



Interoffice Memorandum

May 9, 2019

TO: Mayor Jerry L. Demings
–AND–
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Chairman
Roadway Agreement Committee

SUBJECT: May 21, 2019 – Consent Item
Third Amendment to Right of Way Agreement
Hollywood Plaza Parking Garage
International Drive

The Roadway Agreement Committee has reviewed a Third Amendment to Right of Way Agreement for Hollywood Plaza Parking Garage ("Third Amendment") by and between Hollywood Plaza Garage Realty, LLC, successor by merger with 8050 I Drive Realty, LLC and Wallack Parking, LLC, and Orange County to amend the terms of the Right of Way Agreement approved by the Board of County Commissioners on February 10, 2015 and recorded at OR Book/Page 10876/2264 as amended on January 5, 2016 by a First Amendment to Right of Way Agreement recorded as Document #20160011151 and further amended on November 15, 2016 by a Second Amendment to Right of Way Agreement recorded as Document #20160617154. The Third Amendment revises Section 2(a) of the Agreement to adjust the conveyance schedule, and inserts a new section providing for the reimbursement of deferred impact fees previously paid under protest to address a disparity in timing between development of the project and conveyance of the right-of-way.

The Roadway Agreement Committee approved the Third Amendment on April 3, 2019. The Specific Project Expenditure Report and Relationship Disclosure Forms are on file with the Transportation Planning Division.

If you have any questions, please feel free to contact me at 407-836-5393.

ACTION REQUESTED: Approval and execution of Third Amendment to Right of Way Agreement Hollywood Plaza Parking Garage International Drive by and between Hollywood Plaza Garage Realty, LLC and Orange County to adjust the timing of the conveyance and to provide for reimbursement of impact fees paid under protest. District 6

JEH/HEGB/lme
Attachment

BCC Mtg. Date: May 21, 2019

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

**THIRD AMENDMENT TO
RIGHT OF WAY AGREEMENT**

HOLLYWOOD PLAZA PARKING GARAGE

INTERNATIONAL DRIVE

This Third Amendment to Right Of Way Agreement, Hollywood Plaza Parking Garage, International Drive (the "Third Amendment"), effective as of the latest date of execution ("Effective Date"), is made and entered into by and between Hollywood Plaza Garage Realty, LLC, a Florida limited liability company, successor by merger with 8050 I Drive Realty, LLC and Wallack Parking, LLC ("Owner"), whose mailing address is c/o Friedman Management Co., 770 Lexington Avenue, New York, NY 10065, 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 proposed

International Drive Transit Lane project shown in the project location map identified as Exhibit “A,” (the Transit Lane Project”), attached hereto and incorporated herein by this reference; and

WHEREAS, Wallack Parking, LLC, 8050 I Drive Realty, LLC, and County entered into that certain Right of Way Agreement, Hollywood Plaza Parking Garage, International Drive 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, as amended from time to time (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, the Agreement was amended by that certain First Amendment to Right of Way Agreement, Hollywood Plaza Parking Garage, International Drive, effective as of January 5, 2016, and recorded as Document No. 20160011151 in the Public Records of Orange County, Florida (the “First Amendment”), pursuant to which Section 2(a) of the Agreement was amended to require conveyance of the Conveyed Lands within 120 days of the First Amendment, and permitted one extension of up to 120 days to make such conveyance; and

WHEREAS, the Agreement was further amended by that certain Second Amendment to Right of Way Agreement, Hollywood Plaza Parking Garage, International Drive, effective as of November 15, 2016 and recorded as Document No 20160617154 in the Public Records of Orange County, Florida (the “Second Amendment”), pursuant to which Section 2(a) of the Agreement was amended to require conveyance of the Conveyed Lands within 120 days of the

Second Amendment, and permitted one extension of up to 120 days to make such conveyance;
and

WHEREAS, despite Owner's diligent efforts, the conveyance of the Conveyed Lands, under the terms and conditions described therein, has been delayed for several reasons, which include, but are not limited to, delays in obtaining the release of certain easements burdening the Conveyed Lands; and

WHEREAS, due to the disparity in timing between the required payment by Owner of transportation impact fees and the time at which transportation impact fees credits (the "Credits") are to be awarded pursuant to Section 2(d) of the Agreement, Owner elected to first defer the payment of its transportation impact fees pursuant to Orange County Code Section 23-91, "under protest," and subsequently requested to pay said transportation impact fees in order to obtain a certificate of occupancy and then seek a reimbursement when the Credits are awarded; and

WHEREAS, in order to allow for such reimbursement, as well as extend the timeframe for conveyance, County and Owner desire to further amend certain terms and provisions of the Agreement as set forth below; and

WHEREAS, in all other respects, the original terms of the Agreement, as amended by the First Amendment and Second Amendment, shall remain unchanged and in full force and effect.

NOW, THEREFORE, for and in consideration of the above premises, the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, 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 the Effective Date of this Third Amendment, and to allow for one additional 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. Reimbursement of Paid Transportation Impact Fees. The following shall be added to the end of Section 3 of the Agreement:

Notwithstanding anything herein to the contrary, Owner shall be entitled to request reimbursement from the County of all transportation impact fees deferred “under protest” and subsequently paid to the County, in amounts not to exceed any Credits that are later awarded pursuant to this Agreement. Upon Owner’s request, County shall apply available Credits retroactively and issue refunds for all such corresponding transportation impact fees previously deferred “under protest” and subsequently paid by Owner to County, as contemplated by Orange County Code Section 23-95(d). Other than as set forth in this Section 2, nothing herein shall prevent Owner from assigning Credits as provided in Section 23.95 (e) of the Orange County Code, as may be amended from time to time.

For purposes of the foregoing, County shall issue a refund of such corresponding transportation impact fees previously deferred “under protest” and subsequently paid by Owner to the County, 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, including, without limitation, affiliates of Owner) to effectuate the refund. The right to a refund shall not be affected by the transfer of the Property from the Owner to any entity affiliated to Owner.

Section 4. Notice. Any notice delivered with respect to this Third 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: Hollywood Plaza Garage 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 Planning, Environmental,
and Development Services Department
Manager, Transportation Planning Division
Orange County Public Works Complex
4200 S. John Young Parkway
Orlando, Florida 32839-9205

Section 5. Covenants Running with the Land. This Third 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 transportation impact fee account shall remain with Owner unless expressly assigned in writing to another by Owner.

Section 6. Recordation of Third Amendment. An executed original of this Third 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 7. Applicable Law. This Third Amendment and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

Section 8. Time is of the Essence. Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this Third Amendment and in the Agreement.

Section 9. 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 10. Limitation of Remedies. County and Owner expressly agree that the consideration, in part, for each of them entering into this Third Amendment is the willingness of

the other to limit the remedies for all actions arising out of or in connection with this Third Amendment. Accordingly, the remedies available to each party shall be as stated in the Agreement.

Section 11. Amendments. No amendment, modification, or other change to this Third Amendment or the Agreement shall be binding upon the parties unless in writing and executed by all the parties hereto.

Section 12. Counterparts. This Third 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 Third 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: *Bryson B. Brooks*
AM Jerry L. Demings,
Orange County Mayor

Date: *21 May 19*

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Katie Smith*
Deputy Clerk

Print: **Katie Smith**

HOLLYWOOD PLAZA GARAGE REALTY, LLC
a Florida limited liability company

By: [Signature]
Robert G. Friedman, as Manager

Date: April 19, 2019

WITNESSES:

Brian S. Booth

Print Name: BRIAN S BOOTH

Lola Louie

Print Name: LULA LOUIE

STATE OF New York
COUNTY OF New York

The foregoing instrument was acknowledged before me by Robert G. Friedman, as Manager of Hollywood Plaza Garage Realty, LLC, a Florida limited liability company, who is known by me to be the person described herein and who executed the foregoing, this 19th day of April, 2019. 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 19th day of April, 2019.

RICKI BOOTH
NOTARY PUBLIC-STATE OF NEW YORK
No. 0180808107
Qualified in New York County
My Commission Expires 09-15-2021

Ricki Booth
Notary Public

Print Name: RICKI BOOTH

My Commission Expires: September 15, 2021

Exhibit "A" Project Location Map

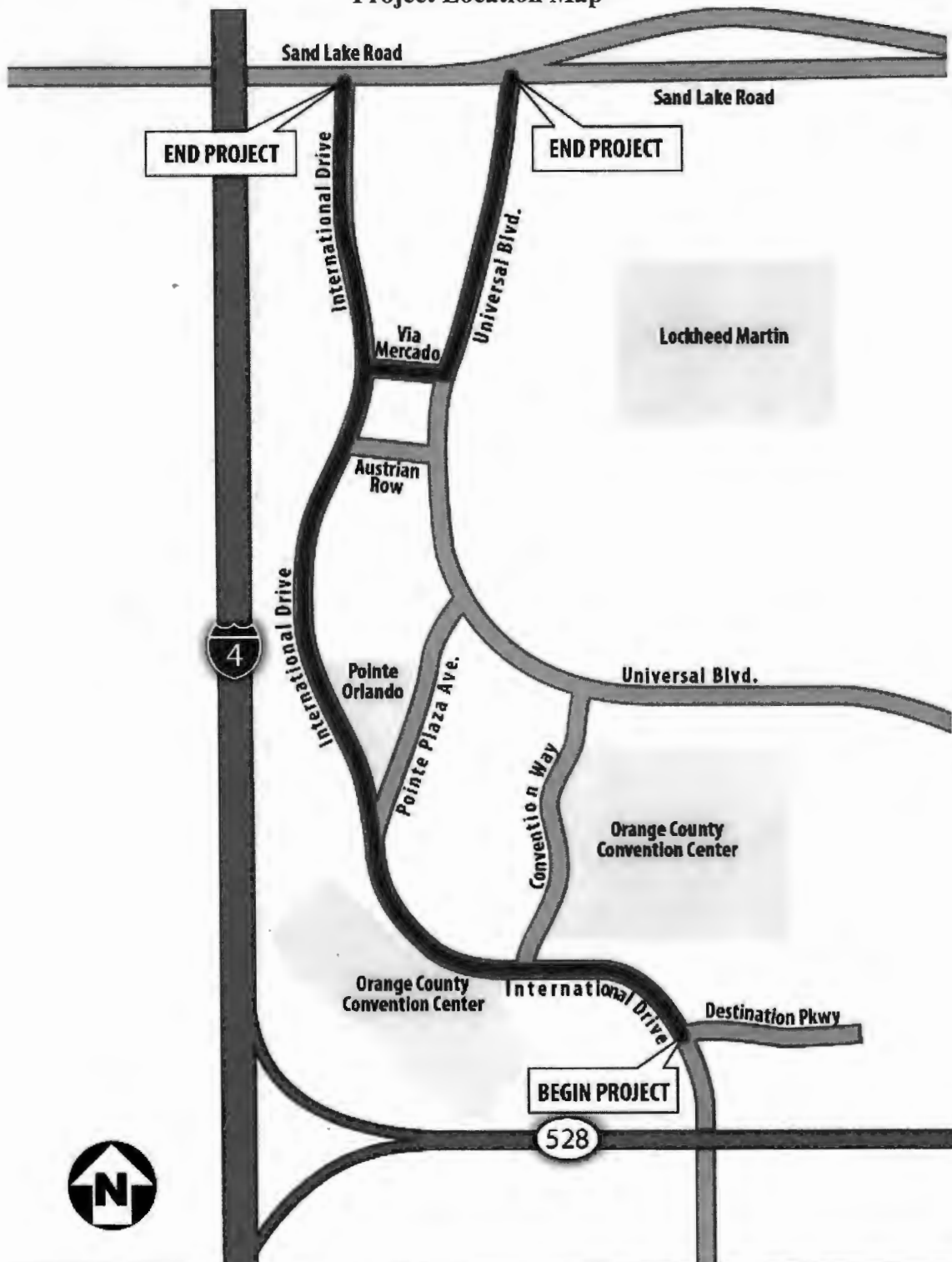


Exhibit "B"

Legal Description and Sketch of Description for Property

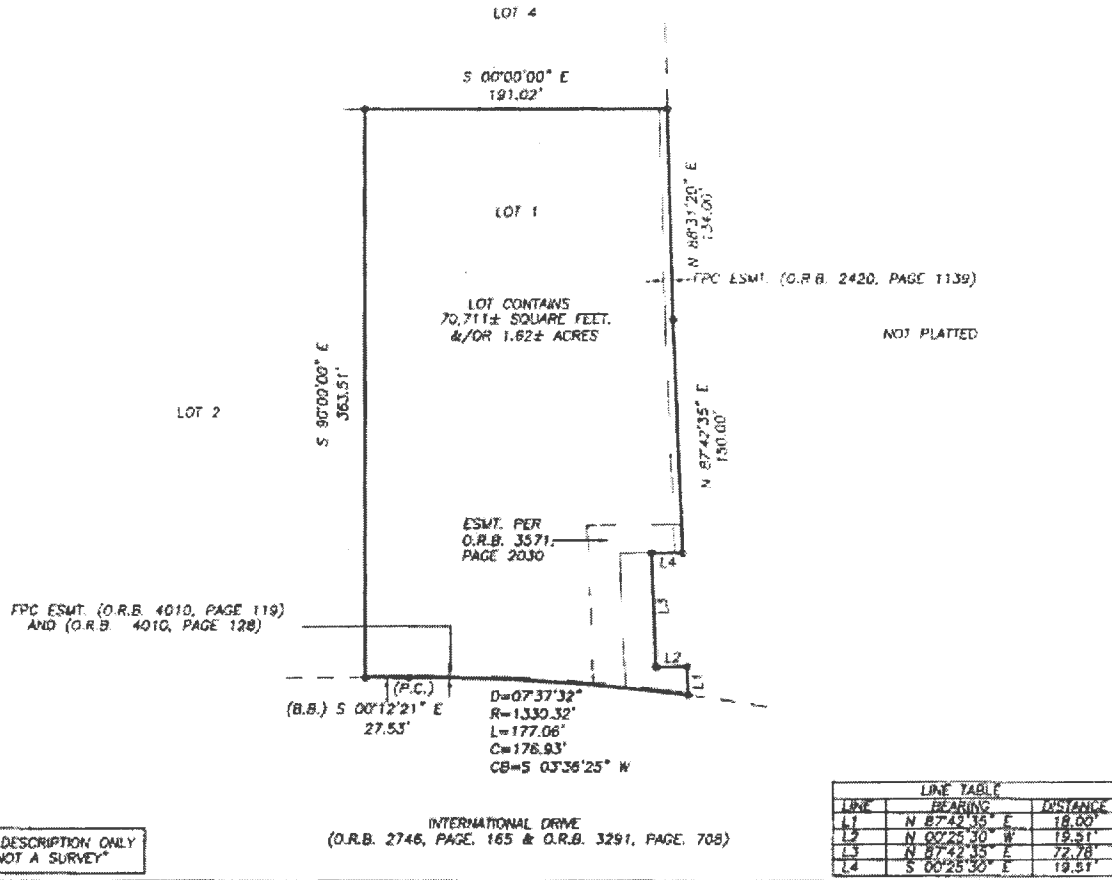
Lot 1, Hollywood Plaza, according to the map or plat thereof, as recorded in Plat Book 36, Page 98, of the Public Records of Orange County, Florida.

[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: Winderweadie, Haines, Ward & Woodman, F.A.; BankUnited, N.A.



SKETCH OF DESCRIPTION ONLY
 THIS IS NOT A SURVEY

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

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

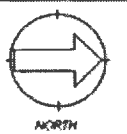
GRUSENMEYER - SCOTT & ASSOC., INC. - LAND SURVEYORS

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
 - LP = IRON PIPE
 - LR = IRON ROD
 - C.M. = CONCRETE MONUMENT
 - SET LR. = 1/2" LR. w/ #18 4596
 - REC. = RECOVERED
 - P.O.B. = POINT OF BEGINNING
 - P.O.C. = POINT OF COMMENCEMENT
 - S = CENTERLINE
 - M&D = MAIL BOX
 - R/W = RIGHT-OF-WAY
 - ESMT. = EASEMENT
 - DRAIN. = DRAINAGE
 - UTL. = UTILITY
 - CL.F.C. = CHAIN LINK FENCE
 - W.D.F.C. = WOOD FENCE
 - C/B = CONCRETE BLOCK
- SCALE: 1"=100'

- LEGEND -
- 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.O.C. = POINT OF COMPOUND CURVATURE
 - RAD. = RADIAL
 - HE. = NON-BANK
 - R.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.L. = 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 54-17 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 ASSIGNED 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**

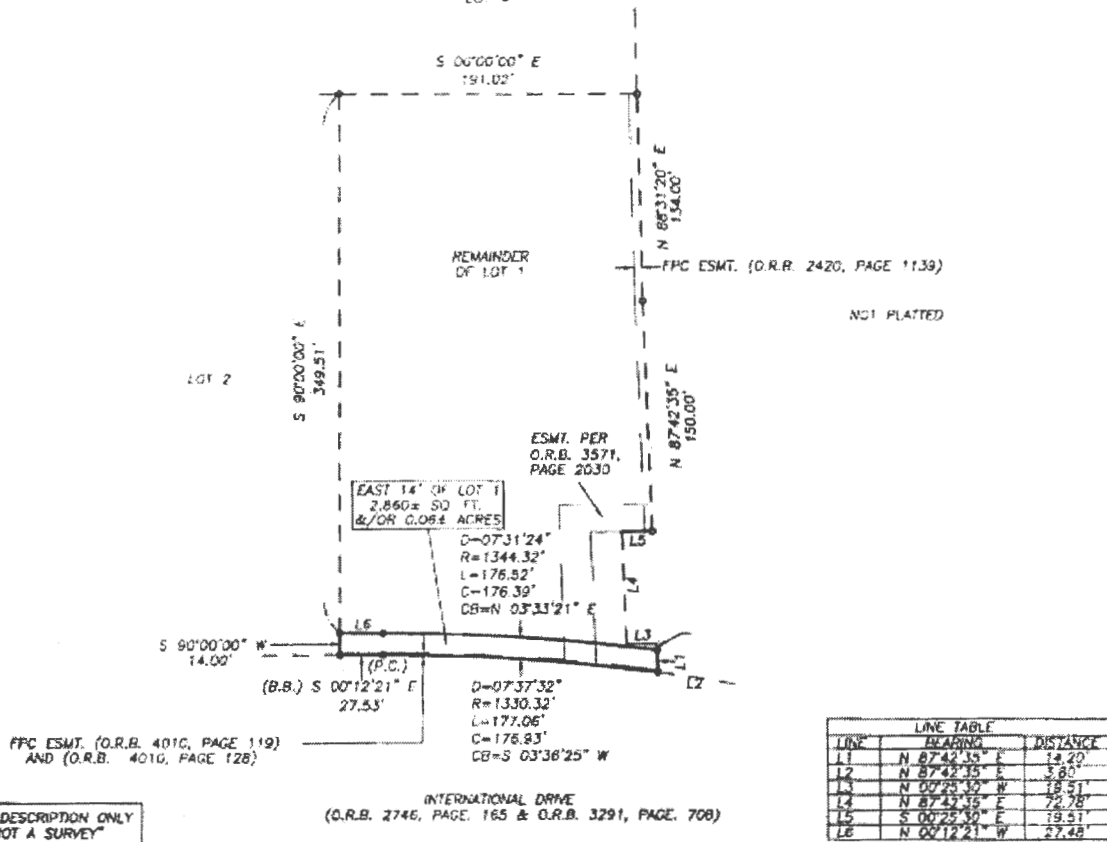
The East 14 feet of Lot 1, Hollywood Plaza, according to the map or plat thereof, as recorded in Plat Book 36, Page 98, of the Public Records of Orange County, Florida.

[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 38, Page 96 of the Public Records of Orange County, Florida. Containing therein $\pm 2,860$ 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

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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 - I.R. = IRON ROD
 - C.M. = CONCRETE MONUMENT
 - SET I.R. = 1/2" I.R. w/PLB 4508
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 - P.O.C. = POINT OF COMMENCEMENT
 - E = EASEMENT
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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
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