

**Return recorded copy to:**

Miskel Backman, LLP  
14 SE 4<sup>th</sup> Street, Suite 36  
Boca Raton, Florida 33432

**This Instrument Prepared by:**

Bonnie L. Miskel, Esq.  
Miskel Backman, LLP  
14 SE 4<sup>th</sup> Street, Suite 36  
Boca Raton, Florida 33432

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**PARKING FACILITY EASEMENT AGREEMENT AND PROJECT COVENANT**

THIS Parking Facility Easement Agreement and Project Covenant (“Agreement”) is made this day of \_\_\_\_\_, 2024, by SUNDY VILLAGE WEST, LLC, a Delaware limited liability company, its successors and assigns (hereinafter referred to as “Developer”), whose mailing address is 7900 Glades Road, Suite 540, Boca Raton, Florida 33434, and the City of Delray Beach, a Florida municipal corporation, its successors and assigns, whose mailing address is 100 N.W. 1st Avenue, Delray Beach, Florida 33444 (hereinafter referred to as “City”).

**WITNESSETH:**

WHEREAS, Developer owns the real property described in Exhibit “A” which is attached hereto within the City of Delray Beach (the “Land”) upon which it intends to construct a parking garage consisting of 165 parking spaces; and

WHEREAS, Developer has received site plan approval of the 165 space parking garage by Historic Preservation Board on January 31, 2024 as hereinafter defined as the “Garage,” which plan is attached as Composite Exhibit “B” attached hereto (“Site Plan”);

WHEREAS, in order to satisfy a condition of the approval of the Garage, Developer has agreed to grant an exclusive easement to the City to allow public use of 138 parking spaces located on floors two through four and roof level of the Garage as reflected on Exhibit “C” in accordance with the terms and limitations set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for Ten Dollars (\$10.00) and other good and valuable consideration in hand paid by City to Developer, the adequacy and receipt of which are hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

- I. The foregoing recitals are true and correct and are incorporated herein by this reference.
- II. Definitions. The following definitions apply to all sections of the Project Covenant:
  1. “City” shall mean City of Delray Beach, a Florida municipal corporation and its successors and assigns.

2. "Developer" shall mean Sundy Village West, LLC, a Delaware limited liability company and its successors and assigns.
3. "Land" means the portion of the land described in Exhibit "A" which is attached hereto and made a part hereof, on which the Garage will be constructed.
4. "PFA" or "Agreement" means this Parking Facility Easement Agreement and Project Covenant.
5. "Garage" means the parking garage which shall be constructed on the Land by Developer.
6. "Parking Garage Facility" means the Garage, and all related and appurtenant fixtures, equipment, walkways, driveways, sidewalks, landscaping, and signage, which shall be constructed by Developer on the Land.
7. "Public Parking Spaces" means the one hundred thirty-eight (138) public parking spaces located on floors two through four and the roof level of the Garage as shown on Exhibit "C" which is attached hereto and made a part hereof inclusive of any pedestrian and vehicular access ways from SE 1<sup>st</sup> Avenue necessary for access to the Public Parking spaces.
8. Commercial Parking means the 27 parking spaces located within the lower ground level with access from the alley to the west limited to the Developer's use.
9. "Site Plan" is the approved plan as of the execution of this Agreement. The term "Site Plan" shall also include any site plan certified, and/or amended with the approval of City subsequent to the execution of this Agreement. The Site Plan is incorporated by reference herein, and in the event there is a conflict between the terms of this Agreement and the Site Plan, the terms and conditions of this Agreement shall control.
10. "Event" is defined as a function scheduled by Developer, its successors or assigns, for a special purpose or occasion with attendance requiring a minimum of 100 spaces within the Parking Garage Facility.
11. "Completion of Construction" means receipt of a certificate of occupancy from the City for the Parking Garage Facility.

III. Developer's Commencement and Completion of Construction of the Parking Garage Facility.

1. Developer, at its sole cost and expense, shall construct the Parking Garage Facility containing not less than one hundred sixty-five (165) parking spaces pursuant to the Site Plan approved by the City. Developer shall diligently seek to obtain all necessary plans, permits, and approvals for the construction of the Parking Garage Facility in accordance therewith. Developer shall construct the Parking Garage Facility in a good and workmanlike manner, in accordance with all applicable governmental regulations and the applicable building code.
2. Within ninety (90) days after Completion of Construction, Developer, at Developer's sole cost and expense, shall cause the preparation of an affidavit by a Florida licensed surveyor, mapper, architect, or engineer containing the graphic depiction of the as built Public Parking Spaces located on the Land and such affidavit shall constitute an amendment to this PFA which shall be recorded, and the as built graphic depiction of the Public Parking Spaces shall form the basis for being a substitute for Exhibit "C" to this Agreement. The Public Parking Spaces shall be located on floors two through four and the roof level and shall be accessible to and from SE 1<sup>st</sup> Avenue.

IV. Parking Garage Facility Easement.

1. Developer hereby grants, bargains and conveys to City, an exclusive vehicular parking easement and a non-exclusive public vehicular and pedestrian ingress and egress easement, in, on, across, over, and through the Land and within the Garage, all as more particularly described in and subject to the covenants, terms and conditions stated in this Agreement for the purpose of access to and use of the Public Parking Spaces between the hours of 6:00 p.m. to 6:00 a.m. Monday through Friday and 6:00 a.m. to 1:00 a.m. on Saturday and Sunday, with the exception of Developer closure of the Parking Garage Facility as permitted by this Agreement. This Agreement is entered into, in part, for the purpose of allowing the general public and Developer to share parking spaces which are located in the Garage. Use of the Public Parking Spaces is further described herein and reflected on Exhibit "C" attached hereto and incorporated herein.
2. The initial construction of the Parking Garage Facility shall be made by Developer at Developer's sole cost and expense. Upon Completion of Construction, Developer shall and does accept sole responsibility for the operation, maintenance, and repair of the Parking Garage Facility, in good condition and repair, and in compliance with all applicable governmental rules, laws, regulations and ordinances.
3. City shall have, and is hereby granted, the exclusive right to use the Public Parking Spaces within the Parking Garage Facility for the parking of vehicles by the general public in accordance with the restrictions and limitations contained herein. Developer agrees that the Land will always contain at least 138 Parking Spaces available for the exclusive use by City during the times specified above and as further provided in this Agreement.
  - a. Except as otherwise provided in this Agreement, City shall have the exclusive right to use the Public Parking Spaces in the same manner it uses other City-owned parking facilities, or as otherwise reasonably determined by the City in its sole and absolute discretion during the times specified in this Agreement. No fee or other expense shall be charged by Developer to the general public for the use of the Parking Spaces, vehicular and pedestrian ingress from a public right of way to the Parking Spaces during the times of exclusive use, or vehicular and pedestrian egress to a public right of way from the Parking Spaces, except as provided in this section. Developer, at its sole cost and expense, has the right to install parking meters in the Parking Garage Facility for the Public Parking Spaces, and all revenue generated and collected by the Developer by the parking meters shall be retained by the Developer, subject to parking rate limitations as stated in Section IV(4) of this Agreement.
  - b. Developer, at Developer's expense, may install electronic or static signage at Developer's sole discretion designating "Public Parking" and such other appropriate signage within and on the outside of the Parking Garage Facility at locations approved and designated on the Master Signage Plan to be approved by City ("Master Signage Plan"), or as otherwise permitted by and in accordance with governmental regulations prior to Completion of Construction. Developer shall maintain, repair, and replace, at Developer's expense, all of the signage, in good condition and repair, and in accordance with all applicable governmental regulations. Developer shall erect such other signage as required by the Master Signage Plan and may erect other signage in accordance with applicable governmental regulations, subject to the governmental approval process.
  - c. Notwithstanding anything to the contrary in this Agreement establishing City's exclusive use of the Public Parking Spaces, Developer is entitled to close the Parking Garage Facility

and use the Public Parking Spaces for the Developer's exclusive use for not more than four (4) days in any one month. As used herein, a "day" is an entire day or a partial day each time the Parking Garage Facility is closed by the Developer. The Developer may request the City Manager to increase the number of days the Developer may close the Parking Garage Facility, and the City Manager may increase or refuse to increase the number of days in the City Manager's sole and absolute discretion. In the event Developer requests additional closures beyond the 4 day per month limitation, such request shall be in writing delivered to the City Manager at least 10 days in advance of any additional closure which shall be deemed approved if not refused in writing within seven (7) days of receipt of such closure request by City Manager. In the event the Developer closes the Parking Garage Facility more than four (4) days in any one month (unless approved by the City Manager as provided herein), in addition to all other remedies available to the City, City may charge Developer, in addition to all other available remedies, one thousand dollars (\$1,000.00) for the first violation, two thousand five hundred dollars (\$2,500.00) for the second violation, and five thousand dollars (\$5,000.00) for each subsequent violation. In the event of a violation, Developer may request, in writing, a hearing before the City Manager or designee within five (5) calendar days of receipt of notice of violation from the City. The City Manager or designee shall hold a hearing within a reasonable time of receipt of the written request. The City Manager may either affirm the fine, may reduce the fine, or may decline to issue the fine. The City Manager's decision is final and is not subject to appeal.

4. Parking Rate Limitations of the Public Parking Spaces. The Developer shall not charge parking rates for the Parking Spaces in excess of the parking rates the City charges for public parking spaces in the immediate vicinity of the Parking Garage Facility along Atlantic Avenue from Swinton Avenue to the Intracoastal. As of the date of the execution of this Agreement, the maximum hourly parking rate the Developer may charge for the Parking Spaces is \$4.00/hour. In the event the City reduces the parking rates for public parking spaces along Atlantic Avenue in the immediate vicinity of the Parking Garage Facility, the Developer may nevertheless continue to charge the parking rates charged for the Public Parking Spaces prior to the reduction and if such rate is less than the maximum rate at the execution of the Agreement (\$4.00/hour), the maximum rate shall continue to be as provided in the Agreement.
  - a. In the event the City eliminates all parking charges for public parking spaces along Atlantic Avenue in the immediate vicinity of the Parking Garage Facility, the City Commission shall determine the parking rates for the Public Parking Spaces which rates shall be not less than the parking rates that were charged for public parking spaces along Atlantic Avenue in the immediate vicinity of the Parking Garage Facility just prior to the City's elimination of the parking charges for the public parking spaces. Anytime the City considers reducing or eliminating parking rates for public parking spaces along Atlantic Avenue in the immediate vicinity of the Parking Garage Facility, the Developer may seek a rate increase for the Public Parking Spaces by requesting such increase in writing to the City Manager with supporting evidence of increased operation, insurance and maintenance costs which request shall not be unreasonably withheld, but the City Commission shall have no obligation to permit an increase in such rates.
  - b. Ingress and egress to the Garage shall be in the same manner as other City- owned parking facilities and as reflected on the Site Plan. City's rights under this Agreement include, without limitation, the unimpeded non-exclusive easement for pedestrian and vehicular ingress and egress from SE 1st Avenue to and from the Parking Garage Facility

to utilize the Public Parking Spaces, which ingress and egress includes through, on, upon, and across walkways, elevators, stairwells, and common areas in the Parking Garage Facility and Land. In addition, City is hereby granted a non-exclusive easement through, over, upon, on, in, across and under the Parking Garage Facility for utility conduits, ducts, plumbing and wiring and other facilities reasonably necessary for the use and enjoyment of the Land, and the City is hereby granted a non-exclusive easement of support and necessity for the Parking Spaces which easement is limited to cases where the City opts to maintain, repair or replace if the Developer fails to maintain, repair, or replace pursuant to its obligation as provided for in this Agreement.

c. Developer agrees to allow public parking within the Land as shown in Exhibit C for use by the City during the times specified above, and in accordance with this Agreement. City, and its invitees, employees, agents, representatives, commissioners, residents, guests, and the public in general, shall have unimpeded non-exclusive vehicular and pedestrian ingress and egress to and from, the Public Parking Spaces and across the driveways and pedestrian walkways necessary to access the SE 1st Avenue public right-of-way also as more particularly shown on Exhibit C.

d. Developer has the right to refuse entry or use of the Parking Garage Facility by any member of the public if such member refuses to use the Parking Garage Facility in accordance with Developer's reasonable rules including but not limited to causing damage or destruction to property, trespass, loitering or any other infraction other than public parking in accordance with the terms set forth in this Agreement. Any Developer rule which conflicts with this Agreement, the Site Plan, or governmental rules and regulations, shall not be enforceable. At all reasonable times during the City's exclusive use of the Public Parking Spaces, City law enforcement, code enforcement, and traffic control officers shall be permitted to patrol and enter the Parking Garage Facility and Public Parking Spaces for the purpose of enforcing the terms of this Agreement and the City rules, laws, and regulations, and City employees and its contractors shall be permitted to enter the Parking Garage Facility to inspect, and in the event Developer fails to comply with this Agreement, to install, maintain, repair, and replace any portion of the Parking Garage Facility, subject to reimbursement as provided in this Agreement. In the event the Developer imposes any fee against a person or entity who uses the Public Parking Spaces in accordance with the terms of this Agreement, no such fee shall exceed the fee the City may charge a person or entity parking in a City public parking space along Atlantic Avenue in the immediate vicinity of the Parking Garage Facility, for the same violation. If Developer charges a fee in excess of the limit set forth in this Agreement, City may charge Developer, in addition to all other available remedies, one thousand dollars (\$1,000.00) for the first violation, two thousand five hundred dollars (\$2,500.00) for the second violation, and five thousand dollars (\$5,000.00) for each subsequent violation. In the event of a violation, Developer may request, in writing, a hearing before the City Manager or designee within five (5) calendar days of receipt of notice of violation from the City. The City Manager or designee shall hold a hearing within a reasonable time of receipt of the written request. The City Manager may either affirm the fine, may reduce the fine, or may decline to issue the fine. The City Manager's decision is final and is not subject to appeal.

e. The standards and practices to be used by Developer and its employees and contractors, in operating and cleaning of the Public Parking Spaces within the Parking Garage Facility, shall be in keeping with the current industry practice for a Class A parking garage facility. Developer shall operate the Parking Garage Facility in a commercially

reasonable manner and in compliance with all applicable legal requirements. No obstruction or interference of the free flow of pedestrian and vehicular traffic or use of the Parking Spaces for parking shall be permitted or caused by Developer.

5. Developer, at its sole cost and expense, shall cause any and all maintenance, repairs, and replacements to be made to the Public Parking Spaces within the Parking Garage Facility as may be necessary or appropriate from time to time to keep the Parking Garage Facility in a commercially reasonable condition and in good repair. Maintenance, repair, and replacement items include, without limitation, the surface of the parking lot, the concrete underlay, curbs, gutters, lighting facilities, striping, markers, and directional and parking signs. City shall have no obligation to maintain, repair, or replace any portion of the Public Parking Spaces within the Parking Garage Facility. The parties hereto agree and acknowledge that the Developer may be required to temporarily close all or portions of the Parking Garage Facility for maintenance, repair or replace any portion of the Parking Garage Facility. Such closures shall be limited to the minimum amount of time necessary.
  - a. The Developer's cost and expense of constructing, maintaining, repairing, and replacing the Parking Garage Facility, shall be borne by Developer including, without limitation:
    - (i) All costs of initial construction of improvements on the Land;
    - (ii) All costs of maintaining, repairing, or replacing the sidewalks and fences on the Land;
    - (iii) All costs of maintaining, mowing, weeding, trimming, and watering all landscaped areas on the Land;
    - (iv) All costs of repairs or replacements of or to any structural component of the Parking Garage Facility;
    - (vi) All ad valorem real estate taxes;
    - (vii) All costs of management fees, wages, or salaries, and related employment benefits of any agents, managers, officers, directors or employees of Developer;
    - (viii) All costs of any replacements that are capital in nature (i.e., repairs and replacements the costs of which are considered capital expenditures and not current expenses under generally accepted accounting principles, consistently applied);
    - (ix) All utility expenses related to the Land; and
    - (x) Any penalties or late charges associated with the late payment of any invoices, bills, or statements.
  - b. For any and all, maintenance, repairs, and replacements or other work to be

constructed or performed by Developer in or about the Parking Garage Facility, Developer shall take any and all safety measures reasonably required to protect the persons and property of City and invitees of City from accidental death, injury, or damage caused by or resulting from the construction or performance of any such work.

c. Developer shall place signage designating "Public Parking" inside and outside the Parking Garage Facility at locations approved and designated on the Master Signage Plan, at Developer's sole cost and expense. Developer shall erect and maintain all such signage in accordance with the applicable code and, if applicable, any private restrictions. Such signage shall be included in the costs of operation and maintenance of the Parking Garage Facility.

d. Developer shall have the right to place signage designating its parking and business inside and outside the Parking Garage Facility at locations approved and designated on the Master Signage Plan, at Developer's sole cost and expense. Developer shall erect and maintain all such signage in accordance with applicable code, and, if applicable, any private restrictions. In addition, Developer shall be responsible for any directional and other signage required by applicable code. Such signage shall be included in the costs of operation and maintenance of the Parking Garage Facility.

6. Each party to this Agreement shall notify the other parties to this Agreement of any unsafe condition in the Public Parking Spaces within the Parking Garage Facility promptly upon its discovery. As between City and Developer, Developer shall be responsible for the safety and security of all Public Parking Spaces within the Parking Garage Facility and patrons and other invitees using the Parking Garage Facility, including without limitation, the Public Parking Spaces located within the Land. Developer shall keep the Public Parking Spaces with the Parking Garage Facility illuminated in accordance with the City parking garage standards.
7. Prior to Completion of Construction of the Parking Garage Facility, the following shall apply:
  - a. Prior to the issuance of the Certificate of Occupancy, the Developer shall procure and maintain an "all-risk" property damage insurance policy for the Parking Garage Facility. This policy shall provide coverage up to the full replacement cost of the facility for all perils except flood and wind damage. Coverage for flood and wind will be sublimited based on Developer's reasonable discretion. Developer shall provide evidence of coverage to the City for review and approval."
  - b. Developer shall purchase and maintain workers' compensation insurance in accordance with statutory requirements of the State of Florida. Included shall be Employer's Liability Insurance with limits no less than \$500,000 each accident and an occupational disease limit of \$500,000 per employee/\$500,000 aggregate.
  - c. Developer shall purchase and maintain garage liability insurance to cover legal liabilities arising from the Parking Garage Facility premises and operations, to include independent contractors and indemnity obligations as under this Agreement; and to include legal liabilities for all autos used by, or for the Developer related to the Parking Garage Facility premises and operations. The combined bodily injury and property damage limits shall not be less than \$1,000,000 per occurrence with an annual aggregate of \$2,000,000.
  - d. Developer shall purchase and maintain garage keepers insurance to cover damage liabilities to the vehicles of patrols of the Parking Garage Facility. Insurance limits should be not less than \$50,000 per vehicle/\$500,000 annual aggregate.

e. All insurance policies required by this section shall (i) have an A.M. Best rating of at least A-/VII or similar high quality rating as available, (ii) provide for a least thirty (30) days written notice by Developer, or its insurer(s) to the City of any cancellation, intent to non-renew, or material reduction or change in insurance coverage and (iii) name the City as an additional insured.

f. The City shall be named as an additional insured by way of the most current ISO endorsement, or its equivalent, on the Developer's liability insurance policies required under this Agreement.

g. On or before the issuance of a building permit, the City shall be listed as an additional insured on the construction insurance policy. Renewal certificates shall be provided to the City at least ten (10) days prior to the expiration of any policy.

h.) To the extent permitted by law, the Developer and its insurers waive (and will so endorse their insurance policies) all rights of subrogation they may have against the City, its employees, officers, directors, and agents for the recovery of damages covered under any of the City's insurance and self-insurance programs. It is the express intention of the City that the waivers apply to all matters described in this Agreement, including, without limitation, any matter that is caused in whole or in part by the sole or concurrent negligence of the City.

#### V. General Provisions

1. Waivers; Remedies. No delay or omission to exercise any right, power, or remedy inuring to any party upon any breach or default of any part under this Agreement shall impair any such right, power, remedy of such party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence to such a breach or default, or of any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default under this Agreement before or after occurring, nor shall there be any estoppel to enforce any provision of this Agreement, except by written instrument signed by the party charged with such waiver or estoppel. All remedies either under this Agreement or by law or otherwise afforded to the parties shall be cumulative and not alternative; provided that suspension or termination of this Agreement on account of any breach shall not be an available remedy.
2. Further Assurance. The parties to this Agreement shall cooperate fully with each other in order to promptly and fully carry out the terms and provisions of this Agreement. Each party to this Agreement shall, from time to time, execute and deliver such other agreements, documents, or instruments and take such other actions as may be reasonably necessary or desirable to effectuate the terms of this Agreement.
3. Counterparts. The parties may execute this Agreement in one or more identical counterparts, all of which, when taken together, will constitute one and the same instrument.
4. If any party to this Agreement is delayed, hindered in, or prevented from the performance of any act required to be performed by that party by reason of act of God, strikes, lockouts, unavailability of materials, failure of power, prohibitive governmental laws or regulations, riots, insurrections, the act or failure to act of any party to this Agreement, adverse weather conditions preventing the performance of work as certified to by an architect, war, act of terrorism, or other reason beyond that party's reasonable control and for which, in each of the aforesaid circumstances, the party is diligently and in good faith and with reasonable



dispatch seeking to abate and remove the circumstances causing the delay or hindrance or prevention from performance of the act required to be performed by that party, then the time for performance of the act shall be extended for a period equivalent to the period of the delay. Lack of adequate funds, pandemic, or financial inability to perform or financial or economic losses or hardship resulting from performance shall not be deemed to be a cause beyond the reasonable control of such party.

5. The parties to this Agreement acknowledge that this Agreement shall be recorded in the Public Records of Palm Beach County, Florida.
6. This Agreement is a covenant running with the land and shall be binding upon and shall inure to the benefit of the heirs, legal personal representatives, successors and assigns of the parties hereto, and shall bind all present and subsequent Developers of the Land.
7. All work performed by Developer in the Parking Garage Facility shall be performed by properly licensed Florida, Palm Beach County and/or Delray Beach City contractors, if available and in compliance with the Site Plan, and all applicable building codes and zoning ordinances, and in a good and workman like manner Every contractor performing the work shall be reasonably insured and without cost to City, insured for any claim arising out of the work, and that City will be indemnified and held harmless for any claims that may arise out of the work.
8. Developer warrants that it is seized of the Land and has the right to convey the easements described herein to City free and clear of all liens and encumbrances, and that City shall have quiet enjoyment of the easements created hereunder in accordance with this Agreement.
9. All notices under this Agreement shall be mailed to the parties at the following respective addresses:

To Developer:

SUNDY VILLAGE WEST, LLC  
7900 Glades Road  
Suite 540  
Boca Raton, FL 33434

With a Copy to:

Bonnie Miskel, Esq.  
Miskel Backman, LLP  
14 SE 4th Street, Suite 36  
Boca Raton, Florida 33432

To City:

City Manager  
City of Delray Beach  
100 N.W. 1st Avenue  
Delray Beach, Florida 33444

With a Copy to:

City Attorney  
City of Delray Beach  
200 N.W. 1st Avenue  
Delray Beach, Florida 33444

All notices, consents or other instruments or communication provided for under this Agreement shall be in writing, signed by the party giving the same, and shall be deemed properly given and received (a) when actually delivered and received personally, by messenger service, or by fax or telecopy delivery; (b) on the next business day after deposited to delivery in an overnight courier service such as Federal Express; or (c) three (3) business days after deposit in the United States mail, by registered or certified mail with return receipt requested. All notices or other instruments shall be transmitted with delivery or postage charges prepaid, addressed to the parties at the address above for the party(s) or to such other address as such party(s) may designate by written notice to the other party(s).

10. In connection with any litigation, arbitration, or dispute arising out of this Agreement, each party shall bear its own attorneys' fees and costs.
11. This Agreement shall be construed and interpreted in accordance with Florida law and shall not be more strictly construed against one party than against the other by virtue of the fact that it may have been physically prepared by one party or by its attorneys, all parties (and their respective attorneys, where applicable) having participated in the negotiation of this Agreement.
12. In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning, or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.
13. The parties agree to execute all future instruments and take all further action that may be reasonably required by any party to fully effectuate the terms and provisions of this Agreement and the transactions contemplated herein.
14. This Agreement supersedes any and all understandings and agreements between the Parties hereto whether oral or written, and this Agreement represents the entire agreement between the parties hereto with respect to the subject matter hereof. No representations or inducements made prior hereto which are not included and embodied in this Agreement shall be of any force and effect. This Agreement may be amended, altered or modified only by a written agreement executed by the parties.
15. Any dispute relating to this Agreement shall only be filed in a court of competent jurisdiction in Palm Beach County, Florida, and each of the parties to this Agreement submits itself to the jurisdiction of such court.
16. Any party to this Agreement shall within a reasonable period of time and from time to time, upon not less than ten (10) days prior written request by any other party, execute, acknowledge and deliver to such party a statement in writing certifying that this

Agreement is unmodified and in full force and effect, or if there has been any modification thereof that the same is in full force and effect as modified and stating the modification or modifications and that there are no defaults existing, or if there is any claimed default stating the nature and extent thereof; and stating that costs and charges have been paid or if not, the amount claimed due, from whom, and the basis of the claim. It is expressly understood and agreed that any such statement delivered pursuant to this paragraph may be relied upon by any prospective purchaser of the requesting party's property or any lender or prospective lender on the security of the property of the fee estate of any part thereof, and any third person.

17. No breach of the provisions of this Agreement shall entitle any party to cancel, rescind or otherwise terminate this Agreement or the applicability to it.
18. In the event of a breach, or attempted threatened breach, of any obligation of this Agreement, the other party(ies) shall be entitled forthwith to obtain an injunction specifically enforce the performance of such obligation, acknowledging the inadequacy of legal remedies the irreparable harm which would be caused by any such breach being hereby acknowledged and/or to relief by all other available legal and equitable remedies from the consequences of such breach.
19. Nothing in this Agreement shall be construed to make the parties hereto partners or joint venturers or render any of said parties liable for the debts or obligations of the other.
20. The term of this Agreement shall be perpetual and this Agreement shall be irrevocable without the consent of the parties.
21. Waiver of Trial by Jury. IT IS MUTUALLY AGREED BY AND BETWEEN CITY AND DEVELOPER THAT THE RESPECTIVE PARTIES HERETO SHALL, AND THEY HEREBY DO, WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE RELATIONSHIP OF CITY AND DEVELOPER HEREUNDER, OR THE USE OF THE LAND, OR BY ANY COURSE OF CONDUCT OR COURSE OF DEALING.
  - a. Governmental Functions
    - i. The parties agree that this Agreement shall not constitute a waiver of any portion of the City of Delray Beach's Code of Ordinances, Land Development Regulations, or any other applicable law, code, or regulation, and that Developer shall comply with all applicable statutes, codes, regulations, and ordinances that apply to Developer's performance of its obligations pursuant to this Agreement.
    - ii. To the extent approval or permission must be obtained from the City of Delray Beach, such approval or permission shall be granted or denied in accordance with applicable governmental regulations, rules, laws, and ordinances, and no person shall have any vested rights.
    - iii. City has not waived its sovereign immunity and the limits of tort liability set forth in F.S. §768.28(5), as may be amended from time to time. Nothing contained in this subparagraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Florida Statutes,

Section 768.28; and

- iv. Any action by City shall be without prejudice to, and shall not constitute a limit or impairment or waiver of, or otherwise affect City's right to exercise its discretion in connection with its governmental or quasi-governmental functions.
- b. Nothing contained in this Agreement shall be construed so as to confer upon any other party the rights of a third-party beneficiary.
- c. Developer shall pay or cause to be paid before delinquency all ad valorem real property taxes, general and special assessments and other governmental charges assessed against the Land and improvements on the Land, and provide evidence of the same to City. If those amounts are not timely paid by Developer, City may (but shall not be obligated to) pay all or part of those amounts and Developer shall immediately reimburse City those amounts upon demand, together with interest at the rate of eighteen percent (18.0%) per annum on the amounts so paid by City, from the date of advance until reimbursed.
- d. The terms and provisions of this Agreement are enforceable with all remedies at law and in equity, including, but not limited to, bringing an action for actual damages, an action for specific performance, an action for temporary restraining orders, preliminary or permanent injunctions, declaratory judgments or other similar orders for relief; provided, however, that suspension or termination of this Agreement on account of a breach shall not be an available remedy. The parties to this Agreement hereby acknowledge and stipulate the inadequacy of legal remedies and the irreparable harm that would be caused by a material breach of any obligation under this Agreement by a party to this Agreement. This Agreement may not be suspended or terminated except by an instrument in writing signed by City and Developer and recorded in the real property records of Palm Beach County, Florida. All remedies provided in this Agreement are cumulative. Without limiting the foregoing, City retains its right to enforce any obligation of Developer as provided in its codes, rules, and ordinances, including code enforcement, denial of issuance of permits and approvals, and the revocation of permits and approvals.
- e. If any portion of the Land is taken under an exercise of the power of eminent domain, condemnation, expropriation or any conveyance in lieu of condemnation under a threat thereof, to a purchaser having the power of condemnation, Developer and City shall, insofar as it is reasonably practicable to do so, promptly upon payment of the award thereof, apply the proceeds of such award, or an amount equivalent to such proceeds, to the restoration of the Land partially taken or sold, as may be appropriate or if feasible, the construction of additional parking areas, as the case may be, upon the remainder of the Land or on any adjacent land then controlled by Developer or one of its affiliates. A condemnation shall not affect the existence of the easements or rights granted to City under this Agreement, except as they may burden the land so taken.
- f. By its acknowledgement and consent to in this Agreement, JPMORGAN CHASE BANK, NATIONAL ASSOCIATION (Developer's "Lienholder"), the holder of a lien on the Land, has consented and does hereby consent to this Agreement, and the liens and security interests held by Lienholder are hereby made subject and subordinate to the terms of this Agreement without the necessity of the execution of any other document. Any future deeds of trust or mortgages on the Land shall automatically, without the necessity of any additional instrument, be subject and subordinate to the terms and conditions of this Agreement and shall be bound by the terms of this Agreement. Any party foreclosing any such deed of trust or mortgage, or acquiring title by deed in lieu of foreclosure or trustees sale shall acquire title subject to all the terms and provisions of this Agreement.

g. In the event of damage or destruction, of the Parking Garage Facility, or any portion thereof, the Developer agrees to commence repair of the property, within one hundred eighty (180) days after the damage or destruction to the Parking Garage Facility occurs, and insurance proceeds and building permits are issued, and diligently pursue completion of repairs/restoration to a condition substantially similar to that immediately prior to such damage or destruction. Said repair or restoration shall be at the sole expense of the Developer, who shall exercise due diligence and complete said repair or restoration within a commercially reasonable time in the same manner as reasonably possible as the Garage Parking Facility was originally constructed.

h. Should Developer fail to maintain, repair or replace any portion of Parking Garage Facility including without limitation, the Public Parking Spaces, vehicular driveways and pedestrian access to the Public Parking Spaces within the Parking Garage Facility, as required by this Agreement, and as a consequence, City's easement rights created by this Agreement become impaired or City is unable to utilize the Public Parking Spaces as intended by this Agreement, in addition to any remedy City may have, City after not less than thirty (30) days prior written notice to Developer to cure the default (except no notice shall be required in the event of an emergency), may, but it is not obligated to, enter onto, over, upon, in, across and under the Parking Garage Facility to access any conduits, ducts, plumbing and wiring and other facilities to perform all reasonable necessary construction, repair, maintenance, replacement and operating work for that portion of the Parking Garage Facility for the enjoyment and use of the Public Parking Spaces in accordance with this Agreement and may assess Developer for the cost of said work. Developer shall pay the cost of said work within thirty (30) days after assessment by City. The assessment, plus interest thereon at eighteen percent (18.0%) per annum, shall be a lien against the Land. The lien shall attach and shall be effective upon recording of a notice thereof in the Public Records of Palm Beach County, Florida, but its priority shall relate back to the date on which this Agreement is recorded. The lien rights granted herein will not affect the easements and other rights granted herein to the City, and such rights shall continue in full force and effect. Such lien may be foreclosed in the same manner as a mortgage and in accordance with law. Reimbursement of such work costs, expenses, and interest shall also be the personal obligation of Developer at the time the costs and expenses are incurred and may be collected by the City accordingly.

i. The easements created by this Agreement are easements appurtenant to the City's rights-of-way and are intended to benefit such properties and shall run in favor of the City and shall be binding upon Developer and its successors and assigns with Developer holding the servient estate.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties hereto have hereunto set their hand and seals on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

By: \_\_\_\_\_  
Katerri Johnson, City Clerk

By: \_\_\_\_\_  
Thomas F. Carney, Jr., Mayor

Date: \_\_\_\_\_

Approved as to Form:

By: \_\_\_\_\_  
Lynn Gelin, City Attorney

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by  physical presence or  online notarization this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of the City of Delray Beach, a Florida municipal corporation, who is  personally known to me or  produced \_\_\_\_\_ as identification and did not take an oath.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Florida (Signature of notary)  
Notary taking Acknowledgment)

My Commission Expires:

\_\_\_\_\_  
Name of Notary Typed, Printed or Stamped

WITNESSES:

SUNDY VILLAGE WEST, LLC, a Delaware limited liability company

[Signature]

By: [Signature]

Print Name: Jared Hochman  
Address: 7900 Glades Rd Suite 540, Boca Raton FL 33434

Print Name: Todd Rosenberg

Its: Authorized Signatory

Date: 7/12/24

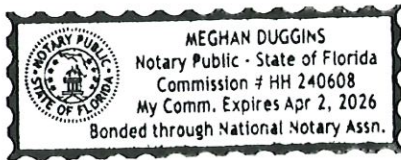
[Signature]

Print Name: Bryan Sugar  
Address: 7900 Glades Rd Suite 540 Boca Raton FL 33434

STATE OF Florida  
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me by  physical presence or  online notarization this 12<sup>th</sup> day of July, 2024, by Todd Rosenberg, as Authorized Signatory on behalf of SUNDY VILLAGE WEST, LLC, a Delaware limited liability company, who is  personally known to me or  produced \_\_\_\_\_ as identification and did not take an oath.

(SEAL)



[Signature]  
Notary Public, State of Florida (Signature of notary)

Notary taking Acknowledgment)

Meghan Duggins  
Name of Notary Typed, Printed or Stamped

My Commission Expires: 4-2-2026

LIENHOLDER ACKNOWLEDGEMENT AND CONSENT, SOLELY WITH RESPECT TO SECTION 21(f) HEREOF

The undersigned Lienholder agrees that the lien of its Mortgage executed by and between \_\_\_\_\_, as Mortgagor, and \_\_\_\_\_, as Mortgagee, is inferior and subordinate to the terms, conditions, rights of the City, and covenants contained in this Agreement, and Lienholder shall execute and record any instrument which may be reasonably necessary to evidence that this Agreement is superior to Lienholder's lien.

\_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by  physical presence or  online notarization this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the \_\_\_\_\_, of \_\_\_\_\_, on behalf of the \_\_\_\_\_. He/She is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification.

\_\_\_\_\_

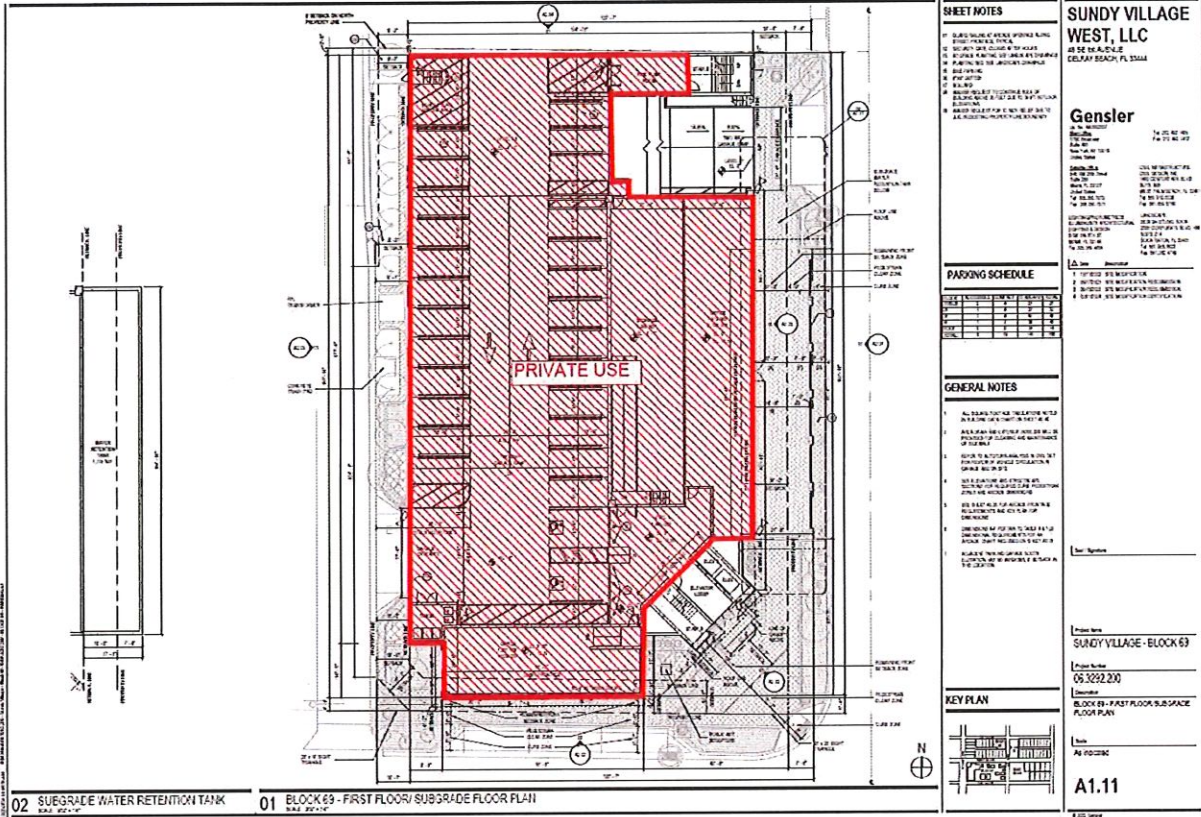
Signature of Person Taking Acknowledgment

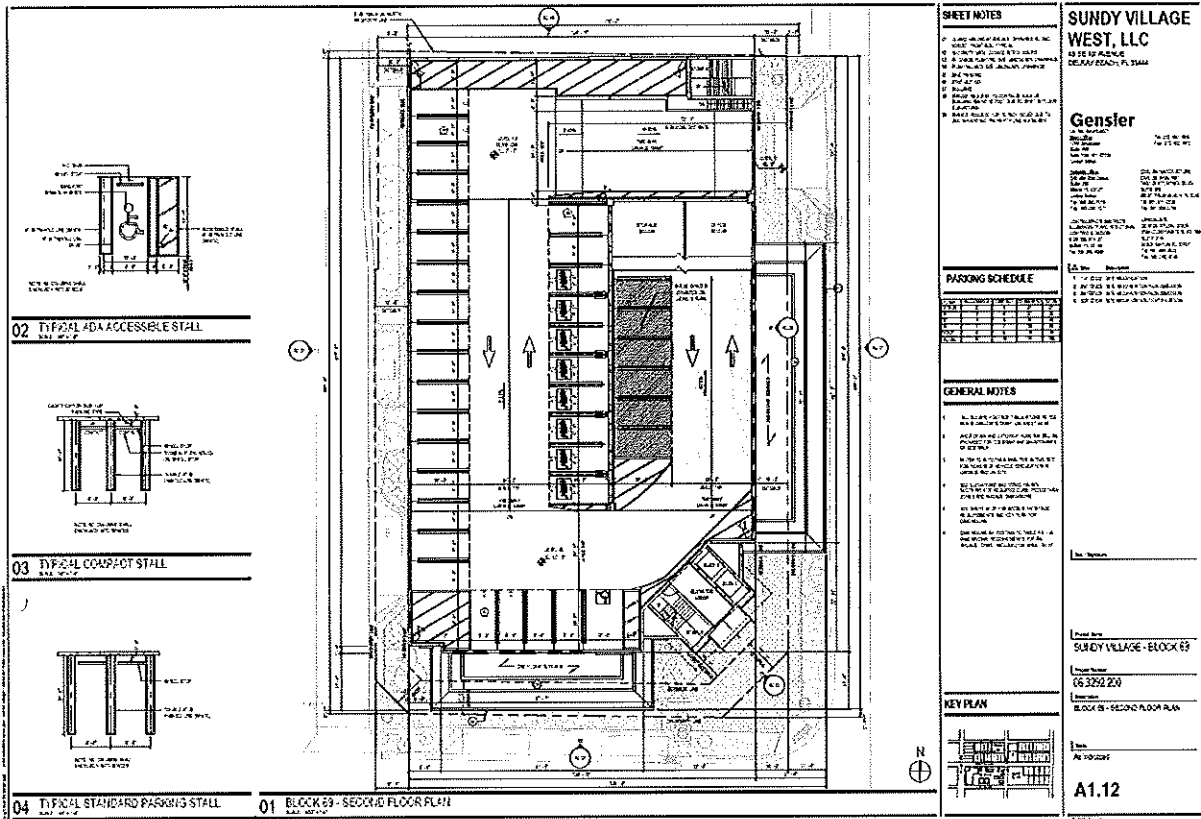


**Exhibit "A"**  
**(Land)**

**Parcel 4 of Sundry Village Plat, according to the plat thereof, recorded in Plat Book 133, page 152, of the Public Records of Palm Beach County, Florida.**

# Composite Exhibit "B" (Site Plan)





02 TYPICAL ADA ACCESSIBLE STALL

03 TYPICAL COMPACT STALL

04 TYPICAL STANDARD PARKING STALL

01 BLOCK 69 - SECOND FLOOR PLAN

**SHEET NOTES**

- 1. ALL DIMENSIONS UNLESS OTHERWISE NOTED SHALL BE IN FEET AND INCHES.
- 2. ALL DIMENSIONS SHALL BE TO THE CENTERLINE UNLESS OTHERWISE NOTED.
- 3. ALL DIMENSIONS SHALL BE TO THE FACE UNLESS OTHERWISE NOTED.
- 4. ALL DIMENSIONS SHALL BE TO THE CENTERLINE UNLESS OTHERWISE NOTED.
- 5. ALL DIMENSIONS SHALL BE TO THE FACE UNLESS OTHERWISE NOTED.
- 6. ALL DIMENSIONS SHALL BE TO THE CENTERLINE UNLESS OTHERWISE NOTED.
- 7. ALL DIMENSIONS SHALL BE TO THE FACE UNLESS OTHERWISE NOTED.
- 8. ALL DIMENSIONS SHALL BE TO THE CENTERLINE UNLESS OTHERWISE NOTED.
- 9. ALL DIMENSIONS SHALL BE TO THE FACE UNLESS OTHERWISE NOTED.
- 10. ALL DIMENSIONS SHALL BE TO THE CENTERLINE UNLESS OTHERWISE NOTED.

**PARKING SCHEDULE**

STALL TYPE	STALL COUNT	TOTAL STALL COUNT
ADA ACCESSIBLE	1	1
COMPACT	1	1
STANDARD	1	1
<b>TOTAL</b>	<b>3</b>	<b>3</b>

**GENERAL NOTES**

- 1. ALL DIMENSIONS UNLESS OTHERWISE NOTED SHALL BE IN FEET AND INCHES.
- 2. ALL DIMENSIONS SHALL BE TO THE CENTERLINE UNLESS OTHERWISE NOTED.
- 3. ALL DIMENSIONS SHALL BE TO THE FACE UNLESS OTHERWISE NOTED.
- 4. ALL DIMENSIONS SHALL BE TO THE CENTERLINE UNLESS OTHERWISE NOTED.
- 5. ALL DIMENSIONS SHALL BE TO THE FACE UNLESS OTHERWISE NOTED.
- 6. ALL DIMENSIONS SHALL BE TO THE CENTERLINE UNLESS OTHERWISE NOTED.
- 7. ALL DIMENSIONS SHALL BE TO THE FACE UNLESS OTHERWISE NOTED.
- 8. ALL DIMENSIONS SHALL BE TO THE CENTERLINE UNLESS OTHERWISE NOTED.
- 9. ALL DIMENSIONS SHALL BE TO THE FACE UNLESS OTHERWISE NOTED.
- 10. ALL DIMENSIONS SHALL BE TO THE CENTERLINE UNLESS OTHERWISE NOTED.

**KEY PLAN**



**SUNDY VILLAGE WEST, LLC**  
 4500 SUNDY VILLAGE WEST, LLC  
 4500 SUNDY VILLAGE WEST, LLC

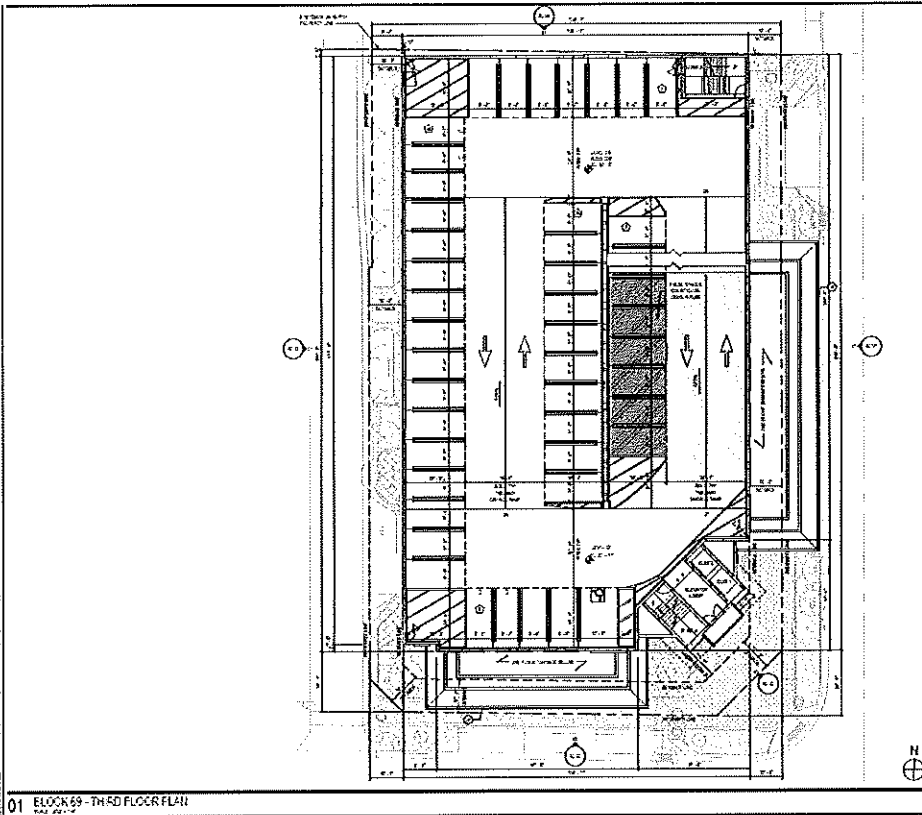
**Gensier**  
 1000 GENSIER  
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SUNDY VILLAGE - BLOCK 69

06 2592 200

BLOCK 69 - SECOND FLOOR PLAN

**A1.12**



**SHEET NOTES**

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND ALL APPLICABLE REGULATIONS.
2. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND ALL APPLICABLE REGULATIONS.
3. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND ALL APPLICABLE REGULATIONS.
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6. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND ALL APPLICABLE REGULATIONS.
7. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND ALL APPLICABLE REGULATIONS.
8. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND ALL APPLICABLE REGULATIONS.
9. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND ALL APPLICABLE REGULATIONS.
10. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND ALL APPLICABLE REGULATIONS.

**PARKING SCHEDULE**

TYPE	NO. OF SPACES	NO. OF SPACES	NO. OF SPACES
Handicap	2	2	2
Other	10	10	10
Total	12	12	12

**GENERAL NOTES**

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND ALL APPLICABLE REGULATIONS.
2. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND ALL APPLICABLE REGULATIONS.
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9. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND ALL APPLICABLE REGULATIONS.
10. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND ALL APPLICABLE REGULATIONS.

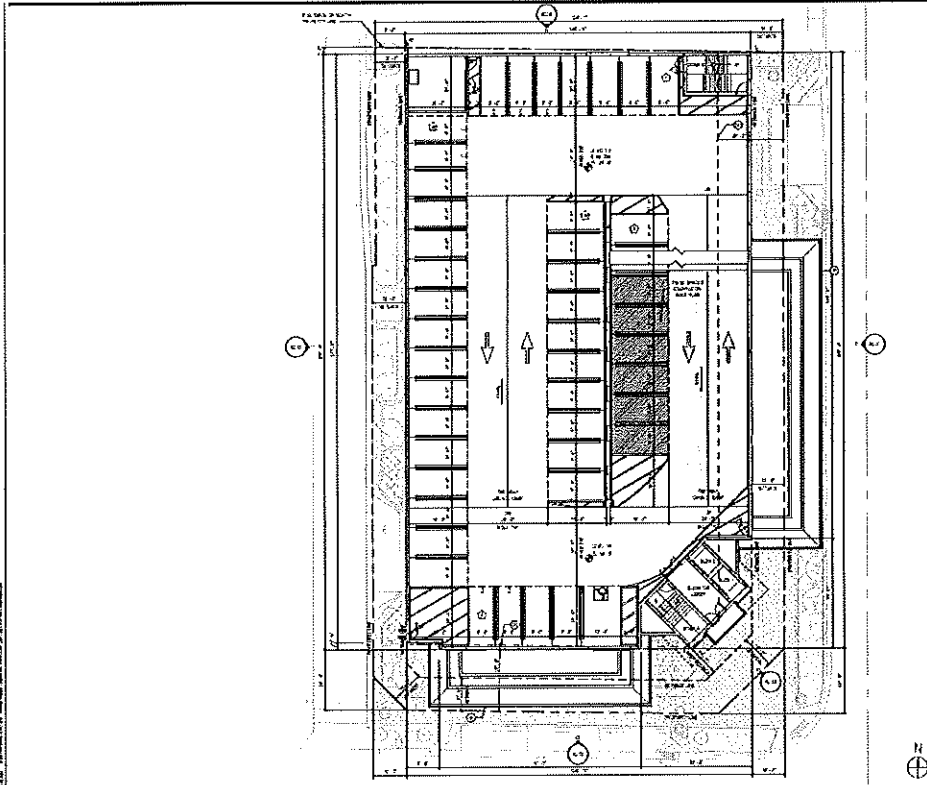
**KEY PLAN**

**SUNDY VILLAGE WEST, LLC**  
 2812 28th Street  
 Columbia, PA 17316

**Gensler**  
 1000 15th Street  
 New York, NY 10019  
 Tel: 212 279 2000  
 Fax: 212 279 2001  
 www.gensler.com

**Project Name:** SUNDY VILLAGE - BLOCK 69  
**Project Number:** 05 3222 220  
**Revision:** BLOCK 69 - THIRD FLOOR PLAN  
**Date:** 06/10/2008  
**Sheet Number:** A1.13

01 BLOCK 69 - THIRD FLOOR PLAN



01 BLOCK 69 - FOURTH FLOOR PLAN  
 11.11.11 11.11.11

**SHEET NOTES**

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODES AND ALL APPLICABLE LOCAL ORDINANCES.
2. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL MECHANICAL AND ELECTRICAL CODES AND ALL APPLICABLE LOCAL ORDINANCES.
3. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL PLUMBING AND MECHANICAL CODES AND ALL APPLICABLE LOCAL ORDINANCES.
4. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL FIRE AND SAFETY CODES AND ALL APPLICABLE LOCAL ORDINANCES.
5. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL ENERGY EFFICIENCY CODES AND ALL APPLICABLE LOCAL ORDINANCES.
6. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL SUSTAINABLE DESIGN AND CONSTRUCTION PRACTICES AND ALL APPLICABLE LOCAL ORDINANCES.

**PARKING SCHEDULE**

TYPE	NO. OF SPACES	NO. OF SPACES	NO. OF SPACES
Handicap	2	2	2
Other	10	10	10
<b>Total</b>	<b>12</b>	<b>12</b>	<b>12</b>

**GENERAL NOTES**

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODES AND ALL APPLICABLE LOCAL ORDINANCES.
2. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL MECHANICAL AND ELECTRICAL CODES AND ALL APPLICABLE LOCAL ORDINANCES.
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5. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL ENERGY EFFICIENCY CODES AND ALL APPLICABLE LOCAL ORDINANCES.
6. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL SUSTAINABLE DESIGN AND CONSTRUCTION PRACTICES AND ALL APPLICABLE LOCAL ORDINANCES.

**KEY PLAN**

**SUNDY VILLAGE WEST, LLC**  
 11111 SUNDY VILLAGE WEST, LLC  
 11111 SUNDY VILLAGE WEST, LLC

**Gensler**

11111 SUNDY VILLAGE WEST, LLC  
 11111 SUNDY VILLAGE WEST, LLC  
 11111 SUNDY VILLAGE WEST, LLC

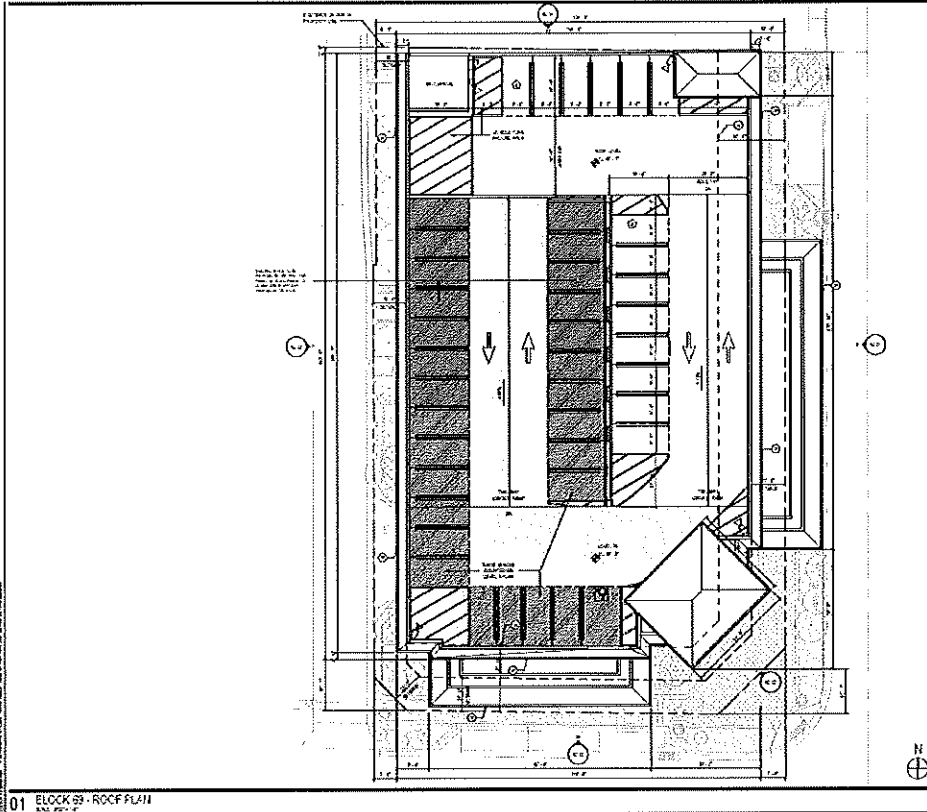
**Project Name:**  
 SUNDY VILLAGE - BLOCK 69

**Project Number:**  
 02 3302 270

**Location:**  
 BLOCK 69 - FOURTH FLOOR PLAN

**Scale:**  
 AS SHOWN

**A1.14**



01 BLOCK 69 - ROOF PLAN

**SHEET NOTES**

**SUNDY VILLAGE WEST, LLC**  
 4100 BELLEVILLE  
 COLONY MADISON, VA 22104

**Genster**

PROJECT NO. 06-2022-290  
 SHEET NO. A1.15  
 DATE: 06/15/22  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 PROJECT: SUNDY VILLAGE - BLOCK 69  
 SHEET: BLOCK 69 - ROOF PLAN

**PARKING SCHEDULE**

TYPE	NO.	AREA (SQ. FT.)	TOTAL AREA (SQ. FT.)
STANDARD	1	100	100
COMPACT	2	50	50
BICYCLE	3	10	10
TOTAL			160

**GENERAL NOTES**

1. REFER TO SHEET A1.14 FOR GENERAL NOTES.

**KEY PLAN**

Block: SUNDY VILLAGE - BLOCK 69  
 Sheet: BLOCK 69 - ROOF PLAN

Scale: AS SHOWN

**A1.15**

### **Exhibit "C"**

**Public Parking Spaces – the 138 spaces located within floors 2-4 plus the roof, including driveways and pedestrian accessways to and from SE 1<sup>st</sup> Avenue as more particularly reflected on Sheets A1.12 through A1.15 of Exhibit "B"**