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# BEFORE THE STATE OF FLORIDA FLORIDA HOUSING FINANCE CORPORATION

FEB 13, 2023 4:32 PM

FLORIDA HOUSING FINANCE CORPORATION

THE ENCLAVE AT RIO, LP

Petitioner,

FHFC Case No. 2023-019BP RFA 2022-203 Application No. 2023-080C

VS.

FLORIDA HOUSING	FINANCE
CORPORATION,	

Respondent.	
	/

# FORMAL WRITTEN PROTEST AND PETITION FOR ADMINISTRATIVE HEARING

Petitioner, The Enclave at Rio, LP, ("The Enclave"), pursuant to section 120.57(3), Florida Statutes ("F.S."), and Rules 28-110 and 67-60, Florida Administrative Code ("FAC") hereby files this Formal Written Protest and Petition for Administrative Hearing regarding the review, ranking, scoring and eligibility decisions of Respondent, FLORIDA HOUSING FINANCE CORPORATION ("Florida Housing") in awarding funding pursuant to Request for Application 2022-203 Housing Credit Financing for Affordable Housing Developments Located in Miami-Dade County (the "RFA"). In support of this challenge The Enclave provide as follows:

- The Enclave is a Florida limited liability company in the business of providing affordable housing. For purposes of this proceeding The Enclave is located at 1022 West 23d Street, Suite 300, Panama City, Florida 32405.
- Florida Housing is the allocating agency for the State of Florida that was granted the
  authority to issue the RFA for the purpose of incentivizing construction, redevelopment,
  rehabilitation or preservation of much needed affordable housing. Florida Housing's address is 227
   North Bronough Street, Suite 5000, Tallahassee, Florida 32301.

 On November 14, 2022, Florida Housing issued the RFA which offered funding as follows:

# SECTION ONE INTRODUCTION

This Request for Applications (RFA) is open to Applicants proposing the development of affordable, multifamily housing located in Miami-Dade County.

Under this RFA, Florida Housing Finance Corporation (the Corporation) expects to have an estimated \$6,855,330 of Housing Credits available for award to proposed Developments located in Miami-Dade County. This amount is an estimate which may be further adjusted based on the funding results of 2022 Construction Housing Inflation Response Program (CHIRP) Invitation to Participate (ITP). If adjusted, the final amount available for this RFA will be posted to the RFA Webpage. A listsery will be issued when this information is available.

The Corporation is soliciting applications from qualified Applicants that commit to provide housing in accordance with the terms and conditions of this RFA, inclusive of all Exhibits, applicable laws, rules and regulations, and the Corporation's generally applicable construction and financial standards.

- 4. Through the issuance of the RFA, Florida Housing sought to solicit proposals from qualified applicants that would agree to provide affordable housing consistent with the terms and conditions of the RFA, applicable laws, rules, and regulations.
- 5. On December 29, 2022, The Enclave submitted its Application in response to the RFA. The Enclave submitted its Application requesting \$3,150,000 in tax credits to construct a 100 unit affordable housing complex in Miami, Dade County, Florida. Florida Housing received 29 Applications in response to the RFA.
- 6. On January 18, 2023, the designated Review Committee, as required by the RFA, met and considered the Applications submitted in response to the RFA. The Review Committee was made up of Florida Housing staff. At the meeting the Review Committee members read into

the record individual scores for each Application and determined if each Application satisfied all threshold requirements.

- 7. The Review Committee also made eligibility determinations concerning each submitted Application. Based on the threshold and eligibility determinations and scores, the Review Committee, following the selection criteria of the RFA, recommended allocating funding to selected Applicants. The Review Committee recommended that The Enclave Application be deemed eligible for funding however not recommended for funding.
- On January 27, 2023, Florida Housing's Board of Directors considered and accepted the Review Committee's ranking, scoring and eligibility determinations.
- 9. As an Applicant seeking funding through the RFA, The Enclave is substantially affected by Florida Housing's review, scoring, ranking and eligibility determination. The results of this proceeding affects The Enclave's ability to obtain the requested funding through the RFA and could affect the ranking of other applications.
- 10. Consistent with the primary mission and goal of the RFA, The Enclave seeks to construct much needed affordable housing in Miami, Dade County, Florida. Without the funds provided through the RFA, The Enclave will be unable to provide this much needed housing. Accordingly, The Enclave's substantial interests are affected by the actions taken by Florida Housing.
- 11. As an unsuccessful Applicant, The Enclave on February 1, 2023, timely filed a Notice of Intent to Protest. (See Attachment A) This Written Protest is being timely filed to challenge the eligibility determination made by Florida Housing.
- 12. In this Petition The Enclave challenges the eligibility of Coco Plum Housing Partners, LP ("Coco"), Application No. 2023-076C as failing to meet the Ability to Proceed requirements of the RFA.

- 13. Specifically the RFA requires that an applicant demonstrate the "Ability to Proceed" elements, as of the Application Deadline, for the entire proposed Development site. Compliance with this requirement is a mandatory eligibility item.
- 14. To demonstrate the Ability to Proceed with respect to Site Plan approval, Coco was required to submit an executed Local Government Verification of Status of Site Plan Approval for Multi-Family Developments ("Verification Form"),
- To satisfy this RFA requirement Coco submitted a Form signed by Mr. Nathan
   Kogan. In its Verification Form Coco selected the following statement.

The above-referenced Development is (a) new construction, or (b) rehabilitation with new construction, or (c) rehabilitation, without new construction, that requires additional site plan approval or similar process.

The final site plan, in the applicable zoning designation, has been approved for the above referenced Development by action of the appropriate City/County legally authorized body; e.g. counsel, commission, board, department, division, etc., responsible for such approval process.

(emphasis added) (See Attachment B)

16. By comparison Enclave selected the second statement which provides as follows:

The above-referenced Development is (a) new construction, or (b) rehabilitation with new construction, or (c) rehabilitation, without new construction, that requires additional site plan approval or similar process, and

- (i) this jurisdiction provides either preliminary site plan approval or conceptual site plan approval which has been issued, or
- (ii) site plan approval is required for the new construction work and/or the rehabilitation work; however, this jurisdiction provides neither preliminary site plan approval nor conceptual site plan approval, nor is any other similar process provided prior to issuing final site plan approval. Although there is no preliminary or conceptual site plan approval process and the final site plan approval has not yet been issued, the site plan, in the applicable zoning designation, has been reviewed.

The necessary approval and/or review was performed on or before the signature date below by the appropriate City/County legally authorized body; e.g. council, commission, board, department, division, etc., responsible for such approval process.

(emphasis added)

Apparently Coco relies on a Site Plan obtained for the subject property in 2021, for

a proposed multi-use development with as many as 168 residential units. The actual unit mix of

the 2021 approved Site Plan was as follows:

Studio – 10 units

1B/1B -32 units

1B/1B + Den - 52

2B/2/B - 34

The approved Site Plan also contains numerous conditions including that any development must be

in substantial compliance with the approved Site Plan.

(See Attachment C)

18. However Coco's proposed 130 unit Development submitted to Florida Housing in

its Application differs from the approved Site Plan by proposing a Development that has the

following unit mix.

1B/1B - 70

2B/2/B - 60

19. It is believed that the Verification Form submitted by Coco was signed in error

because the proposed Development as suggested by the Application will be a substantial deviation

from the Site Plan approved in 2021 and will likely require a new application and further Site Plan

review and approval.

20. At this time it is not clear what information was provided to the local Government

to obtain the signature of the Form. A review of the available electronic public records indicates

only the 2021 approved Site Plan was provided with no further information of what if anything was

discussed concerning the affordable housing Development proposed by the Coco Application.

21. Heritage did not meet the mandatory requisite to demonstrate its Ability to Proceed as of the Application Deadline because no approved final Site Plan exists for the proposed Development rather a new Site Plan must be approved and accordingly the second statement on the

Verification Form should have been selected.

22. As a result of the foregoing, the Application filed by Coco should be deemed

ineligible for funding. If the Coco Application is deemed ineligible the Enclave Application is the

next eligible Application and would be selected for funding.

The Enclave reserves the right to amend this Petition as necessary.

Material Issues in Dispute

 a. Whether Florida Housing's review and actions taken concerning Coco's Application in response to the RFA was arbitrary or capricious, clearly

erroneous or contrary to competition.

b. Whether Coco has satisfied the RFA Ability to Proceed requirements.

c. Whether Coco's Application has been appropriately reviewed, ranked, and

scored.

WHEREFORE, The Enclave requests that a settlement meeting be scheduled and to the

extent no settlement is reached a hearing scheduled and ultimately the entry of a Recommended

and Final Order determining that Florida Housing's review and scoring of Coco's Application was

contrary to the RFA specifications and to Florida Housing's governing statutes, rules and policies

to such an extent as to be arbitrary, capricious, contrary to competition, and clearly erroneous and

finding The Enclave's Application eligible and awarded funding.

Respectfully submitted,

CARLTON, FIELDS

181 Michael F. Donaldson

MICHAEL P. DONALDSON

Florida Bar No. 0802761 Post Office Drawer 190

215 S. Monroe St., Suite 500 Tallahassee, Florida 32302

Telephone: 850/224-1585 Facsimile: 850/222-0398

Email: mdonaldson@carltonfields.com

Counsel for The Enclave at Rio, LP

# CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Formal Written Protest and Petition for Administrative Hearing was filed by e-mail with Ana McGlamory, Corporation Clerk, at (<a href="mailto:CorporationClerk@floridahousing.org">CorporationClerk@floridahousing.org</a>), and a copy via email to Hugh Brown, General Counsel, at (<a href="https://Hugh.brown@floridahousing.org">Hugh.brown@floridahousing.org</a>), both with the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, FL 32301, this 13th day of February 2023.

/s/ Michael P. Donaldson MICHAEL P. DONALDSON

### ATTORNEYS AT LAW



Michael Donaldson 850 513-3613 Direct Dial mdonaldson@carltonfields.com

215 S. Monroe Street | Suite 500 Tallahassee, Florida 32301-1866 P.O. Drawer 190 | Tallahassee, Florida 32302-0190 850.224.1585 | fax 850.222.0398 www.carltonfields.com

> Atlanta Florham Park Hartford Los Angeles Miami New York Orlando Tallahassee Tampa Washington, DC West Palm Beach

February 1, 2023

Florida Housing Finance Corporation Ana McGlamory, CP, FCP, FRP Corporation Clerk 227 North Bronough Street, Suite 5000 Tallahassee, Florida 32301-1329

**ELECTRONIC TRANSMISSION** 

Re:

RFA 2022-203 – Housing Credit Financing for Affordable Housing

Development Located in Miami-Dade County

Dear Ms. McGlamory:

On behalf of The Enclave at Rio, LP ("The Enclave") (2023-080C), this letter constitutes a Notice of Intent to Protest ("Notice") filed pursuant to sections 120.569 and 120.57(3), Florida Statutes, Rules 28-110.003 and 67.60.009, Florida Administrative Code, and the RFA.

This Notice is being filed within 72 hours (not including weekends and holidays) of the posting of the RFA on the Florida Housing's website on January 27, 2023 at 10:52 a.m. The Enclave reserves the right to file a formal written protest within (10) days of the filing of this Notice pursuant to section 120.57(3), Florida Statutes.

Sincerely,

Michael P. Donaldson Michael P. Donaldson

MPD/rb

cc: Jim Boyd

## FLORIDA HOUSING FINANCE CORPORATION LOCAL GOVERNMENT VERIFICATION OF STATUS OF SITE PLAN APPROVAL FOR MULTIFAMILY DEVELOPMENTS

N	ame	of Development:	Heritage at Gratigny Park
	la sul	annont I continu	NW 120th Terrace, Southeast of the intersection of NW 120th Terrace and NW 28th Avenue, Miami-Dade County
A	a min		diress number, street name and city and/or provide the street name, closest designated intersection and either the city (if located within a se unincorporated arcs of the county)
M	fark t	the applicable stat	fement;
1.	0	The above-re	referenced Development is (a) new construction, or (b) rehabilitation with new construction, or
		The final si Developmen	ation, without new construction, that requires additional site plan approval or similar process, ite plan, in the applicable zoning designation, has been approved for the above referenced at by action of the appropriate City/County legally authorized body; e.g. council, commission, transfer, division, etc., responsible for such approval process.
2.	(	The above-re	eferenced Development is (a) new construction, or (b) rehabilitation with new construction, or
		(c) rehabilita	ation, without new construction, that requires additional site plan approval or similar process, and
		(i) this jurisd been issued.	fiction provides either preliminary site plan approval or conceptual site plan approval which has or
		jurisdiction p similar proce conceptual si	approval is required for the new construction work and/or the rehabilitation work; however, this provides neither preliminary site plan approval nor conceptual site plan approval, nor is any other ess provided prior to issuing final site plan approval. Although there is no preliminary or ite plan approval process and the final site plan approval has not yet been issued, the site plan, able zoning designation, has been reviewed.
		City/County	y approval and/or review was performed on or before the signature date below by the appropriate legally authorized body; e.g. council, commission, board, department, division, etc., responsible royal process.
3.	C	The above-re	ferenced Development, in the applicable zoning designation, is rehabilitation without any new
		construction	and does not require additional site plan approval or similar process.
			CERTIFICATION
Te	ertify	that the City Co	unty of Miami-Dade has vested in me the authority to verify status of site plan
A	ргоч	al as specified at	(Name of City or County)  Ove and I further certify that the information stated above is true and correct.
1		a Mill	Nathan Kogon
Sig	gnatu	1400 A	Print or Type Name
		Director	12-14-22
Pri	int or	r Type Title	Date Signed

This certification must be signed by the applicable City's or County's Director of Planning and Zoning, chief appointed official (staff) responsible for determination of issues related to site plan approval. City Manager, or County Manager/Administrator/Coordinator. Signatures from local elected officials are not acceptable, nor are other signatures. If this certification is applicable to this Development and it is inappropriately signed, the certification will not be accepted. If there are alterations made to this form that change the meaning of the form, the form will not be accepted.

(Form Rev. 07-2022)



Department of Regulatory and Economic Resources

Development Services Division 111 NW 1st Street • Suite 1110 Miami, Florida 33128-1902 T 305-375-2800 www.miamidade.gov/zoning

October 6, 2021

Gabriel Boano Gratigny 27 PL LLC 1111 Kane Concourse, Suite 517 Bay Harbor Islands, Florida 33154

Re: Administrative Site Plan Review of ASPR No. A2021000029

Name and Date of Plan:

Plans entitled "Mixed Use Bldg" as prepared by Caymares Martin, consisting of twenty-one (21) sheets dated stamped received September 30, 2021

Section-Township-Range: 28-52-41

## Legal Description:

Tracts 466 and 467 of "EIGHTH ADDITION TO SEABOARD INDUSTRIAL PARK," according to the plat thereof, as recorded in Plat Book 142 Page 57, of the Public Records of Miami-Dade County, Florida

Dear Mr. Boano:

The staff of the Department of Regulatory and Economic Resources has reviewed and approved your request for site plan approval consisting of a proposed mixed-use development consisting of 168 apartment units and 1,680 sq. ft. of commercial space, subject to the following conditions:

That a site plan be submitted to and meet with the approval of the Director upon the submittal of an application for a building permit and/or Certificate of Use; said plan to include, but not be limited to: the location of structure or structures, types, sizes, location of signs, light standards, off-street parking areas, exits and entrances, drainage, walls, fences, landscaping, etc.

APPROVAL LETTER

- That in the approval of the plan, the same being substantially in accordance with that submitted for ASPR review entitled "Mixed Use Bldg" as prepared by Caymares Martin, consisting of twenty-one (21) sheets dated stamped received September 30, 2021.
- That the applicant submit to the Department for its review and approval a landscaping plan which indicates the type and size of plant material prior to the issuance of a building permit and to be installed prior to the issuance of a Certificate of Use.
- That screening of backflow preventers, check valves, and the like as required by Section 32-157(d) of the Code of Miami-Dade County be installed prior to the issuance of a Certificate of Use.
- That the use be established and maintained in accordance with the approved plan subject to the conditions referenced in this letter.
- That the applicant obtain a Certificate of Use from the Department, upon compliance with all terms and conditions, the same subject to cancellation upon violation of any of the conditions.
- That the applicant comply with all applicable conditions and requirements of the Miami-Dade County Department of Regulatory and Economic Resources — Division of Environmental Resources Management (DERM).
- That the applicant comply with all applicable conditions and requirements of the Miami-Dade County Department of Regulatory and Economic Resources – Land Development – Traffic Concurrency/Platting Section.
- That the applicant comply with all applicable conditions and requirements of the Miami-Dade County Water and Sewer Department.
- That the applicant comply with all applicable conditions and requirements of the Miami-Dade County Department of Transportation and Public Works Traffic Engineering Division.
- That the applicant comply with all applicable conditions and requirements of the Miami-Dade County Fire Rescue Department.
- 12. That the applicant shall proffer a Declaration of Restrictions/Agreement to the Department of Regulatory and Economic Resources indicating that a minimum of twelve and one-half (12.5) percent of the proposed 168 residential units (21 units) be set aside for Workforce Housing as defined in Section 33-284.83(A)(3) of the Code of Miami-Dade County.
- 13. That in the event of multiple ownership, a homeowner's association, Special Taxing

District or Community Development District shall be established in accordance with applicable regulations to assure that all common areas and facilities for use of all residents shall be maintained in a continuous and satisfactory manner, and without expense to the general taxpayer of Miami-Dade County. The instrument incorporating such provisions shall be approved by the County Attorney as to form and legal sufficiency and shall be recorded in the public records of Miami-Dade County.

This letter serves as formal notification that the Miami-Dade County Department of Regulatory and Economic Resources recommends that the applicant proceed with the permitting process so long as development remains in substantial compliance with said plans. Substantial deviation from approved plans will require review by the Department.

This item has been reviewed and approved for consistency with the standards of Ordinance No. 89-66, adopted on July 11, 1989, which established Miami-Dade County's Concurrency Management Program.

Action taken today does not constitute a final development order, and one or more concurrency determinations will subsequently be required. Provisional determinations or listings of needed facilities made in association with this initial Development Order shall not be binding with regard to future decisions to approve or deny an Intermediate or Final Development Order on any grounds.

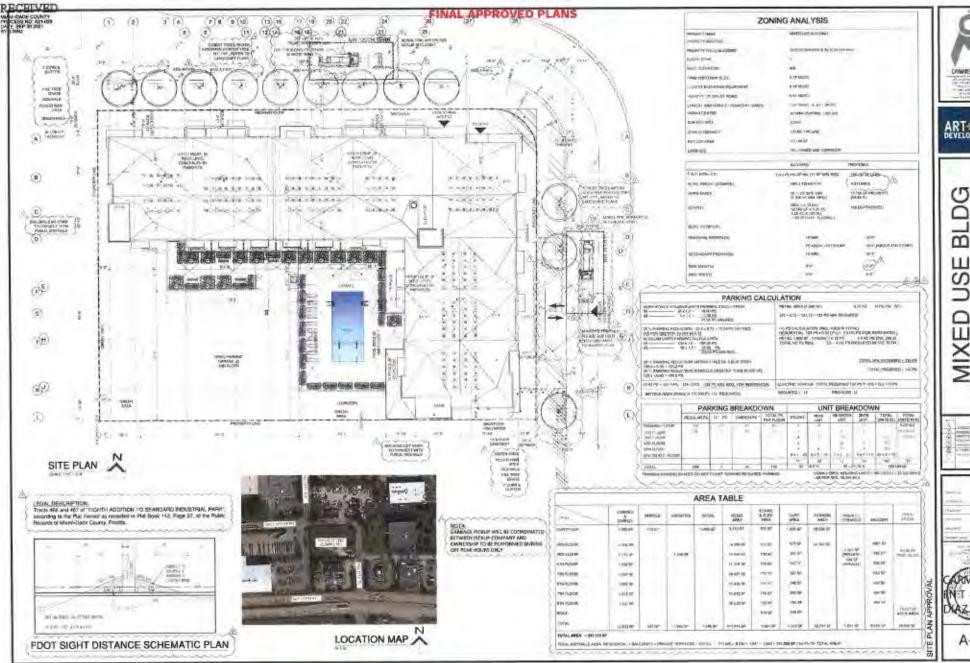
Sincerely,

Nathan Kogon, AIC Assistant Director

**Development Services Division** 

Department of Regulatory and Economic Resources

James Byers, Chief, Permitting Division
 Raul Pino, Chief, Land Development - Traffic Concurrency/Platting Section
 Ronald Connally, Supervisor, Zoning Hearing Section

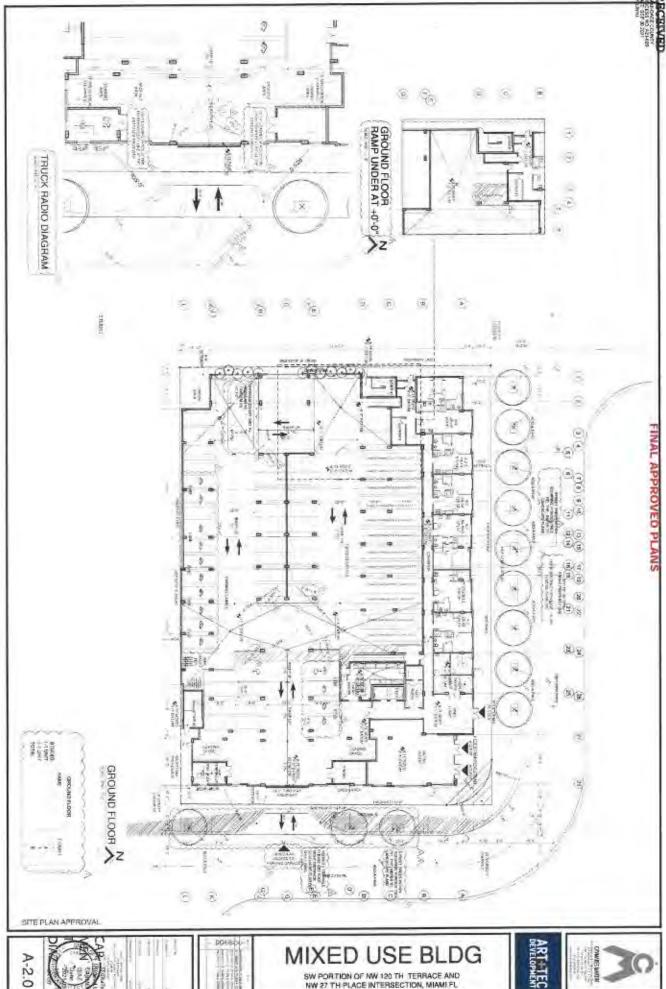






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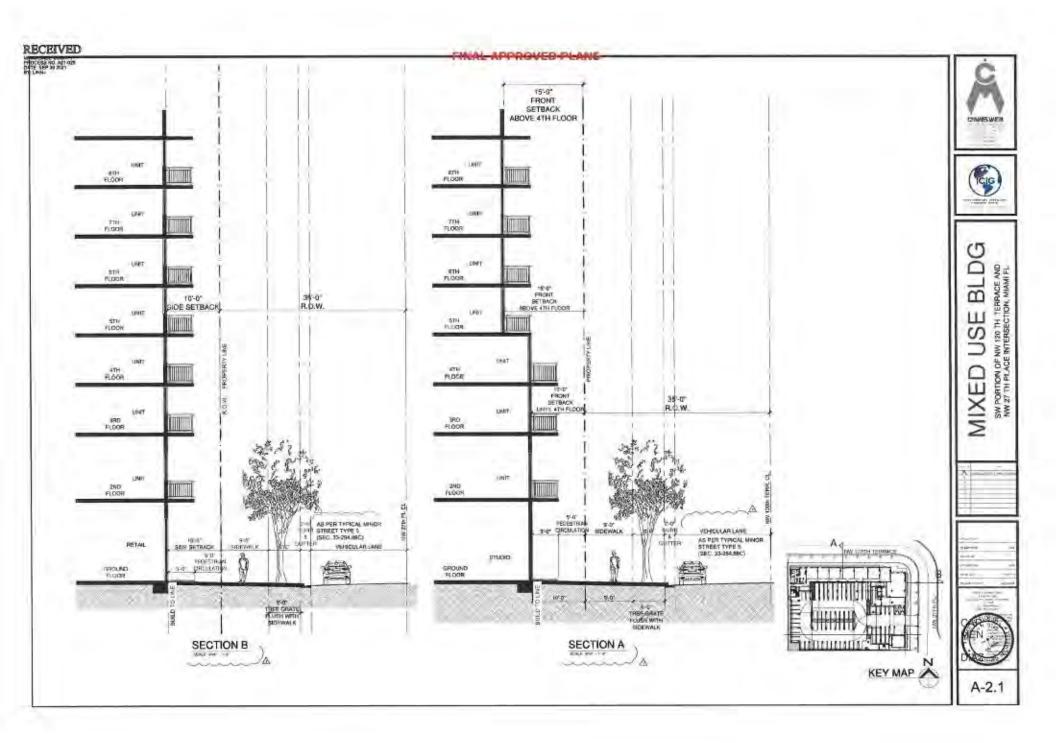


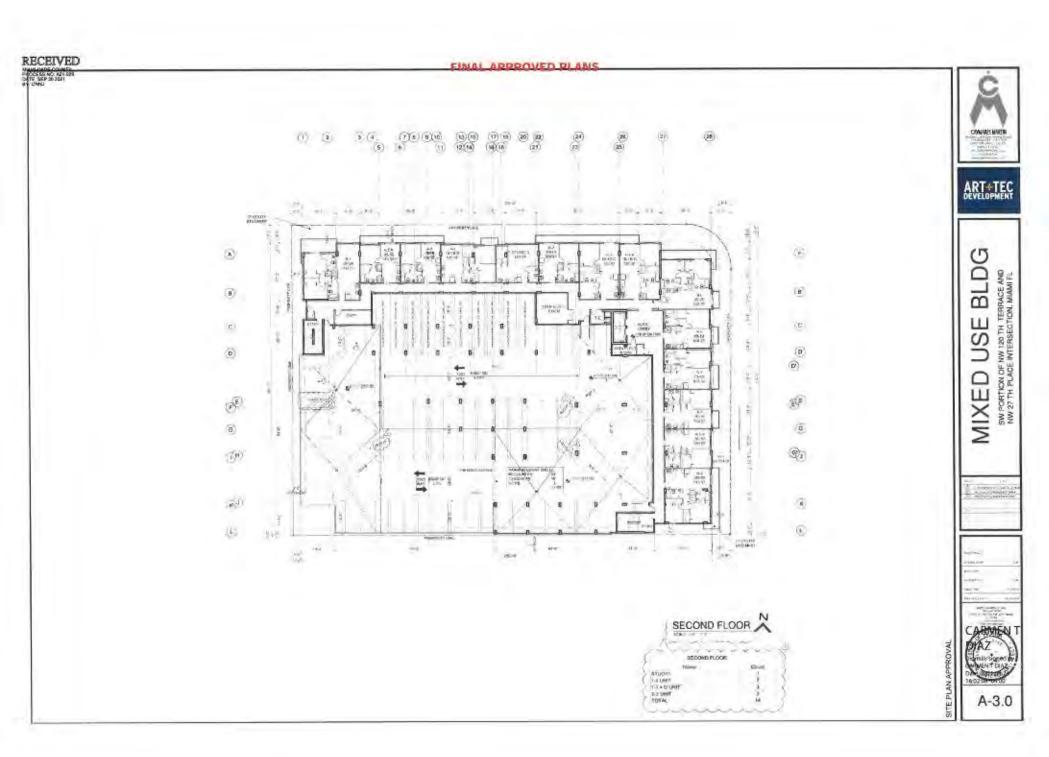


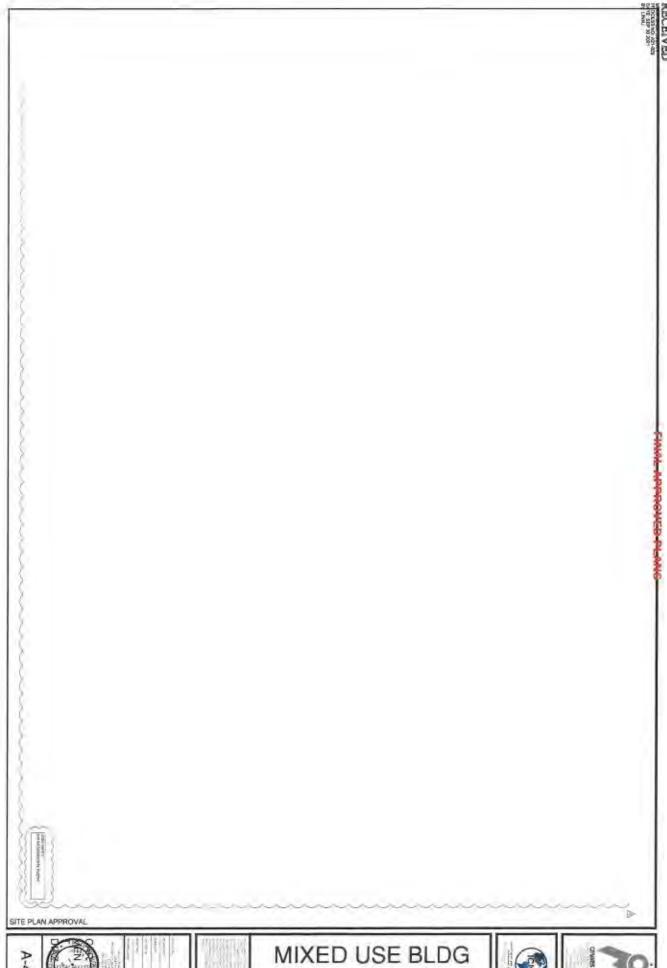














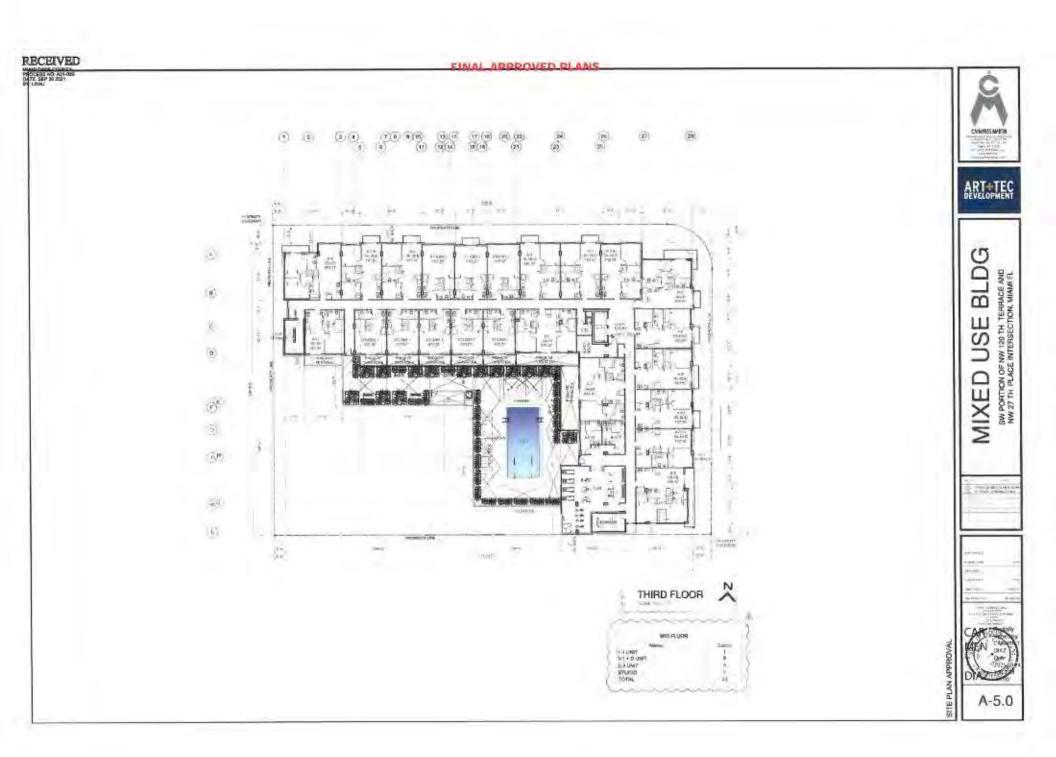


















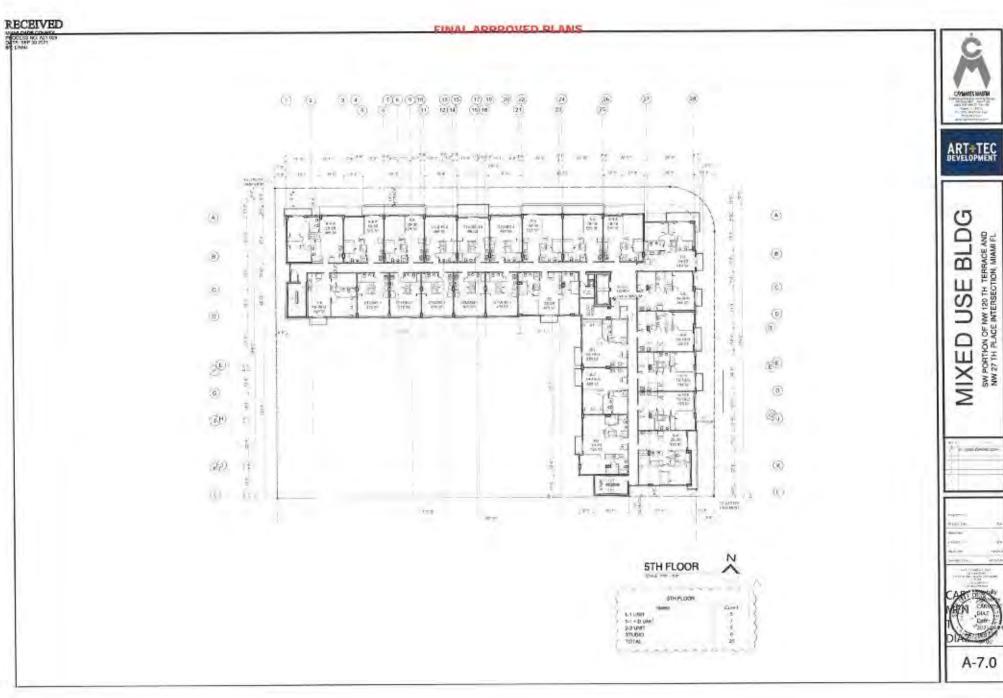
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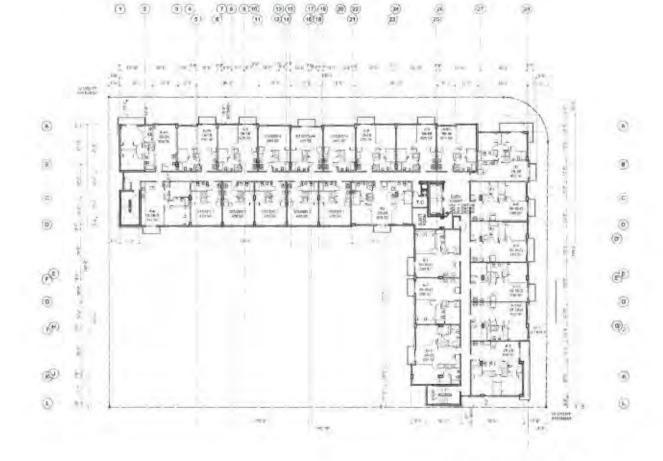






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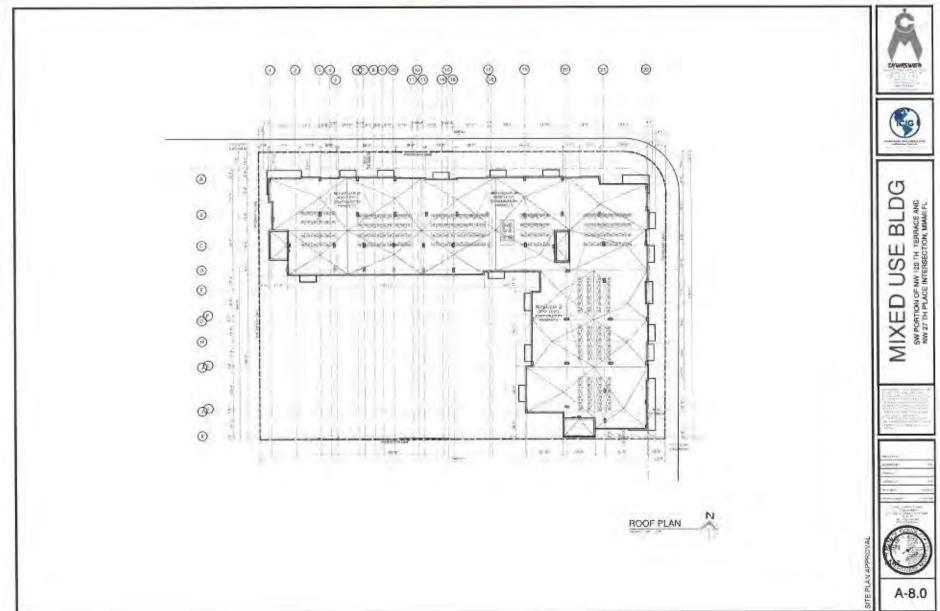




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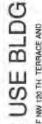
SUSTAINABILITY REQUIREMENTS BUILDING SHALL COMPLY WITH SUSTAINABILITY REQUIREMENTS AS PER MIAMI 21 SECTION 3.13.1

SOUTH ELEVATION SECONDARY FRONTAGE





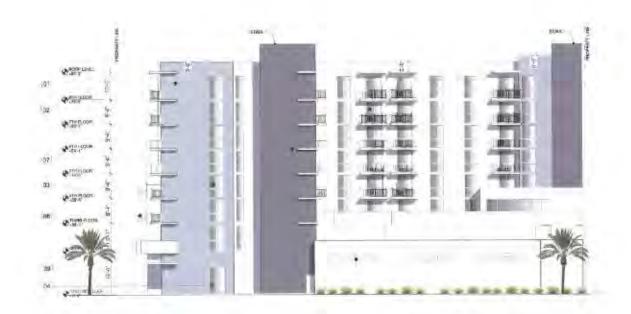
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	WATERIAL LEGEND
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HEAT ISLAND EFFECT SOLAR REPLECTANCE REQUIREMENTS:
ROOFING MATERIALS AND ALL ROOF EXTERIOR SURFACES AND BUILDING
MATERIALS SHALL HAVE A MINIMUM SOLAR REPLECTANCE AS PER SECTION
3.13.22 MINIMUM THEN TESTED IN ADCORDANCE WITH ASTMERGING OR ASTM
E 1918 AS PER MIANI 21 ARTICLE 3 SECTION 3.13.2 HEAT ISLAND EFFECT

WEST ELEVATION SECONDARY FRONTAGE

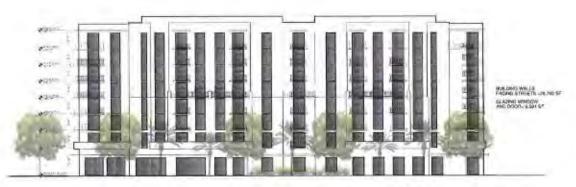
SUSTAINABILITY REQUIREMENTS:
BUILDING SHALL COMPLY WITH SUSTAINABILITY REQUIREMENTS AS PER MAMI
21 SECTION 3-13.1





MIXED USE BLDG SW PORTION OF NW 120 TH TERRACE AND NW 27 TH PLACE INTERSECTION, MIAMI FL.

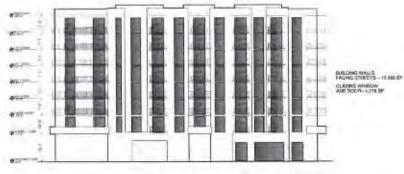
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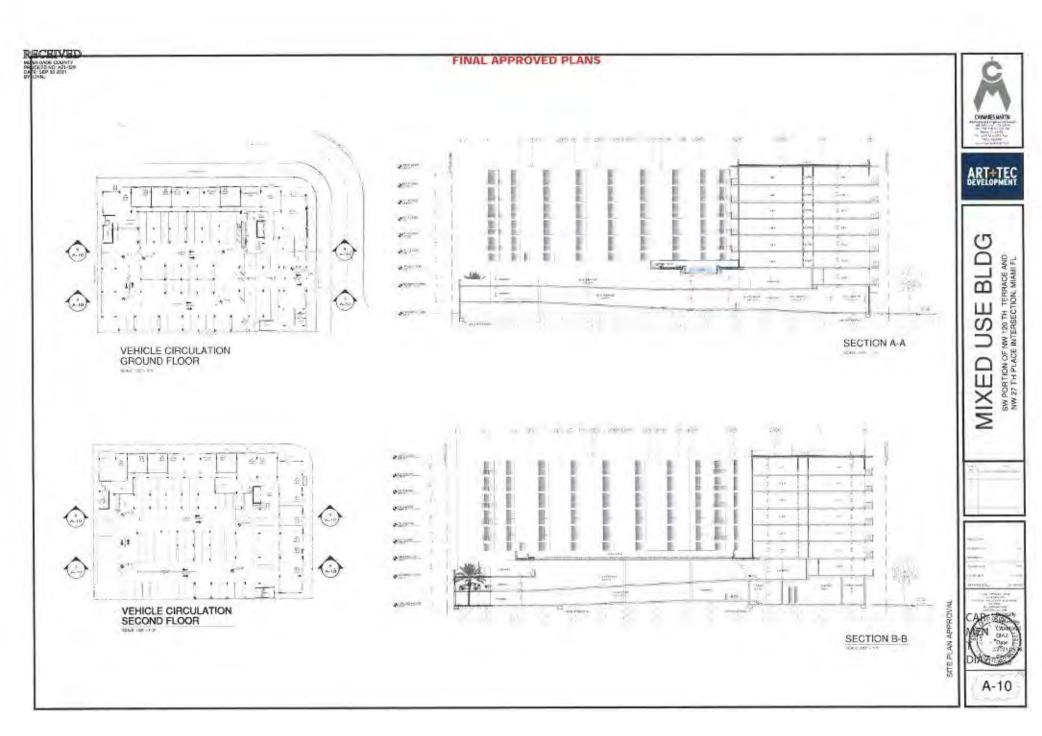
NORTH ELEVATION PRINCIPAL FRONTAGE

# PERCENTAGE OF GLASS

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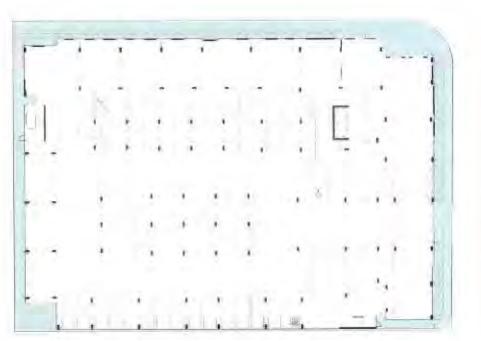


EAST ELEVATION PRINCIPAL FRONTAGE



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FINAL APPROVED PLANS





LEGEND

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RECEIVED **FINAL APPROVED PLANS** landscape legend





DEVELOPMENT

MIXED USE BLDG
SW PORTION OF NW 120 TH TERRACE AND
NW 27 TH PLACE INTERSECTION, MIAMIFL.

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William A Eager

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L-1.0

EXISTING TREE DISPOSITION PLAN





MIXED USE BLDG SW PORTION OF NW 120 TH TERRACE AND NW 27 TH PLACE INTERSECTION, MAMILE.

William 25 A Eage

L-2.0

# plant specifications

- Landscape Contractor shall be terminar will work inguised by those disserings. The shall include all grading plans and detail shreets including lapting of all plansings on the pool date. If these shaels are not included, contact Denoral Contractor, Drawleger may not be part of this Landscape sat and may be from another discipline.
- All plant majorial lamnshed by the Landscape Contracted unions otherwise specified in Glesdes sure Standscale for Narrany Plants, quarter edition, by the Florida Department of Agriculture and Consumer Services District. of the Plant Industry, shall be Florida Grada #1 ox better.
- All strubs and groundstwers shall be guaranteed for 1 year from date of final acceptance. All trees and pairts shall be gueranteed for 1 year from date of final acceptance.
- Planning soil shall be weed free and opness of 80% clean sities sund, 30% everglades muck and 10% Canadian pent. All plants shall be installed with planting soil as indicated an details.
- Landscape Contractor shall take all stops required to make all planting bods word and grass free prior to planting. All plant bods
- to be treated with a pre-amergent approved by Landscape Architect.

  6. Landscape Contractor shall locate and verify all underground. likies prior to digging.
- All lises shall be staked and/or guyed in a good workmanker namer as per attached details. No nati staking permitted.
- 8. Any wire burs and/or fabric straps shall be flagged w/ fourescent colored taps as shown in details.
- All trees shall be fertilized at installation wi "Agrikom Pile\* 21 gram size, w/a 20:10-5 formulation. (or approved signal) according to manufacturors recommendations.
- 10. All other plants shall be rertized at installation will "Osmacole" time release pollets (or approved equal, according to manufacturers recommendations.
- 11. All trees and plant back shall be mulched with a 2" layer al shredded mulch. Mulch shall not touch the liver mank. Cover all shrub beds with a 2" layer of shreeded mulch Much shall not be pine or cypress.
- 12. Where quantities angler species differ between the planting plans and plant liets, the plans shall take precedence
- 13 Landscape Contractor is responsible for doing a lake-off of the attached plans. Plant for provided to for guidance only. Landscape Contractor, in submitting a proposal based on these plans, is responsible for all materials as noted on plans.
- 14. Discrepancies shall be brought to the attention of the
- No changes shall be made without the prior consent of the Landscape Architect.
- 16. Landscape Contractor is responsible for coordinating with the Senaral Contractor or Dwner any and all conditions which may affect the scope of work.
- 17. Landscape contractor shall include in bid of maranals and linbor as required to complete the job as indicated on the plans and as directed by the General Contractor.
- 18. At plant material shall most or exceed specifications listed:
- 19. All planted bads shall recieve 100% coverage by a fully eutomatic intgation system as per plans.
- Landscape Contractor shall be responsible for provising temperary watering provisions until such time as the irrigation system is operational.

### FINAL APPROVED PLANS

### plant details tree key





MATITICES.

tree planting detail in paving

# plant list

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cod 451 Gravet	to be asked to

# landscape legend

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# representative plant photos



shrub planting detail

manuals and

tree planting détail



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multi- Multily Green



















plu - Bridal Bouquel



ART-TEC

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MIXE

WW 27 TH PLACE

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PLANT SPECIFICATIONS















# RECEIVED AL APPROVED PLANS

PERSONAL PROPERTY AND ADDRESS.

Willes A John Mild

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