

This Instrument Prepared by and Return to:
Scott A. Elk, Esq.
Scott A. Elk, P.A.
750 Park of Commerce Blvd, Suite 400
Boca Raton FL 33487

LANDSCAPE MAINTENANCE AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2018 by and between the City of Delray Beach, Florida ("City") and Delray Beach 4th & 5th Avenue LLC ("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. 4th Avenue 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. 4th Avenue; 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:

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

2.0 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.

3.0 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.

4.0 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.

5.0 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.

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

7.0 If for any reason the City decides that it needs the right-of-way of S.E. 4th Avenue 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.

8.0 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.

9.0 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.

10.0 This Agreement may not be assigned or transferred by the Owner, in whole or part without the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

11.0 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.

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

[Signature Pages to Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on their behalf this ____ day of _____, 2018.

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

City Clerk


By: _____
_____, Mayor

Approved as to legal form
and sufficiency:

City Attorney


WITNESSES:

DELRAY BEACH 4TH & 5TH AVENUE LLC, a
Delaware limited liability company



Samantha A. Chase
(PRINT OR TYPE NAME)

By: Delray Beach 4th & 5th Avenue Holdings LLC
a Delaware limited liability company, its sole
member



Dawn M. Nelson
(PRINT OR TYPE NAME)

By: Delray Beach 4th & 5th Avenue Developer
LLC a Delaware limited liability
company, its managing member


By: S&A Delray Beach 4th & 5th Avenue
LLC a Delaware limited liability
company, its manager

By S&A GP LLC, a Massachusetts
limited liability company, its
manager

By: 

Name: Joel Sklar
Its: Manager

By: IPIC-DELRAY INVESTMENT, LLC,
a Delaware limited liability company,
its manager

By: 

Name: Hamid Hashemi
Its: CEO

[Signature Page Continues]

STATE OF FLORIDA)
) ss:
COUNTY OF PALM BEACH

I HEREBY CERTIFY that on this ____ day of _____, 2018, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by _____, AS MAYOR OF THE CITY OF DELRAY BEACH, FLORIDA, on behalf of the City who ☐ is personally known to me or ☐ has produced _____ as identification.

(NOTARY SEAL)

NOTARY PUBLIC

(Name of Notary Typed, Printed, or Stamped)

STATE OF ~~FLORIDA~~ Massachusetts)
) ss:
COUNTY OF Suffolk

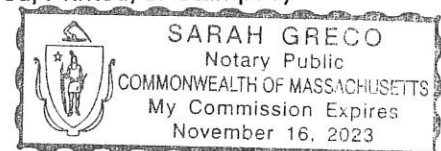
I HEREBY CERTIFY that on this ____ day of _____, 2018, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me Joel Sklar, the Manager of S&A GP LLC, a Massachusetts limited liability company, manager of S&A Delray Beach 4th & 5th Avenue LLC, a Delaware limited liability company, as the Co-Manager of Delray Beach 4th & 5th Avenue Developer LLC, a Delaware limited liability company, the Managing Member of Delray Beach 4th & 5th Avenue Holdings LLC, a Delaware limited liability company, the Sole Member of Delray Beach 4th & 5th Avenue LLC, a Delaware limited liability company, who ☒ is personally known to me or ☐ has produced _____ as identification.

(NOTARY SEAL)

[Signature]
NOTARY PUBLIC

Sarah Greco
(Name of Notary Typed, Printed, or Stamped)

STATE OF FLORIDA)
) ss:
COUNTY OF Palm Beach



I HEREBY CERTIFY that on this 14th day of February, 2018, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me Hamid Hashemi, the CEO of Ipac-Delray Investment, LLC, a Delaware limited liability company, manager of S&A Delray Beach 4th & 5th Avenue LLC, a Delaware limited liability company, as the Co-Manager of Delray Beach 4th & 5th Avenue Developer LLC, a Delaware limited liability company, the Managing Member of Delray Beach 4th & 5th Avenue Holdings LLC, a Delaware limited liability company, the Sole Member of Delray Beach 4th & 5th Avenue LLC, a Delaware limited liability company, who ☒ is personally known to me or ☐ has produced _____ as identification.

(NOTARY SEAL)



DAWN M. NELSON
MY COMMISSION # GG 019097
EXPIRES: December 5, 2020
Bonded Thru Budget Notary Services

[Signature]
NOTARY PUBLIC

Dawn M. Nelson
(Name of Notary Typed, Printed, or Stamped)

EXHIBIT "A"

LEGAL DESCRIPTION

Lot 10, LESS the North 20 feet thereof, and LESS the West 8 feet, 2 inches thereof, in Block 101, TOWN OF LINTON, now known as DELRAY BEACH, according to the plat thereof, as recorded in Plat Book 1, Page 3, of the Public Records of Palm Beach County, Florida.

AND

That part of Lot 11, in Block 101, TOWN OF LINTON, now known as DELRAY BEACH, according to the plat thereof, as recorded in Plat Book 1, Page 3, of the Public Records of Palm Beach County, Florida, being more particularly described as follows:

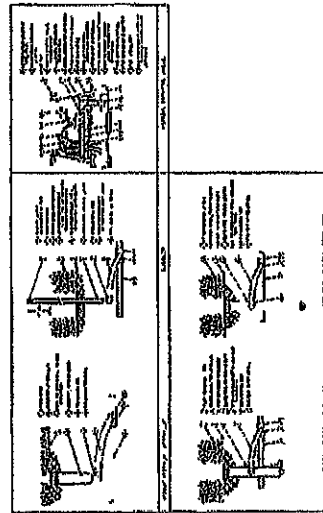
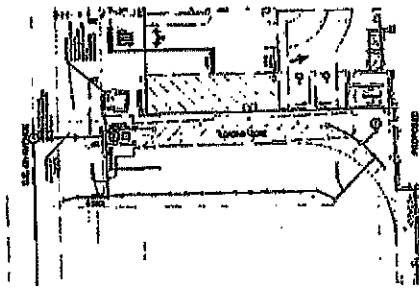
BEGIN at the Northwest corner of said Lot 11, for the POINT OF BEGINNING; Thence Southerly along the West line of said Lot 11, a distance of 3.63 feet; Thence Easterly a distance of 135 feet to a point in the East line of said Lot 11; Thence Northerly along the East line of Lot 11, a distance of 3.96 feet to the Northeast corner of Lot 11, Thence Westerly along the North line of Lot 11, a distance of 135 feet to the POINT OF BEGINNING, LESS the West 8 feet, 2 inches thereof.

Said lands situate in the City of Delray Beach, Palm Beach County, Florida and containing 6,075 square feet (0.14 acres), more or less.

AGI LAND
 LAND SURVEYING
 1000 S. 10th St.
 Suite 100
 Lincoln, NE 68502
 (402) 441-1111
 www.agiland.com



SCALE 1"=250'-0"



WELL DATA

WELL NO.	WELL DEPTH	WELL TYPE	WELL STATUS
1	100'	Artesian	Active
2	120'	Artesian	Active
3	110'	Artesian	Active
4	130'	Artesian	Active
5	140'	Artesian	Active
6	150'	Artesian	Active
7	160'	Artesian	Active
8	170'	Artesian	Active
9	180'	Artesian	Active
10	190'	Artesian	Active

100'

NOTES

1. The irrigation system is designed to provide water to the crops in the area.
2. The system is designed to provide water to the crops in the area.
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WELL NO.	WELL DEPTH	WELL TYPE	WELL STATUS
1	100'	Artesian	Active
2	120'	Artesian	Active
3	110'	Artesian	Active
4	130'	Artesian	Active
5	140'	Artesian	Active
6	150'	Artesian	Active
7	160'	Artesian	Active
8	170'	Artesian	Active
9	180'	Artesian	Active
10	190'	Artesian	Active

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6	150'	Artesian	Active
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9	180'	Artesian	Active
10	190'	Artesian	Active

