

THIS INSTRUMENT PREPARED BY
AND RETURN TO:

SCOTT A. ELK, ESQ.
SCOTT A. ELK, P.A.
750 Park of Commerce Boulevard
Suite 400
Boca Raton, FL 33487

SPACE ABOVE THIS LINE FOR
PROCESSING DATA

SPACE ABOVE THIS LINE FOR
PROCESSING DATA

PUBLIC ACCESS EASEMENT AGREEMENT

THIS PUBLIC ACCESS EASEMENT AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 2018, by DELRAY BEACH 4TH & 5TH AVENUE LLC, a Delaware limited liability company ("Grantor") having an address of 136 Brookline Avenue, Boston, Massachusetts 02215 and the City of Delray Beach a municipal corporation in Palm Beach County, State of Florida, with a mailing address of 100 N.W. 1st Avenue, Delray Beach, Florida 33444.

RECITALS

WHEREAS, the Grantor currently owns the real property located in Palm Beach County, Florida, and legally described in Exhibit "A" attached hereto and made a part hereof (the "Property").

WHEREAS, the City Commission approved a site plan for the Property dated May 2015, last revised May 31, 2016 attached as Exhibit B ("Site Plan"), which contained a condition of approval that the Grantor deliver to the City a public access easement over a portion of the Property.

WHEREAS, the Grantor desires to grant a non-exclusive access easement more particularly described in Exhibit "C" attached hereto and made a part hereof (the "Easement Area") and dedicate same to the public as a public right of way for pedestrian and vehicular access and utility purposes over the Property (the "Easement"), and to provide for landscaping adjacent to the Easement Area as set forth on the approved Site Plan.

WHEREAS, the Grantor desires to grant the Easement and to impose certain restrictions upon the Easement.

NOW, THEREFORE, in consideration of the agreements herein set forth and for TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties agree as follows:

- 1.0 RECITALS. The above recitals are true and correct and are incorporated herein by this reference.
- 2.0 GRANTOR'S REPRESENTATIONS AND WARRANTIES.

2.1 Grantor's Existence. Grantor is a Delaware limited liability company in good standing and authorized to transact business in Florida and has full power and authority to comply with the terms of this Agreement.

2.2 Authority. The execution and delivery of this Agreement by Grantor are within Grantor's legal capacity, and all requisite action has been taken to make this Agreement valid and binding on Grantor in accordance with its terms.

3.0 GRANT OF EASEMENT.

3.1 Grantor hereby grants, gives and conveys to Grantee and the public, a public right of way and Easement for access and utility purposes over and across the Easement Area more particularly described in Exhibit C..

3.2 So long as the Grantor is the owner in fee simple of the Property, the Grantor hereby reserves the right to record, modify, reconfigure, move, or in any way change the Easement subsequent to the granting of this Easement, providing same meets all codes and ordinances of the City of Delray Beach, Florida in Palm Beach County, Florida.

3.3 The Grantor hereby reserves the right to place and/or maintain utility lines and other facilities above or below the Easement. Grantor may modify or amend the Easement to allow for the placement of such utilities underground, or anywhere within or adjacent to the Easement so long as the same meets the codes and ordinances of the City of Delray Beach, Florida and Palm Beach County, Florida.

3.4 The Easement may only be modified, amended or reconfigured with the consent of the City of Delray Beach, Florida, by a document executed with equal dignity herewith.

3.5 All the rights hereby granted shall be exercised at all times in a reasonable manner.

3.6 The Easement Area is hereby dedicated to the public as a Easement for the public right of way for access, ingress and egress and utility purposes. Ownership of the Tract A Property shall not be conveyed to the City of Delray Beach by virtue of this Easement; however the Easement Area may not be utilized as a private street, and there may be no barriers to public access of the Easement Area.

4.0 MAINTENANCE. The Grantor shall be responsible for the following maintenance and repair obligations with respect to the Easement, including, without limitation the following (hereinafter the "Maintenance and Repair Obligation"):

4.1 Maintain, repair and replace the paved surfaces of the Easement and adjacent landscaping as reasonably required from time to time (including, without limitation, all sidewalks contained therein) such that those surfaces are smooth and evenly covered with the type of surfacing materials originally installed on them, or such substitute surfacing materials as shall be in all respects equal to the original surfacing materials in quality, appearance and durability, and maintain and mow landscaped areas immediately adjacent to the access driveway (including irrigation), all in accordance with generally accepted maintenance standards of similar first-class commercial projects in Delray Beach, Florida.

4.2 Remove all papers, debris, filth and refuse from the Easement and wash or, sweep paved areas of the Easement as reasonably required by generally accepted maintenance standards of similar first-class commercial projects in the Delray Beach, Florida.

4.3 Subject to Section 5.0, maintain such appropriate entrance, exit and directional signs, markers, and directional roadway markings as shall be reasonably required in accordance with the approved Site Plan and the design standards, ordinances and Land Development Regulations of the City of Delray Beach, Florida.

4.4 Subject to Section 5.0, install, clean and repair light fixtures, utilities, utility lines as needed in accordance with generally accepted maintenance standards of similar first-class commercial projects in Delray Beach, Florida.

4.5 Repair and repaint striping, markers, directional signs, and all other similar markings as necessary to maintain the Easement in a first-class condition, reasonable wear and tear excepted.

4.6 Undertake such repair and maintenance obligations as are reasonably required by the City of Delray Beach, Florida, Palm Beach County, Florida, Florida Department of Transportation, or any other governing agency.

5.0 ENFORCEMENT OF MAINTENANCE AND REPAIR OBLIGATIONS. The maintenance and repair obligations set forth in Section 4.0 of this Agreement and its subparts herein are enforceable with all remedies of law and in equity, including, but not limited to, bringing an action for actual damages, an action for specific performance, an action for temporary restraining orders preliminary or permanent injunctions, declaratory judgments or other similar orders for relief; provided, however, that suspension or termination of this Agreement on account of a breach shall not be an available remedy. The parties to this Agreement hereby acknowledge and stipulate the inadequacy of legal remedies and the irreparable harm that would be caused by a material breach of any obligation under this Agreement by a party to this Agreement. Without limiting the foregoing, City retains its right to enforce any obligation of Developer as provided in its codes, rules and ordinances, including code enforcement, denial of issuance of permits and approvals, and the revocation of permits and approvals.

6.0 Intentionally Omitted

7.0 SUCCESSORS AND ASSIGNS. This Agreement is a covenant running with the land and shall be binding upon and shall inure to the benefit of the heirs, legal personal representatives, successors and assigns of the parties hereto, and shall bind all present and subsequent Developers of the Property..

8.0 NOT ASSIGNABLE. This Agreement may not be assigned, and any purported assignment of this Agreement or any interest therein shall be void and of no force and effect.

9.0 NOTICES. Any notice, request, demand, instruction or other communication to be given to either party hereunder, shall be in writing and shall either be (i) hand-delivered, (ii) sent by Federal Express or a comparable overnight mail service, (iii) mailed by U.S. registered or certified mail, return receipt requested, postage prepaid, or (iv) sent by telephone facsimile transmission or by e-mail transmission provided that an original copy of the transmission shall be mailed by regular mail, to;

Grantor:
DELRAY BEACH 4TH & 5TH AVENUE LLC
136 Brookline Avenue,
Boston, MA 02215
c/o

City:

c/o City Manager
City of Delray Beach
100 NW 1st Avenue
Delray Beach, FL 33444

With a copy to:
c/o City Attorney
City of Delray Beach
200 NW 1st Avenue
Delray Beach, FL 33444

Notice shall be deemed to have been given upon receipt or refusal of delivery of said notice. The addressees and addresses for the purpose of this paragraph may be changed by giving notice. Unless and until such written notice is received, the last addressee and address stated herein shall be deemed to continue in effect for all purposes hereunder.

10.0 MISCELLANEOUS.

10.1 Term. The term of this Easement Agreement shall be perpetual and shall only be terminated by Grantor, its successors and/or assigns, with the consent of the City of Delray Beach, Florida, by written instrument recorded in the Public Records of Palm Beach County, Florida.

10.2 Amendment. No modification or amendment of this Agreement shall be of any force or effect unless consented to in writing executed by the City of Delray Beach, Florida and Grantor, their heirs, successors in interest and assigns, and recorded in the Public Records of Palm Beach County, Florida.

10.3 Attorneys' Fees. In connection with any litigation, arbitration, or dispute arising out of this Agreement, each party shall bear its own attorneys' fees and costs.

10.4 Construction of Agreement. Should any provision of this Agreement require interpretation in any judicial administrative or other proceeding or circumstance, it is agreed that the court, administrative body, or other entity interpreting or construing the same shall not apply a presumption that the terms thereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who prepared the same, it being further agreed that all parties hereto have fully participated in the preparation of this Agreement.

10.5 Counterparts. This Agreement may be executed in any number of counterparts, any one and all of which shall constitute the agreement of the parties and each of which shall be deemed an original.

10.6 Entire Agreement. This Agreement sets forth the entire agreement relating to the subject matter herein, and supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties, and there are no agreements, understandings, warranties, representations among the parties except as otherwise indicated herein.

10.7 Dedication. Nothing contained in this Agreement shall be deemed a gift or dedication of any portion of the Easement to the general public or the City of Delray Beach, Florida. Grantor shall have the right to temporarily close the Easement only so often and for such period of time as is necessary to avoid such dedication, provided that Grantor shall provide to Grantee suitable alternative access, ingress and egress over and across Grantor's Property during all such closures.

10.8 Gender. As used in this Agreement, the masculine shall include the feminine and neuter, the singular shall include the plural and the plural shall include the singular as the context may require.

10.9 Governing Law. This Agreement shall be interpreted in accordance with the internal laws of the State of Florida, both substantive and remedial, regardless of the domicile of any party, and will be deemed for such purposes to have been made, executed and performed in the State of Florida and venue shall be in Palm Beach County, Florida for all purposes herein.

10.10 Section and Paragraph Headings. The section and paragraph headings herein contained are for the purposes of identification only and shall not be considered in construing this Agreement.

10.11 Severability. Should any clause or provision of this Agreement be determined to be illegal, invalid or unenforceable under any present or future law by final judgment of a court of competent jurisdiction, the remainder of this Agreement will not be affected thereby. It is the intention of the parties that if any such provision is held to be illegal, invalid or unenforceable, there will be added in lieu thereof a legal, valid and enforceable provision that is as similar as possible in terms to the illegal, invalid or unenforceable provision.

10.12 Time of the Essence. Time is of the essence in the performance of all obligations under this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Signed, sealed and delivered
in the presence of:

GRANTOR:


DELRAY BEACH 4TH & 5TH AVENUE LLC, a
Delaware limited liability company

By: DELRAY BEACH 4TH & 5TH AVENUE HOLDINGS LLC, a
Delaware limited liability company, its sole member

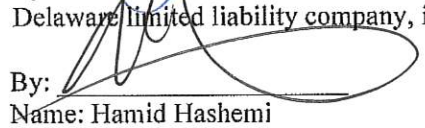
By: DELRAY BEACH 4TH & 5TH AVENUE
DEVELOPER LLC, a Delaware limited liability
company, its managing member


By: S&A DELRAY BEACH 4TH & 5TH AVENUE
LLC, a Delaware limited liability company, its
manager


By: S&A GP LLC, a Massachusetts
limited liability company, its manager

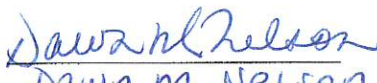
By: 
Name: Joel Sklar
Its: Manager

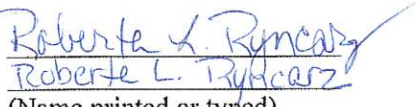
By: IPIC-DELRAY INVESTMENT, LLC, a
Delaware limited liability company, its manager

By: 
Name: Hamid Hashemi
Its: CEO


Samantha A. Chase
(Name printed or typed)


MICHAEL FITZPATRICK
(Name printed or typed)


Dawn M. Nelson
(Name printed or typed)


Robert L. Ryncarz
(Name printed or typed)

[NOTARY BLOCKS ON FOLLOWING PAGE]

STATE OF Massachusetts)
COUNTY OF Suffolk) ss:

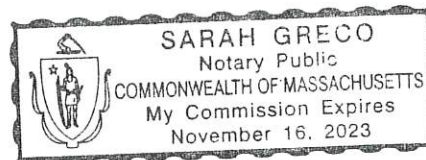
I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by Joel Sklar, as Manager of S&A GP, LLC as Manager of S&A DELRAY BEACH 4TH & 5TH AVENUE LLC, who is personally known to me or ☐ has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____ 2018.

(NOTARY SEAL)

Sarah Greco
NOTARY PUBLIC

(Name of Notary Typed, Printed, or Stamped)



STATE OF Florida)
COUNTY OF Palm Beach) ss:

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by Hamid Hashemi, as Managing Member of IPic Holdings, LLC as Manager of IPIC-DELRAY INVESTMENT, LLC, who: ☒ is personally known to me or ☐ has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 14th day of February 2018.

(NOTARY SEAL)

Dawn M. Nelson
NOTARY PUBLIC

(Name of Notary Typed, Printed, or Stamped)



DAWN M. NELSON
MY COMMISSION # GG 019097
EXPIRES: December 5, 2020
Bonded Thru Budget Notary Services

EXHIBIT "A"
TRACT A PROPERTY

Lot 10, **LESS** the North 20 feet thereof, and **LESS** the West 8 feet, 2 inches thereof, in Block 101, **TOWN OF LINTON**, now known as **DELRAY BEACH**, according to the plat thereof, as recorded in Plat Book 1, Page 3, of the Public Records of Palm Beach County, Florida.

AND

That part of Lot 11, in Block 101, **TOWN OF LINTON**, now known as **DELRAY BEACH**, according to the plat thereof, as recorded in Plat Book 1, Page 3, of the Public Records of Palm Beach County, Florida, being more particularly described as follows:

BEGIN at the Northwest corner of said Lot 11, for the **POINT OF BEGINNING**; Thence Southerly along the West line of said Lot 11, a distance of 3.63 feet; Thence Easterly a distance of 135 feet to a point in the East line of said Lot 11; Thence Northerly along the East line of Lot 11, a distance of 3.96 feet to the Northeast corner of Lot 11, Thence Westerly along the North line of Lot 11, a distance of 135 feet to the **POINT OF BEGINNING**, **LESS** the West 8 feet, 2 inches thereof.

EXHIBIT "B"
SITE PLAN

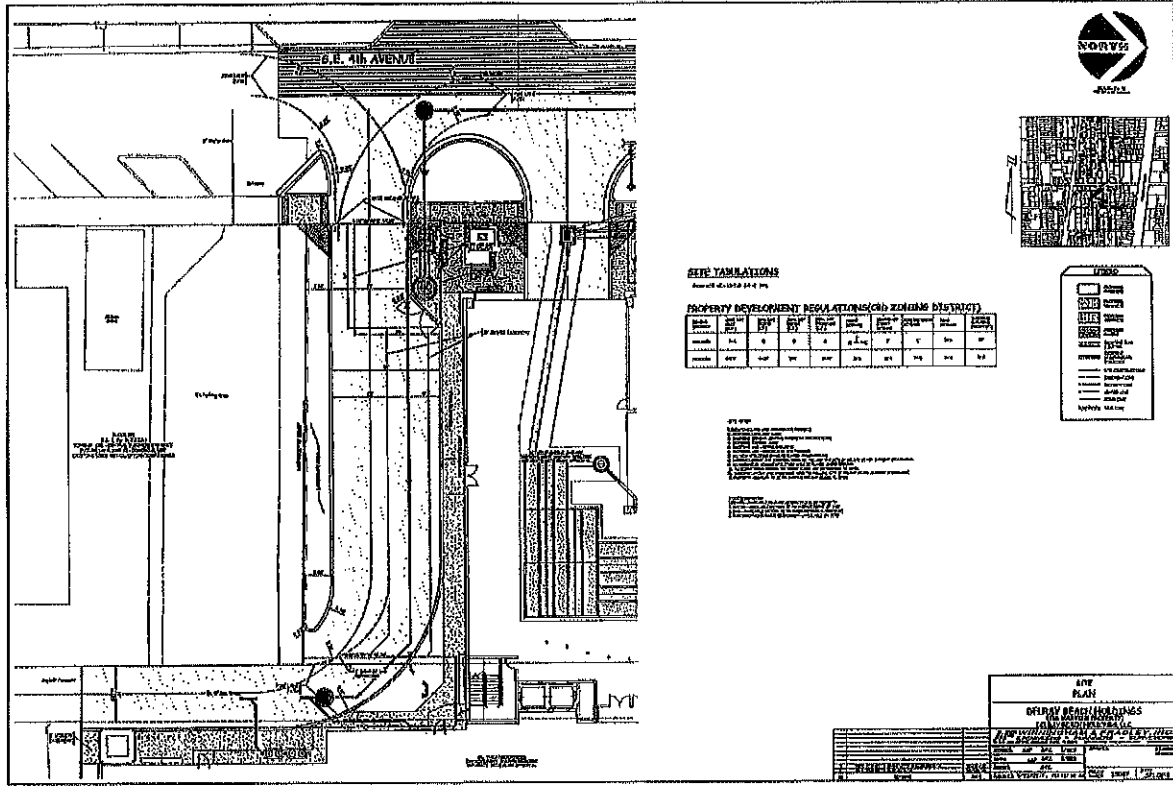


EXHIBIT "C"
EASEMENT AREA

SKETCH & DESCRIPTION FOR:
PUBLIC ACCESS EASEMENT
A PORTION OF LOT 10, BLOCK 101
TOWN OF LINTON (NOW DELRAY BEACH) (P.B. 1/3, P.B.C.R.)
CITY OF DELRAY BEACH, PALM BEACH COUNTY, FLORIDA
EXHIBIT " "

LAND DESCRIPTION:

A portion of Lot 10, Block 101, TOWN OF LINTON (NOW DELRAY BEACH), according to the plat thereof, as recorded in Plat Book 1, Page 3, of the Public Records of Palm Beach County, Florida, described as follows:

COMMENCE at the intersection of the south line of the north 20 feet of Lot 10 and a line lying 8.17 feet east of and parallel with the west line of said Lot 10, all of Block 101, said point of intersection also being the southwest corner of Parcel "A", FOURTH & FIFTH DELRAY, according to the plat thereof, as recorded in Plat Book 123, Pages 35 and 36, of the Public Records of Palm Beach County, Florida; thence S01°32'08"E, along said parallel line, 14.90 to the POINT OF BEGINNING; thence N88°27'52"E, 104.06 feet to a point of curvature of a curve concave to the south; thence southeasterly along the arc of said curve, having a radius of 42.00 feet and a central angle of 29°52'45", an arc distance of 21.90 feet to the intersection of a line lying 2.00 feet west of and parallel with the east line of said Lot 10, Block 101; thence S01°32'09"E, along said parallel line, 25.40 feet to the south line of said Lot 10; thence S89°18'50"W, along said south line, 10.03 feet to a point of cusp of a curve concave to the west; thence northwesterly along the arc of said curve, having a radius of 2.50 feet and a central angle of 142°10'45", an arc distance of 6.20 feet to a point of compound curvature of a curve concave to the south; thence westerly along the arc of said curve, having a radius of 20.00 feet and a central angle of 38°40'13", an arc distance of 13.50 feet; thence S88°27'52"W, 104.06 feet to an intersection with the aforementioned line lying 8.17 feet east of and parallel with the west line of said Lot 10; thence N01°32'09"W, along said parallel line, 22.00 feet to the POINT OF BEGINNING.

Said lands situate in the City of Delray Beach, Palm Beach County, Florida and containing 2,802 square feet, 0.064 acres, more or less.

REVISIONS		AVIROM & ASSOCIATES, INC. SURVEYING & MAPPING 60 S.W. 2nd AVENUE, SUITE 102 BOCA RATON, FLORIDA 33432 (561) 382-2694 / WWW.AVIROMSURVEY.COM <small>©2011 AVIROM & ASSOCIATES, INC. All rights reserved. This sketch is the property of AVIROM & ASSOCIATES, INC. and should not be reproduced or copied without written permission.</small>	JOB #: 7753-16
			SCALE: 1" = 20'
			DATE: 08/14/2017
			BY: M.M.K.
			CHECKED: M.D.A.
			F.B. N/A P.G. N/A
			SHEET: 1 OF 3

**SKETCH & DESCRIPTION FOR:
PUBLIC ACCESS EASEMENT**
A PORTION OF LOT 10, BLOCK 101
TOWN OF LINTON (NOW DELRAY BEACH) (P.B. 1/3, P.B.C.R.)
CITY OF DELRAY BEACH, PALM BEACH COUNTY, FLORIDA

EXHIBIT " "

SURVEYOR'S NOTES:

1. Reproductions of this Sketch are not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper. Additions or deletions to this sketch by other than the signing party is prohibited without written consent of the signing party.
2. No Title Opinion or Abstract to the subject property has been provided. It is possible that there are Deeds, Easements, or other Instruments (recorded or unrecorded) which may affect the subject property. No search of the Public Records has been made by the Surveyor.
3. The land description shown hereon was prepared by the Surveyor.
4. Bearings shown hereon are relative to the plat, FOURTH & FIFTH DELRAY, based on the most northerly south line of PARCEL "A" having a bearing of N89°18'50"E.
5. Data shown hereon was compiled from Instrument(s) of record and does not constitute a boundary survey.
6. Abbreviation Legend: C = Centerline; L.B. = Licensed Business; O.R.B. = Official Records Book; P.B. = Plat Book; P.B.C.R. = Palm Beach County Records; P.L.S. = Professional Land Surveyor; P.O.B. = Point of Beginning; P.O.C. = Point of Commencement; R/W = Right-of-Way.

CERTIFICATION:

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. I FURTHER CERTIFY that this Sketch and Description meets the Standards of Practice set forth in Chapter 5J-17.050 through 5J-17.052, Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.

Date: _____

MICHAEL D. AVIROM, P.L.S.
Florida Registration No. 3268
AVIROM & ASSOCIATES, INC.
L.B. No. 3300
EMAIL: mike@aviromsurvey.com


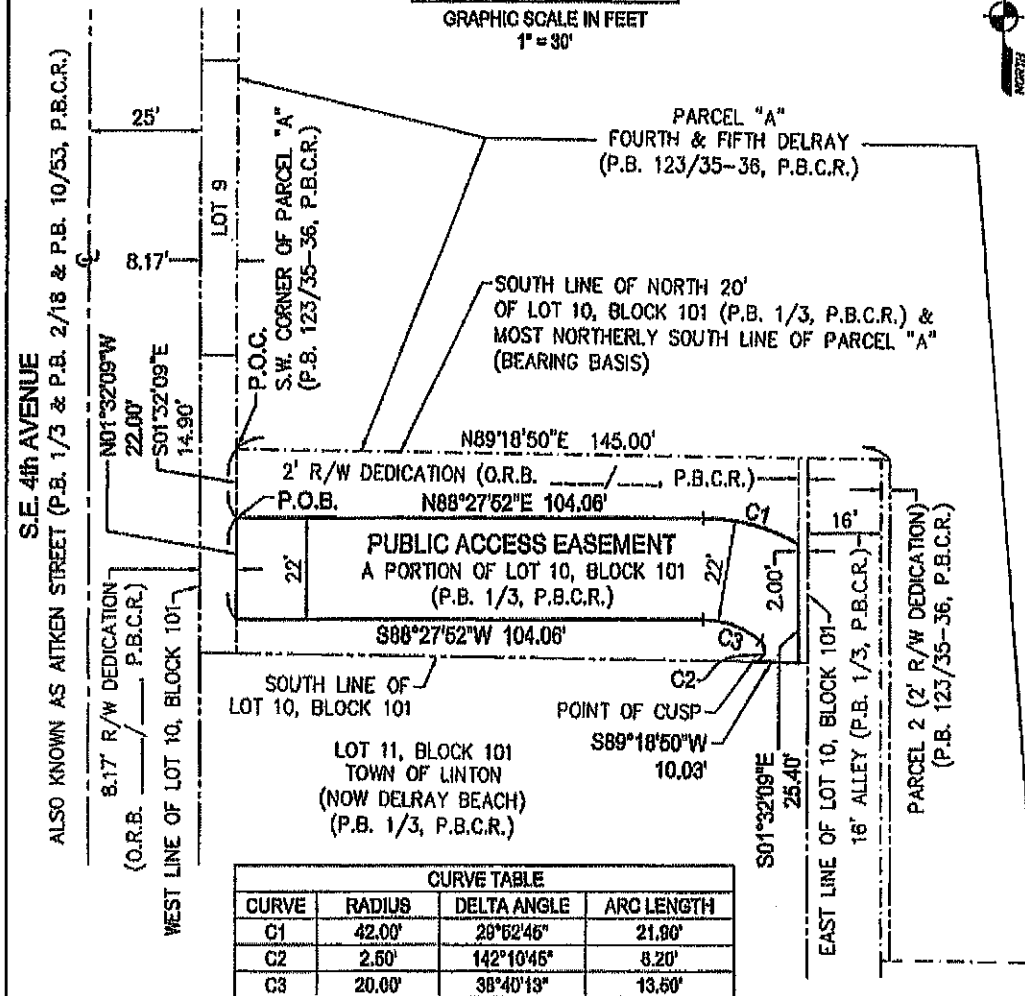
REVISIONS		AVIROM & ASSOCIATES, INC.	JOB #: 7763-16
		SURVEYING & MAPPING	SCALE: 1" = 30'
		50 S.W. 2nd AVENUE, SUITE 102	DATE: 09/14/2017
		BOCA RATON, FLORIDA 33432	BY: M.M.K.
		(561) 392-2594 / WWW.AVIROMSURVEY.COM	CHECKED: M.D.A.
		<small>©2010 AVIROM & ASSOCIATES, INC. all rights reserved. This sketch is the property of AVIROM & ASSOCIATES, INC. and should not be reproduced or copied without written permission.</small>	F.B. N/A PG. N/A
			SHEET: 2 OF 3

EXHIBIT " "



CURVE TABLE			
CURVE	RADIUS	DELTA ANGLE	ARC LENGTH
C1	42.00'	29°52'46"	21.80'
C2	2.50'	142°10'45"	8.20'
C3	20.00'	38°40'13"	13.50'

REVISIONS



AVIROM & ASSOCIATES, INC.
SURVEYING & MAPPING
50 S.W. 2nd AVENUE, SUITE 102
BOCA RATON, FLORIDA 33432
(561) 392-2894 / www.AVIROMSURVEYING.com
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JOB #:	7763-16
SCALE:	1" = 30'
DATE:	08/14/2017
BY:	MMK
CHECKED:	M.D.A.
F.B.	N/A PG. N/A
SHEET:	3 OF 3