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Palm Beach County, Florida
Sharon R. Bock, CLERK & COMPTROLLER
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Prepared by: RETURN:

Noel Pfeffer, Esq.
City Attorney's Office
200 N.W. 1st Avenue
Delray Beach, FL 33444

LANDSCAPE MAINTENANCE AGREEMENT

THIS AGREEMENT is made this 1st day of November, 2014 by and between the City of Delray Beach, Florida ("City") and J&M HOLDINGS AND INVESTMENTS, INC. ("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 SE 1st Ave and SE 1st St 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 SE 1st Ave and SE 1st St; 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 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. At all times here to, 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 SE 1st Ave and SE 1st St 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. Owner shall at all times hereafter indemnify, hold harmless and defend the 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. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement.

The Owner shall indemnify and hold harmless the City, its officers and employees from all suits, actions, claims and liability arising solely out of the Owner's installation and maintenance of landscaping in the City's right-of-way.

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.

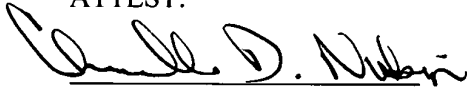
10. This Agreement may not be assigned or transferred by the Owner, in whole or part without the written consent of the City.

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.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on their behalf this day of November, 2014.

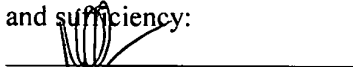
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City Clerk

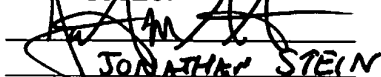
CITY OF DELRAY BEACH, FLORIDA

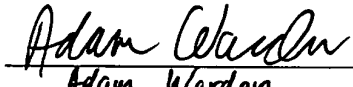
By: 
Cary Glickstein, Mayor

Approved as to legal form
and sufficiency:

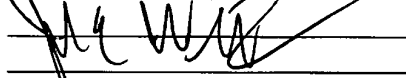

City Attorney

WITNESSES:


JONATHAN STEIN
(Print or Type Name)


Adam Warden
(Print or Type Name)

J&M HOLDINGS AND
INVESTMENTS, INC.


Joseph E. White III

STATE OF Florida

COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 10th day of November, 2014, by Joseph E. White III, as President
(name of officer or agent, title of officer or agent), of J+M Holdings and Investments
(name of corporation acknowledging), a Florida (state or place of incorporation)
corporation, on behalf of the corporation. He/She is personally known to me or has produced
_____ (type of identification) as identification.

Lajoi Ladd
Signature of Person Taking Acknowledgment

Lajoi Ladd
Name Typed, Printed or Stamped



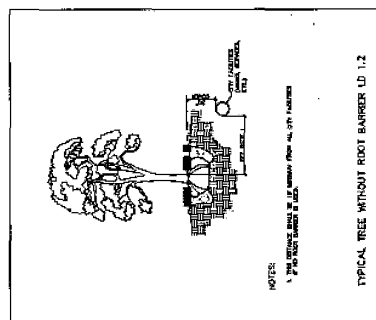
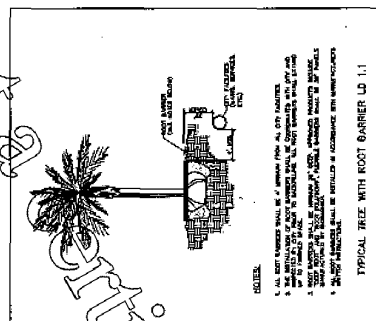
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EXHIBIT A

LEGAL DESCRIPTION

LOT 11, LESS THE NORTH 50.5 FEET AND ALL OF LOT 12, BLOCK 77, TOWN OF LINTON (NOW DELRAY BEACH), ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 1, PAGE 3, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

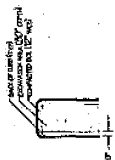
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PLANT LIST

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DETAIL

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projects:
SofA
district
office
103 a.s. 1st avenue
dickson beach
florida 33444

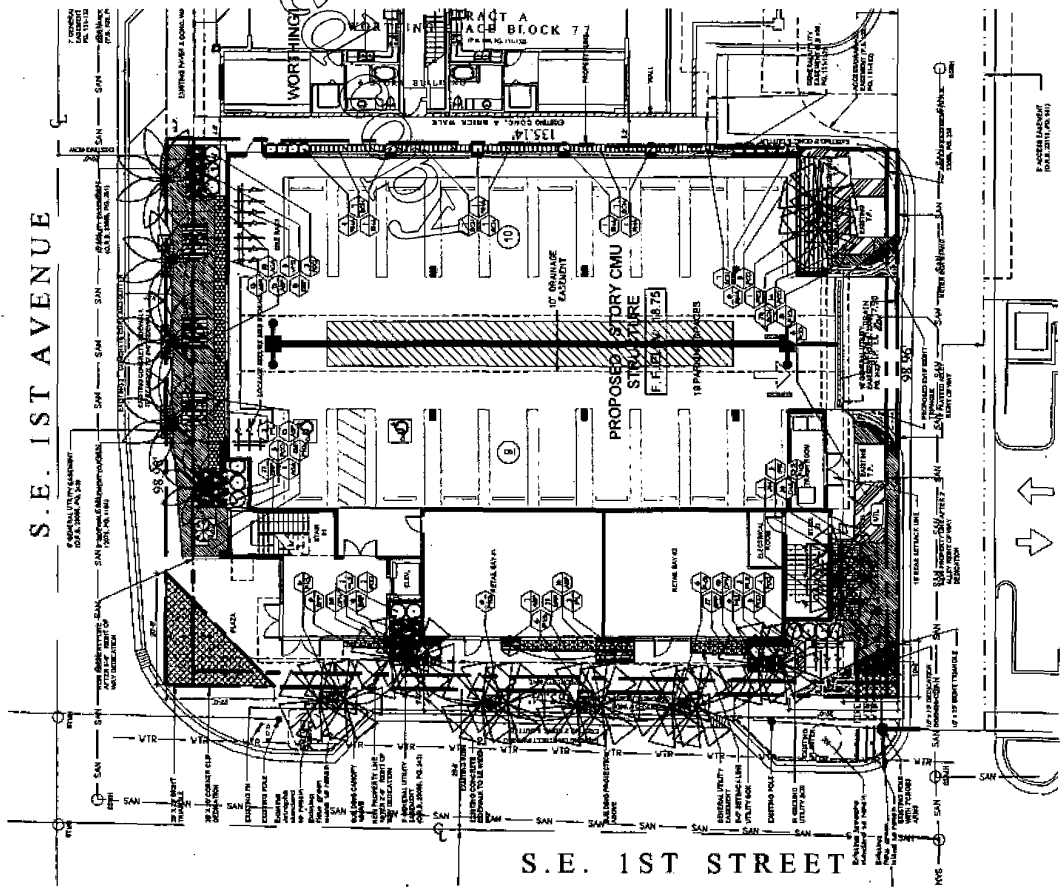
clive booker
landscape architecture/planning inc.
101 N. Congress Ave., suite 1000
Austin, TX 78701

short title:
planting
plan

Project number: 11513
date: 21-27-14
scale: 1" = 10'
drawn by: JMT

[illegible]

Sheet: 1-1





MEMORANDUM

TO: Mayor and City Commissioners

FROM: Community Improvement

THROUGH: Terry Stewart, Interim City Manager

DATE: September 18, 2014

SUBJECT: AGENDA ITEM 8.K. - REGULAR COMMISSION MEETING OF OCTOBER 7, 2014
LANDSCAPE MAINTENANCE AGREEMENT/SEAGATE YACHT CLUB, LLC

BACKGROUND

The Seagate Yacht Club is located on the west side of MacFarlane Drive. The site plans and corresponding landscape plans have been approved and certified by the Planning and Zoning Director. These plans include landscaping in the right-of-way of MacFarlane Drive. The proposed landscaping will consist of Foxtail Palms and Green Island Ficus. The owner has agreed to maintain the plant material for perpetuity and has submitted a signed City of Delray Beach Landscape Maintenance Agreement.

FINANCIAL DEPARTMENT REVIEW

The Finance Department's approval is not required.

DISCUSSION

The item before the City Commission is to approve the Landscape Maintenance Agreement between the property owner and the City for landscape installation within the right-of-way of MacFarlane Drive.

OPERATING COST

There are no operating costs.

TIMING OF THE REQUEST

There is no time-sensitivity to this request.

FUNDING SOURCE

No funding source required.

RECOMMENDATION

Staff recommends the City Commission approve the owner's request to install the proposed plants in the City right-of-way by executing the Landscape Maintenance Agreement.