for the phone number used to opt-into the Program is a Florida area code. You agree that the requirements of the Florida Telemarketing Act and the Florida Do Not Call Act do not apply to you, and you shall not assert that you are a Florida resident, if you do not meet either of these criteria or, in the alternative, do not affirmatively advise us in writing that you are a Florida resident by sending written notice to us. Insofar as you are a Florida resident, you agree that mobile messages sent by Us in direct response to mobile messages or requests from You (including but are not limited to response to Keywords, opt-in, help or stop requests and shipping notifications) shall not constitute a "telephonic sales call" or "commercial telephone solicitation phone call" for purposes of Florida Statutes Section 501 (including but not limited to sections 501.059 and 501.616), to the extent the law is otherwise relevant and applicable.

(m) Miscellaneous: You warrant and represent to Us that you have all necessary rights, power, and authority to agree to these Terms and perform your obligations hereunder, and nothing contained in this

Agreement or in the performance of such obligations will place you in breach of any other contract or obligation. The failure of either party to exercise in any respect any right provided for herein will not be deemed a waiver of any further rights hereunder. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. Any new features, changes, updates or improvements of the Program shall be subject to this Agreement unless explicitly stated otherwise in writing. We reserve the right to change this Agreement from time to time without prior notice. You acknowledge your responsibility to review this Agreement from time to time and to be aware of any such changes. By continuing to participate in the Program after any such changes, you accept this Agreement, as modified.

18. General Terms.

(a) Entire Agreement. These Terms constitute the entire and exclusive understanding and agreement between Certified Landscape Design and you regarding the Services, and these Terms supersede and replace any and all prior oral or written understandings or agreements between Certified Landscape Design and you regarding the Services. If any provision of these Terms is held invalid or unenforceable by an arbitrator or a court of competent jurisdiction, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect. You may not assign or transfer these Terms, by operation of law or otherwise, without Certified Landscape Design's prior written consent. Any attempt by you to assign or transfer these Terms, without such consent, will be null. Certified Landscape Design may freely assign or transfer these Terms without restriction. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors and permitted assigns.

(b) Notices. Any notices or other communications provided by Certified Landscape Design under these Terms, including those regarding modifications to these Terms, will be given: (i) via email; or (ii) by posting to the Services. For notices made by e-mail, the date of receipt will be deemed the date on which such notice is transmitted.

(c) Waiver of Rights. Certified Landscape Design's failure to enforce any right or provision of these Terms will not be considered a waiver of such right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of Certified Landscape Design. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms

19. Contact Information. If you have any questions about these Terms or the Services, please contact Certified Landscape Design at CertifiedLandscapeDesign.com or (800) 578-5535.

CERTIFIED LANDSCAPE DESIGN COPYRIGHT POLICY

Notification of Copyright Infringement

Certified Landscape Design, llc. ("***Certified Landscape Design***") respects the intellectual property rights of others and expects its users to do the same.

It is Certified Landscape Design's policy, in appropriate circumstances and at its discretion, to disable and/or terminate the accounts of users who repeatedly infringe the copyrights of others.

In accordance with the Digital Millennium Copyright Act of 1998, the text of which may be found on the U.S. Copyright Office website at <http://www.copyright.gov/legislation/dmca.pdf>, Certified Landscape Design will respond expeditiously to claims of copyright infringement committed using the Certified Landscape Design website or other online network accessible through a mobile device or other type of device (the "Sites") that are reported to Certified Landscape Design's Designated Copyright Agent, identified in the sample notice below.

If you are a copyright owner, or are authorized to act on behalf of one, or authorized to act under any exclusive right under copyright, please report alleged copyright infringements taking place on or through the Sites by completing the following DMCA Notice of Alleged Infringement and delivering it to Certified Landscape Design's Designated Copyright Agent. Upon receipt of the Notice as described below, Certified Landscape Design will take whatever action, in its sole discretion, it deems appropriate, including removal of the challenged material from the Sites.

DMCA Notice of Alleged Infringement ("Notice")

1. Identify the copyrighted work that you claim has been infringed, or – if multiple copyrighted works are covered by this Notice – you may provide a representative list of the copyrighted works that you claim have been infringed.
2. Identify the material that you claim is infringing (or to be the subject of infringing activity) and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material, including at a minimum, if applicable, the URL of the link shown on the Site(s) where such material may be found.
3. Provide your mailing address, telephone number, and, if available, email address.
4. include both of the following statements in the body of the Notice:
 - "I hereby state that I have a good faith belief that the disputed use of the copyrighted material is not authorized by the copyright owner, its agent, or the law (e.g., as a fair use)."
 - "I hereby state that the information in this Notice is accurate and, under penalty of perjury, that I am the owner, or authorized to act on behalf of the owner, of the copyright or of an exclusive right under the copyright that is allegedly infringed."
5. Provide your full legal name and your electronic or physical signature.

Deliver this Notice, with all items completed, to Certified Landscape Design's Designated Copyright Agent:

Sean Romero
Certified Landscape Design, LLC.
34146 Carissa Drive, Lake Elsinore CA 92532 (800) 578-5535

