

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

PCN: 12-43-46-16-01-102-0150
Address: 142 SE 5th Avenue, Delray Beach, Florida

PCN: 12-43-46-16-01-102-0160
Address: 152 SE 5th Avenue, Delray Beach, Florida

LANDSCAPE MAINTENANCE AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 20__ by and between the **City of Delray Beach**, a Florida municipal corporation of the State of Florida, whose address is 100 NW 1st Avenue, Delray Beach, Florida 33444 (the "City") and **Fifth Avenue Delray, LLC**, a New York limited liability company registered to do business in the State of Florida, whose address is 5554 Main Street, Williamsville, New York 14221 (the "Owner").

WITNESSETH:

WHEREAS, to provide landscaping in the City, the City Commission has adopted ordinances setting forth requirements for landscaping; and

WHEREAS, the Owner owns two parcels of land with a street addresses of 142 and 152 SE 5th Avenue, Delray Beach, Florida 33444 (the "Property"), as more particularly described in Exhibit "A", attached hereto and incorporated herein; and

WHEREAS, to comply with the City's landscape Ordinance, Owner wants to install landscaping and/or hardscape material (the "Improvements") within the Florida Department of Transportation ("FDOT") right-of-way abutting the Property (the "ROW Area"), pursuant to the terms of this Agreement; and

WHEREAS, FDOT requires the City to enter into an agreement requiring the City to install and maintain the Improvements in the ROW Area; and

WHEREAS, the City is required to indemnify and hold harmless FDOT for the Improvements and work performed in the ROW Area; and

WHEREAS, this Agreement requires Owner to hold harmless and defend the City for the installation and maintenance of the Improvements in the ROW Area; and

WHEREAS, this Agreement shall in no way be deemed an actual, constructive, or any other type of abandonment of City or FDOT public right-of-way; and

WHEREAS, the Owner acknowledges FDOT reserves the right at any time to utilize the ROW Area for right-of-way purposes; and

WHEREAS, the public will benefit from the beautification of areas along its streets by the addition of the Improvements; and

WHEREAS, this Agreement is not effective unless the Owner has submitted a landscape and/or site plan, obtained approval from the City and FDOT, and the appropriate amendment to the August 31, 2012, Maintenance Memorandum of Agreement between the City and FDOT has been fully executed; 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 FDOT, 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 Improvements. The Property and ROW Area shall have an approved landscape and/or site plan, attached hereto and incorporated herein as Exhibit "B" (the "Landscape Plan").

3. The Owner shall be responsible for purchasing and installing all plant, tree, hedge, or grass material and any other hardscape material as required by the Owner's approved Landscape Plan and/or site 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 Improvements in the right-of-way in accordance with the City's Ordinances, FDOT regulations, 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 maintain 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 for the Landscape Plan. 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 Landscape Plan 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 areas in the right-of-way. Plants shall be those items that 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 or hardscape 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, which, if unpaid, can be recorded as a lien against the Property;
- (b) Terminate this Agreement and require the Owner to comply with the City's current Ordinance on landscaping; or
- (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 Improvements installed in the ROW Area.

7. If for any reason FDOT decides that it needs the ROW Area for any purpose this Agreement shall terminate, and the Owner shall be required to comply with the City's current Code of Ordinances. Owner shall remove all the Improvements 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, provided in all events the Owner shall not be required to indemnify, defend or hold harmless the City from the City's or any City employees, agents, officers, and servant's negligence, gross negligence or wrongful conduct. 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. The City hereby reserves the right to enforce this Agreement by pursuing any and all remedies provided by law or in equity. All of the remedies available to the City shall be cumulative, and the City's election to pursue any remedy shall not preclude the City for then or later pursuing any one or more other remedies

10. 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.

11. 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 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.

12. 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.

13. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

14. Owner shall be bound by all the terms and conditions regarding the ROW Area found in the Florida Department of Transportation, District Four (4) Landscape Inclusive Maintenance Memorandum of Agreement entered into by the City and FDOT on August 31, 2012, including any amendments thereto.

15. Any notice or communication under this Agreement shall be in writing and may be given by registered or certified mail. If given by registered or certified mail, the notice or communication shall be deemed to have been given and received when deposited in the United States Mail, properly addressed, with postage prepaid. If given otherwise, then by registered or certified mail, it should be deemed to have been given when delivered to and received by the party to whom it is addressed. The notices and communication shall be given to the particular parties at the following addresses:

City: City Manager
City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, Florida 33444

Owner: Mr. Timothy T. Weber
Fifth Avenue Delray, LLC
5554 Main Street
Williamsville, New York 14221

Either party may at any time by giving ten (10) days written notice designate any other person or entity or any other address in substitution of the foregoing to which the notice or communication shall be given.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the City and the Owner executed this Agreement as of the day and year first above written.

WITNESSES:

Mary Beland
Signature

Mary Beland
Print or Type Name

5554 Main Street
Williamsville, NY 14221
Address

Tim Weber
Signature

Tim Weber
Print or Type Name

5554 Main Street
Williamsville, NY 14221
Address

STATE OF NEW YORK

COUNTY OF ERIE

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 26 day of February, 2025, by Michael C. Huntress (name of person), as Member (type of authority) for Fifth Avenue Delray, LLC (name of party on behalf of whom instrument was executed).

Personally known x OR Produced Identification

Type of Identification Produced _____

OWNER:

By: [Signature]
Signature

Michael C. Huntress
Print or Type Name

Member
Type of Authority
for
Company Name: Fifth Avenue Delray, LLC

Sarah K Hyman
Notary Public – State of New York

Sarah Hyman
Notary Public, State of New York
Qualified in Niagara County
Reg No. 02HY6285993
My Commission Exp. 07/22/ 25

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

Alexis Givings, City Clerk

By:

Thomas F. Carney, Jr., Mayor

Approved as to legal form
and sufficiency:

Lynn Gelin, City Attorney

[Remainder of Page Intentionally Left Blank]

EXHIBIT "A"
LEGAL DESCRIPTION OF REAL PROPERTY

Lot 15, less the East 10 feet thereof, Block 102, Town of Delray (formerly known as Map of the Town of Linton, Florida), according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach county, Florida, in Plat Book 1, Page 3.

Lot 16, less the East 10 feet thereof, Block 102, of Town of Delray (formerly known as Map of the Town of Linton, Florida), according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach county, Florida, in Plat Book 1, Page 3.

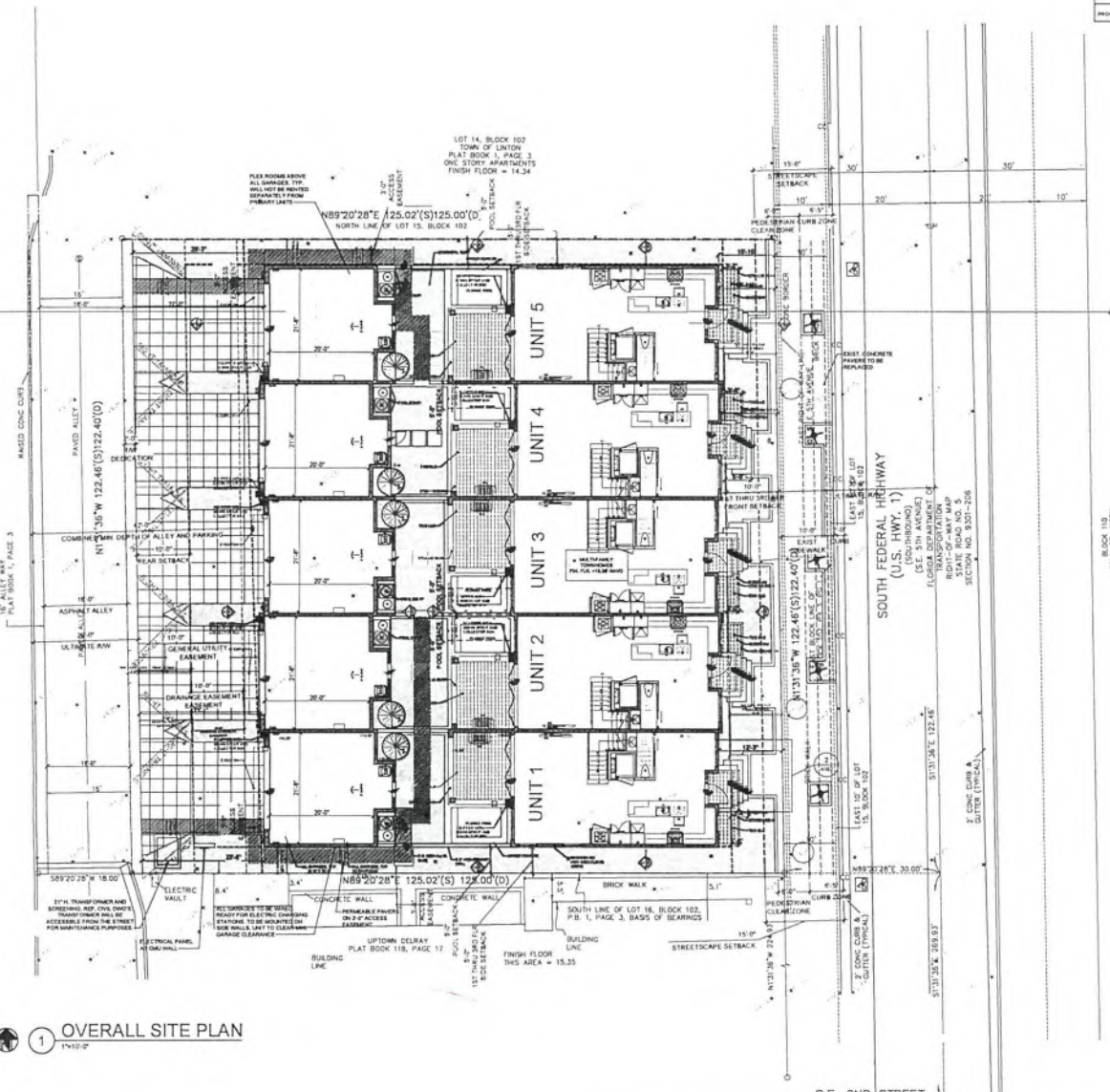
Also being described as:

Begin at the Southwest corner of Lot 16, Block 102 of the Plat of City of Delray Beach (formerly Town of Linton) as recorded in Plat Book 1, Page 3 of the Public Records of Palm Beach County, Florida. Thence North 122.40 feet to the Northwest corner of said Lot 15, Block 102, a Distance of 125.00 feet to the East Right of Way Line of S.E. 5th Avenue, said Point being 10 feet West of the East line of said Lots 15 and 16 of Block 102, thence South along said Right of Way Line a Distance of 122.40 feet to the South line of Lot 16, Block 102, and being 10 feet West of the Southeast corner of said Lot 116, Block 102, thence West along said South line of Lot 16, a Distance of 125.00 feet to the Point of Beginning.

Said lands situate in the City of Delray Beach, Palm Beach County, Florida and containing 15,308 Square Feet, or 0.351 Acres more or less.

Subject to Easements, Restrictions, Reservations, covenants, and Rights-of-Way of record.

EXHIBIT "B"
LANDSCAPE AND/OR SITE PLAN
(TO BE ATTACHED)



| NO. | DATE | BY | DESCRIPTION |
|-----|----------|----|-------------|
| 1 | 10/25/20 | AS | PRELIMINARY |
| 2 | 10/25/20 | AS | REVISED |
| 3 | 10/25/20 | AS | REVISED |

| AC AREA CALCULATION | | | |
|---------------------|--------------|----------------|---------|
| NO. | DESCRIPTION | AREA (SQ. FT.) | PERCENT |
| 1 | LOT AREA | 10,000 | 100% |
| 2 | IMPROVEMENTS | 1,000 | 10% |
| 3 | RESERVED | 9,000 | 90% |

| AC BUILDING AREA TABULATION | | | |
|-----------------------------|-------------|----------------|---------|
| NO. | DESCRIPTION | AREA (SQ. FT.) | PERCENT |
| 1 | UNIT 1 | 1,000 | 10% |
| 2 | UNIT 2 | 1,000 | 10% |
| 3 | UNIT 3 | 1,000 | 10% |
| 4 | UNIT 4 | 1,000 | 10% |
| 5 | UNIT 5 | 1,000 | 10% |

| AC BUILDING AREA TABULATION | | | |
|-----------------------------|-------------|----------------|---------|
| NO. | DESCRIPTION | AREA (SQ. FT.) | PERCENT |
| 1 | UNIT 1 | 1,000 | 10% |
| 2 | UNIT 2 | 1,000 | 10% |
| 3 | UNIT 3 | 1,000 | 10% |
| 4 | UNIT 4 | 1,000 | 10% |
| 5 | UNIT 5 | 1,000 | 10% |

| AC BUILDING AREA TABULATION | | | |
|-----------------------------|-------------|----------------|---------|
| NO. | DESCRIPTION | AREA (SQ. FT.) | PERCENT |
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| 2 | UNIT 2 | 1,000 | 10% |
| 3 | UNIT 3 | 1,000 | 10% |
| 4 | UNIT 4 | 1,000 | 10% |
| 5 | UNIT 5 | 1,000 | 10% |

| AC BUILDING AREA TABULATION | | | |
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| 5 | UNIT 5 | 1,000 | 10% |

| AC BUILDING AREA TABULATION | | | |
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| 4 | UNIT 4 | 1,000 | 10% |
| 5 | UNIT 5 | 1,000 | 10% |

| AC BUILDING AREA TABULATION | | | |
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| 1 | UNIT 1 | 1,000 | 10% |
| 2 | UNIT 2 | 1,000 | 10% |
| 3 | UNIT 3 | 1,000 | 10% |
| 4 | UNIT 4 | 1,000 | 10% |
| 5 | UNIT 5 | 1,000 | 10% |

PERMIT SET 10-25-20

| REVISIONS | BY | DATE |
|-----------|----|----------|
| 1 | AS | 10/25/20 |
| 2 | AS | 10/25/20 |
| 3 | AS | 10/25/20 |

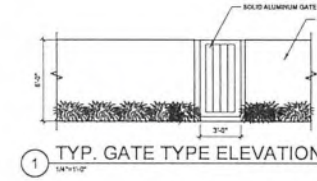
FIFTH AVENUE TOWNHOMES
142 SE 5TH AVENUE
DELRAY BEACH, FLORIDA

RANDALL STOFFT
ARCHITECTS
distinctive inspirational architecture.

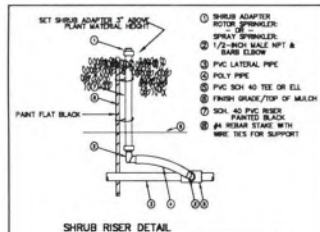
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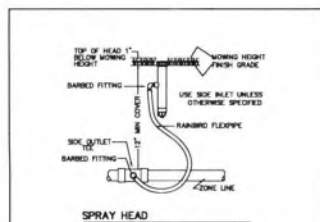
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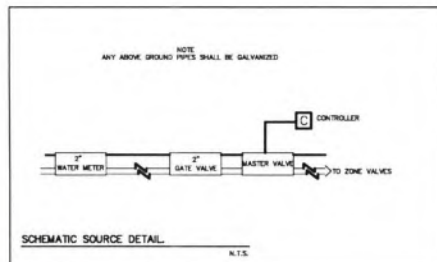
42 N. SHORELINE AVE. DELRAY BEACH, FL 33484 AND 33409 • NAPLES, FL 34107 • WWW.STOFFT.COM



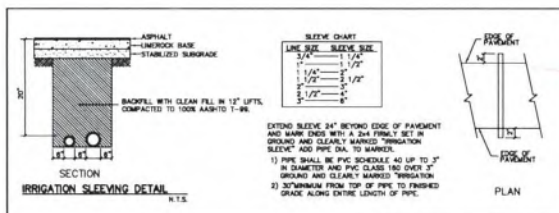
K.T.S.



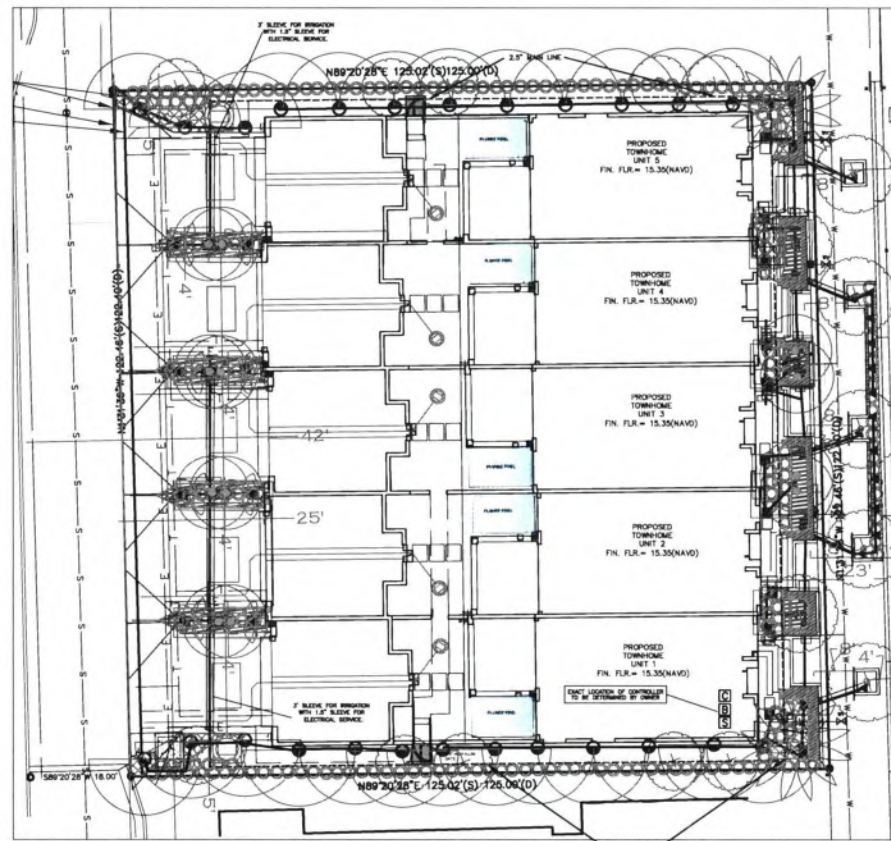
K.T.S.



K.T.S.



K.T.S.



ZONE LINE / SLEEVE SIZING CHART

| GALLONS/MINUTE | PIPE SIZE | SLEEVE SIZE |
|----------------|-----------|-------------|
| TO 10 | 3/4" | 1 1/4" |
| 11-16 | 1" | 1 1/2" |
| 17-26 | 1 1/4" | 2" |
| 27-35 | 1 1/2" | 2 1/2" |
| 36-50 | 2" | 3" |

*NOTE: ALL FIGURES ABOVE ARE RELATED TO SCHEDULE 40 PIPE PLASTIC PIPE, AND A MAXIMUM VELOCITY OF 5 FEET PER SECOND.

VALVE / ZONE SCHEDULE

| VALVE | ZONE TYPE | APPROX. GPM |
|-------|-----------|-------------|
| 1 | SPRAY | 35 |
| 2 | SPRAY | 35 |
| 3 | SPRAY | 35 |
| 4 | SPRAY | 35 |
| 5 | SPRAY | 35 |

IRRIGATION KEY

| MARK | ARC | SPRAY HEAD / STANDARD TRAJECTORY* | PS | GPM |
|------|-----|-----------------------------------|----|------|
| 1 | F | RANBRO 30-3 BUBBLER | 25 | 1.5 |
| 2 | O | RANBRO 15 SERIES WPI | 25 | 0.85 |
| 3 | H | RANBRO 15 SERIES WPI | 25 | 1.65 |
| 4 | T | RANBRO 15 SERIES WPI | 25 | 2.48 |
| 5 | F | RANBRO 15 SERIES WPI | 25 | 3.30 |
| 6 | F | RANBRO 15 SERIES END STOP | 25 | 0.58 |
| 123 | F | RANBRO 15 SERIES SIDE STOP | 25 | 1.55 |

1. RANBRO INC. & STATION ELECTRO MECHANICAL CONTROLLER COORDINATE LOCATION WITH CONTRACTOR

2. SHOWN FOR CLARITY, ALL ZONE VALVES LOCATED AT CONTROLLER

3. ADD RANBRO MODEL RSD-BX RAIN SHUT-OFF DEVICE

4. ADD FALCON 780 PWB Backflow Preventer PPT (FC780-300 OR LINE KNEE)

*NOTES

1. THE IRRIGATION PLAN IS SCHEMATIC. IRRIGATION CONTRACTOR SHALL PROVIDE SOIL COVERAGE WITH A MIN. 70% COVERAGE. HEADS SHALL BE PLACED TO MINIMIZE OVERSPRAY ON BUILDINGS AND FURNITURE.
2. SOME ADJUSTMENT TO THE SPRAY HEADS NOTED ABOVE MAY BE REQUIRED.
3. SPRAY HEADS IN SHRUB AREAS THAT ARE ADJACENT TO WALKS SHALL BE RANBRO 15 SERIES 12" POP-UPS.
4. SPRAY HEADS IN OTHER SHRUB AREAS SHALL BE ON A RISER WITH SHRUB ADAPTER AS NOTED IN THE DETAIL BELOW.
5. SPRAY HEADS IN GRASS AREAS SHALL BE RANBRO 15 SERIES 12" POP-UPS.

| | |
|------------|----------|
| DATE | 10/22/23 |
| DRAWN BY | GAH |
| CHECKED BY | --- |
| SCALE | 1"=10' |

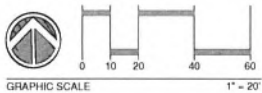
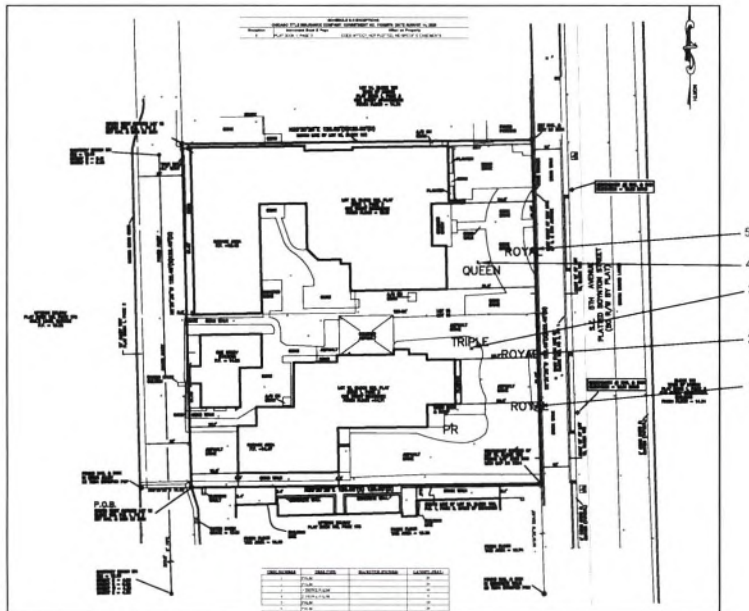
CAULFIELD & WHEELER, INC.
LANDSCAPE ARCHITECTURE - SERVING
THE SOUTHEASTERN FLORIDA AREA
PHONE (813) 980-1911 FAX (813) 980-1942

5TH AVENUE TOWNHOMES
DELRAY BEACH, FLORIDA 33483
IRRIGATION PLAN
DELRAY BEACH

| | |
|------------|----------|
| DATE | 10/22/23 |
| DRAWN BY | GAH |
| CHECKED BY | --- |
| SCALE | 1"=10' |



JOB # 10577
SHEET
IR-1
OF 1 SHEETS



EXISTING PLANT MATERIAL

| # | COMMON NAME | BOTANICAL NAME | O.A. HT. | C.T. HT. | COND. % | COMMENTS | MITT. |
|---|-------------------------|-----------------------|----------|----------|---------|-----------------------|---------------------------|
| 1 | ROYAL PALM | ROYSTONIA REGIA | 26' | 20' | 50 | NUTRITIONAL DEFICIENT | 1, DATE PALM 17' O.A. |
| 2 | ROYAL PALM | ROYSTONIA REGIA | 24' | 17' | 40 | NUTRITIONAL DEFICIENT | 1, DATE PALM 17' O.A. |
| 3 | CHRISTMAS PALM (Triple) | ADONIDIA MERRILLI | 10' | 7' | 70 | HEALTHY | 1, SUNSHINE PALM 18' O.A. |
| 4 | QUEEN PALM | SYAGRUS ROMANZOFFIANA | 18' | 14' | 80 | FAIR | 1, SUNSHINE PALM 18' O.A. |
| 5 | ROYAL PALM | ROYSTONIA REGIA | 24' | 18' | 80 | THIN, WEAK | 1, SUNSHINE PALM 18' O.A. |

Palms with condition rating of $\geq 50\%$: Replaced with one palm of equal overall heights (OH) or 16 ft OH, whichever is greater

Palms with condition rating of $< 50\%$: Required to be mitigated on a palm-for-palm basis (16' OH X 6 CT for others & 12' OH X 6' CT for SF & Duplex)

ARBORIST REPORT SUBMITTED AS SEPARATE DOCUMENT.

| | |
|------|----|
| DATE | BY |
| | |

CAULFIELD & WHEELER, INC.
 LANDSCAPE ARCHITECTURE - SURVEYING
 700 S. GULF BEACH ROAD, SUITE 100
 GULF BEACH, FLORIDA 33483
 PHONE (904) 381-1811 FAX (904) 381-1812

5TH AVENUE TOWNHOMES
 DELRAY BEACH, FLORIDA 33483
 TREE PRESERVATION PLAN
 DELRAY BEACH, FLORIDA

| | |
|------------|----------|
| DATE | 10/22/23 |
| DRAWN BY | GAJ |
| F.B. / PG. | --- |
| SCALE | 1"=10' |

ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE FLORIDA LANDSCAPE ARCHITECTURE BOARD RULES AND REGULATIONS.

JOB # 10577
TP-1
 OF 1 SHEETS