

RETURN to:
City Attorney's Office
200 N.W. 1st Avenue
Delray Beach, FL 33444

LANDSCAPE MAINTENANCE AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 20__ by and between the **City of Delray Beach, Florida** ("City") and **Banyan Court Homeowners Association, 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, Owner shall be allowed to install landscaping material in the right-of-way of Barwick Road, 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 Barwick Road; 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 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 Barwick Road for any 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 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.

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. This Agreement may not otherwise 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.

[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 _____, 20__.

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: Banyan Court Homeowners
Association, Inc.**

JAMES FITZGERALD
(Print or Type Name)

By: _____
JEFF ALEXANDER, SECRETARY
(Print or Type Name)

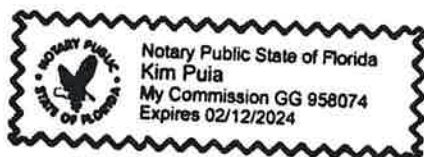
JARED SHAWER
(Print or Type Name)

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 2nd day of June, 2021 by Jeffrey Alexander (name of person), as Secretary (type of authority) for Banyan Court HOA Inc (name of party on behalf of whom instrument was executed).

Personally known ☒ OR Produced Identification
Type of Identification Produced _____



Notary Public – State of Florida

EXHIBIT "A"

DESCRIPTION:

A PORTION OF THE RIGHT-OF-WAY FOR BARWICK ROAD AS DESCRIBED IN OFFICIAL RECORDS BOOK 52, PAGE 576 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, BEING A PORTION OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 12, TOWNSHIP 48 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF BANYAN COURT, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 130, PAGES 171 THROUGH 173, INCLUSIVE, OF SAID PUBLIC RECORDS OF PALM BEACH COUNTY; THENCE ALONG THE WESTERLY PROLONGATION OF THE SOUTH LINE OF SAID BANYAN COURT, NORTH 89°22'52" WEST A DISTANCE OF 22.34 FEET; THENCE NORTH 01°33'02" WEST A DISTANCE OF 40.98 FEET; THENCE NORTH 02°59'15" WEST A DISTANCE OF 191.97 FEET; THENCE NORTH 01°08'55" WEST A DISTANCE OF 705.48 FEET; THENCE NORTH 02°05'25" WEST A DISTANCE OF 44.54 FEET TO AN INTERSECTION WITH THE WESTERLY PROLONGATION OF THE NORTH LINE OF SAID BANYAN COURT; THENCE ALONG SAID WESTERLY PROLONGATION, SOUTH 88°53'46" EAST A DISTANCE OF 27.93 FEET TO THE NORTHWEST CORNER OF SAID BANYAN COURT; THENCE ALONG THE WEST LINE OF SAID BANYAN COURT, SOUTH 01°14'31" EAST A DISTANCE OF 982.45 FEET TO THE POINT OF BEGINNING.

SAID LANDS LYING AND BEING IN THE CITY OF DELRAY BEACH, PALM BEACH COUNTY, FLORIDA, AND CONTAINING 26,654 SQUARE FEET (0.6119 ACRE), MORE OR LESS.

SURVEYOR'S NOTES:

1. SURVEY MAPS OR THE COPIES THEREOF ARE NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND THE ORIGINAL SEAL, OR THE AUTHENTICATED ELECTRONIC SIGNATURE AND SEAL, OF A FLORIDA LICENSED PROFESSIONAL LAND SURVEYOR AND MAPPER.
2. ADDITIONS OR DELETIONS TO SURVEY MAPS BY OTHER THAN THE SIGNING PARTY OR PARTIES IS PROHIBITED WITHOUT WRITTEN CONSENT OF THE SIGNING PARTY OR PARTIES.
3. LANDS SHOWN HEREON WERE NOT ABSTRACTED, BY THE SURVEYOR, FOR RIGHTS-OF-WAY, EASEMENTS, OWNERSHIP, OR OTHER INSTRUMENTS OF RECORD.
4. BEARINGS SHOWN HEREON ARE RELATIVE TO A GRID BEARING OF NORTH 01°14'31" WEST ALONG THE WEST LINE OF BANYAN COURT, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 130, PAGES 171 THROUGH 173 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, RELATIVE TO THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, NORTH AMERICAN DATUM OF 1983 (1990 ADJUSTMENT).
5. THE "DESCRIPTION" SHOWN HEREON WAS PREPARED BY THE SURVEYOR.
6. DATA SHOWN HEREON WAS COMPILED FROM THE INSTRUMENTS OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, AND DOES NOT CONSTITUTE A FIELD SURVEY AS SUCH.
7. INSTRUMENTS OF RECORD SHOWN HEREON ARE RECORDED IN THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, UNLESS OTHERWISE SHOWN.

CERTIFICATE:

I HEREBY CERTIFY THAT THE ATTACHED SKETCH AND DESCRIPTION OF THE HEREON DESCRIBED PROPERTY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS PREPARED UNDER MY DIRECTION ON APRIL 7, 2021. I FURTHER CERTIFY THAT THIS SKETCH AND DESCRIPTION MEETS THE STANDARDS OF PRACTICE SET FORTH IN RULE 5J-17, FLORIDA ADMINISTRATIVE CODE, ADOPTED BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS PURSUANT TO FLORIDA STATUTES CHAPTER 472.027.

THIS IS NOT A SURVEY

SHEET 1 OF 3



CAULFIELD & WHEELER, INC.

CIVIL ENGINEERING - LANDSCAPE ARCHITECTURE
LAND SURVEYING

7900 GLADES ROAD - SUITE 100

BOCA RATON, FLORIDA 33434

PHONE (561)-392-1991 / FAX (561)-750-1452

DAVID E. ROHAL
REGISTERED LAND
SURVEYOR NO. 4315
STATE OF FLORIDA
L.B. 3591

DATE 4-7-2021

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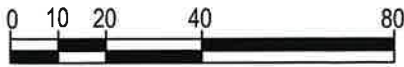
F.B./ PG. N/A

SCALE NONE

JOB NO. 8318 MAINT AGMT

**BANYAN COURT
MAINTENANCE AGREEMENT
SKETCH AND DESCRIPTION**

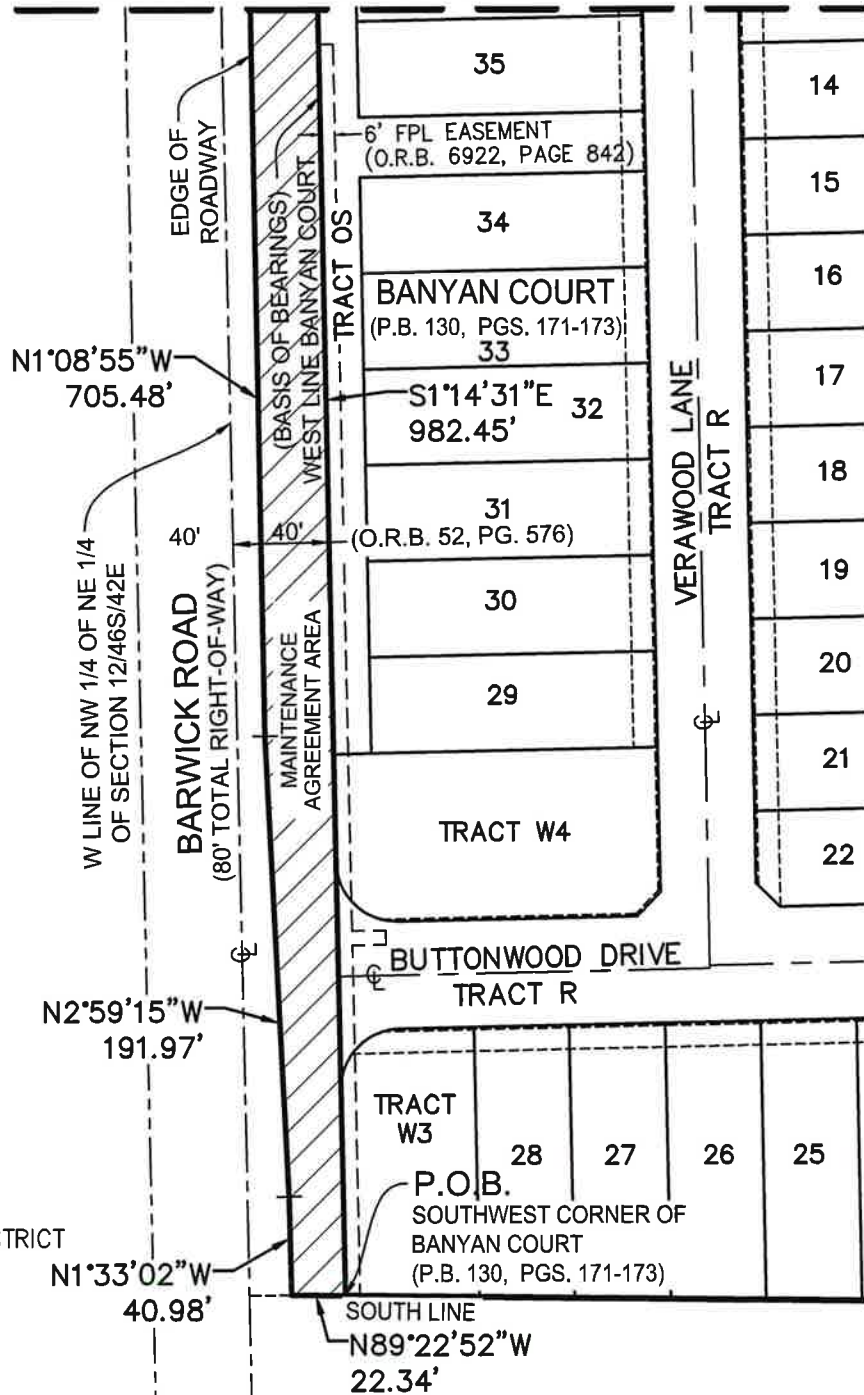
EXHIBIT "A"



GRAPHIC SCALE IN FEET
SCALE 1" = 80'



MATCHLINE - SEE SHEET 3 OF 3



LEGEND:

CL - CENTERLINE
D.B. - DEED BOOK
L.W.D.D. - LAKE WORTH DRAINAGE DISTRICT
O.R.B. - OFFICIAL RECORDS BOOK
PG. - PAGE
P.O.B. - POINT OF BEGINNING
PBCO - PALM BEACH COUNTY
R/W - RIGHT-OF-WAY
12/46S/42E - SECTION 12, TOWNSHIP 46 SOUTH, RANGE 42 EAST

THIS IS NOT A SURVEY

SHEET 2 OF 3



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David E. Rohal

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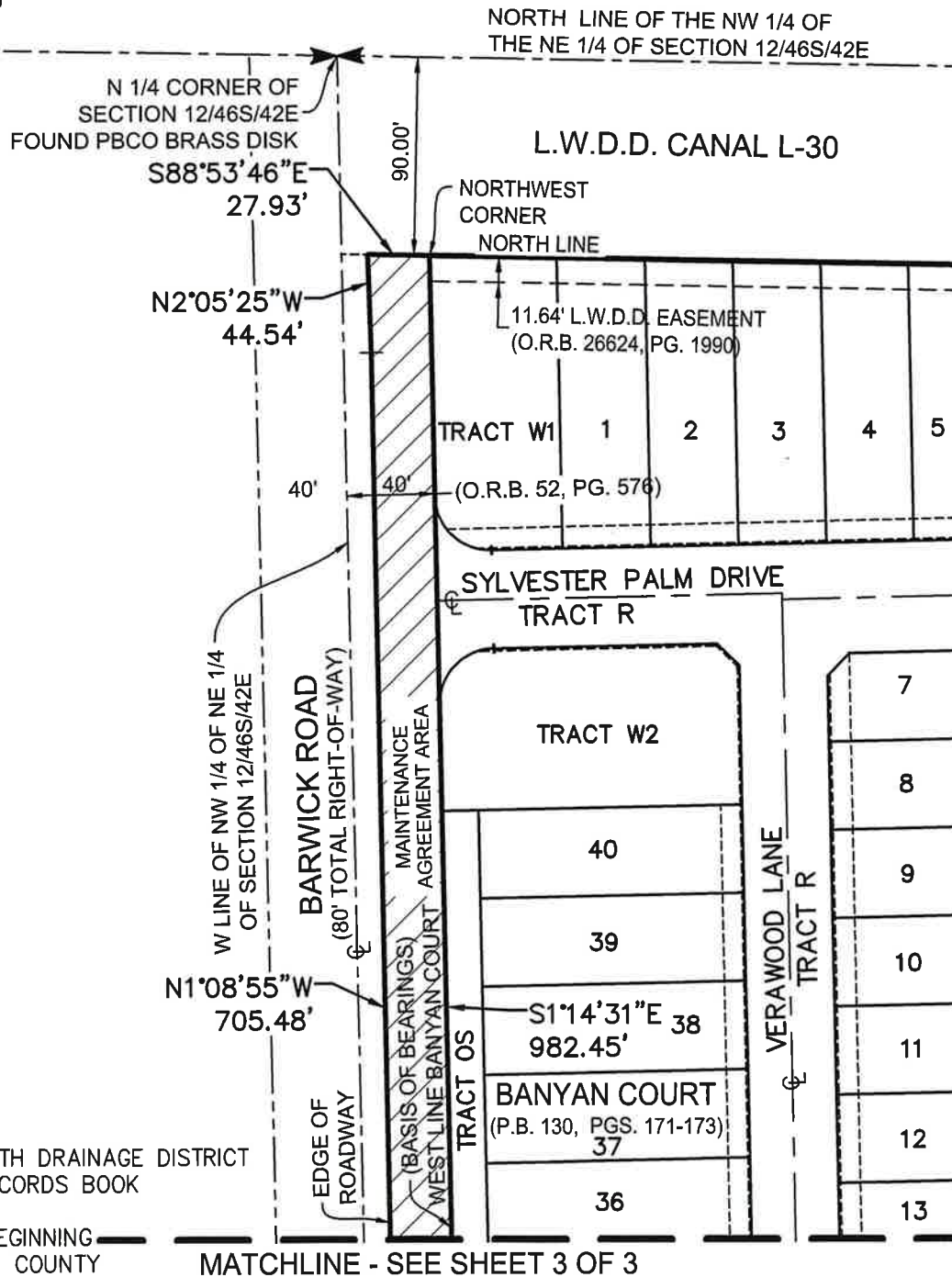
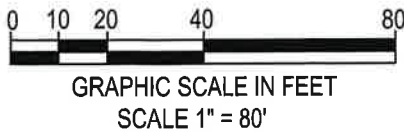
F.B./ PG. N/A

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