

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

LANDSCAPE MAINTENANCE AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2021 by and between the **City of Delray Beach**, Florida ("City") and **Delray Beach Community Redevelopment Agency**, a Florida public body corporate and politic created pursuant to Section 163.356 F.S. ("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 and zoning regulations within the Central Business District, Owner shall be allowed to install landscaping material in the right-of-way of N.W. 1st Street and NW 5th 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 N.W. 1st Street and NW 5th 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. 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 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 sixty (60) 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. At all times hereto, the Owner shall own and maintain all landscaping installed in the right-of-way by the Owner.

7. If for any reason the City decides that it needs the right-of-way of N.W. 1st Street and NW 5th 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 sixty (60) 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. The indemnity obligation of the Owner for actions sounding in tort is limited in

accordance with the provisions of section 768.28, Florida Statutes, to \$200,000 for any claim or judgment by any one person and to \$300,000 for all claims or judgments, or portions thereof, arising out of the same incident or occurrence, when totaled together inclusive of attorney's fees and costs. The terms claim and judgment, as used herein, are inclusive of attorney's fees and costs.

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 subject property, and such future owner shall be deemed to have assumed all the owner's obligations hereunder.

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.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on their behalf this ____ day of _____, 2021.

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

WITNESSES:

**OWNER: DELRAY BEACH COMMUNITY
REDEVELOPMENT AGENCY**

(Print or Type Name)

By: _____
Shirley Ervin Johnson, Chair

(Print or Type Name)

STATE OF FLORIDA _____

COUNTY OF PALM BEACH _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20__, by Shirley Ervin Johnson (name of person), as Chair (type of authority) for DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY, a Florida public body corporate and politic created pursuant to Section 163.356 F.S. (name of party on behalf of whom instrument was executed).

Personally known ____ OR Produced Identification ____
Type of Identification Produced _____

Notary Public – State of Florida

EXHIBIT A
Subject Property

LEGAL DESCRIPTION:

PCN 12-43-46-16-01-020-0110 - (ORB 30091, PAGE 1790): THE NORTH 50 FEET OF THE EAST 135 FEET OF BLOCK 20, CITY OF DELRAY BEACH, FLORIDA, (FORMERLY TOWN OF LINTON), ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 1, PAGE 3, OF PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

EXHIBIT B
Approved Landscape Plans

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NOTES

All plant material to be Florida #1 or better.

Sod to be St. Augustine 'Floratum', contractor to determine quantity.

All sod and landscape to receive 100% coverage from automatic irrigation system using approved water source.

Contractor responsible for all conditions and landscape specifications attached to this plant list. Plan and specifications shall be considered Contract Documents.

Mulch, topsoil, and fertilizer to be applied according to specifications.

SPECIFICATIONS

NOMENCLATURE: All plant material used shall be true to name and size in conformity with the Florida Nurserymen's Grades and Standards, and shall be Florida Grade #1 or better. Plants which do not meet specifications will not be accepted.

PLANT LISTS: Quantities, sizes, and location of plants will be determined by plan and plant lists. Size of plant shall take precedent over container size. Spacing of ground covers will be determined by plant lists. Quantities shown on plant lists are to be used as a guideline only. Contractor will be responsible for verification of actual quantities called for on plans. Discrepancies should be brought to the attention of the Landscape Architect.

SUBSTITUTIONS: No substitutions shall be accepted without consent of Landscape Architect. Any intended substitutions shall be detailed on the bid.

PLANTING SOIL: Topsoil shall be clean, sterile, and free of debris or other foreign material. Trees and palms shall be planted with a min. of 8" topsoil (50% muck, 50% sand) on sides and bottom of root ball. Rooted cuttings shall be planted in beds with a min. of 4" of topsoil worked into the top 6" of existing soil.

FERTILIZER: Palm and Tropical fertilizer (12-4-12) or approved equal shall be applied after planting and prior to mulching per manufacturers recommended application rates.

MULCH: All trees shall be mulched with 3" of approved shredded mulch in a 3 foot dia. circle. All shrubs and groundcover beds shall be mulched with 3" of approved shredded mulch in beds shown on plan or in beds 3' wide for hedges. Mulch should be Grade 'A' unless otherwise approved.

PLANTING PROCEDURE: All plants shall be planted at soil levels at which they were previously grown. Shrub and hedge material shall be planted a min. 2' away from walls or other obstructions. Material with a mature size greater than any overhangs shall be planted away from overhangs so as not to impede the natural growth habit. Sabal Palms are to be planted directly in sand. If necessary, excavate through any compacted building subgrade to undisturbed soil and backfill with planting soil.

WATERING: All plant material shall be watered in thoroughly after installation so as to remove all air pockets. B&B material shall be watered every day for a minimum one week period and thereafter so as to keep continually moist until final acceptance of the landscape installation. Contractor shall notify owner of other watering requirements after installation.

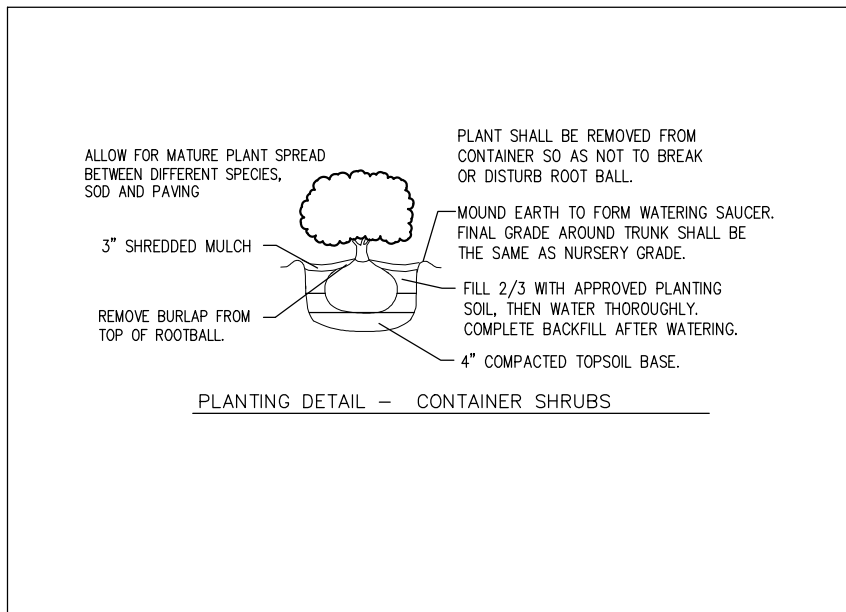
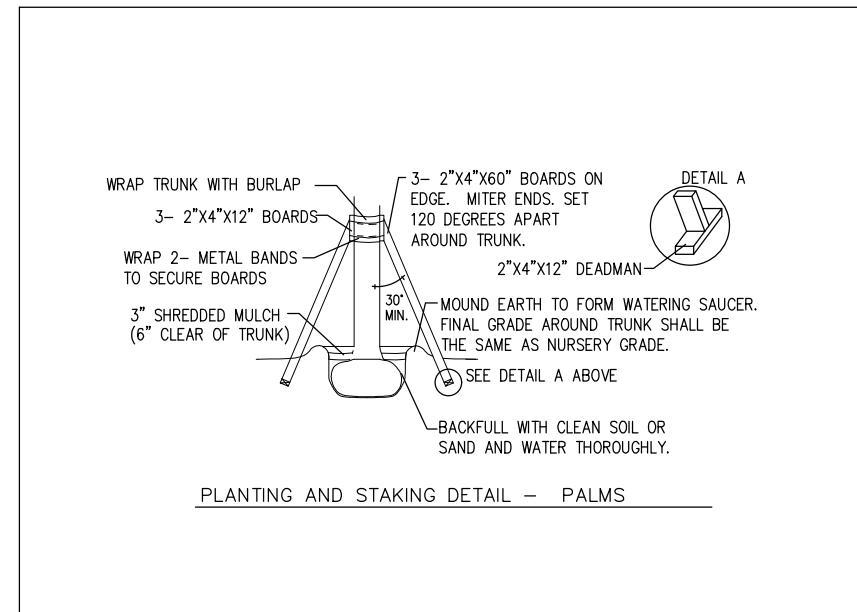
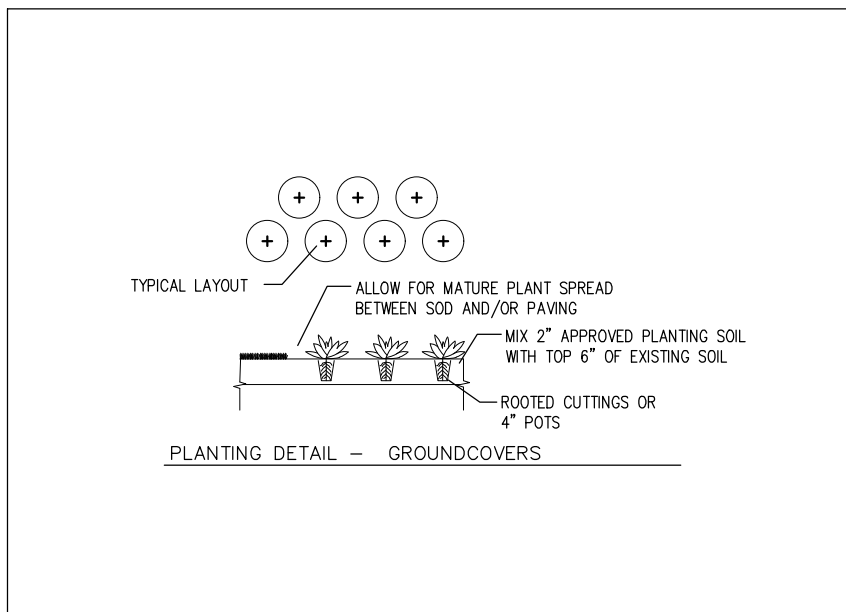
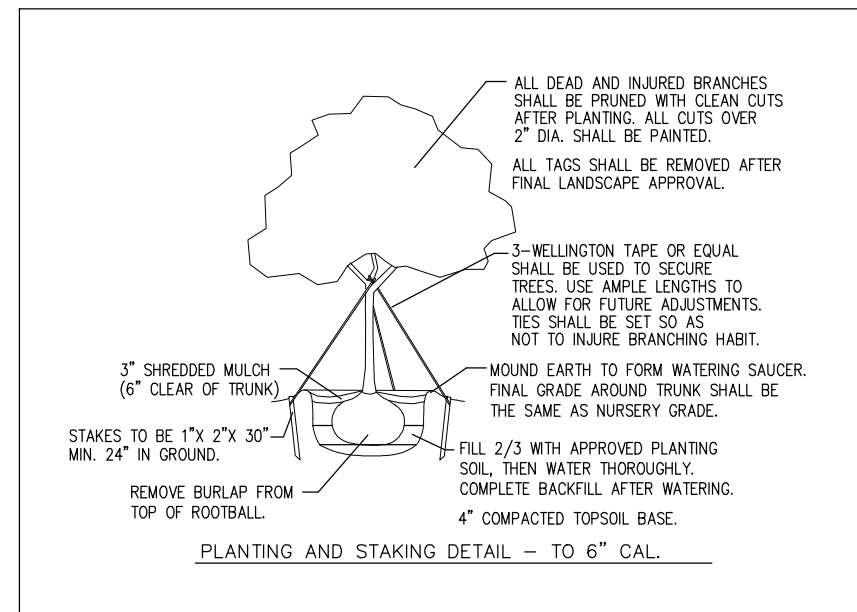
GUYNIG: All trees 8' or taller shall be guyed or staked to provide ample support such that the material will stay straight and true through the guarantee period. Methods used will be such that no injury is caused to plants. Guying shall be done at the option of the Contractor unless specifically requested by the Landscape Architect, however, Contractor shall still be responsible for all trees and palms remaining straight and true throughout the guarantee period.

SOD: Sod shall be dense, green, and well rooted, and free of debris, weeds, objectionable grasses, disease, or injurious insects. A complete 6-6-6 fertilizer shall be spread at a rate of 5 lbs. per 1000 sq. ft. Sod shall be watered to a depth of 4" after laying. All areas to be sodded shall be raked smooth and all debris removed prior to installation.

GUARANTEE: All plant materials shall be guaranteed for 1 year after completion of project. Palms are to be guaranteed for 1 year. Guarantee applies to health, position, and size. Replacement cost will be carried by Contractor.

IRRIGATION NOTES

Irrigation plan to be provided at permit submission. System to provide 100% coverage to all plants using approved water source.



LANDSCAPE CALCS-DELRAY BEACH

A. TOTAL LOT AREA		6,290.5	SQ. FT.
B. STRUCTURES, PARKING, WALKWAYS, DRIVES, ETC.		4,953.2	SQ. FT.
C. TOTAL PVIOUS LOT AREA	C=(A-B)	1337.3	SQ. FT.
D. AREA OF SHRUBS AND GROUND COVER REQUIRED	D=(C x .30)	401	SQ. FT.
E. AREA OF SHRUBS AND GROUNDCOVERS PROVIDED		920	SQ. FT.
F. NATIVE VEGETATION REQUIRED	F=(D x .25)	100	SQ. FT.
G. NATIVE VEGETATION PROVIDED		225	SQ. FT.
H. TOTAL PAVED VEHICULAR USE AREA		N/A	SQ. FT.
I. TOTAL INTERIOR LANDSCAPE AREA REQUIRED	I=(H X .10)	N/A	SQ. FT.
J. TOTAL INTERIOR LANDSCAPE AREA PROVIDED		N/A	SQ. FT.
K. TOTAL INTERIOR SHADE TREES REQUIRED	K=(I / 125 S.F.)	N/A	TREES
L. TOTAL INTERIOR SHADE TREES PROVIDED		N/A	TREES
M. TOTAL LINEAR FEET SURROUNDING PARKING OR VEHICULAR USE AREA		N/A	L.F.
N. TOTAL NUMBER OF PERIMETER TREES REQUIRED	N=(M / 30)	N/A	TREES
O. TOTAL NUMBER OF PERIMETER TREES PROVIDED		N/A	TREES
P. TOTAL NUMBER OF TREES TO BE SAVED OF SITE		1	TREES
Q. TOTAL NUMBER OF NATIVE TREES REQUIRED	Q=(K + N) x .50	N/A	TREES
R. TOTAL NUMBER OF NATIVE TREES PROVIDED		4	TREES
S. TOTAL NUMBER OF TREES ON PLAN PROVIDED		4	TREES AND 5 PALMS

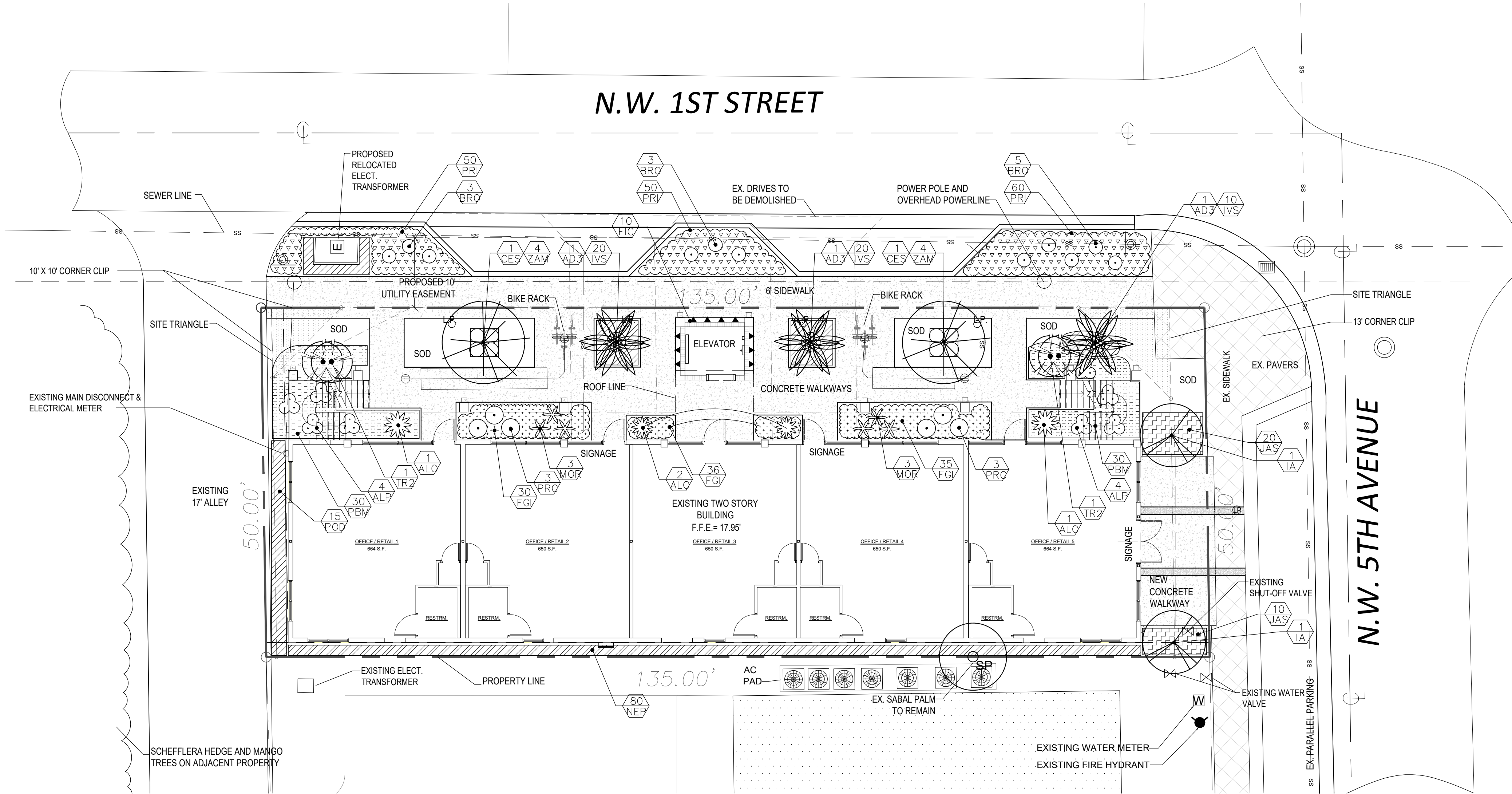
PLANT LIST

SYM	QTY	PLANT AND SPECIFICATION
TREES AND PALMS		
AD3	3	Adonidia merrillii (Double Adonidia Palm) 12' o.a. ht., triples, full, matched
N xx CES	2	Conocarpus erectus 'sericeus' (Silver Buttonwood) 12' o.a. ht., single trunk, 6' c.t., 7' spr matched.
N xx IA	2	Ilex x attenuata (East Palatka Holly) 16' ht., 6' c.t., single trunk, 7' spr. matched
N xx TR2	2	Thrinax radiata (Double Thatch Palm) 10'-12' o.a. ht., 3' c.t., double, full canopy, matched
SHRUBS, GROUNDCOVERS AND ACCENTS		
ALO	4	Alcacia odora (Alcacia) 4' ht., full, matched
ALP	8	Alpinia z. 'Variegata' (Variegated Shell Ginger) 36" ht., 24" spr.
BRO	11	Alcantarea imperialis (Imperial Bromeliad) 20" ht., 30" spr., matched
MOR	6	Dietes iridiades (African Iris) 24" ht., 18" spr., full, matched
FIC	10	Ficus pumila (Creeping Fig) 36" ht., full, trellis
xx FGI	101	Ficus m. 'Green Island' 12" ht., 14" spr., 18" o.c.
JAS	30	Jasminum multiflorum (Downy Jasmine) 16" ht., 16" spr., 18" o.c.
PRC	6	Philodendron 'Rojo Congo' (Rojo Congo Philodendron) 24" ht., 24" spr., matched
PBM	60	Philodendron 'Burle Marx' (Burle Marx Philodendron) 16" ht., 16" spr., 24" o.c.
POD	30	Podocarpus macrophyllus (Podocarpus Hedge) 5' ht., 18" spr., 24" o.c.
PRI	160	Podocarpus m. 'pringles' (Podocarpus Pringles) 14" ht., 14" spr., 18" o.c.
N xx NEP	80	Nephrolepis spp. (Boston Fern) 12" ht., 12" spr., full, 18" o.c.
N xx IVS	50	Ilex vomitoria 'Schillings' (Youpon Holly) 18" ht., 18" spr., 18" o.c.
N xx ZAM	8	Zamia floridana (Florida Coontie) 20" ht., 20" spr., full
SOD		St. Augustine sod. Contractor to determine quantity.
MULCH		3" of Non-Cypress Mulch Contractor to determine quantity.
** DENOTES DROUGHT TOLERANT		
N DENOTES NATIVE SPECIES		

CALL 48 HOURS BEFORE YOU DIG.

IT'S THE LAW
1-800-432-4770

SUNSHINE STATE ONE CALL OF FLORIDA, INC.



SCALE: 1"=10'-0"

PROJECT

98 NW 5TH AVENUE

DELRAY BEACH, FL

TITLE

LANDSCAPE PLAN

PROJ. NO.

FILE NAME

BB DRAWN

07/15/19 DATE

01/27/20 REV.

04/03/20 site plan update

08/07/20 site plan update

01/22/21 site plan update

SHEET

LP-1

OF

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