



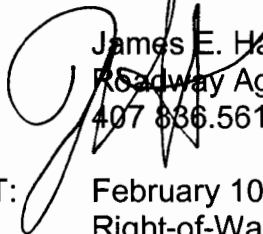
Interoffice Memorandum

SEE MINUTES
FOR MOTION
FEB 10 2015 KH/NP

AGENDA ITEM

January 20, 2015

TO: Mayor Teresa Jacobs
-AND-
Board of County Commissioners

FROM:  James E. Harrison, Esq., P.E., Chairman
Roadway Agreement Committee
407 836.5610

SUBJECT: February 10, 2015 – Consent Item
Right-of-Way Agreement Hollywood Plaza Parking Garage
International Drive

The Roadway Agreement Committee has reviewed a Right-of-Way Agreement ("Agreement") among Wallack Parking, LLC and 8050 I Drive Realty, LLC (collectively, the "Owner") and Orange County for the dedication of right-of-way for International Drive to accommodate the International Drive Transit Lane project. Within 120 days of the effective date of this agreement, the Owner shall convey to Orange County 0.06 acres of right-of-way for International Drive by general warranty deed. Owner shall be entitled to transportation impact fee credits in the amount of \$196,296.30 by agreement.

The Roadway Agreement Committee approved the Right-of-Way Agreement on December 10, 2014. The Specific Project Expenditure Report and Relationship Disclosure Forms are on file with the Transportation Planning Division.

Please note that this item is to be considered concurrently with a Public Hearing for the PD Land Use Plan for the Hollywood Plaza Parking Garage.

ACTION REQUESTED: Approval of Right-of-Way Agreement Hollywood Plaza Parking Garage International Drive by and between/among Wallack Parking, LLC, 8050 I Drive Realty, LLC, and Orange County providing for the dedication of 0.06 acres of right-of-way for \$196,296.30 in transportation impact fee credits. District 6

JEH|HEGB:rep

Attachments

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS
FEB 10 2015 KH/WP

Prepared by and after recording return to:
James E. Cheek, III
Winderweedle, Haines, Ward & Woodman, P.A.
P.O. Box 880
Winter Park, Florida 32790

Tax Parcel I.D. No.: 36-23-28-3787-00-010

RIGHT OF WAY AGREEMENT

HOLLYWOOD PLAZA PARKING GARAGE

INTERNATIONAL DRIVE

This Right-of-Way Agreement (the "Agreement"), effective as of the latest date of execution (the "Effective Date"), is made and entered into by and between/among Wallack Parking, LLC, a Florida limited liability company, and 8050 I Drive Realty, LLC, a Florida limited liability company (collectively, the "Owner"), whose mailing address is 900 Ocean Drive, Office 27, Miami Beach, FL 33139, and Orange County, a charter county and political subdivision of the State of Florida ("County"), whose mailing address is c/o Orange County Administrator, Post Office Box 1393, Orlando, Florida 32802-1393.

WITNESSETH:

WHEREAS, Owner is the owner of fee simple title to certain real property as more particularly described on Exhibit "B" (the "Property"), which abuts the International Drive Transit Lane project shown in the project location map identified as Exhibit "A," (the "Transit Lane Project"), both of which are attached hereto and incorporated herein by this reference; and

WHEREAS, Owner is developing the Property as a public parking garage with a retail and restaurant component (the “Project”), and is re-zoning the Property to Planned Development (PD) in connection with such development; and

WHEREAS, the County has informed the Owner that the eastern fourteen (14) feet of the Property abutting International Drive is required for a future south bound bus lane as part of the Transit Lane Project; and

WHEREAS, Owner is willing to convey to County certain portions of the Property in return for credits against transportation impact fees to be paid in the future in connection with the Project; and

WHEREAS, the Orange County Engineer has declared International Drive to be impact fee eligible; and

WHEREAS, County and Owner desire to set forth certain terms, conditions, and agreements between the parties as to the conveyance of such land to County.

NOW, THEREFORE, Owner and County (the “Parties”) agree as follows:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Conveyance of Land to County by Owner.

(a) *Conveyed Lands.* Within one hundred twenty (120) days from the Effective Date, Owner shall convey to County marketable fee title to those lands described in the legal description and sketch of description attached hereto as Exhibit “C” and incorporated by this reference (the “Conveyed Lands”). In the event conveyance does not occur within the aforesaid 120 days, the Director of the Administrative Services Department, or a designee, may grant an extension of up to 120 days for the conveyance to take place.

(b) *Procedure.* The conveyance of the Conveyed Lands shall be by plat dedication or general warranty deed, free and clear of all liens and encumbrances, except for easements of record acceptable to County, if any. If by plat dedication, the rest of this paragraph and the following paragraphs (c), (e) and (f) will not apply. Owner shall pay all costs associated with the conveyance of the Conveyed Lands, including all recording fees and documentary stamps related to such conveyance. Ad valorem taxes in connection with the conveyance of the Conveyed Lands shall be prorated as of the date of transfer of title and said prorated amount shall be paid by Owner to the Orange County Tax Collector, in escrow, pursuant to Section 196.295, Florida Statutes, unless the conveyance occurs between November 1 and December 31 of the year of conveyance, in which case ad valorem taxes shall be paid in full by Owner for the year of conveyance.

(c) *Title Policy.* No less than thirty (30) days prior to conveyance of the Conveyed Lands, Owner shall deliver to County, at Owner's sole cost and expense, a commitment to issue an Owner's Policy of Title Insurance naming County as the insured (the "Title Commitment"). The original Owner's Policy of Title Insurance (the "Title Policy") shall be delivered to County within thirty (30) days of the conveyance of the Conveyed Lands.

(d) *Value of Conveyed Lands.* The value of the land to be conveyed by Owner to County has been determined in accordance with Section 23-95, Orange County Code, as may be amended from time to time.

The Parties hereby agree that the value of the Conveyed Lands to be conveyed by Owner to County, in return for credits against transportation impact fees to be paid in the future in connection with the Project, is \$196,296.30. This total results from an agreed-upon fair market value of \$3,271,604.94 per acre, or fraction thereof, and a total acreage of .06 acre(s).

(e) *Environmental Audit.* No less than forty five (45) days prior to conveyance, Owner shall submit to County a current (within 6 months of conveyance to County) Phase I environmental audit of the areas encompassed by the Conveyed Lands. The Phase I environmental audit shall be conducted in accordance with the requirements of the All Appropriate Inquiries Final Rule, or with the standards set forth in the American Society for Testing and Materials (ASTM) E-1527-13. In the event the Phase I environmental audit presents a matter of concern, as determined by County, then prior to the conveyance, Owner shall submit to County a Phase II environmental audit. If the Phase II environmental audit is performed and reveals the need for remediation to the Conveyed Lands, one of the following events shall occur: (i) Owner shall remediate the Conveyed Lands to County's satisfaction prior to the conveyance; or (ii) Owner and County shall negotiate and enter into a separate agreement whereby Owner shall pay the full cost of remediation; or (iii) County may terminate this Agreement at its option.

(f) *Compliance with Section 286.23, Florida Statutes.* Owner shall execute and deliver to County the "Disclosure of Beneficial Interests" required pursuant to section 286.23, Florida Statutes.

(g) *Use Agreement.* Following dedication or conveyance of the Conveyed Lands by Owner, Owner may enter into a Use Agreement with County to allow the Owner to continue to use the Conveyed Lands for uses approved by the County and in a manner consistent with County's intended use of the Conveyed Lands.

Section 3. *Transportation Impact Fee Credits.* Promptly upon County's approval of any Environmental Assessments and Title Commitment required under Section 2, and upon approval and acceptance of the general warranty deed or in the case of conveyance by plat

dedication, County's acceptance of the plat dedication, County shall credit on its books to the account of Owner, for purposes of Article IV of Chapter 23 of the Orange County Code and any successor code provisions (the "Impact Fee Ordinance"), the aforementioned amount of transportation impact fee credits to which Owner is entitled under the Impact Fee Ordinance. Such transportation impact fee credits may only be used in transportation impact fee zone 4. Thereafter, as impact fees become payable from time to time in connection with the Project, and if so instructed by Owner, County shall deduct such amounts payable from Owner's account.

For purposes of the foregoing, County shall make deductions from Owner's account from time to time only upon receipt of written direction from Owner (or from such person or entity to whom Owner expressly may assign this authority, in writing, in the future) to effect the particular deduction.

Nothing herein shall prevent Owner from assigning transportation impact fee credits as provided for in Section 23-95(e) of the Orange County Code, as may be amended from time to time.

Section 4. Utilities. This agreement does not address utility requirements. Owner shall coordinate with the Orange County Utilities Director, or a designee, with respect to any utility easements necessary to accommodate appropriately-sized wastewater sewer mains or lines, potable water mains or lines, and/or reclaimed water mains or lines.

Section 5. Notice. Any notice delivered with respect to this Agreement shall be in writing and shall be deemed to be delivered (whether or not actually received) (i) when hand delivered to the person(s) hereinafter designated, or (ii) upon deposit of such notice in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the person at the address set forth opposite the party's name below, or to such other address or to such other

person as the party shall have specified by written notice to the other party delivered in accordance herewith.

As to Owner: Wallack Parking, LLC
900 Ocean Drive, Office 27
Miami Beach, FL 33139
Attention: Joshua Wallack

and

8050 I Drive Realty, LLC
c/o Friedman Management Co.
770 Lexington Avenue
New York, NY 10065
Attention: Robert G. Friedman

With a copy to: Winderweedle, Haines, Ward & Woodman, P.A.
329 Park Avenue North, Second Floor
Winter Park, Florida 32789
Attention: James E. Cheek, III

As to County: Orange County Administrator
P.O. Box 1393
201 S. Rosalind Ave
Orlando, FL 32802-1393

With a copy to: Orange County Community, Environmental,
and Development Services Department
Manager, Transportation Planning Division
Orange County Public Works Complex
4200 S. John Young Parkway
Orlando, Florida 32839-9205

Section 6. Covenants Running with the Land. This Agreement shall run with the Property and shall be binding upon and shall inure to the benefit and burden of the heirs, legal representatives, successors, and assigns of Owner and any person, firm, corporation, or other entity that may become a successor in interest to the Property. Notwithstanding the foregoing, however, the authority under Section 3 to instruct County to make deductions from Owner's

transportation impact fee account shall remain with Owner unless expressly assigned in writing to another by Owner.

Section 7. Recordation of Agreement. An executed original of this Agreement shall be recorded, at Owner's expense, in the Public Records of Orange County, Florida within thirty (30) days of the Effective Date.

Section 8. Applicable Law. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

Section 9. Time is of the Essence. Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this Agreement.

Section 10. Further Documentation. The Parties agree that at any time following a request therefor by the other party, each shall execute and deliver to the other party such further documents and instruments reasonably necessary to confirm and/or effectuate the obligations of either party hereunder and the consummation of the transactions contemplated hereby.

Section 11. Limitation of Remedies. County and Owner expressly agree that the consideration, in part, for each of them entering into this Agreement is the willingness of the other to limit the remedies for all actions arising out of or in connection with this Agreement.

(a) *Limitations on County's remedies.* Upon any failure by Owner to perform its obligations under this Agreement, County shall be limited strictly to only the following remedies:

- (i) action for specific performance or injunction; or
- (ii) the right to set off, against the amounts of impact fees to be credited in favor of Owner under this Agreement, (A) any amounts due to County from Owner under this Agreement but remaining

unpaid and (B) the cost to County of performing any action or actions required to be done under this Agreement by Owner, but which Owner has failed or refused to do when required; or

(iii) the withholding of development permits and other approvals or permits in connection with the Project and/or the Property; or

(iv) any combination of the foregoing.

In addition to the foregoing, nothing in this Agreement prohibits or estops County from exercising its power of eminent domain with respect to the Conveyed Lands or any other portion of the Property as County may lawfully elect.

(b) *Limitations on Owner's remedies.* Upon any failure by County to perform its obligations under this Agreement, Owner shall be limited strictly to only the following remedies:

(i) action for specific performance; or

(ii) action for injunction; or

(iii) action for declaratory judgment regarding the rights and obligations of Owner; or

(iv) any combination of the foregoing.

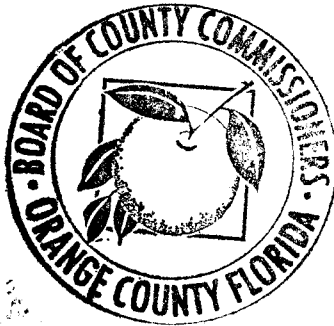
Both parties expressly waive their respective rights to sue for damages of any type for breach of, or default under, this Agreement by the other. Both parties expressly agree that each party shall bear the cost of its own attorney fees for any action arising out of or in connection with this Agreement. Venue for any actions initiated under or in connection with this Agreement shall be in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida.

Section 12. Amendment. This Agreement may be amended only in writing, formally executed in the same manner as this Agreement.

Section 13. Counterparts. This Agreement and any amendment(s) may be executed in up to three (3) counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective duly authorized representatives on the dates set forth below.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners



By: *[Signature]*

[Signature]
Teresa Jacobs
Orange County Mayor

Date: 2.12.15

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: *[Signature]*
Deputy Clerk

Katie Smith

Print name: _____

WALLACK PARKING, LLC,
a Florida limited liability company

By: [Signature]
David P. Wallack, as Manager

Date: 12/16/14

WITNESSES:
[Signature]
Print Name: Joshua Wallack
[Signature]
Print Name: Edith Rivera

STATE OF FLORIDA
COUNTY OF DALLAS

The foregoing instrument was acknowledged before me by David P. Wallack, as Manager of Wallack Parking, LLC, a Florida limited liability company, who is known by me to be the person described herein and who executed the foregoing, this 16 day of Dec., 2014. He is personally known to me or has produced _____ as identification and did/did not take an oath.


WITNESS my hand and official seal in the County and State last aforesaid this 16 day of Dec., 2014.

[Signature]
Notary Public
Print Name: _____
My Commission Expires: _____



8050 I DRIVE REALTY, LLC
a Florida limited liability company

By: Orchard Park Associates, LLC
a Florida limited liability company,
its Manager

By: 


Robert G. Friedman, as Manager

Date: 12/16/14

WITNESSES:



Print Name: Ricki Booth




Print Name: Lola Louie

STATE OF New York
COUNTY OF New York

The foregoing instrument was acknowledged before me by Robert G. Friedman, as Manager of Orchard Park Associates, LLC, a Florida limited liability company, as Manager of 8050 I Drive Realty, LLC, a Florida limited liability company, who is known by me to be the person described herein and who executed the foregoing, this 16th day of December, 2014. He is personally known to me or has produced _____ as identification and did/did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 16th day of December, 2014.


Notary Public

Print Name: Ricki Booth

My Commission Expires: _____

RICKI BOOTH
NOTARY PUBLIC, State of New York
No. 0180500197
Qualified in New York County
Commission Expires Sept. 15, 2017

Exhibit "A" Project Location Map

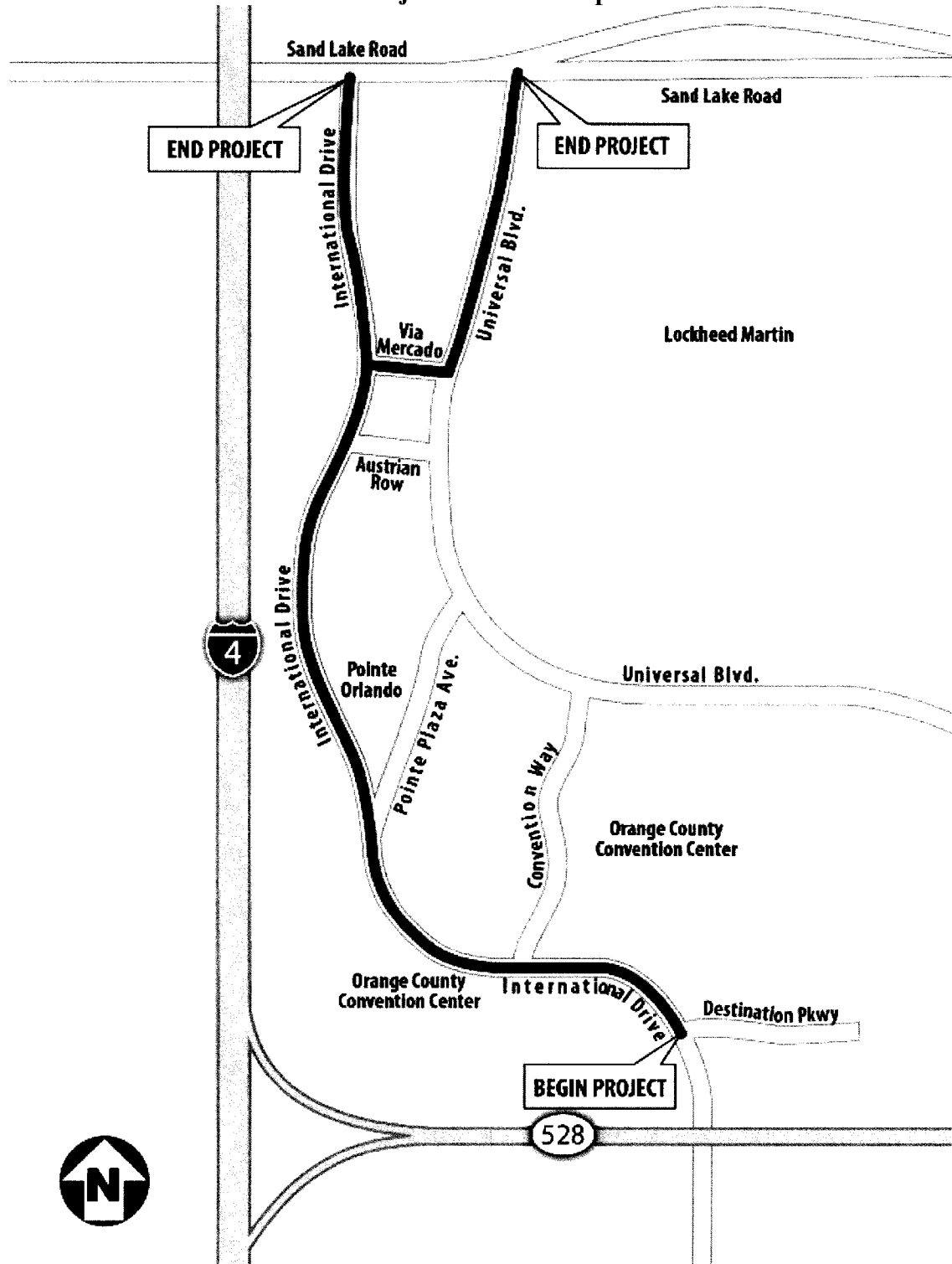


Exhibit "B"

Legal Description and Sketch of Description for Property

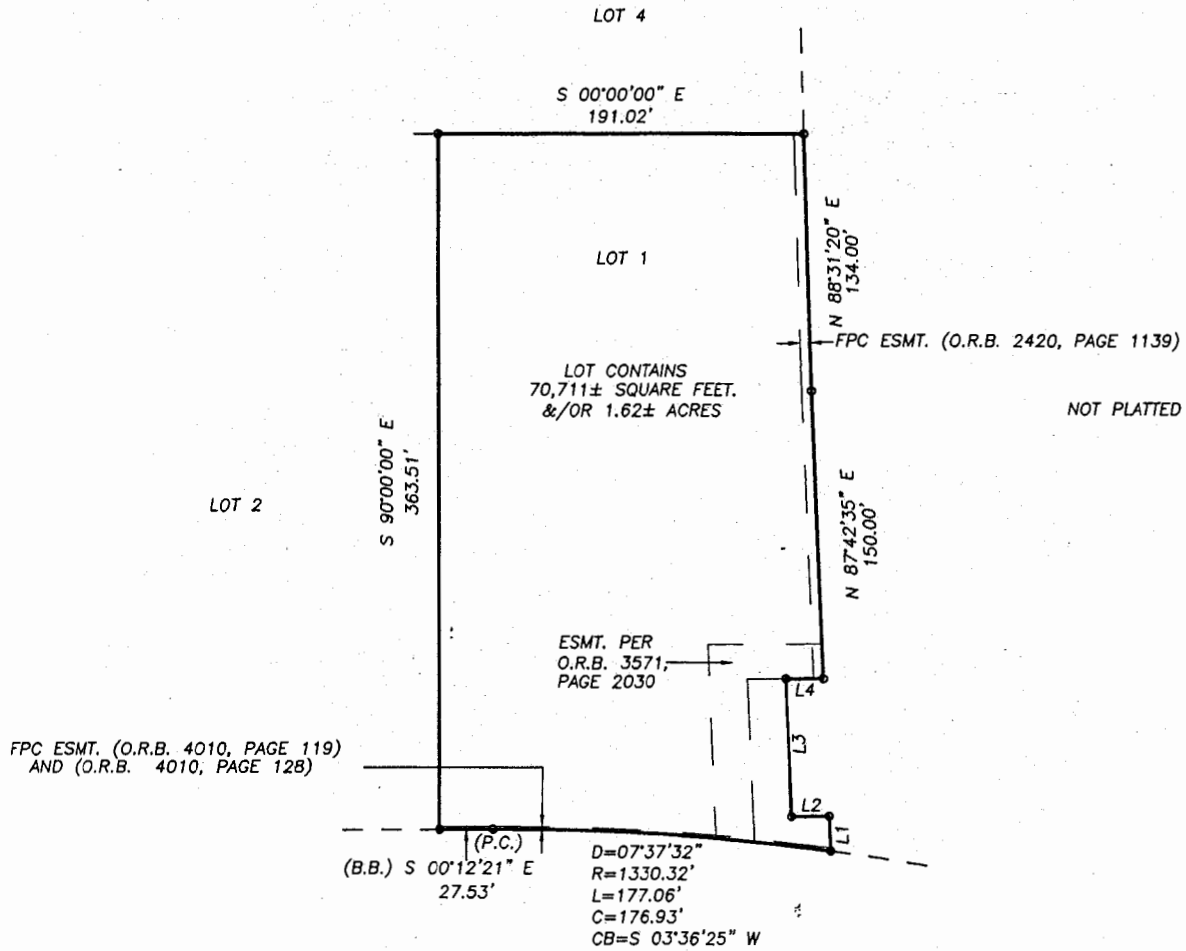
Lot 1, Hollywood Plaza, according to the map or plat thereof, as recorded in Plat Book 36, Page 98, of the Public Records of Orange County, Florida.

[SKETCH ON FOLLOWING PAGE]

SKETCH AND DESCRIPTION

DESCRIPTION AS FURNISHED: Lot 1, HOLLYWOOD PLAZA, according to the map or plat thereof, as recorded in Plat Book 36, Page 98 of the Public Records of Orange County, Florida. Containing therein ±70,711 square feet or ±1.62 Acres.

SKETCH OF DESCRIPTION FOR/CERTIFIED TO: Winderweedle, Haines, Ward & Woodman, P.A.; BankUnited, N.A.



LINE TABLE		
LINE	BEARING	DISTANCE
L1	N 87°42'35\"	18.00'
L2	N 00°25'30\"	19.51'
L3	N 87°42'35\"	72.78'
L4	S 00°25'30\"	19.51'

SKETCH OF DESCRIPTION ONLY
 "THIS IS NOT A SURVEY"

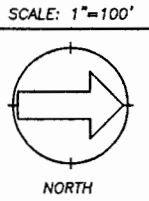
INTERNATIONAL DRIVE
 (O.R.B. 2746, PAGE. 165 & O.R.B. 3291, PAGE. 708)

GRUSENMEYER - SCOTT & ASSOC., INC. - LAND SURVEYORS

5400 E. COLONIAL DR. ORLANDO FLORIDA 32807 (407)277-3232 FAX (407)658-1436 EMAIL GRUSCOTT@GRUSCOTT.COM
 CERTIFICATE OF AUTHORIZATION - LB 4596

- LEGEND -
- P = PLAT
- F = FIELD
- I.P. = IRON PIPE
- I.R. = IRON ROD
- C.M. = CONCRETE MONUMENT
- SET I.R. = 1/2" I.R. w/#LB 4596
- REC. = RECOVERED
- P.O.B. = POINT OF BEGINNING
- P.O.C. = POINT OF COMMENCEMENT
- CL.F.C. = CHAIN LINK FENCE
- WD.F.C. = WOOD FENCE
- C/B = CONCRETE BLOCK
- R = RADIUS
- L = ARC LENGTH
- D = DELTA
- C = CHORD
- C.B. = CHORD BEARING
- P.O.L. = POINT ON LINE
- TYP. = TYPICAL
- P.R.C. = POINT OF REVERSE CURVATURE
- P.C.C. = POINT OF COMPOUND CURVATURE
- RAD. = RADIAL
- N.R. = NON-RADIAL
- W.P. = WITNESS POINT
- CALC. = CALCULATED
- P.R.M. = PERMANENT REFERENCE MONUMENT
- F.F. = FINISHED FLOOR ELEVATION
- SQ. FT. = SQUARE FEET
- B.M. = BENCHMARK
- B.B. = BASE BEARING
- CONC. = CONCRETE
- FIRM = FLOOD INSURANCE RATE MAP
- I.D. = IDENTIFICATION
- P.C. = POINT OF CURVATURE
- P.T. = POINT OF TANGENCY
- DESC. = DESCRIPTION
- FPC = FLORIDA POWER CORPORATION
- O.R.B. = OFFICIAL RECORDS BOOK

- NOTES:
1. THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS SKETCH MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 5J-17 FLORIDA ADMINISTRATIVE CODE.
 2. UNLESS EMBOSSED WITH SURVEYOR'S SIGNATURE AND SEAL, THIS SKETCH IS NOT VALID AND IS PRESENTED FOR INFORMATIONAL PURPOSES ONLY.
 3. THIS SKETCH WAS PREPARED FROM TITLE INFORMATION FURNISHED TO THE SURVEYOR. THERE MAY BE OTHER RESTRICTIONS OR EASEMENTS THAT AFFECT THIS PROPERTY.
 4. THIS SKETCH IS PREPARED FOR THE SOLE BENEFIT OF THOSE CERTIFIED TO AND SHOULD NOT BE RELIED UPON BY ANY OTHER ENTITY.
 5. BEARINGS, IF SHOWN, ARE BASED ASSUMED DATUM AND ON THE LINE SHOWN AS BASE BEARING (B.B.)



CERTIFIED BY: *James W. Scott* R.L.S. # 4801
 JAMES W. SCOTT, R.L.S. # 4801 TOM X. GRUSENMEYER, R.L.S. # 4714
 SKETCH AND DESCRIPTION FOR/CERTIFIED TO:

DATE	ORDER #
11-21-14	4258-14
REVISED 12-10-14	
REVISED 12-12-14	

Exhibit "C"

**Legal Description and Sketch of Description
for Conveyed Lands**

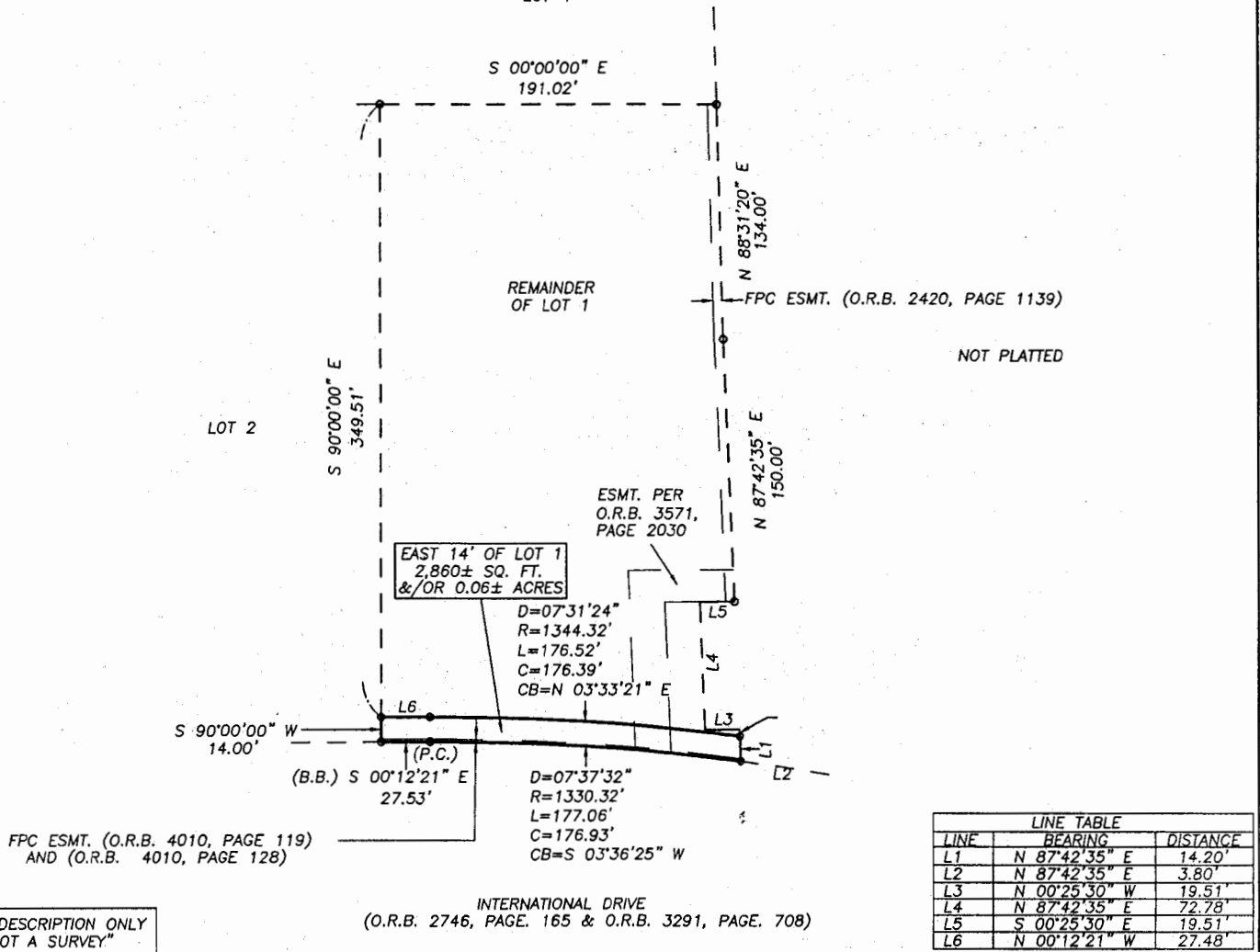
The East 14 feet of Lot 1, Hollywood Plaza, according to the map or plat thereof, as recorded in Plat Book 36, Page 98, of the Public Records of Orange County, Florida.

[SKETCH ON FOLLOWING PAGE]

SKETCH AND DESCRIPTION

DESCRIPTION AS FOLLOWS: The East 14 feet of Lot 1, HOLLYWOOD PLAZA, according to the map or plat thereof, as recorded in Plat Book 36, Page 98 of the Public Records of Orange County, Florida. Containing therein ±2,860 square feet or ±0.06 Acres.

SKETCH OF DESCRIPTION FOR/CERTIFIED TO: Winderweede, Haines, Ward & Woodman, P.A.; BankUnited, N.A.
 LOT 4

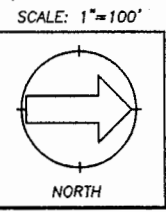


SKETCH OF DESCRIPTION ONLY
 "THIS IS NOT A SURVEY"

GRUSENMEYER - SCOTT & ASSOC., INC. - LAND SURVEYORS

5400 E. COLONIAL DR. ORLANDO FLORIDA 32807 (407)277-3232 FAX (407)658-1436 EMAIL GRUSCOTT@GRUSCOTT.COM
 CERTIFICATE OF AUTHORIZATION - LB 4596

1. THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS SKETCH MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER SJ-17 FLORIDA ADMINISTRATIVE CODE.
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CERTIFIED BY: *James W. Scott* R.L.S. # 4801
 JAMES W. SCOTT, R.L.S. # 4801 TOM X. GRUSENMEYER, R.L.S. # 4714
 SKETCH AND DESCRIPTION FOR/CERTIFIED TO:

DATE	ORDER #
11-21-14	4258-14
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REVISED 12-12-14	