

Prepared by: RETURN:

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

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### **LANDSCAPE MAINTENANCE AGREEMENT**

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by between the CITY OF DELRAY BEACH, a municipal corporation and a political subdivision of the State of Florida, with an address of 100 NW 1st Avenue, Delray Beach, Florida 33444 ("City"), and EQUITY DELRAY, LLC, a Florida Limited Liability Company with an address of 5100 PGA Blvd. Bldg. 2-4A, Palm Beach Gardens FL 33418 ("Developer").

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

WHEREAS, the Developer has applied to the City for approval of a mixed-use development consisting of 112 dwelling units, 17,267.3 square feet of office, 6,040 square feet of restaurant, and 43,162 square feet of commercial/retail space located on the south side of Atlantic Avenue between SW 6<sup>th</sup> Avenue and SW 9<sup>th</sup> Avenue ("Project");

WHEREAS, in order to comply with the City's landscape Ordinance the Developer shall be allowed to install landscaping material in the following areas of public right-of-way ("Public Right-of-Way") pursuant to the terms of this Agreement:

- (1) Along the south side of Atlantic Avenue between SW 6th Avenue and SW 9th Avenue;
- (2) Along the west side of SW 6th Avenue between Atlantic Avenue and the south end of the Project;
- (3) Along the east and west side of SW 7th Avenue between Atlantic Avenue and the south end of the Project;

- (4) Along the east and west side of SW 8th Avenue between Atlantic Avenue and the south end of the Project;
- (5) Along the east side of SW 9th Avenue between Atlantic Avenue and the south end of the Project.

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 as described above, and,

WHEREAS, the City reserves the right at any time to utilize the Public 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 Developer 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 Developer 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 Developer shall be responsible for purchasing and installing all plant, tree, hedge or grass material or any other material as required by the Developer's approved landscaping plan. Developer shall further be responsible for obtaining all permits and approvals from all applicable governmental agencies.

4. The Developer hereby agrees to maintain the plantings in the Public Right-of-Way in accordance with the City's Ordinances and the terms and conditions of this Agreement. The Developer 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 Developer, 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 Public 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 Developer, 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 Developer. Thereafter, the Developer 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 Developer for expenses incurred.
- (b) Terminate this Agreement and require the Developer to comply with the City's current Ordinance on landscaping.

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

6. At all times hereto, the Developer shall own and maintain all landscaping installed in the Public Right-of-Way by the Developer.

7. If for any reason the City decides that it needs the Public Right-of-Way or for any other public purpose this Agreement shall terminate, and the Developer shall be required to comply with the City's current Code of Ordinances regarding landscape requirements. Developer shall remove all landscaping from the Public Right-of-Way within 20 days of such notification, if so requested by the City.

8. Developer 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, Developer, 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, Developer 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. This Agreement may not be assigned or transferred by the Developer, 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.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on their behalf this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

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

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

Approved as to legal form  
and sufficiency:

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

WITNESSES:

Choi: Aronson  
\_\_\_\_\_  
(Print or Type Name)

Equity Delray, LLC

John Flynn  
\_\_\_\_\_  
(Print or Type Name)

Rebecca Garcia  
\_\_\_\_\_  
(Print or Type Name)

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 1st day of APRIL, 2016, by JOHN FLYNN, as PRINCIPAL (name of officer or agent, title of officer or agent), of EQUITY DELRAY, LLC (name of corporation acknowledging), a FLORIDA (state or place of incorporation) corporation, on behalf of the corporation. He/She is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification.

J. Whitley  
\_\_\_\_\_  
Signature of Person Taking Acknowledgment  
J. WHITLEY





**Name Typed, Printed or Stamped**