




Interoffice Memorandum

Date September 6, 2018

TO: Mayor Teresa Jacobs
and Board of County Commissioners

FROM: Mark V. Massaro P.E., Director, Public Works Department 

CONTACT PERSON: ^{DB}Deodat Budhu, P.E., Manager
Roads & Drainage Division

PHONE NUMBER: (407) 836- 7958

SUBJ: Waltham Avenue Improvements

The intersection of Waltham Avenue and Marinell Drive is located adjacent to the city limits of Belle Isle. Previously, the Public Works Department installed a new sidewalk along Marinell Drive which has altered drainage patterns at the intersection. To address the drainage concerns, Public Works staff will be installing valley gutters and asphalt paving along a portion of the private drive located on the east side of the intersection. (It was determined, upon detailed review, that Waltham Avenue on the east side of the intersection is a private drive owned by Luke and Amy Daly.)

This work is scheduled to start on October 22, 2018, and be completed by November 2, 2018. The agreement is necessary to accommodate this work on private property and to relieve Orange County from any future liability. (The County has also secured the requisite Right of Entry from the abutting property owners.)

The County Attorney's office and the Roads & Drainage Division have reviewed this agreement and find it acceptable.

Action Requested: Approval and execution of Agreement regarding driveway and drainage at corner of Waltham Avenue and Marinell Drive, Pine Castle, Florida between Luke J. Daly and Amy E. Daly and Orange County, Florida. District 3.

MVM/MJP/hw

Attachment(s)

BCC Mtg. Date: September 18, 2018

**AGREEMENT REGARDING DRIVEWAY and DRAINAGE AT CORNER OF
WALTHAM AVENUE and MARINELL DRIVE, PINE CASTLE, FLORIDA BETWEEN
LUKE J. DALY and AMY E. DALY AND ORANGE COUNTY, FLORIDA**

THIS AGREEMENT ("Agreement") is entered into by and between the following:

Luke J. Daly and Amy E. Daly (collectively "Daly"), with a mailing address at 1322 Waltham Avenue, Belle Isle, Florida 32809 and Orange County, Florida ("County"), a charter county and political subdivision of the State of Florida with a mailing address at P.O. Box 1393, Orlando, FL 32802-1393.

BACKGROUND RECITALS

- A. Daly are residents of Belle Isle, Florida who reside at 1322 Waltham Avenue, Belle Isle, Florida 32809 ("property"); and
- B. The property is located at the end of the Daly private driveway which commences at the corner of Waltham Avenue and Marinell Drive, Pine Castle, Florida and continues in an easterly direction to the end of the Daly property.
- C. At the corner of Waltham Avenue and Marinell Drive is a Live Oak tree with a large root system, which the parties agree should not be compromised.
- D. There is a curb and gutter along Waltham Avenue and an inlet at the corner of Waltham Avenue and Marinell Drive.
- E. The parties agree that water pools at the corner of Waltham Avenue and Marinell Drive, which pooling will be addressed in this Agreement.

NOW, THEREFORE, the parties hereby agree:

- 1. Recitals. The foregoing recitals are incorporated herein by reference.
- 2. Purpose of this Agreement. This agreement is for the purpose of permitting Orange County to address the pooling of water at the corner of Waltham Avenue and Marinell Drive.
- 3. Description of Work to be performed by Orange County. The work to be performed by Orange County is depicted in Exhibit "A" attached:
 - A. Construct 4' wide / 6' thick concrete valley gutter;
 - B. Add 2" – 3" of asphalt pavement above the tree roots. The asphalt will be laid on top of existing asphalt, at least around the tree roots, so as not to harm the tree. Selective removal of existing payment/asphalt may need to occur based on the

deteriorating/crumbling nature of the existing pavement/asphalt prior to county paving the area;

C. At the existing inlet, create 6" slots to accommodate drainage.

4. Additional Work to be performed by Orange County:

A. Orange County will reinstall the stop sign located at the end of the Daly property driveway at the corner of Waltham Avenue.

B. The County will clear/clean out the ditch located to the west of Daly's property this one time only. The County specifically disclaims ownership of the ditch.

C. The County will clean out the drain located at the corner of Waltham Avenue and Marinell Drive once a quarter.

D. The County will pave up to the first fence brick column from the corner of Waltham Avenue and Marinell Drive (the fence located at the corner of Waltham Avenue and Marinell Drive on the northern side of Waltham Avenue.) The rest of the driveway belongs to Daly and/or the City of Belle Isle, Florida and any pavement beyond the point indicated will be the responsibility of Daly and/or the City of Belle Isle.

5. Commencement of Work. The work described in paragraphs 3 and 4 above shall commence in August, 2018 and last for a period not to exceed two (2) to three (3) weeks.

6. Right of Entry. Daly agrees to sign a Right of Entry for Orange County and/or its contractor to perform the construction actions set forth herein. Daly further agrees to secure the signature of its neighbor, Marianne Gray and John Hronek at 1320 Waltham Avenue, Belle Isle, Florida, on a Right of Entry for Orange County and/or its contractor to perform the construction actions set forth herein.

7. Waiver of any claims. It is expressly understood that the work contemplated by this Agreement and mutually agreed upon by the parties is to be built and completed in accord with the sketch attached hereto as Exhibit "A" and incorporated herein by reference. Daly, by acceptance of this agreement, hereby waives any and all claims Daly may have had, has or may have arising from the drainage issues described herein and/or the work to be performed by Orange County, for damages, loss to property or any other claim, demand, damages, costs, expenses and legal fees arising therefrom.

Daly does hereby remise, release and forever discharge Orange County, Florida, from any and all manner of actions, claims, causes of actions, including any and all claims or causes of action for inverse condemnation, eminent domain, trespasses, controversies, damages, attorney's fees, costs, expenses and demands, whatsoever, whether arising in law or in equity, common law or statutory

8. Attorney's fees and expert fees and costs. Each party shall bear their own attorney's fees, expert fees and costs arising from the matters set forth herein and in connection with this Action and this Agreement.
9. Independent Legal Advice. Daly warrants, represents and agrees that by executing this Agreement, Daly has done so with full knowledge of their rights with respect to the subject matter of this Agreement and that they have received and/or have had the opportunity to receive independent legal advice with regard to those rights.
10. Applicable Law and Forum. This Agreement will be interpreted under and enforced in accordance with the laws of the State of Florida without regard to conflict of laws. If litigation is commenced to enforce any terms of this Agreement, or in which this Agreement is raised as a defense, the parties hereby agree that venue and jurisdiction of any litigation will be vested solely in a court of competent jurisdiction sitting in Orange County, Florida and agree to accept service of process outside of the state. The parties expressly agree to waive trial by jury in any such legal proceeding.
11. Entire Agreement. This Agreement sets forth the entire, final and complete agreement and the understanding of the parties with respect to the matters set forth herein. All prior discussions, negotiations, commitments and understandings related to this matter are merged herein. Daly declares and represents that no promise, inducement or agreement not expressed herein has been made to them. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall such waiver constitute a continuing waiver hereunder. If for any reason any portion of this Agreement shall be deemed or unenforceable, then the remaining portions of this Agreement shall be binding upon the parties hereto with the same effect as though the void and unenforceable parts were deleted.

12. Construction. This agreement shall be construed without regard to the party or the parties responsible for the preparation of the same and shall be deemed to have been prepared by Daly and Orange County. Any ambiguity or uncertainty existing herein shall not be interpreted against Daly or Orange County.

The undersigned certifies that he has read this entire Agreement consisting of five (5) pages, he reads and speaks English and he fully understand the terms, conditions and consequences of this Agreement.



Luke J. Daly

State of Florida)
) ss
County of Orange)

BEFORE ME the undersigned authority, personally appeared Luke J. Daly, who executed this Agreement in my presence and who is () personally known to me; or () provided a valid State of Florida Driver's License or Florida Identification Card.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal in the county and state last aforesaid, this 28 day of June, 2018.



NOTARY PUBLIC



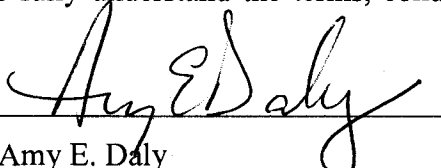
Print Name



PAMELA A. SMITH
MY COMMISSION # FF 185572
EXPIRES: January 2, 2019
Bonded Thru Budget Notary Services

My commission expires:

The undersigned certifies that she has read this entire Agreement consisting of five (5) pages, she reads and speaks English and she fully understand the terms, conditions and consequences of this Agreement.



Amy E. Daly

State of Florida)
) ss
County of Orange)

BEFORE ME the undersigned authority, personally appeared Amy E. Daly, who executed this Agreement in my presence and who is () personally known to me; or () provided a valid State of Florida Driver's License or Florida Identification Card.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal in the county and state last aforesaid, this 28 day of June, 2018.

Pamela A. Smith
NOTARY PUBLIC

Pamela A. Smith
Print Name



PAMELA A. SMITH
MY COMMISSION # FF 185572
EXPIRES: January 2, 2019
Bonded Thru Budget Notary Services

My commission expires:

Orange County, Florida
By Board of County Commissioners

By: Teresa Jacobs
Teresa Jacobs,
Orange County Mayor

Dated: 9.18.18

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

By: Katie Smith
Deputy Clerk

Printed Name: Katie Smith

Dated: SEP 18 2018



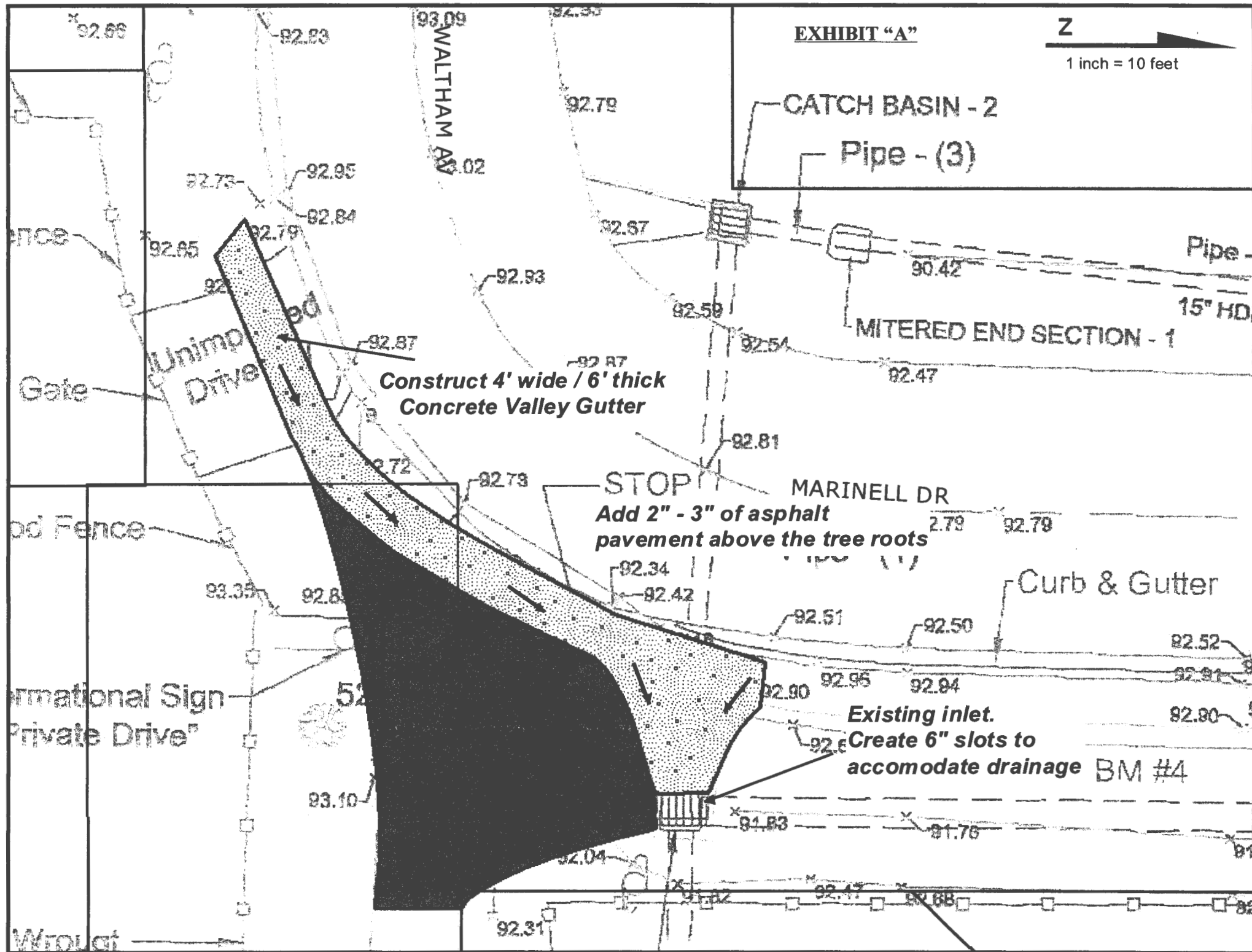


EXHIBIT "B"

**DALY, LUKE J. PROPERTY
LEGAL DESCRIPTION**

From the SW corner of Government Lot 3 of Section 24, Township 23 South, Range 29 East, Orange County, Florida, run North along the West line of said Government Lot 157 feet; thence East 352.9 feet to an iron stake; thence N 83°14' E, 248.5 feet to the Point of Beginning. Continue thence N 83°14' E, 160.50 feet to an iron stake located S 44°05' E, 505 feet from a Point 75.7 feet East of the NW corner of Lot 14 of Livingston's Subdivision, as recorded in Plat Book "B", Page 33, Public Records of Orange County, Florida; thence run S 44°05' E, 270 feet; thence S 5°55' W, 10.7 feet to the South line of Lot 14 extended East; thence run East 27.6 feet; thence S 44°22' E, 21.54 feet to the waters of Lake Conway; thence run S 59°18' W, 151 feet along the shore of Lake Conway to a Point located 1591.9 feet East and 426.36 feet North of the SW corner of Lot 10, Harney's Homestead as recorded in Plat Book "C", Page 53, Public Records of Orange County, Florida; thence run N 57°20' W, 171 feet to a Point 704.3 feet East of the aforesaid SW corner of Government Lot 3; thence run West 105.0 feet; thence run North 127.0 feet, thence run West 599.3 feet; thence run North 30 feet, thence run East 352.9 feet, thence run N 83°14' E, 248.5 feet to the Point of Beginning.

ALSO: From a Point 77.2 feet East of NW corner of Lot 14 of Livingston's Subdivision run S 45°02'30" E, 511.9 feet to Point of Beginning; thence S 83°14' W, 12.78 feet; thence S 44°05' E, 270 feet; thence S 5°55' W, 10.7 feet to South line of said Lot 14 extended East; thence run East 27.6 feet; thence S 44°22' E, 21.54 feet to the waters of Lake Conway; thence Easterly along the shore to a Point S 45°02'30" E of Beginning; thence N 45°02'30" W to the Point of Beginning.

Subject to an easement over and across the N 30.0 feet of the S 157.0 feet of the W 599.3 feet of Government Lot 3, Section 24, Township 23 South, Range 29 East, Orange County, Florida, for ingress and egress to and from the S 127.0 feet of the W 599.3 feet of said Government Lot 3.

TOGETHER WITH: The East 112.0 feet of the West 599.30 feet of the South 127.00 feet of Government Lot 3, Section 24, Township 23 South, Range 29 East, together with an easement for ingress and egress over and across the North 30.00 feet of the South 157.00 feet of the West 599.30 feet of said Government Lot 3, Public Records of Orange County, Florida.

TOGETHER WITH: The East 112.00 feet of the West 487.30 feet of the South 127.00 feet of Government Lot 3, Section 24, Township 23 South, Range 29 East, together with an easement for ingress and egress over and across the North 30.00 feet of the South 157.00 feet of the West 487.30 feet of said Government Lot 3, Public Records of Orange County, Florida.



ORANGE COUNTY PUBLIC WORKS ROADS AND DRAINAGE DIVISION

RIGHT OF ENTRY

Date: July 19, 2018

Name: Daly, Luke J.

Address: 1322 Waltham Avenue, Belle Isle, FL 32809-4254

Project description: Orange County Roads and Drainage Division will be installing curb, gutter and pavement/asphalt on your property as agreed upon and as described in the attached document, identified as Exhibit "A". The work shall take two (2) to three (3) weeks to complete once the crews mobilize to this area. Project is scheduled to be constructed in the month of October 22, 2018 after execution and approval of the attached Exhibit "A" agreement.

Agreement: In consideration of the benefits accruing to me, Luke J. Daly, I do hereby give, grant, bargain and release to ORANGE COUNTY, a charter county and political subdivision of the State of Florida, right of entry to enter upon said lands of the property described as:

SEE EXHIBIT "B" attached for Legal Description

as necessary to complete the construction project as described in Exhibit "A" with the work to be undertaken by ORANGE COUNTY, FLORIDA, and/or its assigns.

This Right of Entry will expire three weeks from the date construction begins.

Signature :

Luke J. Daly (Owner)

STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 20th day of ~~June~~ July 2018, By Luke J. Daly who is personally known to me or who has produced _____ as identification.

(Notary Seal)




PAMELA A. SMITH
MY COMMISSION # FF 185572
EXPIRES: January 2, 2019
Bonded Thru Budget Notary Services

Pamela A. Smith
Notary Signature

Pamela A Smith
Printed Notary Name

Notary Public in and for
the county and state aforesaid
My commission expires

Signature :  Maricela Torres (County Representative)

Signature :  (County Representative)



ORANGE COUNTY PUBLIC WORKS ROADS AND DRAINAGE DIVISION

RIGHT OF ENTRY

Date: AUGUST 4, 2018

Name: Hronek, John T. and Gray, Marianne T.

Address: 1320 Waltham Avenue, Belle Isle, FL 32809-4254

Project description: Orange County Roads and Drainage Division will be installing curb, gutter and pavement/asphalt on your property as agreed upon and as described in the attached document, identified as Exhibit "A". The work shall take two (2) to three (3) weeks to complete once the crews mobilize to this area. Project is scheduled to be constructed in the month of October 22, 2018 after execution and approval of the attached Exhibit "A" agreement.

Agreement: In consideration of the benefits accruing to us, Hronek, John T. and Gray, Marianne T., do hereby give, grant, bargain and release to ORANGE COUNTY, a charter county and political subdivision of the State of Florida, a right of entry to enter upon said property as necessary to complete the construction project as described above and in the attached document identified as Exhibit "A" with the work to be undertaken by ORANGE COUNTY, FLORIDA, and/or its assigns. The property is described as follows:

THAT PART OF LOT 13, J.H. LIVINGSTON'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK B, PAGE 33, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, DESCRIBED AS FOLLOWS: BEGIN AT A POINT AT THE SOUTH LINE OF GOVERNMENT LOT 3, SECTION 24, TOWNSHIP 23 SOUTH, RANGE 29 EAST, 170 FEET EAST OF THE SOUTHWEST CORNER OF SAID LOT, THENCE EAST ALONG THE SOUTH LINE OF SAID LOT 205.3 FEET, THENCE NORTH 127 FEET, THENCE WEST 205.3 FEET, THENCE SOUTH 127 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OVER THE NORTH 30 FEET OF THE SOUTH 157 FEET OF THE WEST 375.3 FEET OF LOT 3, SECTION 24, TOWNSHIP 23 SOUTH, RANGE 29 EAST, BEING IN J.H. LIVINGSTON'S SUBDIVISION, PLAT BOOK B, PAGE 33, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

This Right of Entry will expire three weeks from the date construction begins.

Signature: [Signature] (Owner)

Signature: Marianne T. Gray (Owner)

STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 4 day of ^{August}~~July~~ 2018, By John T. Hronek and Marianne T. Gray, who are personally known to me or who have [each] produced N/A [and N/A] as identification.

(Notary Seal)



Katherine D. Newsom
Notary Signature

KATHERINE D. NEWSOM
Printed Notary Name

Notary Public in and for
the county and state aforesaid
My commission expires

Signature: [Signature] (County Representative)

Signature: [Signature] (County Representative)