

PREPARED BY AND RETURN TO:

City Attorney's Office
200 NW 1st Avenue
Delray Beach, FL 33444
FILE No. 3770.00003

LANDSCAPE MAINTENANCE AGREEMENT

THIS AGREEMENT is made this ____ day of ____ 20__, by and between the CITY OF DELRAY, Florida ("City") and **ALBANESE HOME BUILDER INC**, 1655 SE 6th St., Deerfield Beach, FL 33441

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 4th Street pursuant to the terms of this Agreement; 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, it has been approved by the City and said landscaping has been installed pursuant to said approved plan; 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 approval 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 planning 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 landscape 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 of 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 SE 4th Street 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 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 actions, 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 related to the subject matter of this Agreement including without limitation , any and all claims, losses, liabilities, expenditures, demand 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, causes of action or demand, Owner shall, upon written notice from City resist and defend such lawsuit or proceeding by counsel satisfactory to City or, City's option, pay for any 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. The Owner shall have the right, without the need of obtaining the writing consent of the City, to assign its responsibilities pursuant to this Agreement to any homeowner's association established by the Owner, ALBANESE HOME BUILDER INC, which will then be responsible for the maintenance of the common areas of the real property dedicated by Owner on a plat of the development, along with the right-of-way plantings shown Exhibit "B", and also pursuant ALBANESE HOME BUILDER INC. Said assignment of landscape responsibilities shall be in writing and recorded in the Public Records of Palm Beach County, Florida. Upon said permitted assignment,

Owner shall be deemed released from all obligations hereunder. Except as stated herein, 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 Pubic Records of Palm Beach County and shall run with the land.

12. This Agreement shall be governed by any 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 _____, 2019.

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

KATERRI JOHNSON, City Clerk

By: _____
SHELLY PETROLIA, Mayor

Approved as to legal form and sufficiency:

City Attorney

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on their behalf this 4th day of March, 2019.

WITNESSES:

Deak Campbell
Print Name: DEAK CAMPBELL

Rosemary Matos
Print Name: ROSEMARY MATOS

ALBANESE HOME BUILDER INC
A Florida corporation

By: *[Signature]*
STEPHEN ALBANESE

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 4th day of March, 2019, by STEPHEN ALBANESE, as President of ALBANESE HOME BUILDER INC, a Florida corporation on behalf of the corporation. He is personally known to me or has produced _____ as identification.

[Signature]
Notary Public

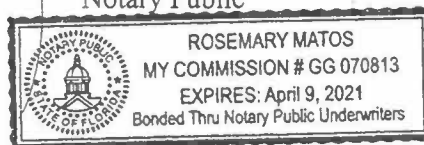
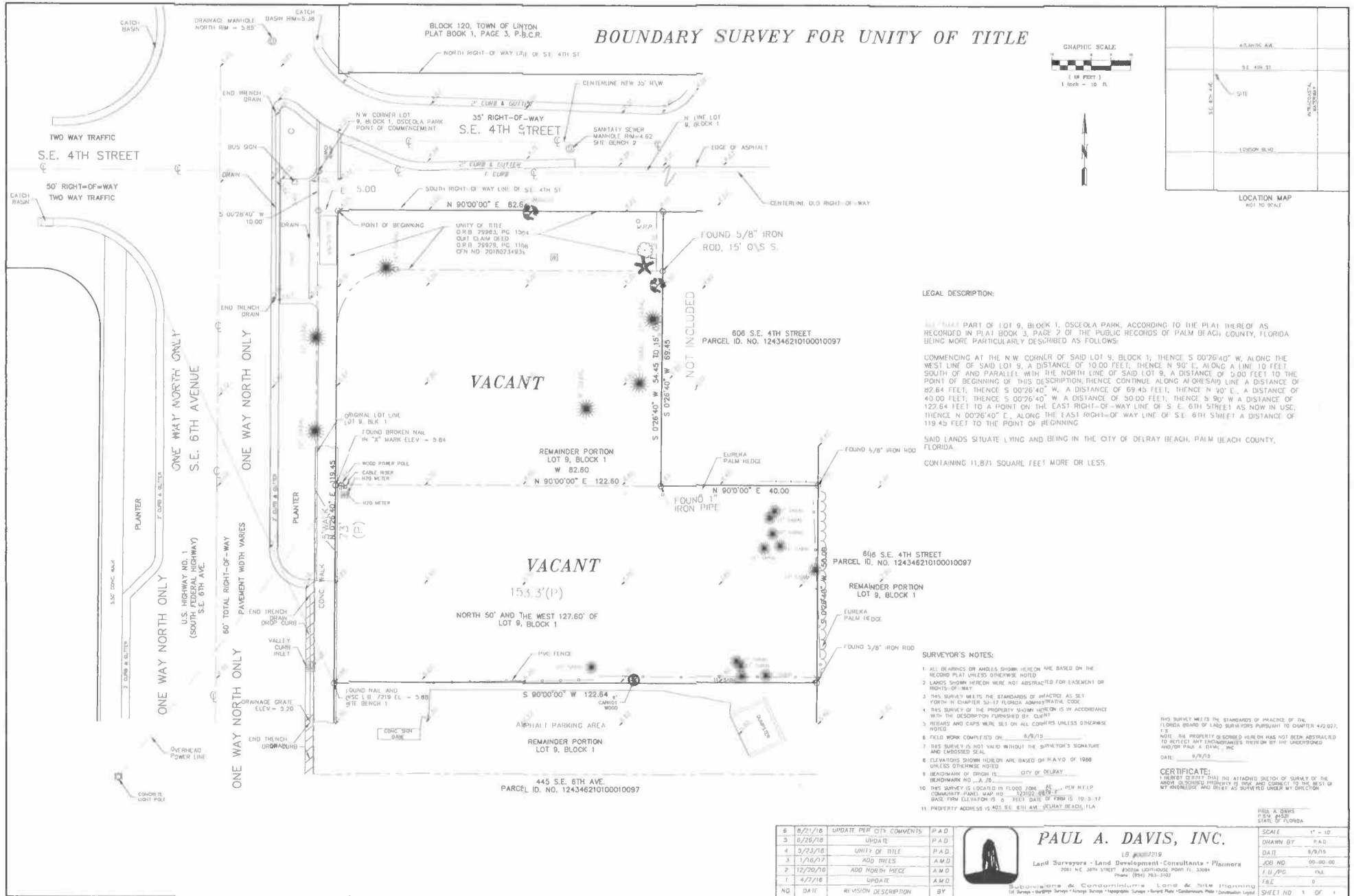


EXHIBIT A

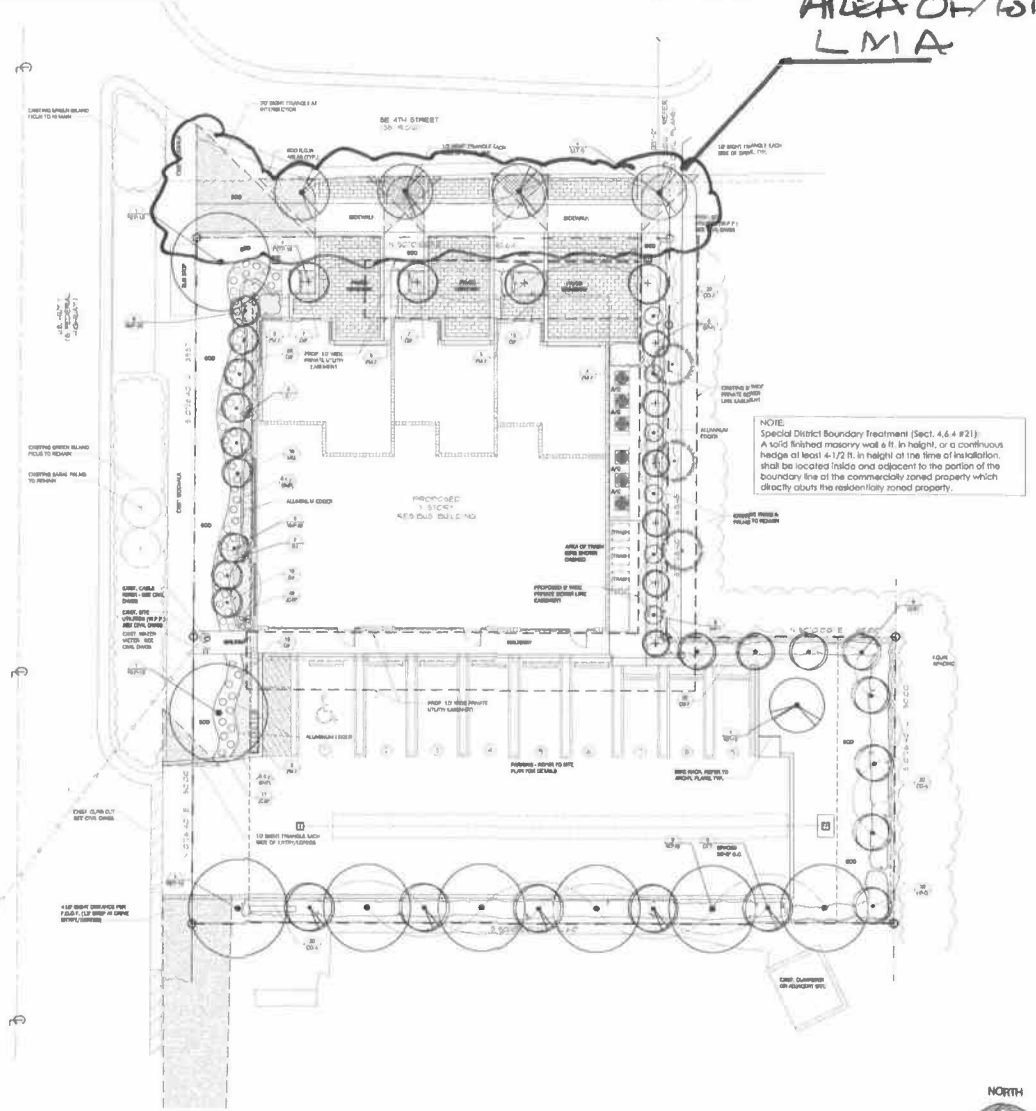


AREA OF TOP
LMIA

* - Denotes native, or highly drought tolerant plants materials, per SFWMD "Xeriscape Manual".

A. TOTAL LOT AREA	11,871.0 SQ.FT.
B. TOTAL PAVED/PAVERIOUS AREA	6,404.82 SQ.FT.
C. REQ'D INTERIOR GREENSPACE (10% TOTAL PAVED AREA)	640.48 SQ.FT.
D. INTERIOR GREENSPACE PROVIDED	3,031.40 SQ.FT.
E. TOTAL # OF TREES REQ'D (1 PER 125 SQ.FT. OF REQ'D GREENSPACE)	24 TREES
F. NUMBER OF INTERIOR TREES PROVIDED	25 TREES
G. PERIMETER GREENSPACE REQ'D (DEPTH OF BUFFER X LENGTH)	1,990.85 SQ.FT.
H. NUMBER OF PERIMETER TREES REQ'D (1 PER 30 L.F.T.)	13 TREES
I. NUMBER OF PERIMETER TREES PROVIDED	27 TREES

A. REGD SHRUBS & GROUND COVERS (30% OF REGD INTERIOR & PERMETER GRTFMSPACE)	/99.99 SQ.FT.
B. SHRUBS & GROUND COVER PROVIDED	965.40 SQ.FT.
C. REGD NATIVE PLANT MATERIALS (25% OF REGD SHRUBS & GROUND COVERS)	197.00 SQ.FT.
D. NATIVE PLANT MATERIALS PROVIDED	965.40 SQ.FT.
E. NUMBER OF NATIVE TREES REGD (50% OF REGD TREES)	19 TREES
F. NUMBER OF NATIVE TREES PROVIDED	2 / TREES



NOTE:
Special District Boundary Treatment (Sect. 4.6.4 #21):
A solid finished masonry wall 6 ft. in height, or a continuous hedge at least 4-1/2 ft. in height at the time of installation, shall be located inside and adjacent to the portion of the boundary line of the commercially zoned property which directly abuts the residentially zoned property.

REVISIONS	BY
10/9/18 Revised per Arch1 Site Plan	TE
12/15/18 Revised per Arch1 Site Plan	TE

DESIGNED BY:
CARTER & ASSOCIATES
LANDSCAPE ARCHITECTS INC.
74 N.E. 5th AVE., Delray Beach, FL 33483
561-272-9621 dclainc@bellsouth.net LA: 831

Landscape & Irrigation Plans for:
405 South
405 SE 6th Avenue
Delray Beach, Florida

DRYING
TE
CHECKED
O.H.C.
DATE
date?
SCALE
1" = 10'-0"
JOB NO.
Job #7
1-2007

L-2
of 4 sheets