

Prepared by: RETURN:  
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 \_\_\_\_\_, 2019 by and between the City of Delray Beach, Florida ("City") and **ROSEBUD 3<sup>rd</sup> AVENUE, LLC**, a Florida limited liability company ("**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, Owner shall be allowed to install landscaping material in the right-of-way of S.E. 1<sup>st</sup> Street and S.E. 3<sup>rd</sup> 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. 1<sup>st</sup> Street and S.E. 3<sup>rd</sup> 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. 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 within the City's right of way. The subject property is depicted in and subject to the approved landscape plan in Exhibit "A", 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 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 any 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 (30) 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, exclusive of any requirements to maintain landscaping the Right of Way.
- (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 right-of-way by the Owner in the manner provided herein.

7. If, for any reason, the City decides that it needs the right-of-way of S.E. 1st Street and/or S.E. 3rd Avenue, for any other public purpose, the City may terminate this Agreement upon at least 60

days notice, and the Owner shall thereafter be required to comply with the City's current Code of Ordinances regarding landscape requirement, exclusive of any requirements to maintain landscaping the Right of Way. Owner shall remove all landscaping from the right-of-way within 60 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. This Agreement is a covenant that runs with the land. Upon any transfer of the subject property, the transferee shall be deemed to assume the Owner's obligations under this Agreement, and the Owner shall be released of any further responsibility.

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 Pages to Follow]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on their behalf this \_\_\_\_ day of \_\_\_\_\_, 2019.

ATTEST:

**CITY OF DELRAY BEACH, FLORIDA**

\_\_\_\_\_  
Katerri Johnson, City Clerk

By: \_\_\_\_\_  
Shelly Petrolia, Mayor

Approved as to legal form  
and sufficiency:

\_\_\_\_\_  
Lynn Gelin, City Attorney

WITNESS #1:

**ROSEBUD 3<sup>rd</sup> AVENUE, LLC**, a Florida limited  
liability company

\_\_\_\_\_  
(name printed or typed)

By: **ROSEBUD CAPITAL, INC.**, a Florida corporation,  
its Manager

By: \_\_\_\_\_  
Craig Menin, President

WITNESS #2:

\_\_\_\_\_  
(name printed or typed)

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019 by **Craig Menin**, as President of Rosebud Capital Inc., as Manager of **ROSEBUD 3<sup>rd</sup> AVENUE, LLC**, a Florida Limited Liability Company on behalf of the company. He is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification and did/did not take an oath.

(SEAL)

\_\_\_\_\_  
Signature of Notary Public  
State of \_\_\_\_\_

## CONSENT OF MORTGAGEE

CITY NATIONAL BANK OF FLORIDA (Mortgagee), is the holder of that certain Mortgage, Assignment of Rents and Security Agreement dated as of April 26, 2019, recorded in Official Records Book 30572, at Page 1767, of the Public Records of Palm Beach County, Florida ("Mortgage"), which encumbers the following described property, in Palm Beach County, Florida, to wit:

Parcel "A" of Metropolitan at Delray, according to the plat thereof as recorded in Plat Book 123, at Page 52, of the Public Records of Palm Beach County, Florida.

The undersigned, Mortgagee, hereby consents to the foregoing Landscape Maintenance Agreement ("Agreement") from **Rosebud 3<sup>rd</sup> Avenue, LLC**, a Florida Limited Liability Company ("Grantor") to the **City of Delray Beach**, a municipal entity ("Grantee") and hereby subordinates the lien of its Mortgage to the Agreement.

IN WITNESS WHEREOF, this Consent and Joinder is executed by the undersigned this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

WITNESS #1:

CITY NATIONAL BANK OF FLORIDA

\_\_\_\_\_  
\_\_\_\_\_

(Printed Name)

By: \_\_\_\_\_

\_\_\_\_\_

(Printed Name & Title)

WITNESS #2:

\_\_\_\_\_  
\_\_\_\_\_

### Acknowledgement

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

ACKNOWLEDGED and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, as \_\_\_\_\_ of CITY NATIONAL BANK OF FLORIDA, on behalf of the financial institution.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

[SEAL]

**EXHIBIT A**  
**APPROVED LANDSCAPE PLANS**

DELRAY CITY MARKET

SOUTH EAST 3RD AVENUE | DELRAY BEACH, FL 33483

EXHIBIT A

SEAL  
(MARSH C. KRIPLEN LIC.FL LA6667007)

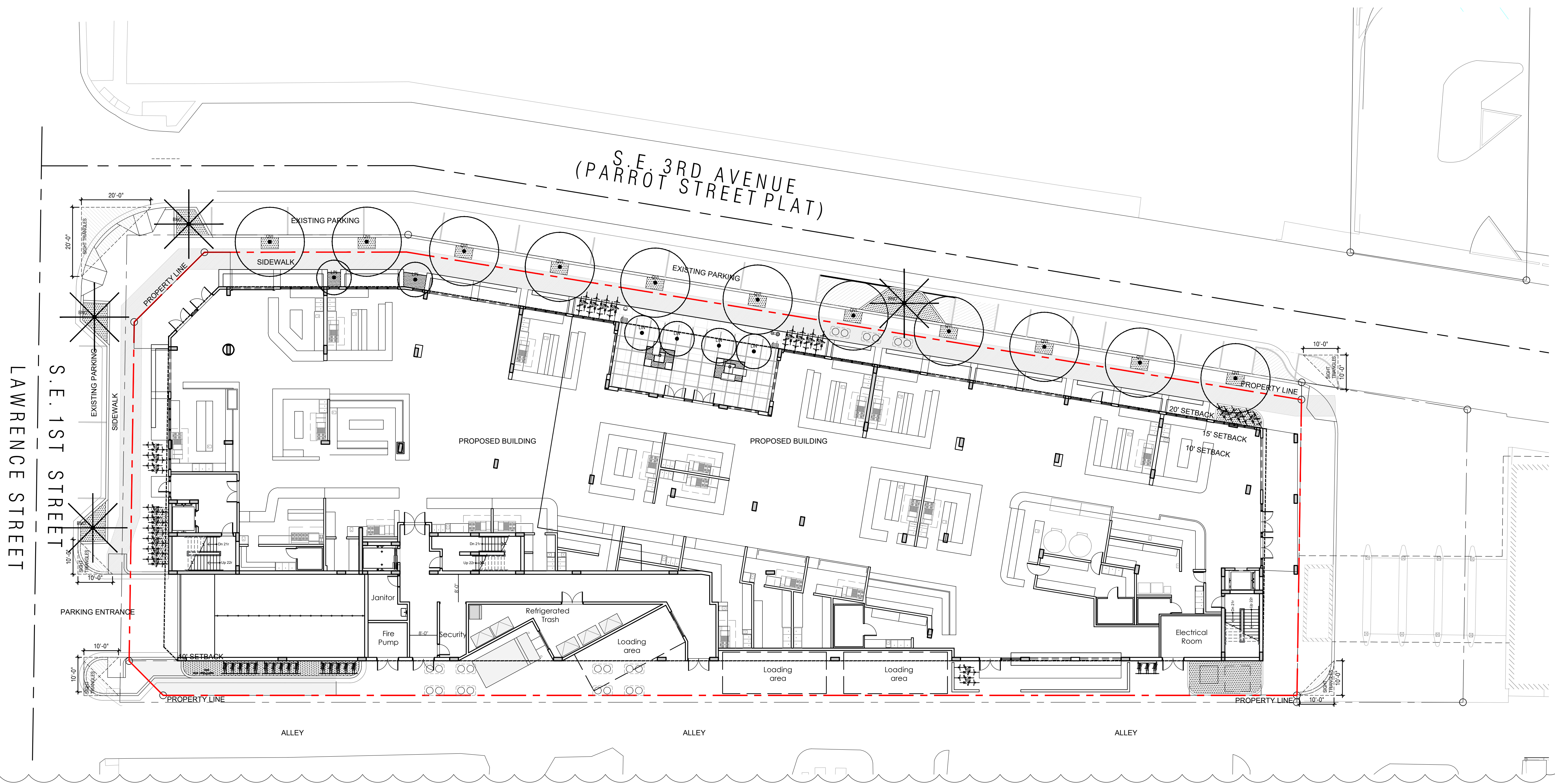
ENLARGED TREE & PALM PLANTING PLAN	
DATE	ISSUE
09.21.2018	REVISION 1
10.15.2018	REVISION 2



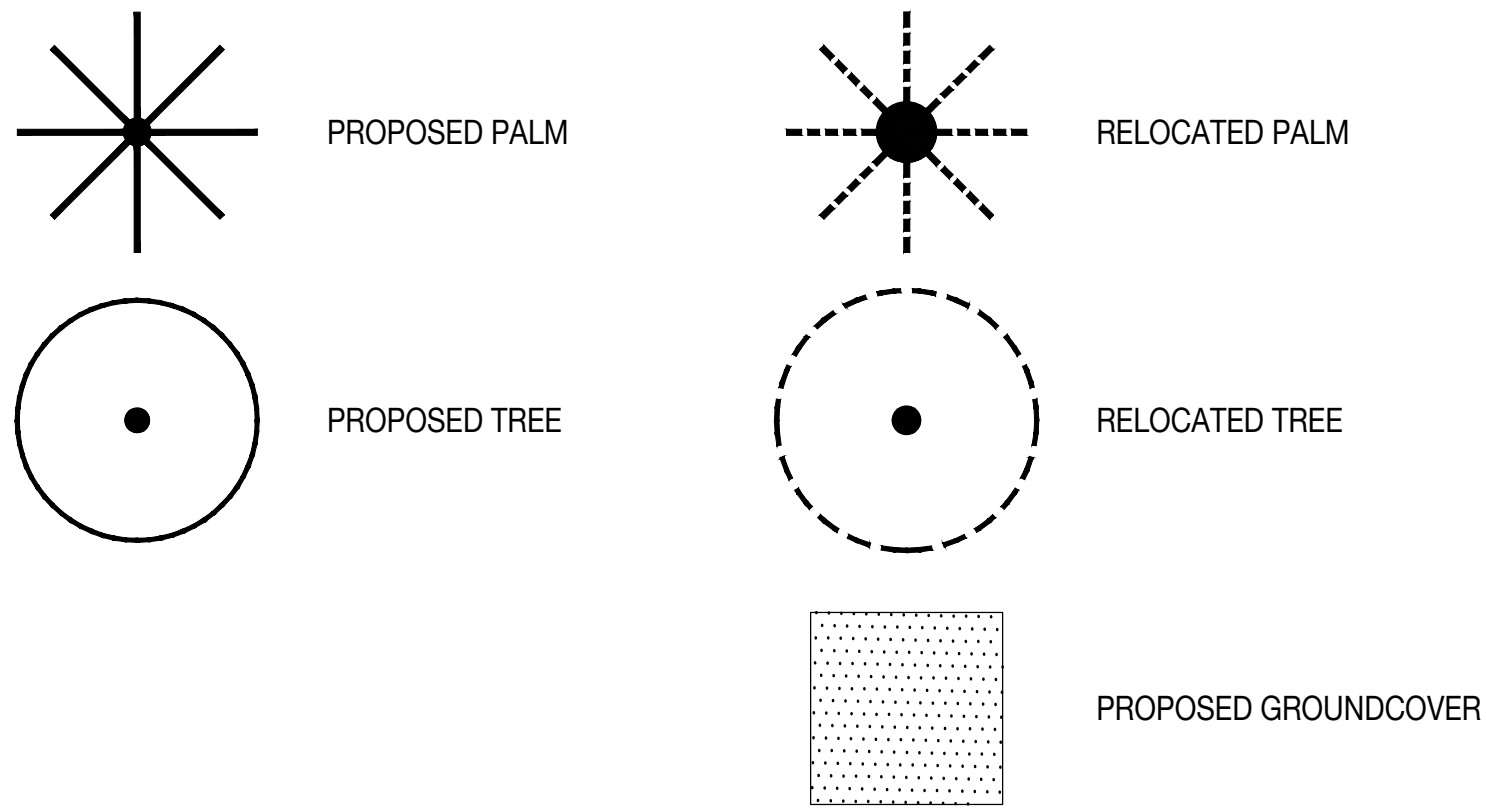
0 8' 16'  
SCALE 1/16"=1' - 0"

L401

© COPYRIGHT LAND



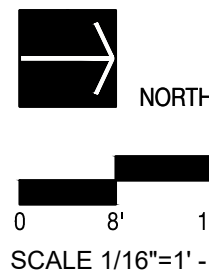
PLANTING LEGEND



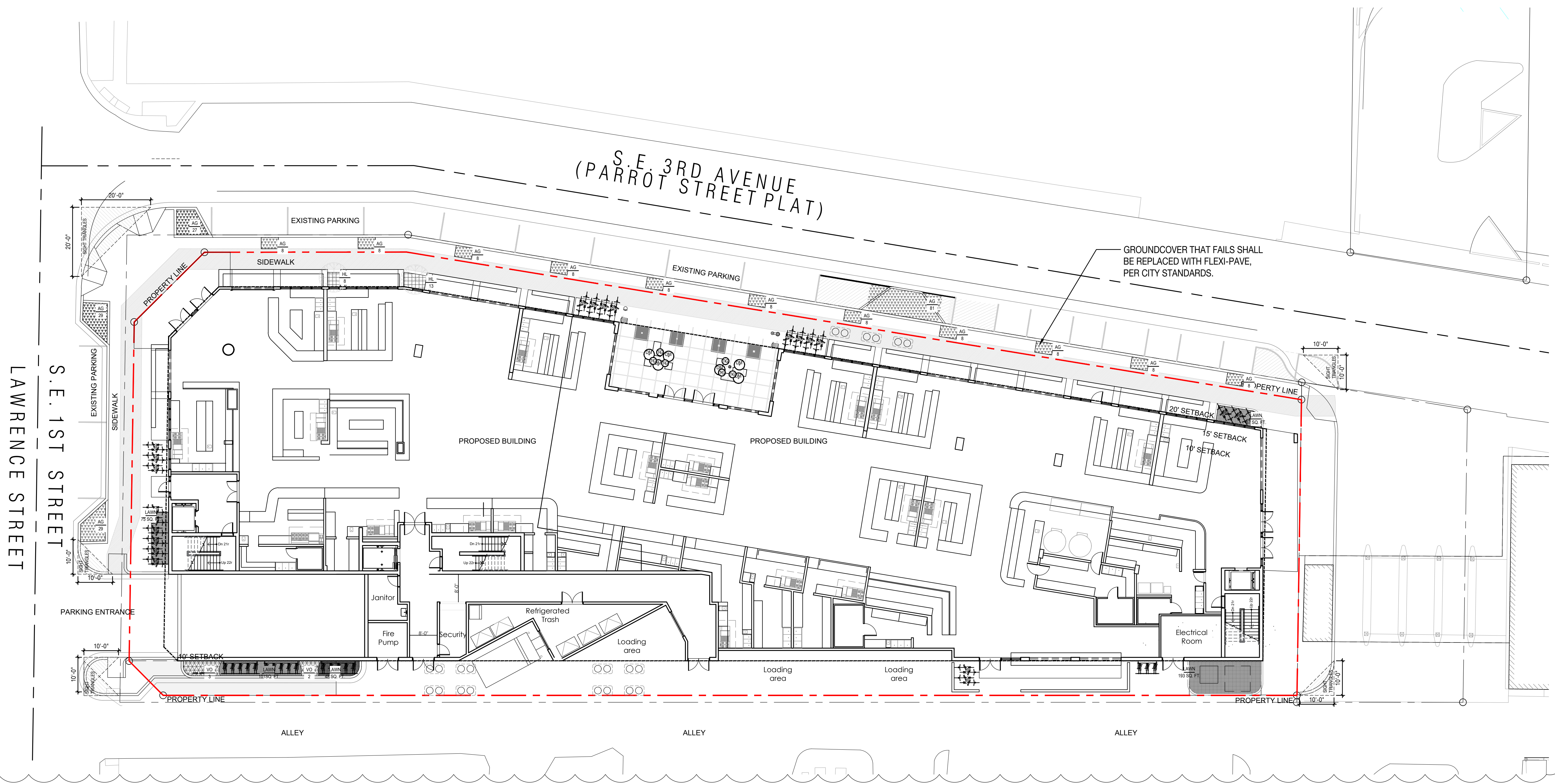


SEAL  
(MARSH C. KRIPLEN LIC.FL LA6667007)

ENLARGED UNDERSTORY PLANTING PLAN	
DATE	ISSUE
09.21.2018	REVISION 1
10.15.2018	REVISION 2



L402



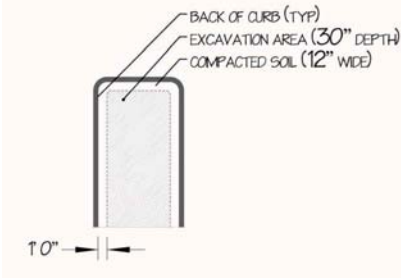
UNDERSTORY PLANTING LEGEND

- |  |                       |  |                            |
|--|-----------------------|--|----------------------------|
|  | AG, ARACHIS GLABRATA  |  | HL, HYMENOCALLIS LATIFOLIA |
|  | VO, VIBURNUM OBOVATUM |  | LAWN                       |
|  | PROPOSED SHRUB        |  |                            |



PLANTING NOTES

1. PLANT MATERIAL IS TO BE HEALTHY SPECIMENS FREE FROM DISEASE OR DAMAGE, AND IS TO BE MAINTAINED IN EXCELLENT CONDITION WHILE ON THE JOBSITE. LANDSCAPE ARCHITECT SHALL INSPECT PLANT MATERIAL UPON ARRIVAL TO JOBSITE AND WILL REJECT PLANT MATERIAL THAT DOES NOT MEET THE STANDARDS DESCRIBED WITHIN THE CONTRACT DOCUMENTS.
2. THE LANDSCAPE ARCHITECT WILL PERIODICALLY INSPECT PLANT MATERIAL STOCKPILED AND/OR PLANTED ON SITE DURING THE COURSE OF CONSTRUCTION. PLANT MATERIAL NOT MEETING THE STANDARDS CONTAINED WITHIN CONTRACT DOCUMENTS SHALL BE REPLACED AT NO COST TO THE OWNER.
3. PROVIDE MATCHING SIZES AND FORMS FOR EACH PLANT OF THE SAME SPECIES UNLESS OTHERWISE INDICATED.
4. CONTRACTOR TO VERIFY ALL QUANTITIES. IN CASE OF DISCREPANCIES, GRAPHICALLY SHOWN QUANTITIES SHALL TAKE PRECEDENCE.
5. ALL NEWLY INSTALLED LANDSCAPE MATERIAL INCLUDING TREES AND PALMS SHALL BE FLORIDA GRADE NO. 1 OR BETTER IN ACCORDANCE WITH THE FDACS GRADES AND STANDARDS MANUAL FOR NURSERY PLANTS (2015 OR CURRENT PUBLICATION).
6. REFER TO PLANTING DETAILS FOR PLANTING, STAKING AND GUYING REQUIREMENTS. COORDINATE GUYING AND STAKING OF CHARACTER PLANTS WITH LANDSCAPE ARCHITECT. CONTRACTOR TO REMOVE AND DISPOSE OF ALL STAKING, GUYING, TREE WRAP, NURSERY TAPE ETC. AT THE END OF THE GUARANTEE PERIOD.
7. THE CONTRACTOR SHALL PRUNE EXISTING AND/OR NEW TREES ONLY PER LANDSCAPE ARCHITECT DIRECTION.
8. THE CONTRACTOR SHALL STAKE THE LOCATIONS OF ALL TREES AND B&B SHRUBS FOR LANDSCAPE ARCHITECT REVIEW AND APPROVAL, PRIOR TO INSTALLATION.
9. ALL ROOT-WRAPPING MATERIALS THAT ARE NOT BIO-DEGRADABLE SHALL BE REMOVED FROM THE ROOT BALL. ROOT BALLS SHALL BE FREE OF WEEDS.
10. SPECIFIED PLANT MATERIAL SIZES SHALL BE CONSIDERED MINIMUM SIZES.
11. FINISH GRADE OF PLANTING BEDS SHALL BE ONE (1) INCH BELOW ADJACENT FLATWORK, UNLESS SPECIFIED OTHERWISE.
12. MULCH OR PLANTING BED DRESSING SHALL BE PLACED IN ALL PLANTING AREAS AS SPECIFIED. MULCH OR PLANTING BED DRESSING SHALL NOT BE PLACED WITHIN SIX (6) INCHES OF TREE TRUNKS. MULCHING SHOULD BE REPEATED ANNUALLY DURING THE AUTUMN TO A THREE (3) INCH DEPTH.
13. ALL PLANT MATERIAL SHOULD RECEIVE AN ORGANIC FERTILIZER IN LIMITED APPLICATION FOLLOWING INSTALLATION. TYPE AND APPLICATION RATE AND METHOD OF APPLICATION TO BE SPECIFIED BY THE CONTRACTOR AND APPROVED BY THE LANDSCAPE ARCHITECT.
14. EXCESS FERTILIZER SHALL BE DISPOSED OF PROPERLY OFF-SITE. IT SHALL NOT BE DISPOSED OF IN STORM DRAINS AND/OR DRYWELLS.
15. STOCKPILED PLANT MATERIAL TO BE PLACED IN THE SHADE AND PROPERLY HAND-WATERED UNTIL PLANTED.
16. MINI-NUGGET TYPE DECORATIVE BARK MULCH WILL BE USED TO RETURN NUTRIENTS TO THE SOIL, REDUCE MAINTENANCE AND MINIMIZE EVAPORATION FOR AREAS APPROXIMATE TO THE RESIDENCE. LARGER SHREDDED BARK MULCH WILL BE USED FOR STEEP AREAS SO SLOUGHING IS LESS LIKELY TO OCCUR.
17. PRESERVE & PROTECT ALL EXISTING VEGETATION INDICATED TO REMAIN AT ALL TIMES.
18. SIX (6) INCH PLANT MIX SHALL BE PROVIDED FOR ALL LAWN, TURF, AND NATIVE PLANTING ZONES. 18 INCH PLANT MIX SHALL BE PROVIDED FOR ALL PERENNIAL PLANTING BEDS UNLESS OTHERWISE NOTED.
19. LANDSCAPE CONTRACTOR SHALL GUARANTEE ALL NEW TREES AND PALMS FOR A PERIOD OF 1-YEAR FROM DATE OF INITIAL ACCEPTANCE.
20. EXISTING NATIVE SOIL WITHIN ALL LANDSCAPE ISLANDS, INTERIOR LANDSCAPE STRIPS AND PERIMETER LANDSCAPE STRIPS, ADJACENT TO VEHICULAR USE AREAS, SHALL BE EXCAVATED DOWN TO A DEPTH OF 30 INCHES BELOW EXISTING GRADE, EXCEPT FOR A 12-INCH BUFFER FROM THE INSIDE OF CURB OR PAVEMENT (SEE DIAGRAM BELOW). A SUITABLE PLANTING SOIL MIXTURE OF 50/50, 60/40 (SAND/TOPSOIL) OR AS OTHERWISE INDICATED BY THE REGISTERED LANDSCAPE ARCHITECT. SHALL EITHER BE BACKFILLED IN PLACE OF THE NATIVE SOIL OR EFFICIENTLY MIXED WITH THE NATIVE SOIL TO CREATE AN OPTIMUM ENVIRONMENT FOR SUCCESSFUL ROOT DEVELOPMENT. IF NATIVE SOIL IS TO BE MIXED, IT SHALL FIRST BE SCREENED TO REMOVE ROCKS AND DEBRIS LARGER THAN ONE-HALF INCH IN DIAMETER PRIOR TO MIXING. ALL PROPERTIES UNDER THIS SECTION SHALL BE REQUIRED TO HAVE AN OPEN LANDSCAPE BED INSPECTION PRIOR TO BACKFILLING TO INSURE THE 30-INCH DEPTH HAS BEEN MET LDR 4.6.16 (H)(3)(N).



PLANTING SCHEDULE - GROUND LEVEL

TREES				
ABR	QUANTITY	BOTANICAL NAME	COMMON NAME	SPECIFICATIONS
QVI	11	QUERCUS VIRGINIANA	LIVE OAK	FIELD GROWN, 20' HEIGHT, 20' WIDTH, 6" CAL.
LIN	6	LAGERSTOMIA INDICA	CRAPE MYRTLE	100 GAL, MULTI TRUNK, 16' MIN. HEIGHT
PALMS				
ABR	QUANTITY	BOTANICAL NAME	COMMON NAME	SPECIFICATIONS
BNO	4	BISMARCKIA NOBILIS	BISMARCK PALM	FILED GROWN, 20' CLEAR TRUNK
SHRUBS & GROUNDCOVERS				
ABR	QUANTITY	BOTANICAL NAME	COMMON NAME	SPECIFICATIONS
AO	254	ARACHIS GLABRATA	ORNAMENTAL PEANUT	3 GAL, 18" O.C.
DM	6	DIOON MEJIAE	DIOON	15 GAL, AS SHOWN
HL	21	HYMENOCALLIS LATIFOLIA	SPIDER LILY	3 GAL, 18" O.C.
VO	5	VIBURNUM OBOVATUM	WALTER'S VIBURNUM	7 GAL, 36" O.C.
VINES				
TG	6	THUNBERGIA GRANDIFLORA	SKY VINE	1 GAL, AS SHOWN

PLANTING SCHEDULE - SECOND FLOOR

VINES				
TG	55	THUNBERGIA GRANDIFLORA	SKY VINE	1 GAL, AS SHOWN

LANDSCAPE LEGEND

MUNICIPALITY: City of Delray Beach				
ZONING CLASS: CBD		LOT AREA: 27,212	ACRES: 0.6247	
OPEN SPACE		REQUIRED/ ALLOWED PROVIDED		
ORDINANCE/CODE SECTION: DELRAY BEACH LDR 4.6.16				
A.	Total Lot Area			
	Lot area:	37,497	S.F.	
B.	Structures, parking, walkways, drives, etc.			
		36,521	S.F.	
C.	Total pervious lot area			
		976	S.F.	
D.	Area of shrubs		293	26
	Pervious area:	976		
	Multiplier:	30%		
E.	Area of shrubs and ground covers provided			
		976	S.F.	
F.	Native vegetation required		73	26
	Required green space:	269		
	Multiplier:	25%		
G.	Native vegetation provided			
		26	S.F.	
H.	Total paved vehicular use area			
		269	S.F.	
I.	Total interior landscape area required		27	27
	Total vehicular use area:	269		
	Multiplier:	30%		
J.	Total interior			
		27	S.F.	
K.	Total interior shade trees		0	4
	Interior landscape:	27		
	Multiplier:	125	S.F.	
L.	Total interior shade trees provided			
		4	Tree	
M.	Total linear feet surrounding parking or vehicular use areas			
		514	L.F.	
N.	Total number of perimeter trees required		17	15
	Vehicular use areas:	514		
	Multiplier:	30		
O.	Total number of perimeter trees provided			
		15	Trees	
* Includes palms at 2 palms : 1 tree.				
P.	Total number of existing trees to be saved on site			
		-	Trees	
Q.	Total number of native trees required		30	11
	Total interior shade trees:	4		
	Total perimeter trees:	15		
	Multiplier:	50%		
R.	Total number of native trees provided			
		11	Trees	
S.	Total number of trees on plan provided			
		19	Trees	

LAND

2610 NORTH MIAMI AVENUE  
MIAMI, FL 33127  
614.439.4895  
WWW.LAND.DESIGN

DELRAY CITY MARKET

SOUTH EAST 3RD AVENUE | DELRAY BEACH, FL 33480

SEAL  
(MARSH C. KRIPLIN LIC.FL LA6667007)

PLANTING SCHEDULE & NOTES	
DATE	ISSUE
09.21.2018	REVISION 1
01.15.2019	REVISION 2

L400

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