

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

PCN: 12-43-46-28-00-000-1140  
Address: 1035 Bermuda Gardens Road, Delray Beach, FL 33483

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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 1035 Bermuda Gardens LLC, whose address is 1035 BERMUDA GARDENS RD, DELRAY BEACH, FL 33483-6420 (the "Owner").

#### **W I T N E S S E T H:**

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 1035 BERMUDA GARDENS RD (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 wants to install landscaping and/or hardscape material (the "Improvements") within the Florida Department of Transportation ("FDOT") right-of-way of State Road A1A from crossroad MP 7.952 to crossroad MP 7.971 abutting the Property (the "ROW Area"), pursuant to the terms of this Agreement; and

WHEREAS, FDOT requires the City to enter into an agreement requiring the City to install and maintain the Improvements in the ROW Area; and

WHEREAS, the City is required to indemnify and hold harmless FDOT for the Improvements and work performed in the ROW Area; and

WHEREAS, this Agreement requires Owner to hold harmless and defend the City for the installation and maintenance of the Improvements in the ROW Area; and

WHEREAS, this Agreement shall in no way be deemed an actual, constructive, or any other type of abandonment of City or FDOT public right-of-way; and

WHEREAS, the Owner acknowledges FDOT 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 the Improvements; and

WHEREAS, this Agreement is not effective unless the Owner has submitted a landscape and/or site plan, obtained approval from the City and FDOT, and the appropriate amendment to the August 31, 2012, Maintenance Memorandum of Agreement between the City and FDOT has been fully executed; 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 FDOT, 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 Improvements. The Property and ROW Area shall have an approved landscape and/or site plan, 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 and any other hardscape material as required by the Owner's approved landscaping and/or site 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 Improvements in the right-of-way in accordance with the City's Ordinances, FDOT regulations, 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 areas in the right-of-way. Plants shall be those items that 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 or hardscape 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 Improvements installed in the ROW Area.

7. If for any reason FDOT 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. Owner shall remove all the Improvements 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. The City hereby reserves the right to enforce this Agreement by pursuing any and all remedies provided by law or in equity. All of the remedies available to the City shall be cumulative, and the City's election to pursue any remedy shall not preclude the City for then or later pursuing any one or more other remedies

10. 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.

11. 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.

12. 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.

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

14. Owner shall be bound by all the terms and conditions regarding the ROW Area found in the Florida Department of Transportation, District Four (4) Landscape Inclusive

Maintenance Memorandum of Agreement entered into by the City and FDOT on August 31, 2012, including any amendments thereto.

14 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:                1035 Bermuda Gardens, LLC  
                         Elizabeth Butler Sole Owner  
                         1035 Bermuda Gardens Rd.  
                         Delray Beach, FL 33483

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.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the City and the Owner executed this Agreement as of the day and year first above written.

WITNESSES:

Bar. M. Porter  
Signature

Ind. M. Porter  
Print or Type Name

133 Center Mill Rd.  
Chadds Ford, PA 19317  
Address

Jan. Co. Chay  
Signature

Jan. Clare  
Print or Type Name

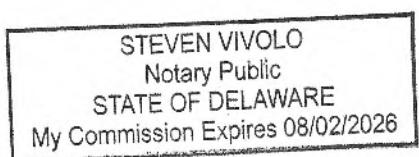
902 Hillside Rd  
Greenville, DE 14807  
Address

STATE OF Delaware

COUNTY OF New Castle

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 16<sup>th</sup> day of December, 2025, by Scott T. Porter (name of person), as Power of Attorney (type of authority) for 1035 Bermuda Gardens LLC (name of party on behalf of whom instrument was executed).

Personally known  OR Produced Identification  
Type of Identification Produced PA Drivers License



Steven Vivo  
Notary Public – State of Delaware

ATTEST:

**CITY OF DELRAY BEACH, FLORIDA**

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Alexis Givings, City Clerk

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

Approved as to legal form  
and sufficiency:

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Lynn Gelin, City Attorney

[Remainder of Page Intentionally Left Blank]

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

**28-46-43, ELY 110.79 FT OF S 100 FT OF N 1570 FT OF SEC LYG W OF SR A-  
1-A**

**EXHIBIT "B"**  
**LANDSCAPE AND/OR SITE PLAN**

