

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

PCN: 12-43-46-16-01-089-0030  
Address: 319 NE 3rd Avenue, Delray Beach

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### LANDSCAPE MAINTENANCE AGREEMENT

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the **City of Delray Beach**, a Florida municipal corporation of the State of Florida, whose address is 100 NW 1st Avenue, Delray Beach, Florida 33444 (the "City") and **Big B Investments, LLC**, a Florida limited liability company, whose address is 9608 Lake Serena Drive, Boca Raton, Florida 33496 (the "Owner").

#### WITNESSETH:

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

WHEREAS, the Owner owns a parcel of land with a street address of 319 NE 3rd Avenue, Delray Beach, Florida 33444 (the "Property"), as more particularly described in Exhibit "A", attached hereto and incorporated herein; and

WHEREAS, to comply with the City's landscape Ordinance, Owner shall be allowed to install landscaping material within the right-of-way of NE 3rd Avenue abutting the Property (the "ROW Area"), 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 the ROW Area; and

WHEREAS, the City reserves the right at any time to utilize the ROW Area 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 Property and ROW Area shall have an approved landscape, attached hereto and incorporated herein as Exhibit "B".

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, which, if unpaid, can be recorded as a lien against the Property;
- (b) Terminate this Agreement and require the Owner to comply with the City's current Ordinance on landscaping; or
- (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 ROW Area.

7. If for any reason the City decides that it needs the ROW Area for any 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, 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 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.

13 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: Charles Monticello  
Big B Investments, LLC  
9608 Lake Serena Drive  
Boca Raton, FL 33496

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.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on their behalf this 9 day of APRIL, 2024

WITNESSES:

[Signature]  
Signature

ILAN BENYES  
Print or Type Name

102 NE 2ND ST  
BOCA RATON, FL 33432  
Address

[Signature]  
Signature

Phyllis R. Garcia  
Print or Type Name

102 NE 2ND ST  
BOCA RATON, FL 33432  
Address

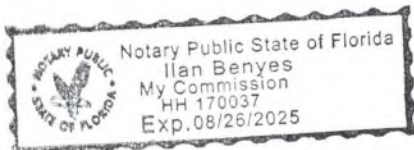
STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 9 day of APRIL, 2024, by CHARLES MONTICELLO (name of person), as OWNER (type of authority) for Big B Investments, LLC (name of party on behalf of whom instrument was executed).

Personally known \_\_\_ OR Produced Identification  
Type of Identification Produced Nx OR Lic

OWNER:  
By: [Signature]  
Signature  
CHARLES MONTICELLO  
Print or Type Name  
OWNER  
Type of Authority

[Signature]  
Notary Public - State of FLORIDA



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

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**EXHIBIT "A"**  
**LEGAL DESCRIPTION OF REAL PROPERTY**

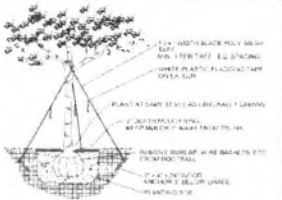
LOT 3, RESUBDIVISION OF THE WEST PORTION OF BLOCK 89, DELRAY  
FLORIDA. ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT  
BOOK 13, PAGE 49, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

**EXHIBIT "B"**  
**LANDSCAPE PLAN**



### PLANTING DETAILS

NOT TO SCALE



**TREE PLANTING DETAIL**  
NOTE: MULTI-TRUNK TREE PLANTING SIMILAR N.T.S.

### NOTE

INDIAN PLANTS WITH LEAF QUALITY DETRIMENT TO ALL PLANT MATURE CAPACITY SHOULD BE EXCLUDED. BEFORE PLANTING, CHECK FOR TOXIC PLANTS, WEEDS, OR OTHER PLANTS THAT MAY BE AFFECTED BY THE PLANTING MAT.



**SHRUB PLANTING DETAIL**  
NOT TO SCALE

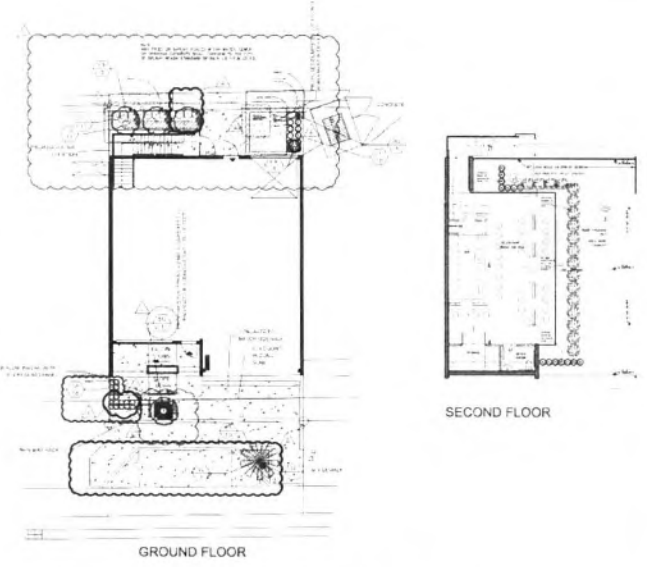
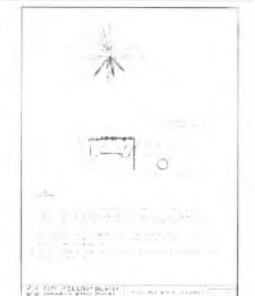


NOTE: PLANTING MATS TO BE INSTALLED UNDER ALL PLANTS, 1/4" STAKING, 1/2" PLASTIC FLOOR TAMP, 1/2" POLY SUEDE

**SHRUB MASS PLANTING**  
NOT TO SCALE

### GENERAL NOTES

1. ALL PLANTS SHALL BE PLANTED BY THE CONTRACTOR AND SHALL BE PLANTED IN ACCORDANCE WITH THE LATEST EDITION OF THE NATIONAL SPECIFICATION FOR PLANTING AND MAINTENANCE OF PLANTS AND TREES.
2. ALL PLANTS SHALL BE PLANTED IN ACCORDANCE WITH THE LATEST EDITION OF THE NATIONAL SPECIFICATION FOR PLANTING AND MAINTENANCE OF PLANTS AND TREES.
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## LANDSCAPE PLANS

SCALE - 1"=10'



### PLANT LIST

NO.	PLANT NAME	SIZE	QUANTITY	REMARKS
1	FLORIDA BURNING BUSH	12"	100	100
2	FLORIDA BURNING BUSH	18"	100	100
3	FLORIDA BURNING BUSH	24"	100	100
4	FLORIDA BURNING BUSH	30"	100	100
5	FLORIDA BURNING BUSH	36"	100	100
6	FLORIDA BURNING BUSH	42"	100	100
7	FLORIDA BURNING BUSH	48"	100	100
8	FLORIDA BURNING BUSH	54"	100	100
9	FLORIDA BURNING BUSH	60"	100	100
10	FLORIDA BURNING BUSH	66"	100	100

THERE ARE NO EXISTING TREES ON SITE

### DISCLAIMER

The information contained herein is for informational purposes only and does not constitute a contract or any other legal document. It is the responsibility of the client to verify the accuracy and completeness of the information provided. The information is provided as is, without any warranty, express or implied, and the user assumes all liability for its use.

MAUREEN SMITH  
LANDSCAPE ARCHITECT  
1000 PARKWAY DRIVE  
DUBLIN, FLORIDA 32118  
PH: 407.279.4141  
FAX: 407.279.4142  
WWW.MSMAUREENSMITH.COM

319 RESTAURANT  
1000 PARKWAY DRIVE  
DUBLIN, FLORIDA 32118  
BIG FISH CONSULTANTS, LLC

Notes:  
1. ALL PLANTS SHALL BE PLANTED IN ACCORDANCE WITH THE LATEST EDITION OF THE NATIONAL SPECIFICATION FOR PLANTING AND MAINTENANCE OF PLANTS AND TREES.  
2. ALL PLANTS SHALL BE PLANTED IN ACCORDANCE WITH THE LATEST EDITION OF THE NATIONAL SPECIFICATION FOR PLANTING AND MAINTENANCE OF PLANTS AND TREES.  
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DATE: 10/15/2014  
BY: MAUREEN SMITH  
CHECKED BY: MAUREEN SMITH  
DATE: 10/15/2014

SCALE: 1"=10'  
SHEET NO. 1  
TOTAL SHEETS: 1  
L-1