

THIS INSTRUMENT PREPARED BY:

Roy K. Payne
Assistant City Attorney
City of Orlando
400 S. Orange Avenue
Orlando, Florida 32801
(407) 246-2295

STREET RIGHT-OF-WAY ENCROACHMENT AND REMOVAL AGREEMENT
(Veranda Park Sign)

THIS STREET RIGHT-OF-WAY ENCROACHMENT AND REMOVAL AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2014, by and between **CITY OF ORLANDO**, a Florida municipal corporation (hereinafter referred to as "CITY"), and **VERANDA PARK INTERIM ASSOCIATION, INC.**, a Florida non-profit corporation, whose address is 2121 S. Hiawassee Road, Orlando, FL 32835, Attn: Management Office (hereinafter referred to as the "OWNER").

RECITALS:

WHEREAS, OWNER is a duly formed property owner's association whose members include owners of property located in the mixed use development known as Veranda Park (the "Project") in the MetroWest area of the City of Orlando; and

WHEREAS, OWNER is also the owner of certain real property located within the Project, which real property is more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (the "OWNER'S Property"); and

WHEREAS, OWNER desires to maintain signage within the street right-of-way of Westpointe Boulevard, south of Hiawassee Road, which right-of-way is owned and maintained by the CITY (the "City's Right-of-Way") and serves as an entrance to the Project, all as shown in **Exhibit "B"** attached hereto and made a part hereof by reference; and

WHEREAS, Section 61.200 of the Orlando City Code requires that the OWNER enter into a binding agreement providing for the encroachment of the Project signage into the City's Right-of-Way and providing for removal of the Project signage under certain conditions; and

WHEREAS, the Project, including the Project signage, will continue to be subject to all applicable provisions of the Orlando City Code and any other applicable government regulation, and this Agreement does not vest any particular manner of development of the OWNER'S Property; and

WHEREAS, in connection with OWNER'S construction of a temporary sign in the City's Right-of-Way, which temporary sign is intended to be replaced with the Sign described hereinbelow, OWNER and City previously entered into that certain Street Right-of-Way Encroachment and Removal Agreement dated April 22, 2014 and recorded at Official Records Book 10737, Page 3448, Public Records of Orange County, Florida (the "Temporary Encroachment Agreement"); and

WHEREAS, this Agreement is to exist independently of the Temporary Encroachment Agreement, until such time as the Temporary Encroachment Agreement expires or is terminated by the parties thereto (at which point the Temporary Encroachment Agreement shall no longer be of any force or effect).

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by the parties hereto, the parties agree as follows:

1. Recitals. The foregoing Recitals are true and correct and incorporated into the substantive body of this Agreement.
2. Encroachment. The CITY hereby grants permission for the encroachment of a sign within the Westpointe Boulevard right-of-way, strictly limited to the location depicted on **Exhibit "C"**, attached hereto and incorporated herein by reference, and that strictly conforms to the shape, size and other attributes as depicted on **Exhibit "D"** attached hereto and incorporated herein by reference (the "Sign"). The Sign may not be constructed in the City Right-of-Way until OWNER'S Temporary Sign (as defined in the Temporary Encroachment Agreement) has been removed from the City Right-of-Way by the OWNER at the OWNER'S expense. Following removal of the Temporary Sign from the City Right-of-Way and satisfaction of all other requirements of OWNER as set forth in the Temporary Encroachment Agreement, and if requested by OWNER, the CITY agrees to execute a termination, in recordable form, of the Temporary Encroachment Agreement.
3. Release. OWNER hereby releases the CITY, its representatives, employees and elected officials from any and all damages, claims, or liability, with respect to the Sign that may arise due to the CITY's operation and maintenance of the City's Right-of-Way.
4. Priority of City's Right-of Way. The Sign shall not be maintained in such a manner so as to interfere, in any way, with the CITY'S operation or maintenance of its right-of-way or any public or general utility improvements located thereon.

5. Sign. In consideration for the CITY'S consent for the OWNER to maintain the Sign within the City's Right-of-Way, as described herein, the OWNER agrees, at its sole cost and expense, to construct, maintain, repair and operate the Sign, consistent with reasonable engineering standards and all applicable laws, codes, and regulations.
6. No Waiver/No Vesting. This Agreement does not constitute a waiver of the CITY'S regulatory authority, and the OWNER'S Property and the Sign remain subject to all applicable laws, rules, codes and regulations. This Agreement does not operate to vest any interest or right whatsoever.
7. Insurance. OWNER shall possess and maintain, at all times during the construction, operation and maintenance of the Sign within the City's Right of Way, general liability insurance in the amount of at least One Million Dollars (\$1,000,000.00) in order to protect the CITY from any covered liability, claims, damages, losses or expenses arising from, out of, or in any way connected with, construction, operation or maintenance of the Sign or this Agreement. CITY shall be listed as an additional insured on the general liability policy and may request proof of such insurance at any time. Nothing in this Agreement operates as a waiver of the City's grant of sovereign immunity or the limits of liability established under Florida law.
8. Indemnification. The OWNER agrees that it shall indemnify, hold harmless and defend the CITY, its representatives, employees and elected and appointed officials from and against all claims, damages, loss and expenses of any sort including reasonable attorney's fees and costs including appeals, arising out of or resulting from any negligent act or omission of the OWNER, its tenants, agents, subcontractors, or anyone for whose act or acts any of them may be liable, relating to the operation or maintenance of the Sign in the City's Right-of-Way; provided, however, the foregoing shall not act to indemnify the CITY, its representatives, employees and elected and appointed officials, to the extent that any claims, damages, loss and expenses of any sort including reasonable attorney's fees and costs including appeals, arise from any negligent act or omission of the CITY or its representatives, employees and elected and appointed officials. Nothing in this Agreement operates as a waiver of the City's grant of sovereign immunity or the limits of liability established under Florida law.
9. Representatives Bound Hereby. This Agreement shall be recorded and shall be binding upon the successors, heirs, executors, administrators, representatives, or assigns of the OWNER, and upon all persons acquiring an interest thereunder and shall be a restrictive covenant running with the OWNER'S Property. Without

limiting the generality of the foregoing, OWNER shall have the right to assign its rights and obligations under this Agreement.

10. Recording. The OWNER will record this Agreement, at its expense, in the Public Records of Orange County, Florida, where it shall encumber the OWNER'S Property.

11. Controlling Laws.

- a. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida, and all duly adopted ordinances, regulations, and policies of the CITY now in effect and those hereinafter adopted.
- b. The location for settlement of any and all claims, controversies, disputes, arising out of or relating to any part of this Agreement, or any breach hereof, shall be in Orange County, Florida.
- c. The parties to this Agreement agree to comply with all applicable federal, state, and local laws, ordinances, rules and regulations pertaining to the utilization of the property under this Agreement.

12. Miscellaneous.

- a. This Agreement constitutes the entire Agreement between the parties with respect to the specific matters contained herein and supersedes all previous discussions, understandings, and agreements. Any amendments to or waivers of the provisions herein shall be made by the parties in writing. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either party hereto.
 - b. If any sentence, phrase, paragraph, provision or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed an independent provision and such holding shall not affect the validity of the remaining portions hereto.
13. Legal Counsel. OWNER acknowledges that it has had ample opportunity to seek and consult with independent legal counsel prior to executing this Agreement.

14. Negotiation. The parties to this Agreement acknowledge that all terms of this Agreement were negotiated at arm's length and that this Agreement and all documents executed in connection herewith were prepared and executed without undue influence exerted by any party or on any party. Further, this Agreement was drafted jointly by all parties, and no parties are entitled to the benefit of any rules of construction with respect to the interpretation of any terms, conditions or provisions of this Agreement in favor of or against any person or party who drafted this Agreement.
15. Termination of License and Removal of Encroachment. The CITY retains the right to revoke this license if the City determines (in its reasonable discretion) that the Sign is interfering with the safe and normal operations of the City right-of-way, or that the right of way is necessary for a public purpose or upon default by Owner, by notifying the OWNER in writing at the address listed in the initial paragraph of this Agreement. OWNER shall remove the Sign, and any and all attendant improvements, from the City's Right-of-Way, within sixty (60) days of the date of receipt of the written notice to OWNER. If the OWNER fails to remove the Sign and attendant encroachments, within the above-described timeframe, the CITY may remove same and charge the cost of removal to the OWNER. Should the OWNER fail to pay the costs of CITY's removal of the Sign and attendant encroachments within sixty (60) days of the CITY'S request, the CITY may file a lien against the OWNER'S Property to accrue interest at the statutory rate and to be enforced as provided by law.
16. License. This Agreement constitutes a License and does not rise to the level of a real property interest in the property underlying the City's Right-of-Way.
17. Effective Date. The effective date of this Agreement is the date of its execution by the last person to execute it.

[signatures contained on following pages]

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first written above.

CITY OF ORLANDO

Attest:

Mayor / Mayor Pro Tem

Alana C. Brenner, City Clerk

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____, and Alana C. Brenner, to me known as the Mayor/ Mayor Pro Tem and City Clerk respectively, of the City of Orlando, who acknowledged before me that they have executed the foregoing instrument for the purposes therein expressed, and that they were duly authorized to do so.

Notary Public: _____
Commission Expires: _____

APPROVED AS TO FORM AND LEGALITY
for the use and reliance of the
City of Orlando, Florida, only.

_____, 2014.

Assistant City Attorney

TWO WITNESSES:

OWNER

Veranda Park Interim Association, Inc. a
Florida non-profit corporation

Heldi Maske
Print Name: Heldi Maske

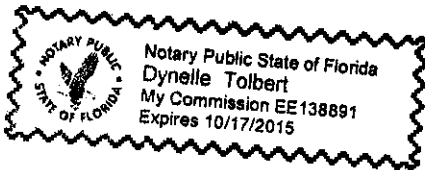
By:

Ashley Phillips
Ashley Phillips

Dynelle Tolbert
Print Name: Dynelle Tolbert As Its: President

STATE OF Florida
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 16th day of June,
2014, by Ashley Phillips, as the President of the Veranda Park Interim Association, Inc., a
Florida non-profit corporation, on behalf of said entity.



AFFIX NOTARY STAMP

Dynelle Tolbert
Signature of Notary Public

Dynelle Tolbert
(Print Notary Name)

My Commission Expires: 10/17/15

Commission No.: EE138891

☒ Personally known, or

☐ Produced Identification

Type of Identification Produced

Exhibit "A"

(Description of OWNER'S Property)

Tract B (Drainage); Tract C (Drainage); and Tract F (Drainage); and the private street south of Lots 5A and 5B; Veranda Park Second Replat according to the plat thereof recorded Plat Book 58, Page 137 of the Public Records of Orange County, Florida.

And,

Tract G (Access); Tract H (Access); Tract J (Access); Tract K (Access); Tract L; and all private streets; Veranda Park Third Replat according to the plat thereof recorded at Official Records Book 69, Page 88 of the Public Records of Orange County, Florida.

And,

Tract D (Recreation) and Tract E (Recreation), Veranda Park Second Replat according to the plat thereof recorded in Plat Book 58, Page 137 of the Public Records of Orange County, Florida; and Tract A (Recreation), Veranda Park Third Replat according to the plat thereof recorded in Official Records Book 69, Page 88 of the Public Records of Orange County, Florida; and Lot 7, Veranda Park Second Replat according to the plat thereof recorded in Plat Book 58, Page 137 of the Public Records of Orange County, Florida; all of which Lot 7 and Tracts A, D and E were deemed transferred to the Veranda Park Commercial Property Owners Association, Inc. pursuant to Paragraph 44 on Page 10 of that certain Amended Default Final Judgment Against Westpointe LLC (the "Bankruptcy Order") entered by the United States Bankruptcy Court Middle District of Florida, Orlando Division under Case No. 6-9-bk-10338-KSJ and recorded on April 14, 2011 at Official Records Book 10199, Page 3422 of the Public Records of Orange County, Florida

Exhibit "B"

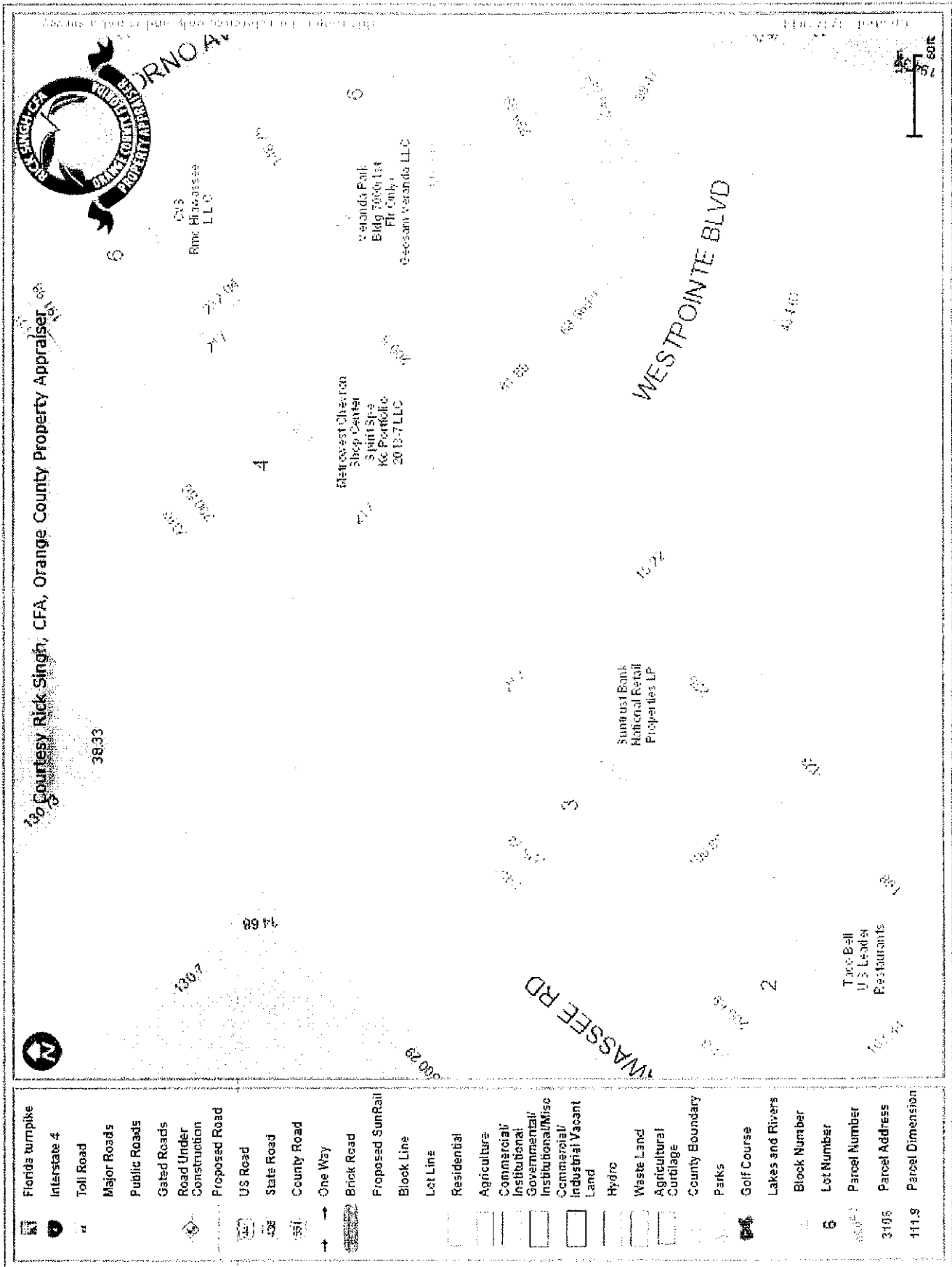
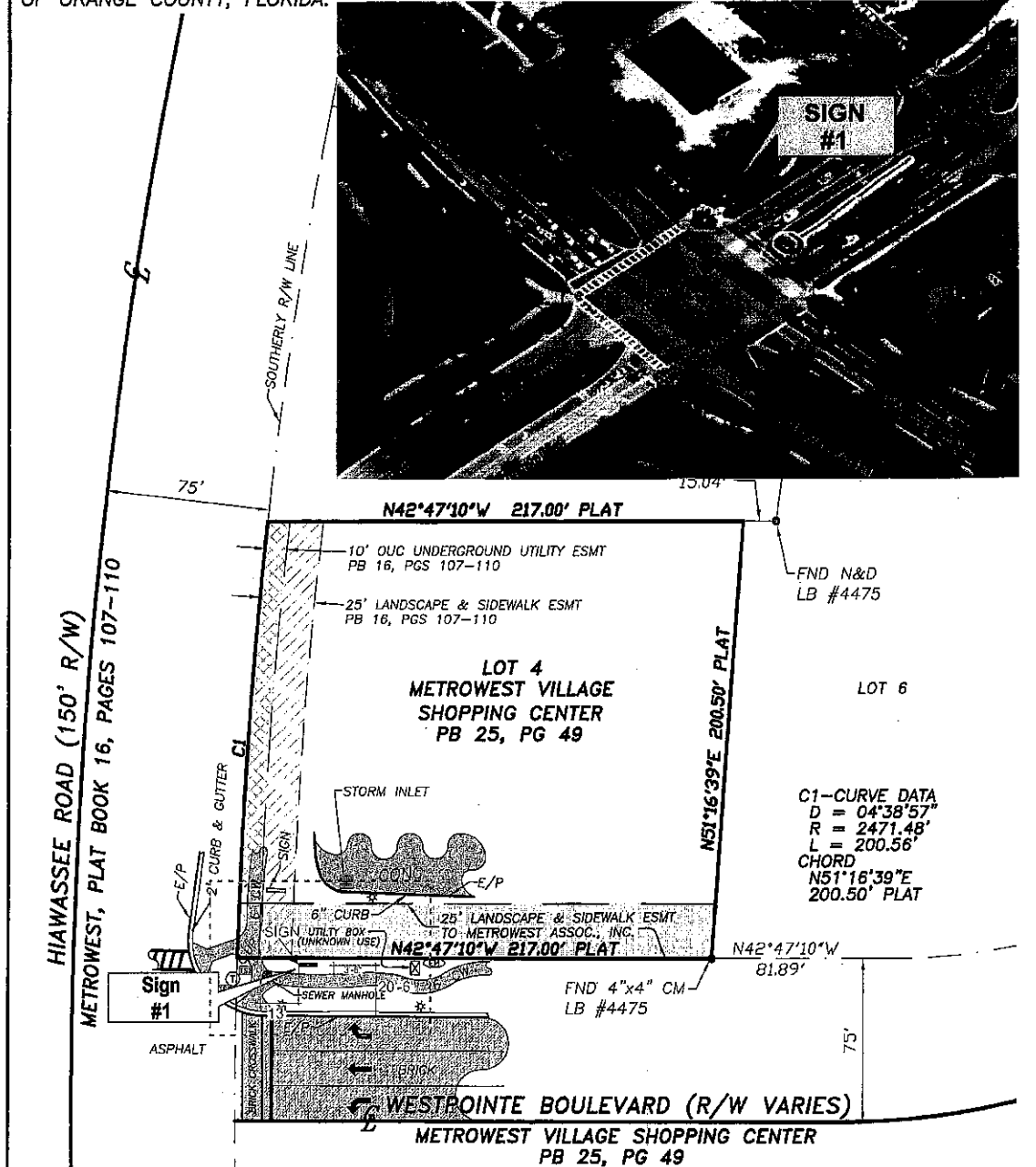


Exhibit "C"

PLAT OF SURVEY

DESCRIPTION

A PORTION OF LOT 4 & WESTPOINT BOULEVARD, METROWEST VILLAGE SHOPPING CENTER, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 25, PAGE 49, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.



JOB #37261

CF#OC25-49 LOT4 SIGN

FIELD DATE: 7/03/2013

SCALE: 1" = 60'

DRAWN BY: YES

AS-BUILT SURVEY CERTIFIED TO:

VERANDA PARK INTERIM ASSOCIATION

REVISIONS

ACCURIGHT SURVEYS

of Orlando Inc., LB 4475
2012 E. Robinson St.
Orlando, Florida 32803
www.AccurightSurveys.net
accusurvey@bellsouth.net

PHONE (407) 894-6314 FAX (407) 897-3777

JAMES D. BRAY PSM 6507

"NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF THIS FLORIDA LICENSED SURVEYOR AND MAPPER."

NOTES:

1. BEARING STRUCTURE IS BASED ON THE MONUMENTED NORTH R/W LINE OF WESTPOINTE BOULEVARD, BEING: N42°47'10"W PER PLAT.
2. THIS BUILDING/LOT LIES IN ZONE "X", BASED ON FLOOD INSURANCE RATE MAP NO. 1209SC0240F, COMMUNITY NO. 120188, CITY OF ORLANDO, ORANGE COUNTY, FLORIDA, EFFECTIVE SEPTEMBER 25, 2009.
3. THIS SURVEY REFLECTS ONLY MATTERS OF RECORD AS PROVIDED BY CLIENT.
4. UNDERGROUND IMPROVEMENTS HAVE NOT BEEN LOCATED.
5. BUILDING TIES SHOWN ON THIS SURVEY SHOULD NOT BE USED TO RECONSTRUCT PROPERTY LINES.
6. THIS SURVEY IS VALID ONLY FOR THE PARTIES TO WHOM IT IS CERTIFIED.
7. THIS SURVEY EXCEEDS THE ACCURACY REQUIREMENTS SET FORTH IN FLORIDA STATUTES.

LEGEND

- | | | | |
|------|----------------------------|------|-------------------------|
| (TV) | - CABLE TV RISER | IR | - IRON ROD |
| CCO | - CENTERLINE | L | - ARC LENGTH |
| CBW | - CLEAN OUT | LB | - LICENSED BUSINESS |
| CC | - CONCRETE BLOCK WALL | LF | - LIGHT POLE |
| CC | - COVERED CONCRETE | LS | - LICENSED SURVEYOR |
| CLF | - CHAIN LINK FENCE | LSA | - LANDSCAPE AREA |
| CM | - CONCRETE MONUMENT | MEAS | - MEASURED |
| CM | - CONCRETE | MF | - METAL FENCE |
| CONC | - COVERED | MS | - METAL SHED |
| CP | - CONCRETE PAD | N&D | - NAIL & DISK |
| OW | - CONCRETE WALKWAY | OW | - OVERHEAD WIRE |
| CA | - CENTRAL ANGLE | ORB | - OFFICIAL RECORDS BOOK |
| D&M | - DESCRIBED & MEASURED | P&M | - PLAT & MEASURED |
| DE | - DRAINAGE EASEMENT | PB | - PLAT BOOK |
| DESC | - DESCRIPTION | PC | - POINT OF CURVATURE |
| DM | - DOT MANHOLE | PG | - PAGE |
| DW | - DRIVEWAY | PF | - PLASTIC FENCE |
| E/P | - EDGE OF PAVEMENT | PGB | - POINT OF BEGINNING |
| EB | - ELECTRIC BOX | POC | - POINT OF COMMENCEMENT |
| EL | - ELECTRIC METER | R | - RADIAL |
| EL | - ELEVATION | R/W | - RIGHT OF WAY |
| ESMT | - EASEMENT | TR | - TELEPHONE RISER |
| FTE | - FINISHED FLOOR ELEVATION | T | - TRANSFORMER |
| FFH | - FIRE HYDRANT | TYP | - TYPICAL |
| FIRM | - FLOOD INSURANCE | UE | - UTILITY EASEMENT |
| FM | - FLOOD MAP | UP | - UTILITY POLE |
| FND | - FOUND | W | - WATER METER |
| G | - GUY WIRE ANCHOR | WV | - WATER VALVE |
| IP | - IRON PIPE | WS | - WOOD SHED |

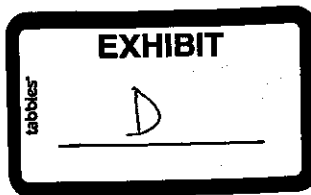
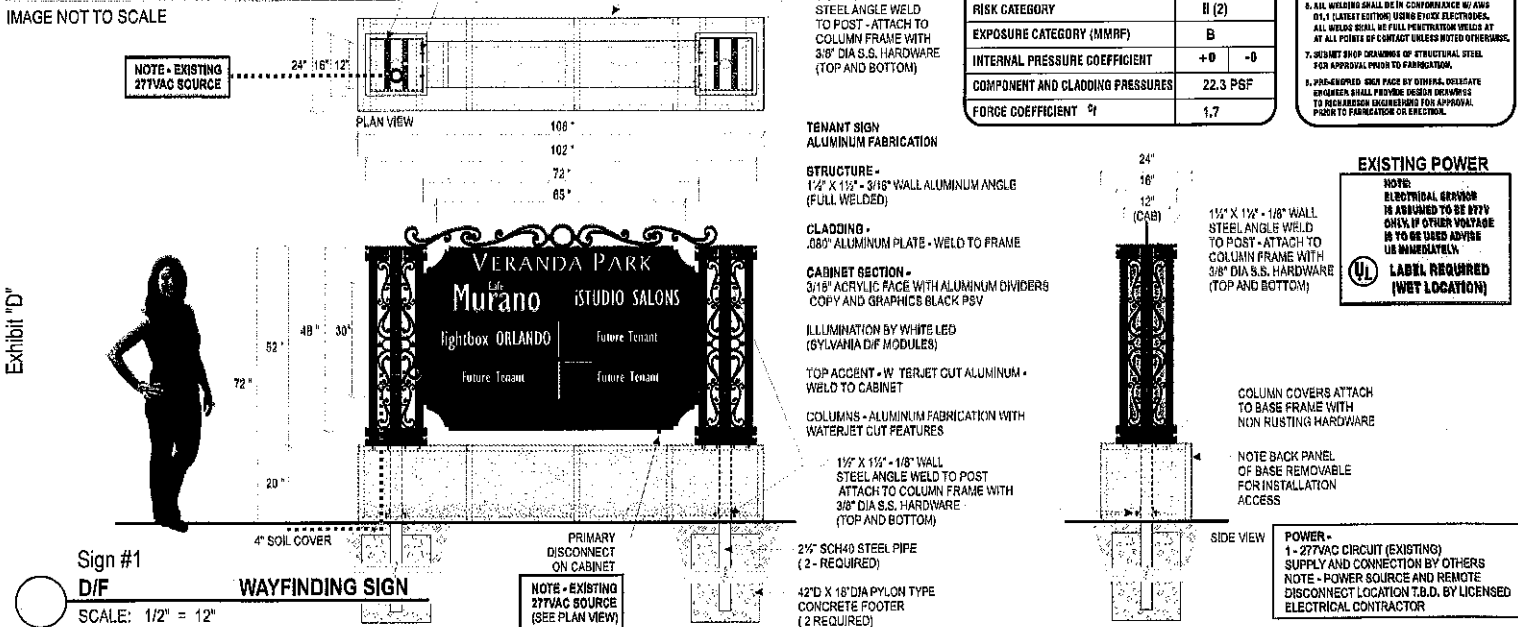



IMAGE NOT TO SCALE

Exhibit "D"



	1251 University Blvd., Suite 100, FLORIDA Phone: 404-544-1111 Fax: 404-544-1111 www.richardson-engineering.com	PROJECT: VERANDA PARK	CRM / Quote: 8435-4197	REVISION LEVEL No. DATE DESCRIPTION 01 09-03-13 PREPARED FOR PERMIT 02 09-03-13 FOR CABINET SETTING 03 09-03-13 REV. GRAPHIC CONTENT AND DELIVERY TO SITE	<input type="checkbox"/> Approved <input type="checkbox"/> Approved as noted <input type="checkbox"/> Revise and resubmit Approved: _____ Date: _____	Sheet: WMN1
	This drawing and all its contents are the property of Richardson Engineering and may not be reproduced, published, changed or used in any way without written consent.	SITE ADDRESS: METROWEST, ORLANDO, FL	AM: LDM PM / PSC: _____ Designer: JC Date: 09-03-13			File name: _____