

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**

R. A. Massi

Robert A. Massi
(Print or Type Name)

By: Shirley Ervin Johnson
Shirley Ervin Johnson, Chair

Heather Hinkle

HEATHER HINKLE
(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 3 day of August, 2021, 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 _____

Tracy Lynn Waterlander
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

