

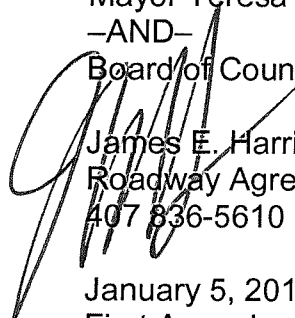


Interoffice Memorandum

AGENDA ITEM

December 10, 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: January 5, 2016 – Consent Item
 First Amendment to Right-of-Way Agreement
 Hollywood Plaza Parking Garage - International Drive

The Roadway Agreement Committee has reviewed a First Amendment to Right-of-Way Agreement for Hollywood Plaza Parking Garage ("First Amendment") among Wallack Parking, LLC and 8050 I Drive Realty, LLC (collectively "Owner") and Orange County for a modification of the timeframe to convey. The Right-of-Way Agreement for Hollywood Plaza Parking Garage was approved by the Board of County Commissioners on February 10, 2015, recorded at OR Book/Page 10876/2264, and provided for the conveyance to be made within 120-days. The conveyance was not completed within the timeframe provided. The First Amendment extends the timeframe in Section 2(a) of the Agreement to provide for the conveyance of right-of way within 120-days of the effective date of the First Amendment with the opportunity for an additional 120-day extension to be granted by the Manager of the Real Estate Management Division.

The Roadway Agreement Committee approved the First Amendment to Right-of-Way Agreement for Hollywood Plaza Parking Garage on November 11, 2015. The Specific Project Expenditure Report and Relationship Disclosure Forms are on file with the Transportation Planning Division.

ACTION REQUESTED: Approval of First Amendment to Right Of Way Agreement Hollywood Plaza Parking Garage International Drive by and between Wallack Parking, LLC and 8050 I Drive Realty, LLC and Orange County to modify the timeframe for the conveyance. District 6

JEH/HEGB:rep

Attachment

JAN 05 2016 JUK/LC

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

**FIRST AMENDMENT TO
RIGHT OF WAY AGREEMENT**

HOLLYWOOD PLAZA PARKING GARAGE

INTERNATIONAL DRIVE

This First Amendment to Right Of Way Agreement, Hollywood Plaza Parking Garage, International Drive (the "First Amendment"), effective as of the latest date of execution ("Effective Date"), is made and entered into by and between 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" (legal description and sketch of description) attached hereto and incorporated herein by this reference (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 and County entered into that certain Right of Way Agreement approved by the Orange County Board of County Commissioners (“BCC”) on February 10, 2015 and recorded in Official Records Book 10876, Page 2264, in the Public Records of Orange County, Florida (the “Agreement”), which requires conveyance of the lands described in the legal description and sketch of description attached hereto as Exhibit “C” and incorporated by this reference (the “Conveyed Lands”) under the terms and conditions described therein; and

WHEREAS, County and Owner desire to amend certain terms and provisions of the Agreement as set forth below; and

WHEREAS, in all other respects, the original terms of the Agreement shall remain unchanged and in full force and effect.

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. Section 2(a) of the Agreement is hereby amended to require conveyance of the Conveyed Lands within 120 days from this First Amendment, allowing for one extension of up to 120 days to convey, in accordance with the Agreement, which may be granted by the Manager of the Real Estate Management Division, or a designee.

Section 3. Notice. Any notice delivered with respect to this First Amendment or the 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 4. Covenants Running with the Land. This First Amendment shall run with the Property and shall be binding upon and shall inure to the benefit and burden of the parties and of the heirs, legal representatives, successors, and assigns of Owner and any person, firm, corporation, or other entity that may become the successor in interest to the Property.

Notwithstanding the foregoing, however, the authority under Section 3 of the Agreement to instruct County to make deductions from Owner's road impact fee account shall remain with Owner unless expressly assigned in writing to another by Owner.

Section 5. Recordation of First Amendment. An executed original of this First Amendment shall be recorded, at Owner's expense, in the Public Records of Orange County, Florida within thirty (30) days of the Effective Date.

Section 6. Applicable Law. This First Amendment and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

Section 7. Time is of the Essence. Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this First Amendment and in the Agreement.

Section 8. 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 9. Limitation of Remedies. County and Owner expressly agree that the consideration, in part, for each of them entering into this First Amendment is the willingness of the other to limit the remedies for all actions arising out of or in connection with this First Amendment.

(a) **Limitations on County's remedies.** Upon any failure by Owner to perform its obligations under this First Amendment, 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 the Agreement, (A) any amounts due to County from Owner under the Agreement but remaining unpaid and (B) the cost to County of performing any action or actions required to be done under the 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 First Amendment 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 First Amendment, 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.

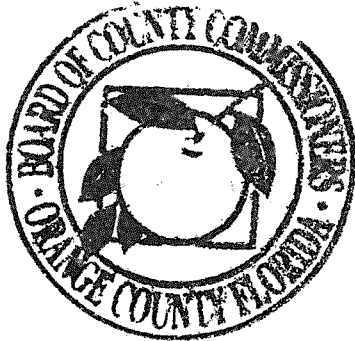
Both parties expressly waive their respective rights to sue for damages of any type for breach of, or default under, this First Amendment by the other. Both parties expressly agree that each party shall bear the cost of its own attorney fees for any action arising out of or in connection with this Amendment.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

Section 10. Amendments. No amendment, modification, or other change to this Amendment or the Agreement shall be binding upon the parties unless in writing and executed by all the parties hereto.

Section 11. Counterparts. This First Amendment 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.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties have caused this Amendment 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: *Teresa Jacobs*

TJ
Teresa Jacobs,
Orange County Mayor

Date: 1.5.16

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

By: *Craig A. Stopysa*
for Deputy Clerk

Print: Craig A. Stopysa

WALLACK PARKING, LLC,
a Florida limited liability company

By: [Signature]

David P. Wallack, as Manager

Date: 11/20/15

WITNESSES:

[Signature]
Print Name: Tracy Wallack

[Signature]
Print Name: JUNE H. ARIAS

STATE OF FLORIDA
COUNTY OF DAD1

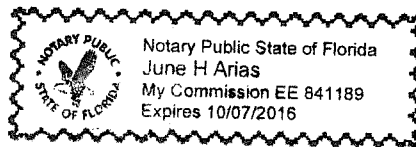
The foregoing instrument was acknowledged before me by David P. Wallack, as Manager of Wallack Parking, LLC, a Florida limited liability company, who is known by me to be the person described herein and who executed the foregoing, this 11 day of NOV, 2015. He is personally known to me or has produced _____ as identification and did/did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 20 day of NOV, 2015.

[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: [Signature]

Robert G. Friedman, as Manager

Date: 11/24/15

WITNESSES:

[Signature]

Print Name: Lola Louie

[Signature]

Print Name: LOUIS LOJAN

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 24 day of November, 2015. 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 24 day of November, 2015.

[Signature]
Notary Public

Print Name: Recki Booth

My Commission Expires: _____



Exhibit "A"

Project Location Map

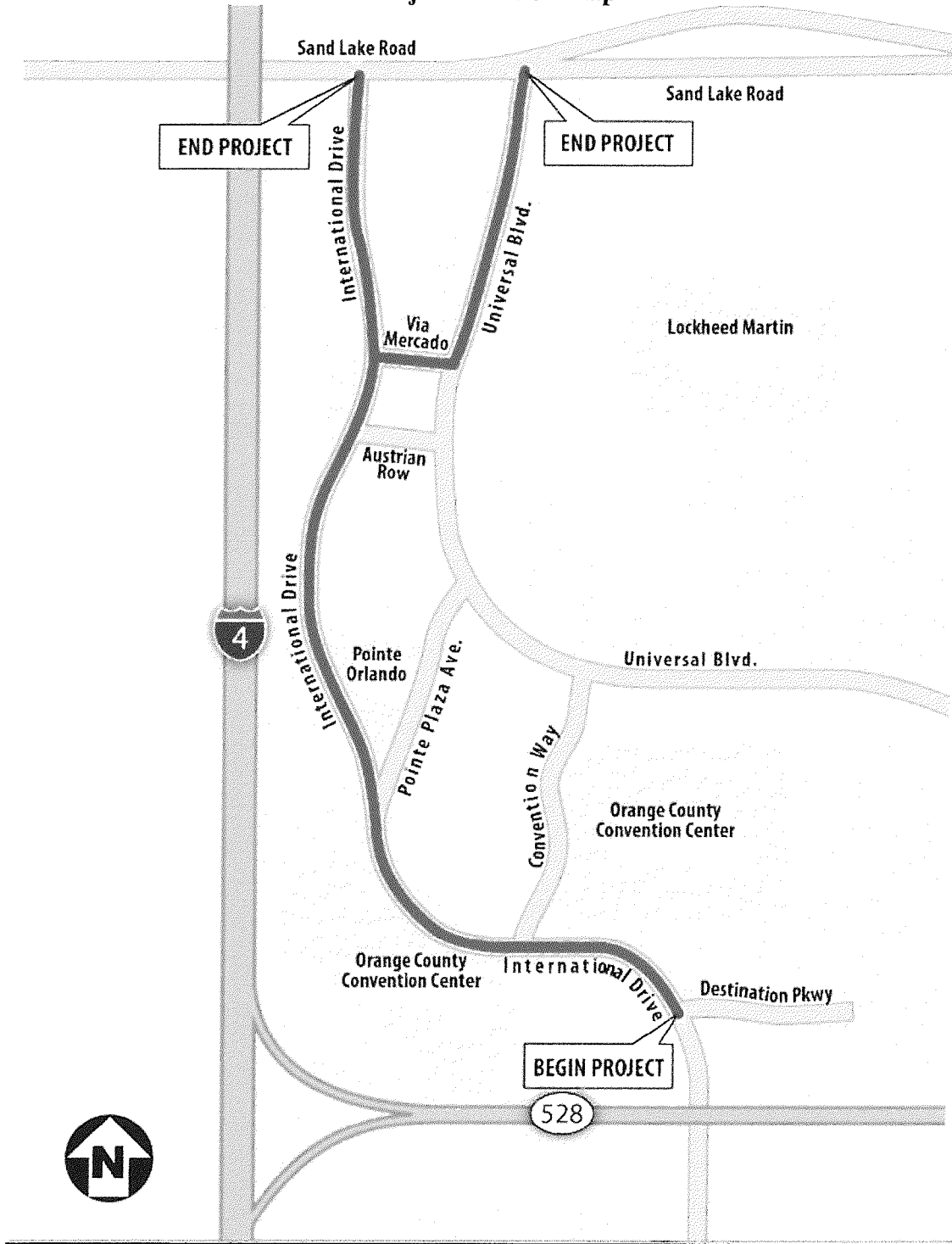


Exhibit "B"

Legal Description and Sketch of Description for Property

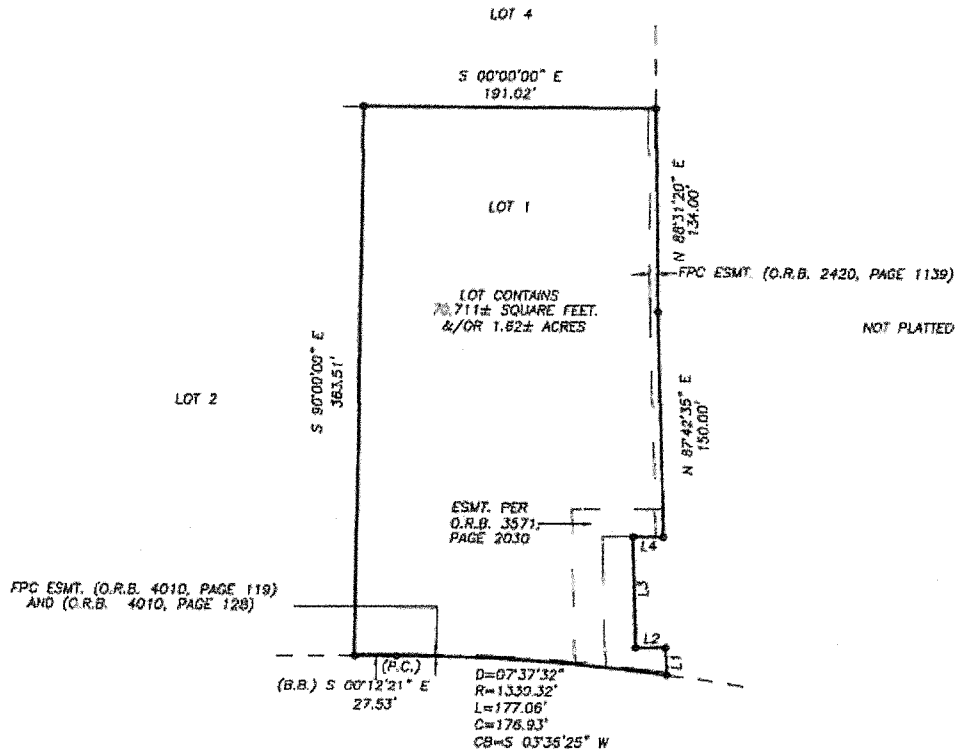
Lot 1, Hollywood Plaza, according to the map or plat thereof, as recorded in Plat Book 36, Page 98, of the Public Records of Orange County, Florida.

[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 $\pm 70,711$ square feet or ± 1.62 Acres.

SKETCH OF DESCRIPTION FOR CERTIFIED TO: Winderweeide, 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

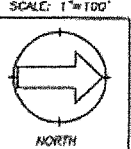
INTERNATIONAL DRIVE
 (O.R.B. 2746, PAGE. 165 & O.R.B. 3291, PAGE. 708)

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 - | LEGEND - |
| P = PLAT | R = RADIUS |
| F = FIELD | L = ARC LENGTH |
| I.P. = IRON PIPE | D = DELTA |
| I.R. = IRON ROD | C = CHORD |
| C.M. = CONCRETE MONUMENT | C.B. = CHORD BEARING |
| SET CR. = 1/2" IR. w/ #18 4598 | P.O.L. = POINT ON LINE |
| REC. = RECOVERED | TYP. = TYPICAL |
| P.O.B. = POINT OF BEGINNING | P.R.C. = POINT OF REVERSE CURVATURE |
| P.O.C. = POINT OF COMMENCEMENT | P.C.C. = POINT OF COMPOUND CURVATURE |
| S = CENTERLINE | RAD. = RADIAL |
| N&D = NAIL & DISK | N.R. = NON-RADIAL |
| R/W = RIGHT-OF-WAY | W.P. = WITNESS POINT |
| ESMT. = EASEMENT | CALC. = CALCULATED |
| DRAIN. = DRAINAGE | P.R.M. = PERMANENT REFERENCE MONUMENT |
| UTL. = UTILITY | F.F. = FINISHED FLOOR ELEVATION |
| CL.F. = CHAIN LINK FENCE | SQ. FT. = SQUARE FEET |
| W.D.F. = WOOD FENCE | B.M. = BENCHMARK |
| C/B. = CONCRETE BLOCK | B.B. = BASE BEARING |
| | CONC. = CONCRETE |
| | FRM. = FLOOD INSURANCE RATE MAP |
| | I.D. = IDENTIFICATION |
| | P.C. = POINT OF CURVATURE |
| | P.T. = POINT OF TANGENCY |
| | DESC. = DESCRIPTION |
| | F.P.C. = 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 11-17 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 (S.B.)



SCALE: 1"=100'

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
REVISION	
12-10-14	
REVISION	
12-12-14	

Exhibit "C"

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

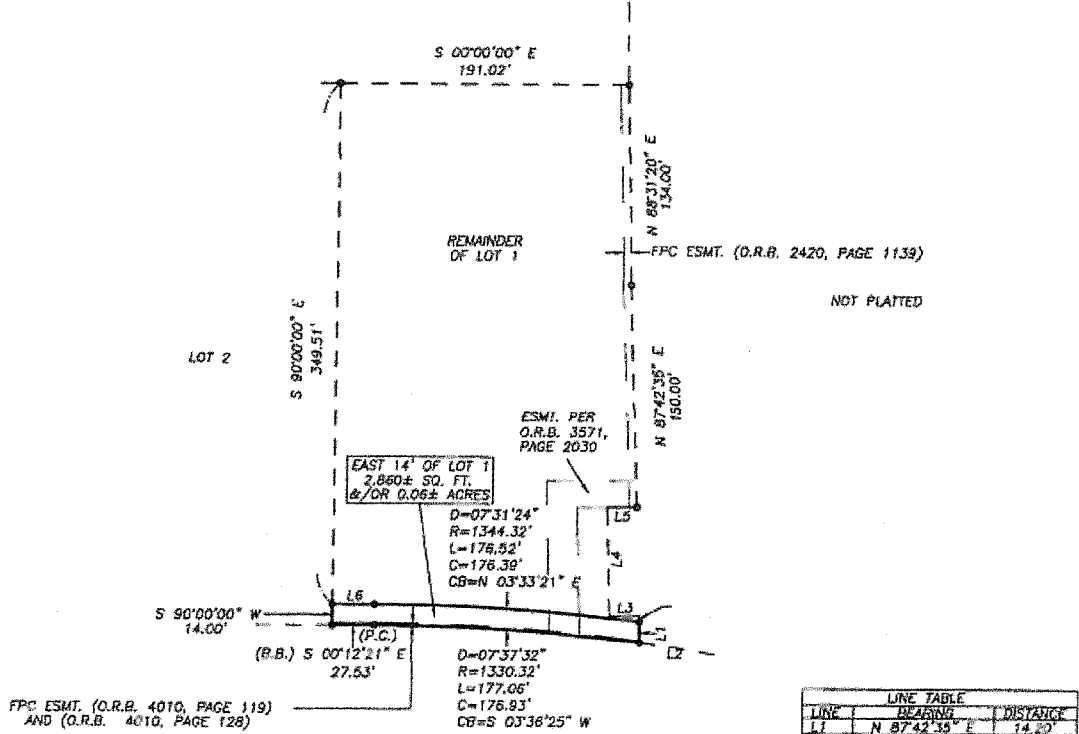
The East 14 feet of Lot 1, Hollywood Plaza, according to the map or plat thereof, as recorded in Plat Book 36, Page 98, of the Public Records of Orange County, Florida.

[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: Winderweeple, Haines, Ward & Woodman, P.A.; BankUnited, N.A.
 LOT 4



LINE	BEARING	DISTANCE
L1	N 87°42'35" E	14.00
L2	N 87°42'35" E	3.80
L3	N 00°25'30" W	18.51
L4	N 87°42'35" E	72.78
L5	S 00°25'30" E	18.51
L6	N 00°12'21" W	27.48

SKETCH OF DESCRIPTION ONLY
 THIS IS NOT A SURVEY

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

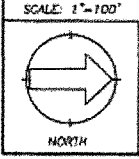
GRUSENMEYER - SCOTT & ASSOC., INC. - LAND SURVEYORS

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

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 - SET L.S. = 1/2" I.R. w/SLB 4508
 - REC. = RECOVERED
 - P.O.B. = POINT OF BEGINNING
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 - R/W = RIGHT-OF-WAY
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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
REVISED 12-10-14	
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