

Prepared by:

Janice Rustin, Esq.  
City Attorney's Office  
200 N.W. 1st Avenue  
Delray Beach, FL 33444

Return to:

John C. Strickroot, Jr.  
City of Delray Beach  
CityPlace Tower  
525 Okeechobee Blvd., Suite 1100  
West Palm Beach, FL 33401  
561-650-8507

RECEIVED BY

AUG 19 2016

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### LANDSCAPE MAINTENANCE AGREEMENT

THIS AGREEMENT is made this 8<sup>th</sup> day of September, 2016 by and between the City of Delray Beach, Florida ("City") and Samar 202 Florida, LLC, a Florida limited liability company ("Owner").

#### WITNESSETH:

WHEREAS, in order to provide landscaping in the City, the City Commission has adopted ordinances setting forth requirements for landscaping; and,

WHEREAS, in order to comply with the City's landscape Ordinance the Owner shall be allowed to install landscaping material in the right-of-way of S.E. 5<sup>th</sup> Avenue, S.E. 2<sup>nd</sup> Street, and S.E. 3<sup>rd</sup> Street pursuant to the terms of this Agreement; and,

WHEREAS, this Agreement shall in no way be deemed an actual, constructive or any other type of abandonment by the City of the public right-of-way of S.E. 5<sup>th</sup> Avenue, S.E. 2<sup>nd</sup> Street, and S.E. 3<sup>rd</sup>; and,

WHEREAS, the City reserves the right at any time to utilize the right-of-way for right-of-way purposes; and,

WHEREAS, the public will benefit from the beautification of areas along its streets by the addition of landscaping; and,

WHEREAS, this Agreement is not effective unless the Owner has submitted a landscape plan and it has been approved by the City; and,

WHEREAS, the parties hereto mutually recognize the need for entering into an Agreement designating and setting forth the responsibilities of each party.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The Parties hereby represent and warrant that the above recitals are accurate and correct and hereby incorporate them in this Agreement.

2. The Owner shall perform all conditions as required by the City or any Board of the City in conjunction with the site plan and review process for the required installation and maintenance of the landscaping. The subject property, further described in Exhibit "A", shall have an approved landscape plan, Exhibit "B", attached hereto and incorporated herein by reference.

3. The Owner shall be responsible for purchasing and installing all plant, tree, hedge or grass material or any other material as required by the Owner's approved landscaping plan. Owner shall further be responsible for obtaining all permits and approvals from all applicable governmental agencies.

4. The Owner hereby agrees to maintain the plantings in the right-of-way in accordance with the City's Ordinances and the terms and conditions of this Agreement. The Owner shall be responsible to maintain, which means the proper watering and proper fertilization of all plants and keeping them as free as practicable from disease and harmful insects; to properly mulch the plant beds; to keep the premises free of weeds; to mow and/or cut the grass to a proper height; to properly prune all plants which includes (1) removing dead or diseased parts of plants, or (2) pruning such parts thereof which present a visual hazard for those using the roadway. To maintain also means removing or replacing dead or diseased plants in their entirety, or removing or replacing those that fall below original project standards. All plants removed for whatever reason shall be replaced by plants of the same grade, not necessarily the same plant but of acceptable quality to the City and the Owner, as specified in the original plans and specifications and of a size comparable to those existing at the time of replacement. To maintain also means to keep litter removed from the landscaped areas in the right-of-way. Plants shall be those items which would be scientifically classified as plants and include but are not limited to trees, grass, or shrubs.

5. If at any time after the execution of this Agreement by the Owner, it shall come to the attention of the City that the landscaping is not properly maintained pursuant to the terms and conditions of this Agreement then the City may at its option issue a written notice that a deficiency or deficiencies exist, by sending a certified letter to the Owner. Thereafter, the Owner shall have a period of thirty calendar days within which to correct the cited deficiencies. If said deficiencies are not corrected within this time period, the City may at its option, proceed as follows:

(a) Maintain the landscaping or part thereof, and invoice the Owner for expenses incurred.

(b) Terminate this Agreement and require the Owner to comply with the City's current Ordinance on landscaping.

(c) Cite the Owner for failure to comply with the City's Ordinances.

6. At all times hereto, the Owner shall own and maintain all landscaping installed in the right-of-way by the Owner.

7. If for any reason the City decides that it needs the right-of-way of S.E. 5<sup>th</sup> Avenue, S.E. 2<sup>nd</sup> Street, and S.E. 3<sup>rd</sup> or for any other public purpose this Agreement shall terminate, and the Owner shall be required to comply with the City's current Code of Ordinances regarding landscape requirements. Owner shall remove all landscaping from the right-of-way within 20 days of such notification, if so requested by the City.

8. Owner shall at all times hereafter indemnify, hold harmless and defend the City its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional or negligent act of, or omission of, Owner, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against City by reason of any such claim, cause of action or demand, Owner shall, upon written notice from City, resist and defend such lawsuit or proceeding by counsel satisfactory to City. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement.

The Owner shall indemnify and hold harmless the City, its officers and employees from all suits, actions, claims and liability arising solely out of the Owner's installation and maintenance of landscaping in the City's right-of-way.

9. This Agreement shall constitute the entire Agreement of the parties with respect to the subject matter of it. All prior understandings and agreements between the parties with respect to such matters are merged into this Agreement, which alone fully and completely expresses their understanding.

10. This Agreement may not be assigned or transferred by the Owner, in whole or part without the written consent of the City.

11. This Agreement shall be binding on the Parties, their respective heirs, successors, legal representatives, and permitted assigns and shall be recorded in the Public Records of Palm Beach County and shall run with the land.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on their behalf this 8<sup>th</sup> day of September, 2016.

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

Approved as to legal form and sufficiency:

\_\_\_\_\_  
City Attorney

WITNESSES:

SAMAR 202 FLORIDA, LLC,  
a Florida limited liability company

Jessica Brown  
JESSICA BROWN  
(Print or Type Name)

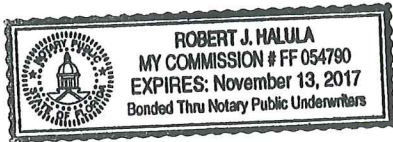
Karen Grabler  
Karen Grabler  
(Print or Type Name)

By: Alan Mindel  
Alan Mindel, Manager

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of August, 2016, by Alan Mindel, as Manager of Samar 202 Florida, LLC, a Florida limited liability company, on behalf of the limited liability company. He is personally known to me or has produced \_\_\_\_\_ as identification.



Robert J. Halula  
Signature of Person Taking Acknowledgment

Robert J. Halula  
Name Typed, Printed or Stamped

**EXHIBIT "A"**

**Property Description**

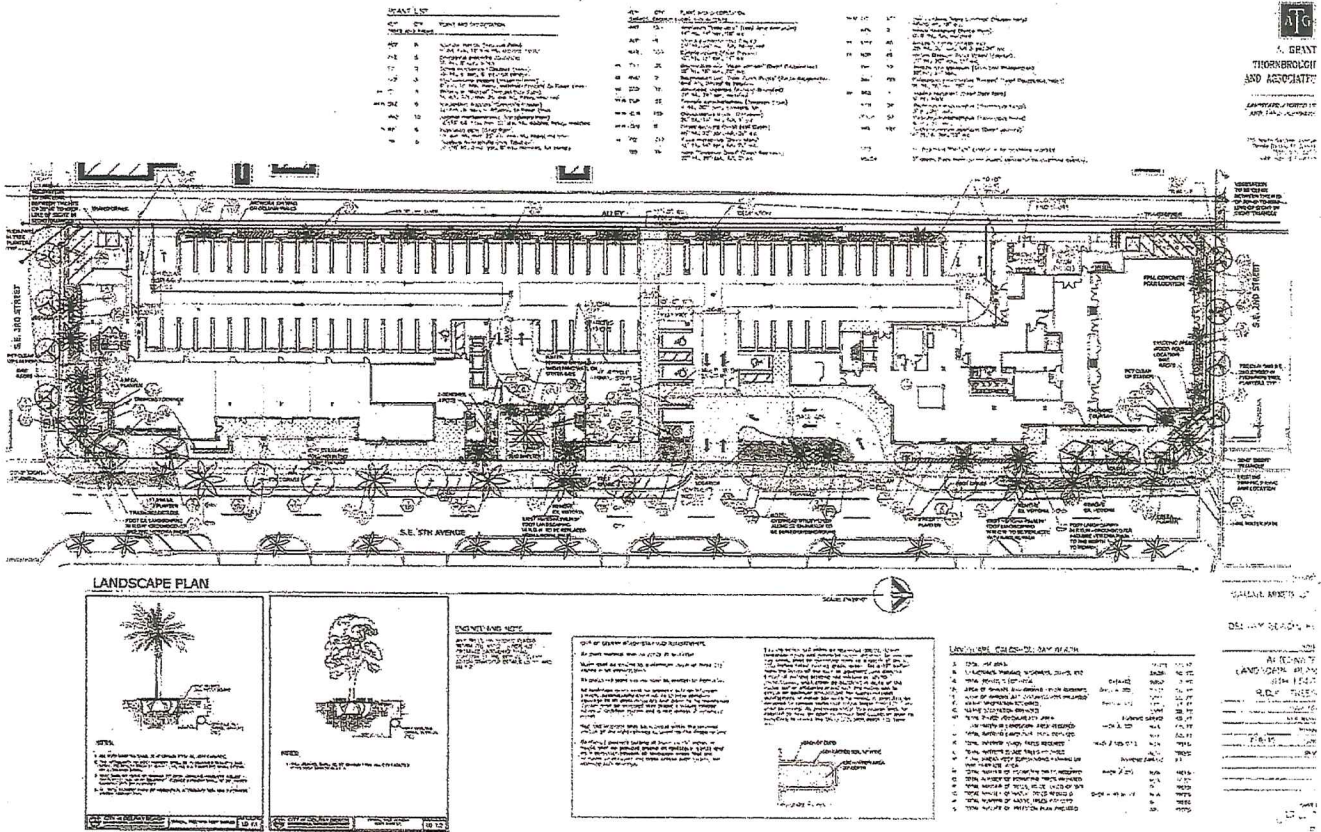
**LEGAL DESCRIPTION:**

Lots 1, 2, 3, 4, 5 and 6, Block 103, ROEBUCK'S RESUBDIVISION OF BLOCK 103, according to the Plat thereof, recorded in Plat Book 2, Page 19, of the Public Records of Palm Beach County, Florida, LESS AND EXCEPT the east 5 feet of Lots 1, 3, 4, 5 and 6 conveyed to the State of Florida for Road Right-Of-Way.

**TOGETHER WITH:**

Lots 7, 8, 9 and 10, less the east 5 feet of said Lots 11 and 12, less the portion of Lot 11 conveyed to the State of Florida for State Road No. 5 as in Official Records Book 459, Page 323, all in ROEBUCK'S RE-SUBDIVISION OF BLOCK 103 DELRAY BEACH (FORMERLY LINTON), according to the Plat thereof recorded in Plat Book 2, Page 19 of the Public Records of Palm Beach County, Florida.

Said lands lying in the City of Delray beach, Palm Beach County, Florida and containing 77,925 square feet (1.7889 acres) more or less.



Approved Landscape Plan

EXHIBIT "B"