

**PREPARED BY AND RETURN TO:**

City Attorney's Office  
200 NW 1<sup>st</sup> 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 6<sup>th</sup> 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 4<sup>th</sup> 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 4<sup>th</sup> 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 r 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 Public 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**

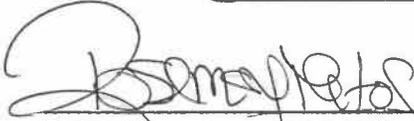
Approved as to legal form and sufficiency:

\_\_\_\_\_  
City Attorney

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

WITNESSES:

  
Print Name: OAK CAMPBELL

  
Print Name: ROSEMARY MATOS

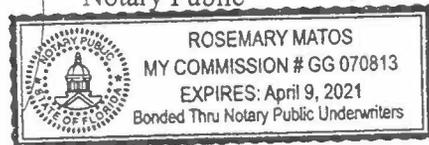
ALBANESE HOME BUILDER INC  
A Florida corporation

By:   
STEPHEN ALBANESE

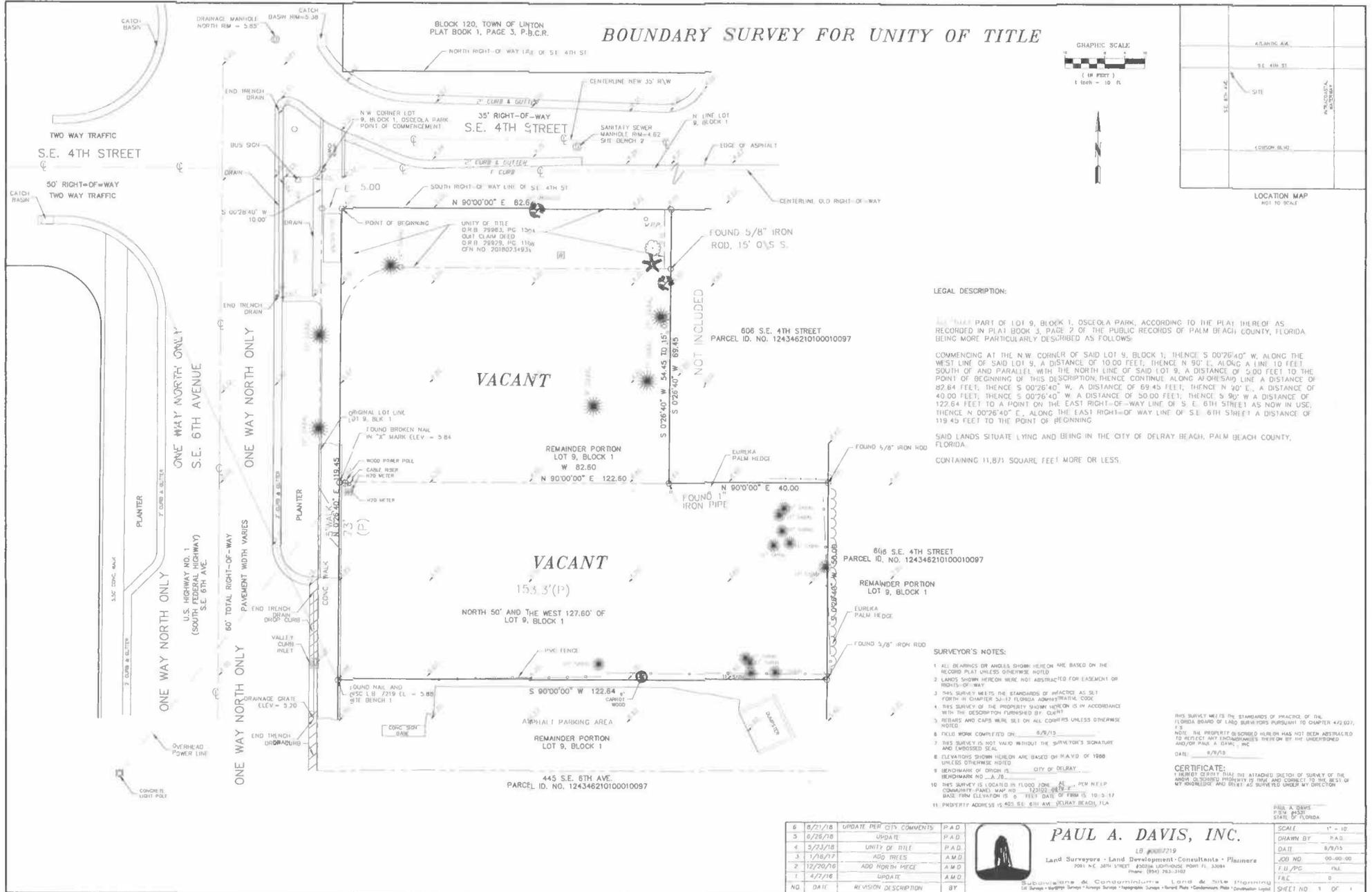
STATE OF FLORIDA  
COUNTY OF PALM BEACH

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.

  
\_\_\_\_\_  
Notary Public



# EXHIBIT A



## BOUNDARY SURVEY FOR UNITY OF TITLE



### LEGAL DESCRIPTION:

ALL PARTS OF LOT 9, BLOCK 1, OSCEOLA PARK, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 3, PAGE 2 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE N.W. CORNER OF SAID LOT 9, BLOCK 1, THENCE S 00°26'40" W, ALONG THE WEST LINE OF SAID LOT 9, A DISTANCE OF 10.00 FEET; THENCE N 90° E, ALONG A LINE 10 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID LOT 9, A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUE ALONG A FORESAID LINE A DISTANCE OF 82.64 FEET; THENCE S 00°26'40" W, A DISTANCE OF 69.45 FEET; THENCE N 90° E, A DISTANCE OF 40.00 FEET; THENCE S 00°26'40" W, A DISTANCE OF 50.00 FEET; THENCE S 90° W A DISTANCE OF 122.64 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF S.E. 6TH STREET AS NOW IN USE; THENCE N 00°26'40" E, ALONG THE EAST RIGHT-OF-WAY LINE OF S.E. 6TH STREET A DISTANCE OF 119.45 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE LYING AND BEING IN THE CITY OF DELRAY BEACH, PALM BEACH COUNTY, FLORIDA.

CONTAINING 11,871 SQUARE FEET MORE OR LESS.

### SURVEYOR'S NOTES:

1. ALL BEARINGS OR ANGLES SHOWN HEREON ARE BASED ON THE RECORD PLAT UNLESS OTHERWISE NOTED.
2. LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR EASEMENT OR RIGHTS-OF-WAY.
3. THIS SURVEY MEETS THE STANDARDS OF PRACTICE AS SET FORTH IN CHAPTER 34-17, FLORIDA ADMINISTRATIVE CODE.
4. THIS SURVEY OF THE PROPERTY SHOWN HEREON IS IN ACCORDANCE WITH THE DESCRIPTION FURNISHED BY CLIENT.
5. REBARS AND CAPS WERE SET ON ALL CORNERS UNLESS OTHERWISE NOTED.
6. FIELD WORK COMPLETED ON: 8/9/13
7. THIS SURVEY IS NOT VALID WITHOUT THE SURVEYOR'S SIGNATURE AND EMBOSSED SEAL.
8. ELEVATIONS SHOWN HEREON ARE BASED ON HAYDO OF 1988 UNLESS OTHERWISE NOTED.
9. BENCHMARK OF ORIGIN IS: \_\_\_\_\_ CITY OF DELRAY BEACH, FLORIDA BENCH MARK NO. A-18.
10. THIS SURVEY IS LOCATED IN FLOOD ZONE: AE-1 PER FIRM COMMUNITY HAZARD MAP NO. 12202-0001.
11. PROPERTY ADDRESS IS 445 S.E. 6TH AVE. DELRAY BEACH, FLA.

THIS SURVEY MEETS THE STANDARDS OF PRACTICE OF THE FLORIDA BOARD OF LAND SURVEYORS PURSUANT TO CHAPTER 472.002, F.S. NOTE: THE PROPERTY DESCRIBED HEREON HAS NOT BEEN ABSTRACTED TO REFLECT ANY ENCUMBRANCES THEREON BY THE UNDERGROUND AND/OR PUBLIC A.G.W. & P.C. DATE: 8/9/13

**CERTIFICATE:** I HEREBY CERTIFY THAT THE ATTACHED DETACH OF SURVEY OF THE ABOVE DESCRIBED PROPERTY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS SURVEYED UNDER MY DIRECTION.

NO.	DATE	REVISION	DESCRIPTION	BY
6	8/21/13	UPDATE PER CITY COMMENTS		P.A.D.
5	8/26/13	UPDATE		P.A.D.
4	3/22/13	UNITY OF TITLE		P.A.D.
3	1/16/13	ADD TREES		P.A.D.
2	12/20/12	ADD NORTH PIECE		P.A.D.
1	4/7/12	UPDATE		P.A.D.



**PAUL A. DAVIS, INC.**

Land Surveyors • Land Development • Consultants • Planners  
 390 S.W. 4th Street, Suite 1000, Delray Beach, FL 33444  
 Phone: (561) 763-3100

SCALE	1" = 10'
DRAWN BY	P.A.D.
DATE	8/9/13
JOB NO.	00-00-00
T.B./P.C.	FILE
SHEET	0
SHEET NO.	1 OF 1

# EXHIBIT B

AREA OF TSD  
L M A

**MATERIAL SCHEDULE:**

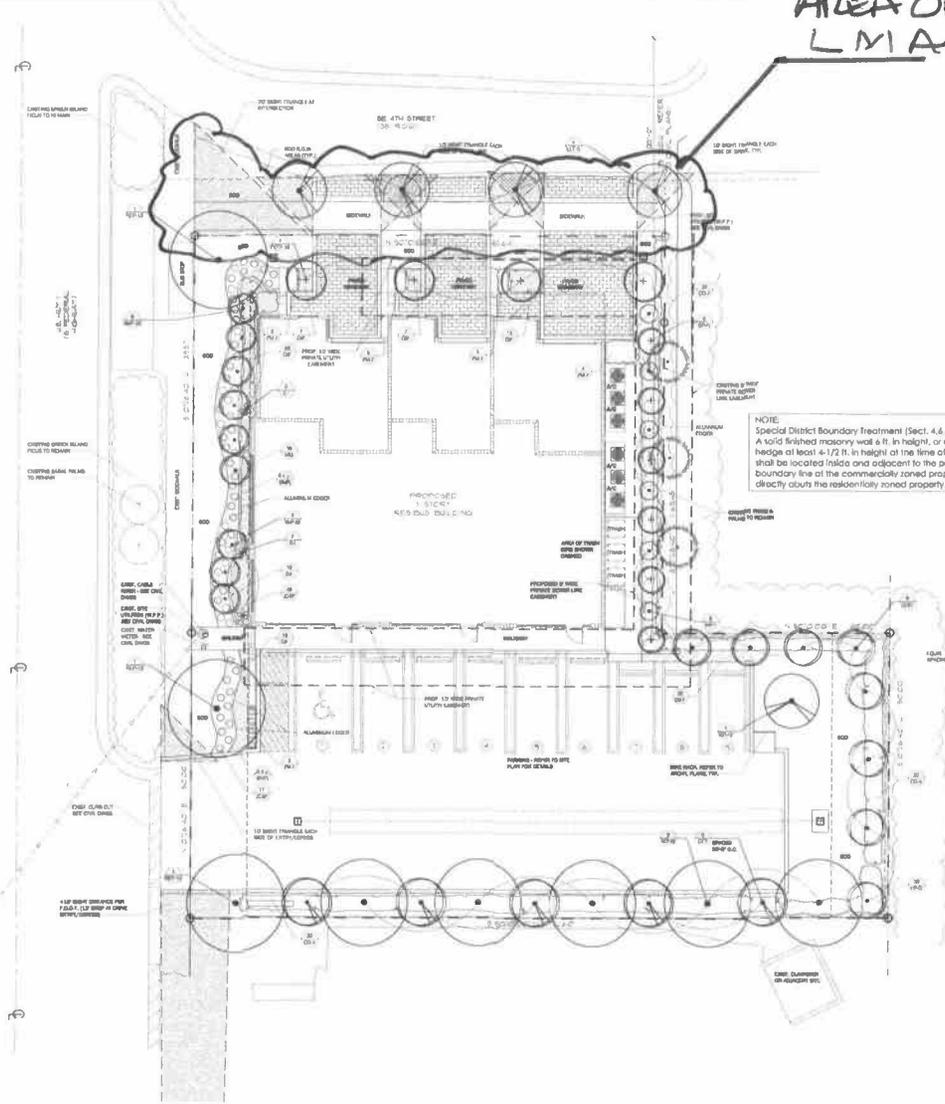
Qty	Key	Botanical / common name	Sp/6
5	Ce1*	Conocarpus erectus / Green Buttonwood tree	16 x 7, 7 c.t., matching
8	Ce2*	Conocarpus F. Sensibilis / Silver Buttonwood Tree	14 x 6, 7 c.t.
6	Sp R*	Sabal Palm - Replaced	16'00" o.c.
1	Bc-16	Bungia Simarouba / Gumbo Limbo tree	16 x 8, 7 c.t.
4	L1-S	Livistona littoralis / Salsola tree	17 x 8, 6 c.t.
1	Pop-5	Phycosperma elegans / Alexander Palm	18" o.c. - single trunk, matching
6	R6p-28*	Ravenea arcata / Florida Royal Palm	10 gray wood, heavy colla, matching specimen
4	Fmp-18	Woodworthia truncata / Fox Tail Palm	18" o.c., heavy colla, matching
9	Vmp-20	Vallicaria Montegomeryana / Montgomery Palm	20" o.c., heavy colla, matching
6	M1*	Mircionanthes fragrans / Simpson Topper tree	8'10" o.c.
24	Pm-7	Podocarpus nalis / Tree	40'-42" ea. 7g. IM to base
113	Cl1*	Hicus macrocarpa / Green Island Hicus	18" 3g @ 12" o.c.
40	Cg-4*	Clusia guifera / Small Leaf Clusia	42'-48" x 24" @ 4 1/2 ft. o.c.
25	Cg-7*	Clusia guifera / Small Leaf Clusia	54" 3g @ 4 1/2 ft. o.c.
30	D-8*	Dianella tasmanica / Blue Fox Lily	15'-18" 3g @ 18" o.c.
4	Wp-D*	Hamelia patens, cliv / Owl-Whisper	24" 3g @ 24" o.c.
59	Jc-5p	Juniperus chinensis / Blue Pacific	15" 3g @ 18" o.c.
15	Mp*	Muhlenbergia capillaris / Muffy Grass	15" 3g @ 15" o.c.
4	B1	Bromelad imperialis	24" x 24"

cu. yd. BRG Brown River Gravel on typal filter fabric  
3.5 cu. yd. BMR Black Mexican Rock on typal filter fabric

Planting xols. see notes & specs.  
Mutch. see notes & specs.  
Sed. Floration  
\* - Denotes native, or highly drought tolerant plant materials per SFVMD "Xeriscape Manual".

**LANDSCAPE CALCULATION TABLE:**  
SITE DATA

A. TOTAL LOT AREA	11,871.0 SQ.FT.
B. TOTAL PAVED IMPERVIOUS 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 LH.F.T.)	13 TREES
I. NUMBER OF PERIMETER TREES PROVIDED	27 TREES
<b>XERISCAPE CALCULATIONS</b>	
A. REQ'D SHRUBS & GROUND COVERS	789.29 SQ.FT.
(30% OF REQ'D INTERIOR & PERIMETER GREENSPACE)	
B. SHRUBS & GROUND COVER PROVIDED	985.40 SQ.FT.
C. REQ'D NATIVE PLANT MATERIALS	197.00 SQ.FT.
(25% OF REQ'D SHRUBS & GROUND COVERS)	
D. NATIVE PLANT MATERIALS PROVIDED	985.40 SQ.FT.
E. NUMBER OF NATIVE TREES REQ'D	19 TREES
(50% OF REQ'D TREES)	
F. NUMBER OF NATIVE TREES PROVIDED	27 TREES



Landscape Plan

REVISIONS	BY
10/9/18 Revised per Arch1 Site Plan	TE
12/13/18 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. B31

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

OWNER	TE
DESIGNER	D.H.C.
DATE	06/07
SCALE	1" = 10' G
JOB NO.	2018-01
JOB #	