

Prepared by: RETURN:
City Attorney's
Office 200 N.W.
1st Avenue
Delray Beach, Florida 33444

PCN 12-43-46-16-47-000-0300,
12-43-46-16-47-000-0330, and
12-43-46-16-01-098-0010
Address: 200-234 NE 5th Avenue, Delray Beach

**HOLD HARMLESS AGREEMENT FOR WORK
PERFORMED WITHIN THE STATE RIGHT-OF-WAY**

THIS HOLD HARMLESS AGREEMENT (Agreement), is entered into this ____ day of _____, 2021, by and between the **CITY OF DELRAY BEACH, FLORIDA**, (hereinafter referred to as "**CITY**") and **PHG DELRAY BEACH, LLC** (hereinafter referred to as "**OWNER**").

W I T N E S S E T H:

WHEREAS, OWNER is the owner of certain real property located at 200-234 NE 5th Avenue, Delray Beach, FL ("**PROPERTY**"); and

WHEREAS, OWNER is constructing improvements on the **PROPERTY** which require the relocation of a water main and related improvements ("**PROJECT**"); and

WHEREAS, the PROJECT requires work to be completed within State right-of-way located at or near the **PROPERTY**; and

WHEREAS, the CITY is required to sign the permit on behalf of the **OWNER** to allow the installation/construction to take place in the State right-of-way; and

WHEREAS, the CITY is required to indemnify and hold harmless the State for the work performed by **OWNER** in the State right-of-way; and

WHEREAS, this Agreement requires **OWNER** to hold harmless and defend the **CITY** for the work performed in the State right-of-way by the **OWNER**, its developer, contractor or agent.

NOW, THEREFORE, for the mutual covenants and matters set forth herein, as of the

date set forth above, the parties hereby agree as follows:

1. The recitations set forth above are incorporated herein.

2. **OWNER** shall at all times indemnify and hold harmless the **CITY** and its officers, employees, agents, and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the **CITY** or its officers, employees, agents, or instrumentalities may incur as a result of claims, demands, suits, causes of actions, or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of the agreement by the **OWNER** or its employees, agents, servants, partners, principals, or subcontractors. **OWNER** shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the **CITY**, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may be incurred thereon. **OWNER** expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by **OWNER** shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the **CITY** or its officers, employees, agents, and instrumentalities as herein provided the obligations of this section shall survive the term of this Agreement.

3. **OWNER** warrants and guarantees to the **CITY** that all work on the **PROJECT** shall be constructed in accordance with the applicable codes of the City of Delray Beach and the State of Florida. The **OWNER's** warranty and guarantee shall remain in effect for one year from the date of final acceptance. Unremedied defects identified for correction during the warranty/guarantee period but remaining after its expiration shall be considered as part of the obligations of the guarantee and warranty. Defects in the installation or construction of the utility improvement, which are remedied as a result of obligations of the warranty/guarantee shall subject the remedied portion of the work to an extended warranty/guarantee period of one year after the

defect has been remedied. **OWNER** shall deliver this agreement to its Surety. The Surety shall be bound with and for the **OWNER** in the **OWNER's** faithful observance of the guarantee.

4. **OWNER**, shall supervise and direct the installation and construction of the utility improvement, applying such skills and expertise as may be necessary to perform the work in accordance with the approved engineering plans. **OWNER** shall be solely responsible for the means, methods, techniques, sequences and procedures of the construction and installation of the utility improvement.

5. **OWNER** agrees to include the following terms in any contract entered into between **OWNER** and any developer, contractor, or agent selected by **OWNER** to perform any work required by this Agreement: (i) The contractor agrees to protect, defend, indemnify, and hold harmless the City of Delray Beach, its officers, employees, and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges, and other expenses or liabilities of every kind, including court costs, reasonable attorney's fees, at both the trial and appellate levels in connection with or arising directly out of the work agreed to be performed herein, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of contractor, its employees, servants, agents, and subcontractors. Without limiting the foregoing, any and all such claims, suits, etc., relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, is included in the indemnity. Contractor further agrees to investigate, handle, respond to, provide defense for, and defend any such claims, etc., at his sole expense and agrees to bear all other costs and expenses related thereto, even if the claim(s) is groundless, false, or fraudulent., and (ii) The parties recognize that various provisions of this

agreement, including but not necessarily limited to this Section, provide for indemnification by the contractor and that Section 725.06, Florida Statutes, requires a specific consideration be given thereof. The parties therefore agree that the sum of Ten Dollars and 00/100 (\$10.00), receipt of which is hereby acknowledged, is the specific consideration for such indemnities, and the providing of such indemnities is deemed to be part of the specifications with respect to the services to be provided by contractor. Furthermore, the parties understand and agree that the covenants and representations relating to this indemnification provision shall survive the term of this Agreement and continue in full force and effect as to the party's responsibility to indemnify.

6. Any claims, lawsuits or disputes that may arise under this Agreement shall be governed by the Laws of Florida, with venue in Palm Beach County, Florida.

7. This Agreement constitutes the entire agreement and understanding of the parties, as it pertains to the construction or installation of the utility. There are no representations or understandings of any kind not set forth herein. Any amendments to this Agreement must be in writing and executed by both parties.

8. **OWNER**, its developer, contractor, or agent shall maintain worker's compensation insurance in an amount required by law and general liability insurance in the amount of one million dollars (\$1,000,000.00) governing bodily injury and property damage in standard form, insuring **CITY** and the State as additional named insureds. **OWNER** its developer, contractor, or agent shall provide this information to the **CITY** on a Certificate of Insurance, that is acceptable to the **CITY**, prior to commencing installation or construction.

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. **OWNER** shall be bound by all the terms and conditions found in the Utility Permit Agreement between the **CITY** and the State for this project and attached hereto as Exhibit "A".

11. This agreement shall not be valid unless signed by the City's Mayor and City Clerk.

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

ATTEST:

CITY OF DELRAY BEACH

Katerri Johnson, City Clerk

By: _____
Shelly Petrolia, Mayor

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney

WITNESSES:

PHG DELRAY BEACH, LLC

Signature

Claire Lawless

Print Name

Allis

Signature

Allison Neamy

Print Name

By: _____

Name: Kevin Cadin

Its: Authorized Person

Date: 3/31/2021

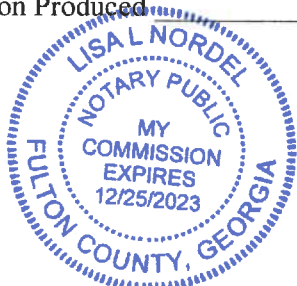
STATE OF ~~FLORIDA~~ Georgia

COUNTY OF ~~PALM BEACH~~ Fulton

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 1st day of April, 2021, by Kevin Cadin (name of person), as Auth. Person (type of authority) for PHG Delray Beach, LLC (name of party on behalf of whom instrument was executed).

Personally known ☒ OR Produced Identification

Type of Identification Produced _____



Lisa L. Nordel
Notary Public – State of ~~Florida~~ Georgia

UTILITY PERMIT

PERMIT NO: _____

STATE ROAD INFORMATION

County:	Section:	State Road No:	Beginning Mile Post:	Ending Mile Post:

APPLICANT INFORMATION

The Utility Agency Owner (UAO) shall be identified in this Applicant Information Box. When the UAO is a City or County and desires to have the Utility Builder make a joint permit applicant, as prescribed in Section 2.1(4) of the 2017 Utility Accommodation Manual (UAM), the Utility Builder shall also be identified in this Applicant Information Box. A Utility Builder alone cannot apply for a utility permit without the City or County adding them as a joint applicant.

Utility Agency/Owner (UAO)

Name: City of Delray Beach
Contact Person: Hassan Hadjimiry, P.E.
Address: 434 S Swinton Ave
City: Delray Beach
State: FL
Zip: 33444
Telephone: (561) 243 - 7303 ext. _____
Email: hadjimiryh@mydelraybeach.com

Utility Builder (only applicable when the UAO is a City or County)

Name: PHG Delray Beach, LLC
Contact Person: Lee Shuman
Address: 3500 Lenox Rd, Suite 625
City: Atlanta
State: GA
Zip: 30326
Telephone: (404) 497 - 4102 ext. _____
Email: lshuman@peachtreehotelgroup.com

WORK DESCRIPTION

The Applicant(s) requests permission from the Florida Department of Transportation (FDOT) to construct, operate, and maintain the utilities as described below and as depicted in the incorporated documentation.

Relocation of existing 12" water main and installation of water services within the FDOT right-of-way along NE 5th Ave (SR5) north of NE 2nd St.

Utility Work No: _____

Additional sheets are attached and are incorporated into this permit Yes ☐ No ☐

For FDEP certification, the FDOT agency report is attached in accordance with UAM Section 2.4.1 (13) Yes ☐ No ☐

TRAFFIC CONTROL (TCP)

☒ The TCP will comply with the following 600 series index(es) 102-613

☒ A TCP has been attached and incorporated into this permit application in compliance with UAM Section 2.4.2.

MOT Technician's contact information (may be supplied at the two (2) business day notification to FDOT):

Name: _____ Telephone (____) _____-_____ Email: _____

COMMENCEMENT OF WORK

The UAO and/or Utility Builder shall commence actual construction in good faith within sixty (60) calendar days after approval of the permit application. If the beginning date is more than sixty (60) calendar days from the date of approval, the UAO and/or Utility Builder must review the permit with the FDOT Approving Engineer listed to make sure no changes have occurred to the transportation facility that would affect the permit's continued approval. The UAO and/or Utility Builder shall make good faith efforts to expedite the work and complete the work within the calendar days indicated.

Anticipated Start Date: ____/____/____

Calendar days needed to completed: _____

UTILITY PERMIT**PERMIT NO:** _____**APPLICANT SIGNATURE**

By the below signature(s) the UAO and/or Utility Builder agree(s) to construct, operate, and maintain the work as noted in the above Work Description, shown in plans and incorporated documents, in compliance with the UAM, all instructions noted in the FDOT Special Instructions Box, and special instructions incorporated into this permit. The UAO and/or Utility Builder declares, the location of all existing utilities that it owns or has an interest in, both aerial and underground, are accurately shown on the plans of the work areas. In accordance with UAM Section 2.8, the UAO and/or Utility Builder further declares that a letter of notification was delivered to the owners of other facilities within the work areas and that those listed below are the only facility owners known to be involved or potentially impacted by the proposed work.

Date Notified:

Name of other facility owners (attach additional sheets if necessary).

____/____/____

____/____/____

____/____/____

____/____/____

____/____/____

Utility Agency/Owner

Utility Builder (when applicable)

Signature: _____ Date: ____/____/____

Signature: _____ Date: ____/____/____

Name (printed): _____

Name (printed): _____

Title: _____

Title: _____

FDOT PROJECT INFORMATION

Pursuant to UAM Section 2.1(10), the utility work is within FDOT projects listed below and must have a Utility Work Schedule for each project approved prior to commencement of work within the FDOT project limits:

FDOT SPECIAL INSTRUCTIONS

In accordance with UAM Section 2.7, FDOT incorporates the below and attached special instructions into this permit.

Additional FDOT Special Instructions are attached and incorporated into this permit. Yes ☐ No ☐

PERMIT APPROVAL

By signature below, FDOT gives permission to the UAO and/or Utility Builder to construct, operate, and maintain the utilities indicated in this Utility Permit in compliance with the UAM, all incorporated documents, and special instructions. Any changes to the approved work must be approved by the FDOT's Approving Engineer and attached and incorporated into this permit in accordance with UAM Section 2.11.

Approving Engineer: _____ Date: ____/____/____

Name: _____

Title: _____

Notification of Utility Work to be provided to: Telephone (____) ____-____ or Email: _____

An FDOT Representative is required to be present on the worksite prior to commencement of work. Yes ☐ No ☐

Rep. Name: _____ Telephone (____) ____-____ Email: _____

UTILITY PERMIT**PERMIT NO:** _____**CERTIFICATION**

I, the undersigned UAO and/or Utility Builder, hereby CERTIFY that the utilities were constructed and inspected in compliance with the UAM all incorporated documents, and special instructions. Pursuant to UAM Section 2.11, all changes have been approved by the FDOT's Approving Engineer and incorporated into this permit along with all other material certifications, test results, bore logs, approved plans changes, as-built plans or other required documentation.

I also CERTIFY that work began on ____/____/____ and was completed on ____/____/____ and that the area was left in as good or better condition than when the work began.

Utility Agency/Owner

Utility Builder (when applicable)

Signature: _____ Date ____/____/____

Signature: _____ Date ____/____/____

Name (printed): _____

Name (printed): _____

Title: _____

Title: _____

FINAL INSPECTION OF WORK☐ The work was inspected and found to be in non-compliance as noted below:

☐ All issues of non-compliance listed above have been brought into compliance and/or FDOT has no outstanding issues that need to be addressed by the UAO and/or Utility Builder. However, this final inspection does not release the UAO and/or Utility Builder of their continuing responsibilities pursuant to Rule 14-46.001, the UAM, all incorporated documents, and special instructions.

FDOT Inspector: _____ Date: ____/____/____


Name: _____

Title: _____

[illegible]

CALL 48 HOURS BEFORE YOU DIE.
IT'S THE LAW
1-800-432-4770
SUNSHINE STATE ONE CALL OF FLORIDA, INC.

SCALE: 1" = 20'



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ALL RIGHTS RESERVED. THIS ADVERTISEMENT
MAY BE REPRODUCED AND USED BY A LIMITED NUMBER OF
INDIVIDUALS FOR PERSONAL OR PROFESSIONAL PURPOSES.
FOR FURTHER INFORMATION, CONTACT: STANFORD, INC.

40 60
SEWER PROFILE
 VERT. SCALE: 1" = 2'
 HORIZONTAL SCALE: 1" = 20'
 40 0 20
 A-VALVE
 DP M.M.
 811
 CALL BEFORE YOU DIG.
 Know what's below.
 Call before you dig.

INSTALL ON DRAIN

FIRE HYDRANT

WATER MAIN

BACKFLOW PREVENTION ASSEMBLY

GENERAL WATER NOTES:

1. BACKFLOW PREVENTION ASSEMBLY MUST BE APPROVED BY USC.
2. USE REPAIRS WATER MAIN FOR CURE CURING PER F.A.C. 88-665.330(21)P.9s.

SURVEYOR'S NOTES:

1. SURVEY MAPS OR THE COPIES THEREOF ARE NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND ORIGINAL SEAL, OR THE AUTHENTICATED ELECTRONIC SIGNATURE, 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 SOUTH 01°30'11" EAST ALONG THE WEST RIGHT-OF-WAY LINE OF STATE ROAD NO. 5 (ALSO KNOWN AS N.E. 5TH AVENUE AND FEDERAL HIGHWAY) AS SHOWN ON THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP FOR STATE ROAD NO. 5, SECTION 9301-206, RELATIVE TO THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, TRANSVERSE MERCATOR PROJECTION, NORTH AMERICAN DATUM OF 1983 (1990 ADJUSTMENT), AND BASED ON FIELD MEASUREMENTS.
5. THE LAND DESCRIPTION SHOWN HEREON WAS PREPARED BY THE SURVEYOR.
6. DATA SHOWN HEREON WAS COMPILED FROM THE INSTRUMENTS OF RECORD RECORDED IN THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, AND DOES NOT CONSTITUTE A FIELD SURVEY AS SUCH.

DESCRIPTION:

PORTIONS OF LOTS 30, 31, 32 & 33, BLOCK 98, L.R. BENJAMIN'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 12, PAGE 18 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, TOGETHER WITH A PORTION OF BOYNTON STREET AND A PORTION OF BLOCK 98, MAP OF THE TOWN OF LINTON, FLORIDA (NOW KNOWN AS THE CITY OF DELRAY BEACH), ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 1, PAGE 3 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, ALL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SAID LOT 30; THENCE S89°24'07"W ALONG THE NORTH LINE OF SAID LOT 30, A DISTANCE OF 4.00 FEET TO THE POINT OF BEGINNING; THENCE S01°30'11"E, A DISTANCE OF 45.71 FEET; THENCE N88°29'49"E, A DISTANCE OF 1.44 FEET TO A POINT OF CURVE TO THE RIGHT HAVING A RADIUS OF 7.50 FEET AND A CENTRAL ANGLE OF 90°00'00"; THENCE SOUTHEASTERLY ALONG SAID CURVE A DISTANCE OF 11.78 FEET TO THE POINT OF TANGENCY; THENCE S01°30'11"E, A DISTANCE OF 230.78 FEET TO A POINT OF CURVE TO THE RIGHT HAVING A RADIUS OF 22.00 FEET AND A CENTRAL ANGLE OF 71°17'29"; THENCE SOUTHWESTERLY ALONG SAID CURVE A DISTANCE OF 27.37 FEET TO A POINT ALONG THE EXTENSION OF THE WEST RIGHT-OF-WAY LINE OF STATE ROAD NO. 5 (ALSO KNOWN AS N.E. 5TH AVENUE AND FEDERAL HIGHWAY) AS SHOWN ON THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP FOR STATE ROAD NO. 5, SECTION 9301-206; THENCE N01°30'11"W ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 304.93 FEET TO A POINT ALONG THE NORTH LINE OF SAID LOT 30; THENCE N89°24'07"E ALONG SAID NORTH LINE, A DISTANCE OF 6.00 FEET TO THE POINT OF BEGINNING.

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

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS, COVENANTS, AND RIGHTS-OF-WAY OF RECORD.

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 NOVEMBER 2, 2020. I FURTHER CERTIFY THAT THIS SKETCH AND DESCRIPTION MEETS THE STANDARDS OF PRACTICE SET FORTH IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE, ADOPTED BY THE FLORIDA BOARD OF 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 - SURVEYING
7900 GLADES ROAD - SUITE 100
BOCA RATON, FLORIDA 33434
PHONE (561)-392-1991 / FAX (561)-750-1452

DAVID P. LINDLEY
REGISTERED LAND
SURVEYOR NO. 5005
STATE OF FLORIDA
L.B. 3591

DATE	11/2/2020
DRAWN BY	RW
F.B./ PG.	N/A
SCALE	NONE
JOB NO.	8441-SIDEWALK

SKETCH AND DESCRIPTION

LEGEND

O.R.B. - OFFICIAL RECORDS BOOK
P.B. - PLAT BOOK
PG. - PAGE
P.O.B. - POINT OF BEGINNING
P.O.C. - POINT OF COMMENCEMENT
CL - CENTERLINE



GRAPHIC SCALE



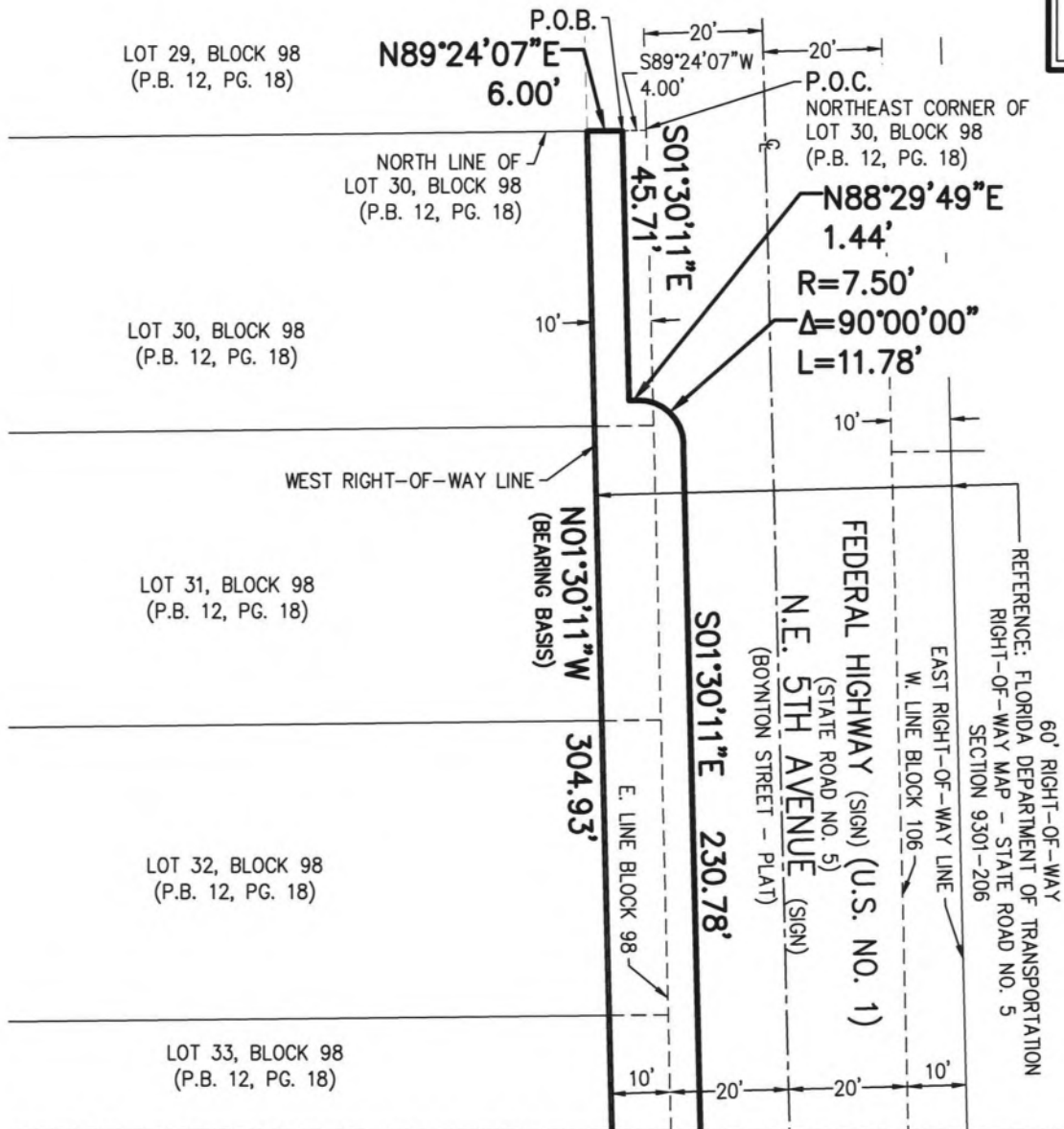
(IN FEET)

1 INCH = 30 FT.

KEY MAP
(NOT TO SCALE)

THIS
SHEET

SHEET
3



THIS IS NOT A SURVEY MATCHLINE - SEE SHEET 3

SHEET 2 OF 3



CAULFIELD & WHEELER, INC.

CIVIL ENGINEERING
LANDSCAPE ARCHITECTURE - SURVEYING
7900 GLADES ROAD - SUITE 100
BOCA RATON, FLORIDA 33434
PHONE (561)-392-1991 / FAX (561)-750-1452

SKETCH AND DESCRIPTION

DATE 11/2/2020

DRAWN BY RW

F.B./ PG. N/A

SCALE 1"=30'

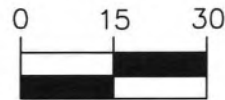
JOB NO. 8441-SIDEWALK

LEGEND

O.R.B. - OFFICIAL RECORDS BOOK
P.B. - PLAT BOOK
PG. - PAGE
CL - CENTERLINE



GRAPHIC SCALE



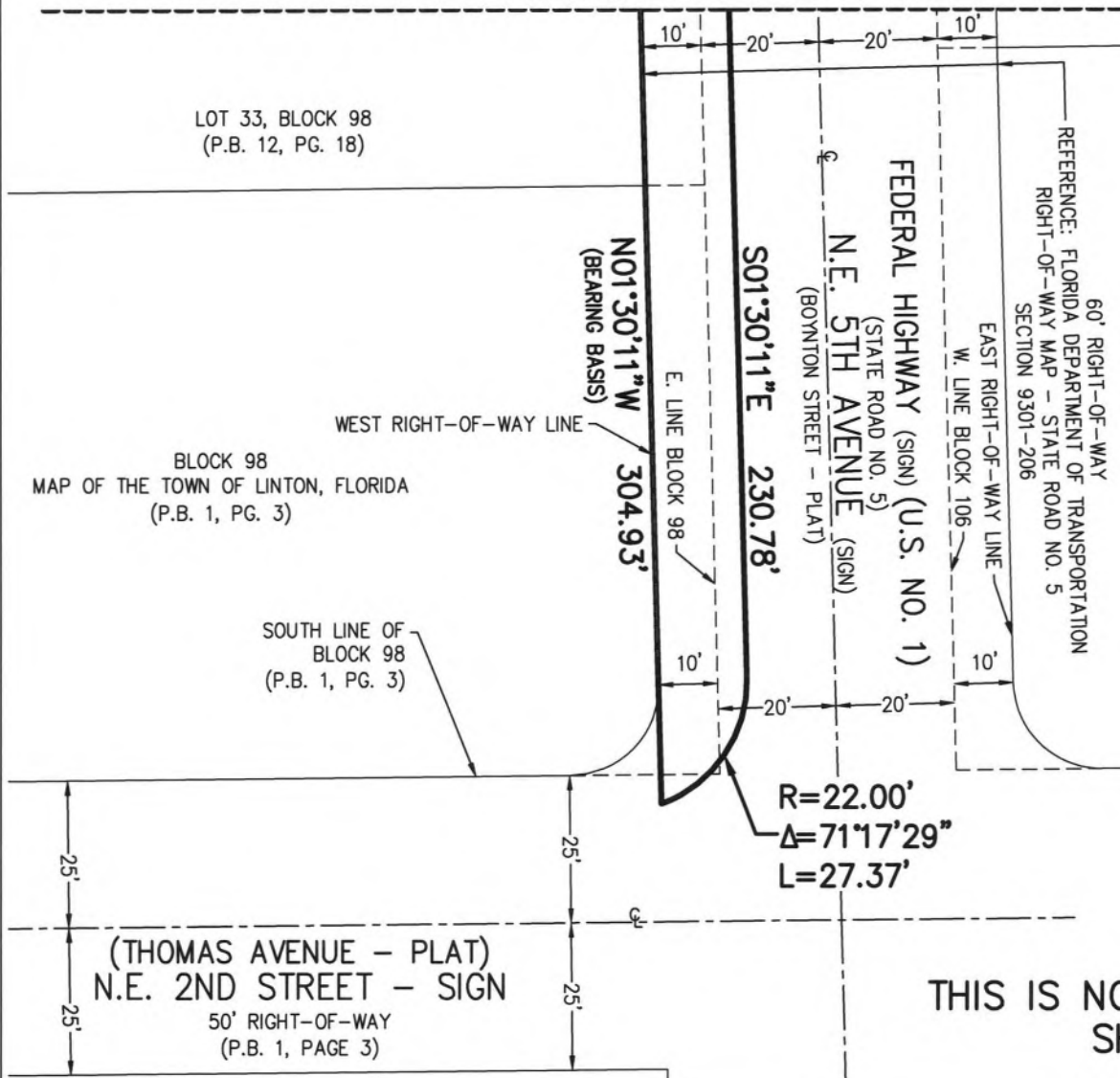
(IN FEET)
1 INCH = 30 FT.

KEY MAP
(NOT TO SCALE)

SHEET
2

THIS
SHEET

MATCHLINE - SEE SHEET 2



CAULFIELD & WHEELER, INC.

CIVIL ENGINEERING

LANDSCAPE ARCHITECTURE - SURVEYING

7900 GLADES ROAD - SUITE 100

BOCA RATON, FLORIDA 33434

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



SKETCH AND DESCRIPTION

DATE 11/2/2020

DRAWN BY RW

F.B./ PG. N/A

SCALE 1"=30'

JOB NO. 8441-SIDEWALK