RETURN to: City Attorney's Office 200 N.W. 1st Avenue Delray Beach, FL 33444

PCN: 12-43-46-16-Q6-001-0020 Address: Portion within Block 69

LANDSCAPE MAINTENANCE AGREEMENT
THIS AGREEMENT is made this day of, 2024, by and
between the City of Delray Beach, a Florida municipal corporation of the State of Florida
("City"), whose address is 100 NW 1st Avenue, Delray Beach, Florida 33444 ("City") and
Sundy Village West, LLC, whose address is 7900 Glades Road, Suite 540, Boca Raton, Florida
33434 ("Owner").

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

WITNESSETH:

WHEREAS, in order to comply with the City's landscape Ordinance, Owner shall be allowed to install landscaping material within the public rights-of-way of <u>SE 1st Avenue and</u> <u>SE 1st Street</u> (collectively the "Affected ROW"), 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 Affected ROW; and

WHEREAS, the City reserves the right at any time to utilize the Affected ROW 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 Affected ROW 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 Ordinances 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 Affected ROW.
- 7. If for any reason the City decides that it needs the right-of-way within the Affected ROW for any 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 30 days of such notification, if so, requested by the City.
- 8. Owner shall at all times hereafter indemnify, hold harmless and, at the City's option, defend or pay for an attorney selected by the City Attorney to defend 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 or, at City's option, pay for an attorney selected by City Attorney to defend City. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement.

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. Upon conveyance of the subject property to any future owner, this Agreement

shall be deemed automatically assigned by the Owner to any such future owner of the subject

property, and such future owner shall be deemed to have assumed all the Owner's obligations

hereunder. This Agreement may not otherwise 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.

Any notice or communication under this Agreement shall be in writing and may

be given by registered or certified mail. If given by registered or certified mail, the notice or

communication shall be deemed to have been given and received when deposited in the United

States Mail, properly addressed, with postage prepaid. If given otherwise, then by registered or

certified mail, it should be deemed to have been given when delivered to and received by the

party to whom it is addressed. The notices and communication shall be given to the particular

parties at the following addresses:

City:

City Manager

City of Delray Beach

100 N.W. 1st Avenue

Delray Beach, Florida 33444

Owner: Sundy Village West, LLC

7900 Glades Road, Suite 540

Boca Raton, Florida 33434

Bood reaton, Florida 99191

Attn: Todd Rosenberg, Manager

Either party may at any time by giving ten (10) days written notice designate any other person or

entity or any other address in substitution of the foregoing to which the notice or communication

shall be given.

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	ereto have caused this Agreement to be duly
executed on their behalf this 3°day of 500	, 2024.
WITNESSES: OWN	NER: Sundy Village West, LLC
Signature Bryan Siegel	Signature Todd Rosenberg Print or Type Name
Print or Type Name 7900 Glades Rd, Suite 540 Boca Raton, FL 33434 Address Signature	Authorized Signatory Title or Type of Authority
Jared Hochman Print or Type Name	
7900 Glades Rd, Suite 540 Boca Raton, FL 33434 Address	
STATE OF Florice COUNTY OF Palm Beach	
The foregoing instrument was acknowledg or online notarization, this 312 day of 500 (name of person), as Allow For Sprange (type (name of party on behalf of whom instrument was	ed before me by means of physical presence , 2024, by Todd Rusenberg of authority) for Sundy Village West, LLC executed).
Personally known OR Produced Identification Type of Identification Produced	· // -
MEGHAN DUGGINS Notary Public - State of Florida Commission # HH 240608 My Comm. Expires Apr 2, 2026 Bonded through National Notary Assn.	Notary Public - State of Florica

ATTEST:	CITY OF DELRAY BEACH, FLORIDA
Katerri Johnson, City Clerk	By: Thomas F. Carney, Jr., Mayor
Approved as to legal form and sufficiency:	
Lynn Gelin, City Attorney	
[Remainder of Pa	age Intentionally Left Blank]

EXHIBIT "A" LEGAL DESCRIPTION OF REAL PROPERTY

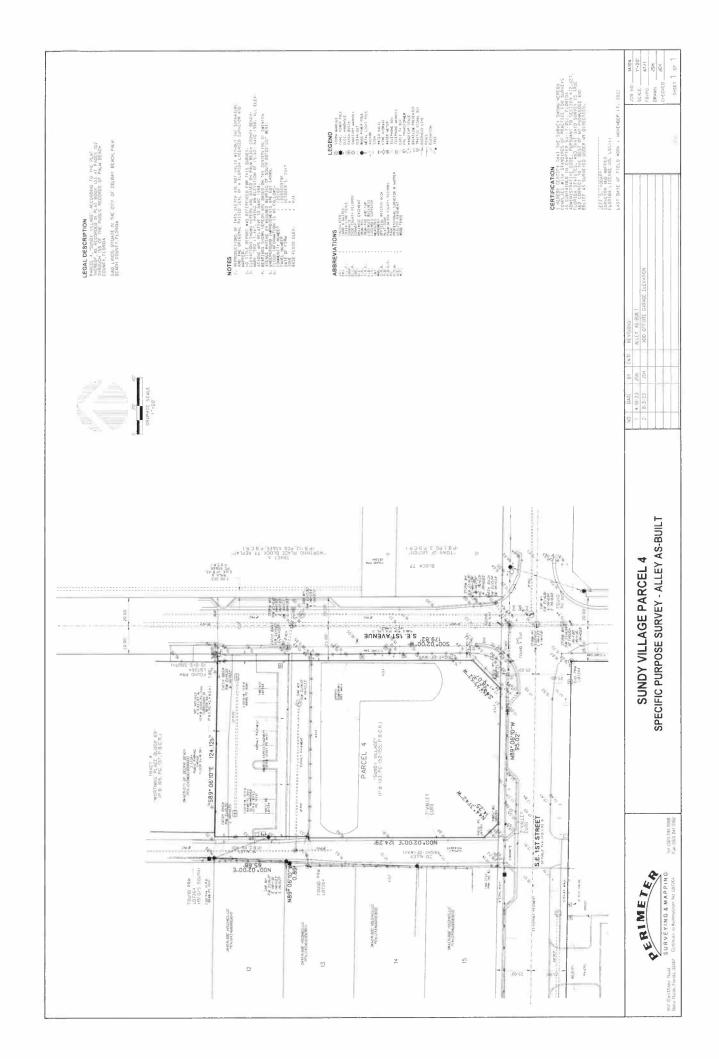


EXHIBIT "B" LANDSCAPE PLAN

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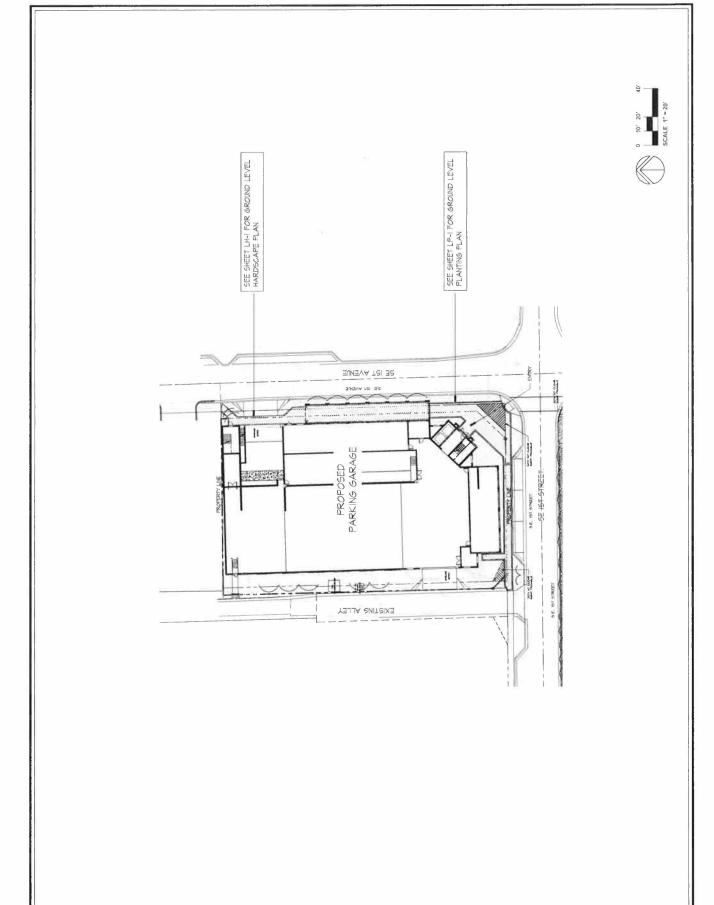












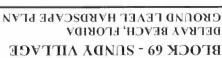
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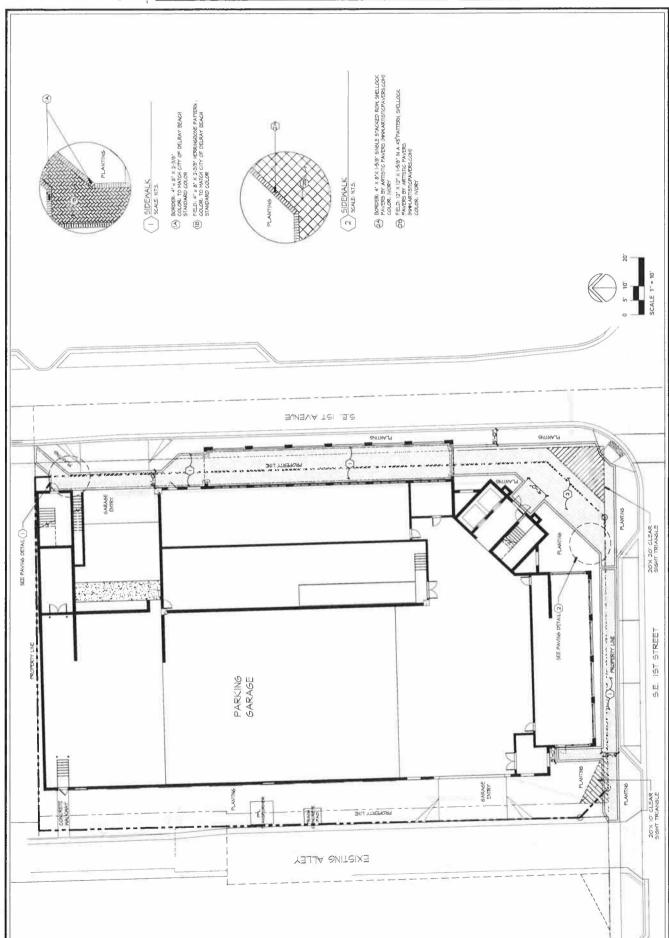


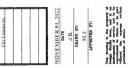










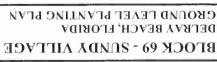




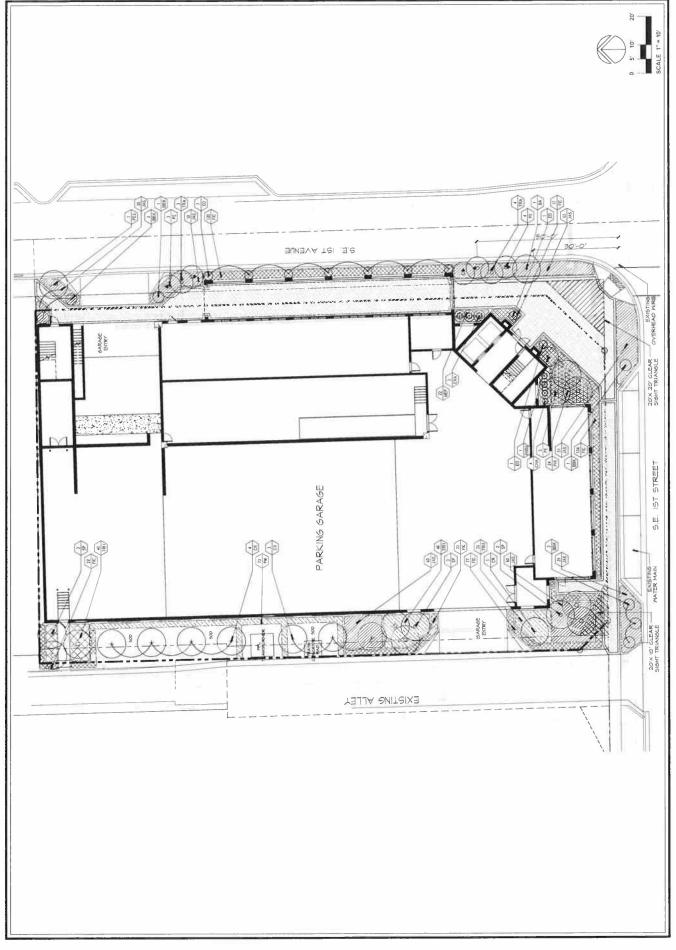
























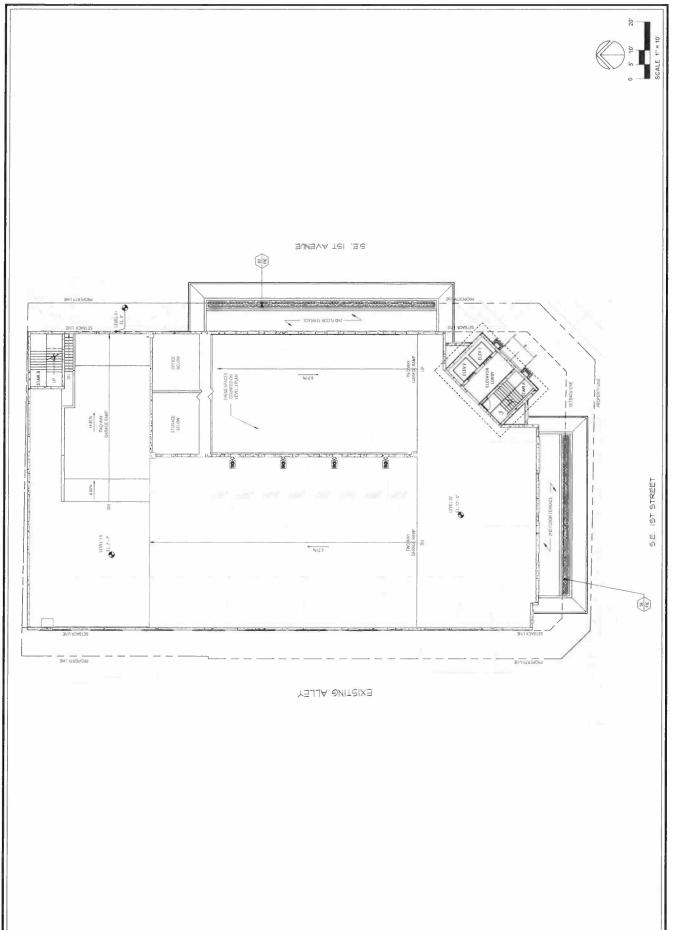












APPROVED BY: J.R. DEAVY ST.



NOVEMBER 11, 2022 DATE

2X ROOT BALL

PLANTING SOIL BACKFILL & TERRILIZER
AS SPECIFED

COPPACT SOIL TO PREVENT SETTLEDENT TYPICAL TREE PLANTING DETAIL

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2" DIA, X B" LONG
LONG PALE PANTED
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SET TOP OF ROOT BALL
2" ABOVE THESH SANDE COMPACTED SUBSTADE S' HULCH HIR (TYP.)

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PLANT LIST AND DETAILS

BLOCK 69 - SUNDY VILLAGE

ДЕГВАУ ВЕЛСН, FLORIDA

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in case of discrepancies, planting plan takes precedence over plant first. Landscape contractor is responsible for his own quantity take-offs.

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TREES

KEY OTY, TOTAL (P.1 (P.2

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	Nephrolepis exaltata Boston Fern	± 6-	žg.		18" O.C.	Full cont.	ж	MODERATE
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	Podocarpus macrophytius Column' Japanese Yew Column	in	3430.	FULL TO BASE	34.0C	Full conf.		MODERATE
	Trachelospermum jasminoides Confederate Jasmine	44				Trelife Grown, 15 gal, cont.		MODERATE
	Tripsecum dactyloides 'Dwarf	24"	le:		24.00.	Full clump	×	HIGH

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FLANTING SPECIFICATIONS DELRAY BEACH, FLORIDA

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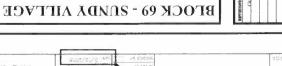












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TREE DISPOSITION PLAN DELRAYY BEACH, FLORIDA

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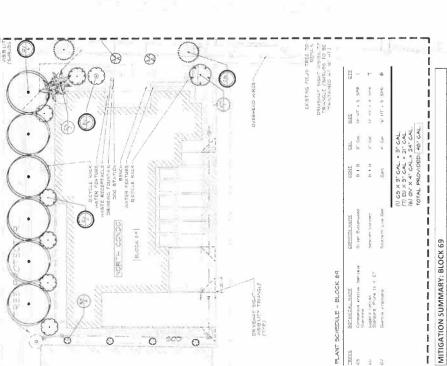


NOTE, THE PREVIOUSLY APPROVED CERTIFIED SITE PLAN DATED OD-12-2019 SHOWN ON THIS SMEET WAS BEEN VALUED. AS A RESULT OF THE MODIFICATION WE ARE INABILE TO PLANT (4) OF THE 4" CAL. (OV) SOUTHERS LITE OAKS ALONG THE BIS IST, AVE. RIGHT OF PAYT.

PAYMENT IN LIEU - CALCULATIONS

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Southern tive Oak (8" E.4!)



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(1) C3 × 3° CAL. = 3° CAL. (7) B1 × 3° CAL. = 31° CAL. (8) OV × 4° CAL. = 31° CAL. (7) TAL PROVIDED (46° CAL.	