

**THIS INSTRUMENT PREPARED BY
AND RETURN TO:**

Borron J. Owen, Jr., Esquire
Gray Robinson, P.A.
301 E. Pine Street, Suite 1400
Orlando, Florida 32801
Phone: 407-843-8880

RIGHT-OF-WAY EASEMENT AGREEMENT
(Sanitarium Avenue)

THIS RIGHT-OF-WAY EASEMENT AGREEMENT (the “**Agreement**”) is made and entered into as of the ____ day of _____, 2014, by and between **ADVENTIST HEALTH SYSTEM/SUNBELT, INC.**, a Florida not-for-profit corporation, doing business as **FLORIDA HOSPITAL**, whose address is 601 E. Rollins Street, Orlando, Florida 32803, (“**Florida Hospital**” or “**Owner**”), and the **CITY OF ORLANDO**, a municipal corporation organized and existing under the laws of the State of Florida (the “**City**”).

W I T N E S S E T H:

WHEREAS, the City is the owner of that certain roadway located in Orange County, Florida and known and hereinafter referred to as “**Sanitarium Avenue**”; and

WHEREAS, in connection with the construction of the “**Florida Hospital’s East King Street – North Garage**” (the “**Building**”), Florida Hospital intends to (i) construct certain portions of the Building within the right-of-way of Sanitarium Avenue depicted and described in **Exhibit “A”** attached hereto and incorporated herein by this reference (the “**Right-of-Way Easement Property**”), as permitted by the City, and (ii) install, maintain, repair and replace landscaping, sidewalks, lighting and irrigation within the Right-of-Way Easement Property (sometimes collectively, the “**Improvements**”); and

WHEREAS, the City has agreed to grant to Florida Hospital an easement to allow Florida Hospital (i) to construct certain portions of the Building within the Right-of-Way Easement Property, as permitted by the City, and (ii) to install, maintain, repair and replace landscaping, sidewalks, lighting and irrigation within the Right-of-Way Easement Property, as permitted by the City, on the terms and conditions set forth herein.

NOW, THEREFORE, for an in consideration of the premises hereof, of the sum of Ten and no/100ths Dollars (\$10.00) paid by Florida Hospital to the City, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Florida Hospital and the City hereby agree as follows:

1. **Recitals.** The recitals set forth above are true and correct and are incorporated herein by this reference.

2. **Easements.** The City hereby grants and conveys to Florida Hospital permanent, perpetual, non-exclusive easements in, under, through, over and across the Right-of-Way Easement Property for purposes of constructing and maintaining the Improvements, and more particularly for the purposes of (i) constructing, maintaining and repairing certain portions of the Building within the Right-of-Way Easement Property, and (ii) installing, maintaining, repairing and replacing landscaping, sidewalks, lighting and irrigation within the Right-of-Way Easement Property, and all activities incidental and related thereto. This Easement is strictly limited to the extent reasonably necessary for the

purposes stated herein, as may be permitted by the City, and may not be expanded except as may be permitted by the City by amendment of this Agreement. Nothing in this Agreement authorizes interference with the use, operation and maintenance of Sanitarium Avenue and Florida Hospital hereby assumes the responsibility of ensuring that no such interference occurs.

3. **Construction of the Improvements.**

(a) **Review of Construction Plans.** In connection with any and all Improvements constructed and installed by Florida Hospital in the Right-of-Way Easement Property, Florida Hospital shall coordinate the design thereof with City staff designated by the City's Public Works Director. The City's review herein is in addition to the City's regulatory authority with respect to permitting the construction plans for the Building and related Improvements.

(b) **Insurance During Design, Installation and Construction of the Improvements.** Florida Hospital shall require that the construction contractor (the "Contractor"), at all times during the construction, possesses: 1) worker's compensation insurance in the amount of the Florida Statutory Limit; 2) automobile liability insurance of at least \$1,000,000; and 3) general liability insurance in the amount of at least \$3,000,000. All liability insurance shall be maintained throughout the course of the construction and for a period of time thereafter as required by the City in order to protect the City from any covered liability, claims, damages, losses or expenses arising from or out of in any way connected with the construction. The City shall be listed as an additional insured on the automobile, general liability, and builder's risk policies. In addition, the Contractor shall also be required to purchase and possess builder's risk, "all risk", insurance covering physical loss and property damage, in the amount of at least the bid for the construction costs. Florida Hospital shall require the Contractor to provide to the City proof of such insurance coverages, as described above, ten (10) days prior to commencement of construction. In the alternative, Florida Hospital may provide, via its self-insured insurance programs, the City-required coverages for general liability and workman's compensation. In addition, Florida Hospital is the party carrying the builder's risk on the project and will provide builder's risk coverage to the City, as required by City Code.

(c) **Payment & Performance Bonds.** Florida Hospital shall require the Contractor to obtain performance and payment bonds, prior to commencement of construction and in a form acceptable to the City, with the penal amount of each bond equal to the contract amount. The Surety must be authorized to issue bonds in Florida, must be listed in the most recently issued United States Department of the Treasury's "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," as published in the Federal Register and is subject to the final approval of the City. The City shall be listed as an obligee on each bond. Florida Hospital shall act diligently to prevent construction liens from being filed on the property necessary for construction or operation of the Improvements. If a lien is filed, Florida Hospital shall take the requisite action to have the lien removed. If the Contractor is not currently carrying performance and payment bonds on this project, the Owner will reimburse the Contractor for the cost of performance and payment bonds or will provide the bonds to the City directly.

(d) **Warranty/Maintenance Bond.** Prior to certification by the City as described in subparagraph (f) below, Florida Hospital shall obtain from the Contractor a two-year warranty (in a form acceptable to the City) on the materials and work performed with regard to the Improvements, as commercially appropriate. The City shall be named as additional beneficiary of the warranty/bond. The commencement date of the warranty/bond shall be the date upon which the Improvements are completed and certified by the City as described in subparagraph (f) below, unless otherwise agreed by the parties. If the Contractor is not currently carrying the cost

of any City required bonds on the project, the Owner will elect to either reimburse the Contractor for the costs of providing the bonds to the City or provide the City-required bonds directly.

(e) **Non-Conforming Work.** In the event work is discovered, whether by the City or Florida Hospital, its consultants or contractors, which is defective or otherwise non-conforming to the requirements of the construction plans which have been permitted by the City, the City or Florida Hospital shall promptly notify the other party of such defect or non-compliance. Florida Hospital shall immediately cause such work to be removed and replaced with conforming work or otherwise remedy the non-conforming work to the satisfaction of the City. The City has final authority over the determination that certain work related to the Improvements is non-conforming or defective and that said non-conforming or defective work has been remedied, which determination shall be made in accordance with the City permitted construction plans. Any costs associated with correcting such deficient work shall be borne by Florida Hospital. In any such event, determinations by the City will be communicated by the City to Florida Hospital. Florida Hospital will then provide direction to the Contractor, who is the agent of Florida Hospital, to correct or remedy such deficient work. Florida Hospital shall be responsible for any additional costs for work that is objected to by the City, but which is not in conformance with the City approved construction documents; provided, however, that the foregoing shall not create any obligation or liability on the part of Florida Hospital to undertake any corrective or remedial action on any work that is in conformance with the City approved construction documents.

(f) **Certification.** Upon completion of the Improvements, the City shall conduct a final inspection. If the City determines that all work has been completed in conformance with the permitted construction plans and any other applicable construction, permitting or engineering requirements, the City shall notify Florida Hospital in writing of said conformance. Upon receipt of the City's written notification, Florida Hospital shall cause the Contractor to submit a final completion certification of the Improvements. This certification shall be accompanied by the As-Built drawings as well as any necessary warranties, waivers and releases from contractors, subcontractors and suppliers, test certifications, operation manuals and documentation of approval of the construction by governmental agencies having jurisdiction other than the City, if any. The City's determination under this subparagraph does not operate to impose any liability or responsibility on the City with respect to the Improvements, which remains the sole and exclusive responsibility of Florida Hospital.

(g) **Independent Contractors.** Florida Hospital, its agents, Contractor, subcontractors or design engineer, shall perform all activities that are outlined in this Agreement as independent entities and not as agents, employees or representatives of the City, or their employees or representatives. Nothing herein operates to impose any obligation, responsibility or liability upon the City with respect to the Right-of-Way Easement Property or the construction, operation or maintenance of the Improvements.

4. **Insurance.** During the entire term of this Agreement, Florida Hospital shall maintain: 1) worker's compensation insurance in the amount of the Florida Statutory Limit; 2) automobile liability insurance of at least \$1,000,000; and 3) general liability insurance in the amount of at least \$3,000,000 to protect the City from any liability arising from this Agreement or Florida Hospital's operation, repair and maintenance of the Improvements, or which is caused in whole or in part, directly or indirectly, by Florida Hospital or any of its contractors, subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. In the alternative, Florida Hospital may provide, via its self-insured insurance programs, the City-required coverages for general liability and workman's compensation. The City shall be listed as an additional insured on the above-referenced liability policy. This provision shall survive termination of this Agreement to the extent necessary to

protect the City from liability arising during the term of this Agreement. Nothing herein operates as a waiver of the City's grant of sovereign immunity or the limits of liability established under Florida law.

5. **Indemnification.** To the extent permitted by law, Florida Hospital shall indemnify, release and hold harmless the City, its agents, employees and elected and appointed officials, from and against all claims, damages, losses and expenses (including all costs and attorney's fees and all costs and attorney's fees on appeal), arising out of or resulting from this Agreement, construction, installation, operation, use, replacement or maintenance of the Improvements, or which are caused in whole or in part, directly or indirectly, by Florida Hospital or any of its subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.

6. **Maintenance and Repairs.** The Improvements shall be constructed, installed, used, owned, maintained, replaced and repaired by Florida Hospital, and Florida Hospital hereby assumes any and all responsibility and liability with respect to, or arising from, or in any way associated therewith, including, though not exclusively, any and all damage to the City's roadway and any improvements located within the Right-of-Way Easement Property to the extent that said damage is caused by the operation, maintenance and repair of the Improvements. Florida Hospital has confirmed that construction, operation and maintenance of the Improvements will not damage, or interfere with the use, operation and maintenance of, any public infrastructure located within the Right-of-Way Easement Property. In the event Florida Hospital fails to maintain the Improvements in good condition and in accordance with applicable laws and regulations, or in the event that the operation, maintenance or repair of the Improvements has caused damage to the City's roadway or other improvements within the Right-of-Way Easement Property, the City may give Florida Hospital written notice thereof and Florida Hospital shall be obligated to promptly and diligently conduct such maintenance and/or correct such deficiency within a reasonable period of time, or within forty-eight (48) hours after written notice from the City, in the case of an emergency situation. The repair of damage to the City's roadway or other improvements within the Right-of-Way shall be conducted in a manner approved by the City so as to minimize interference with the operation of Sanitarium Avenue. In the event Florida Hospital fails to maintain the Improvements and repair/correct any such deficiency within a reasonable time after such written notice by the City, or within forty-eight (48) hours after written notice from the City, in the case of an emergency situation, then the City shall have the right, but not the obligation, to correct any such deficiency and Florida Hospital shall then reimburse the City for the City's reasonable expenses in connection therewith, no less than sixty (60) days after written request by the City, failing which the full amount shall bear interest at the highest rate allowed by law and shall become a lien in favor of the City upon the adjacent Florida Hospital property. Such liens shall become effective upon the filing of a Claim of Lien by the City in the Official Records of Orange County, Florida and may be foreclosed in the manner as provided by Florida law. The City's conduct of remedial action shall not operate to impose any obligation, responsibility or liability whatsoever upon the City. Furthermore, nothing herein operates to impose any obligation, responsibility or liability upon the City with respect to the construction, installation, use, operation or maintenance of the Improvements. In the event of an emergency situation resulting in an immediate threat to public health, safety or welfare, the City shall only be required to attempt to give reasonable written notice as provided herein, prior to taking action in accordance with this paragraph.

7. **Termination.** This Agreement may be terminated by mutual consent of the parties hereto or upon Florida Hospital's abandonment of the Improvements. Except as otherwise agreed by the parties, if reasonably practical, after consultation with the City, Florida Hospital shall remove the Improvements, or some portions thereof, within one hundred eighty (180) days of termination of this Agreement, said removal to occur in compliance with any and all applicable rules, laws and regulations. Upon any such termination, this Agreement and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect, except as otherwise provided herein.

8. **Defaults.** Failure by either party to comply with or perform any of the terms, conditions, covenants, agreements or obligations contained in this Agreement to be performed by each of them respectively, shall constitute a default under this Agreement, and (i) if such default is not cured or remedied within sixty (60) days after the non-defaulting party provides written notice to the defaulting party specifying with particularity the nature of such default, or (ii) if such default cannot be reasonably cured or remedied within such sixty (60) day period, the defaulting party fails to commence to cure or remedy the default within such sixty (60) day period and thereafter fails to diligently and expeditiously pursue such cure or remedy, the non-defaulting party, in its sole discretion, shall be entitled to exercise any and all rights and remedies available to it under this Agreement, at law and in equity.

9. **Litigation and Attorneys' Fees.** In the event either party to this Agreement should bring suit to enforce or interpret any provision hereof, each party shall be responsible for its own attorneys' fees, experts' fees and costs, in addition to any other relief granted as a result of such litigation.

10. **Binding Effect.** The easements herein granted by the City shall run in favor of Florida Hospital. The terms and conditions of this Agreement shall run with the title to (i) the real property owned by Florida Hospital as of the date hereof, and (ii) the Right-of-Way Easement Property and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

11. **No Waiver of Regulatory Authority.** Florida Hospital acknowledges that the City is the entity responsible for issuing building permits and certain other types of permits which will be required in connection with activities on the Right-of-Way Easement Property and other property owned by Florida Hospital, and further acknowledges that nothing in this Right-of-Way Easement Agreement constitutes or is intended to operate as a waiver of such regulatory authority or the application of any applicable laws, rules or regulations. Furthermore, nothing herein operates to vest any particular manner or means of development of any property owned by Florida Hospital and nothing herein operates as an amendment of, or modification to, the development of regional impact that encumbers the Florida Hospital property. Lastly, the Improvements and the Right-of-Way Easement Property remain subject to the City's police power and shall not be operated or utilized in any manner so as to interfere with the operation and maintenance of the City's right-of-way or any improvements located within said right-of-way.

12. **Estoppel Certificate.** Florida Hospital and the City shall execute and deliver to each other, within fifteen (15) days of any written request therefore by the other party, a certificate addressed as indicated by the requesting party and stating: (i) whether this Right-of-Way Easement Agreement is in full force and effect; (ii) whether this Right-of-Way Easement Agreement has been modified or amended in any respect; (iii) whether there are any existing defaults hereunder known to the party executing the certificate, and specifying the nature thereof; and (iv) such other matters as may be reasonably requested.

13. **Notices.** Any notices required or permitted under this Agreement, and copies thereof, shall be addressed to Florida Hospital and the City at the following addresses, or at such other addresses designated in writing by the party to receive notice:

City:	City of Orlando
	Public Works Director
	400 S. Orange Avenue
	Orlando, FL 32801

With a copy to: City of Orlando
Office of Legal Affairs - 3rd Floor
400 S. Orange Avenue
Orlando, FL 32801

Florida Hospital: Jody Barry, MBA, CCIM
Administrative Director, Strategic Property Development
Florida Hospital / AHS Florida Division
550 East Rollins Street, 7th Floor
Orlando, FL 32803

With a copy to: Borron J. Owen, Jr., Esq.
Gray Robinson, P.A.
301 East Pine Street, Suite 1400
Orlando, FL 32801

Notices shall be either: (i) personally delivered (including delivery by Federal Express or other overnight courier service) to the addresses set forth above, in which case they shall be deemed delivered on the date of delivery; or (ii) sent by certified mail, return receipt requested, in which case they shall be deemed delivered on the date shown on the receipt unless delivery is refused or intentionally delayed by the addressee, in which event they shall be deemed delivered on the date of deposit in the U.S. Mail.

14. **Taxes/Fees.** Florida Hospital shall be responsible for the payment of all taxes or fees which may be assessed or levied against the Improvements, or any equipment or other personal property located therein, and all taxes or fees associated with Florida Hospital's use of the Right-of-Way Easement Property.

15. **Effective Date.** This Agreement shall become effective on the date of full and complete execution by all parties hereto.

16. **Counterparts.** This Agreement may be executed in counterparts, all of which shall collectively constitute a single agreement.

17. **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 and 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 subject to this Agreement.

18. **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.

19. **Legal Counsel.** Florida Hospital acknowledges that it has had ample opportunity to seek and consult with independent legal counsel prior to executing this Agreement, and that Florida Hospital represents and warrants that it has sought such independent legal advice and counsel.

20. **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.

21. **Effective Date.** This Agreement shall become effective on the date of full and complete execution by all parties hereto.

IN WITNESS WHEREOF, Florida Hospital and the City have executed this Right-of-Way Easement Agreement in manner and form sufficient to bind them as of the day and year first written above.

Signed, sealed and delivered
in the presence of:

**ADVENTIST HEALTH SYSTEM/
SUNBELT, INC.,** a Florida not-for-profit
corporation, doing business as **FLORIDA
HOSPITAL**

Print Name: _____

By: _____
Lars D. Houmann, Vice President

Print Name: _____

[CORPORATE SEAL]

**STATE OF FLORIDA
COUNTY OF ORANGE**

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Lars D. Houmann, as the Vice President of **ADVENTIST HEALTH SYSTEM/SUNBELT, INC.,** a Florida not-for-profit corporation, d/b/a **FLORIDA HOSPITAL,** on behalf of the corporation.

AFFIX NOTARY STAMP

Signature of Notary Public

(Print Notary Name)

My Commission Expires: _____

Commission No.: _____

☐ Personally known, or

☐ Produced Identification

Type of Identification Produced _____

CITY OF ORLANDO

ATTEST:

Alana C. Brenner, City Clerk

By: _____
Mayor _____

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

Assistant City Attorney
_____, 2014

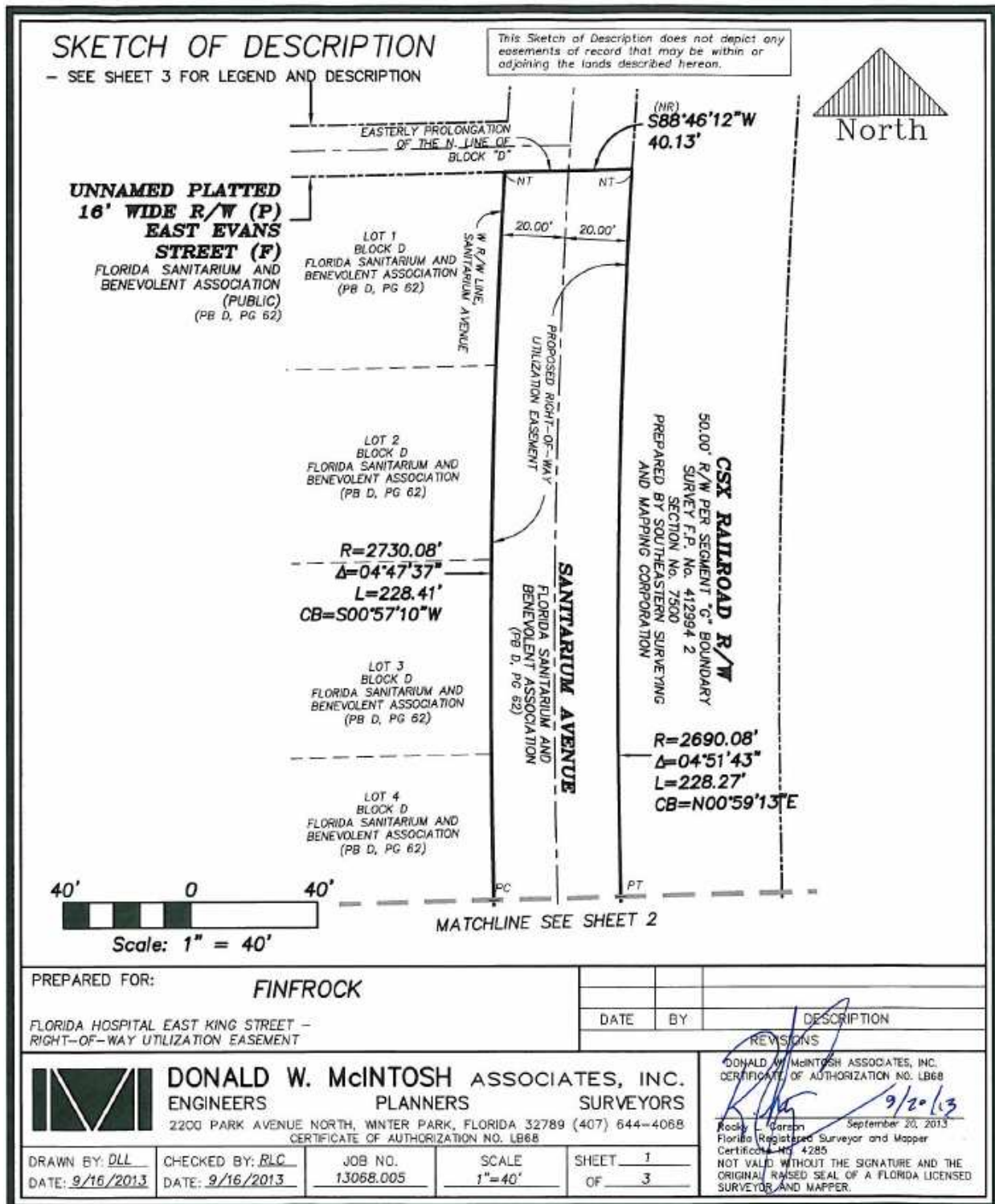
**STATE OF FLORIDA
COUNTY OF ORANGE**

PERSONALLY APPEARED before me, the undersigned authority,
_____ and, Alana C. Brenner, well known to me and known by me to be
Mayor _____ and City Clerk, respectively, of the City of Orlando, Florida, and acknowledged
before me that they executed the foregoing instrument on behalf of the City of Orlando as its true act and
deed, and that they were duly authorized so to do.

WITNESS my hand and official seal this ____ day of _____, 2014.

Notary Public
Print Name: _____
My Commission expires: _____

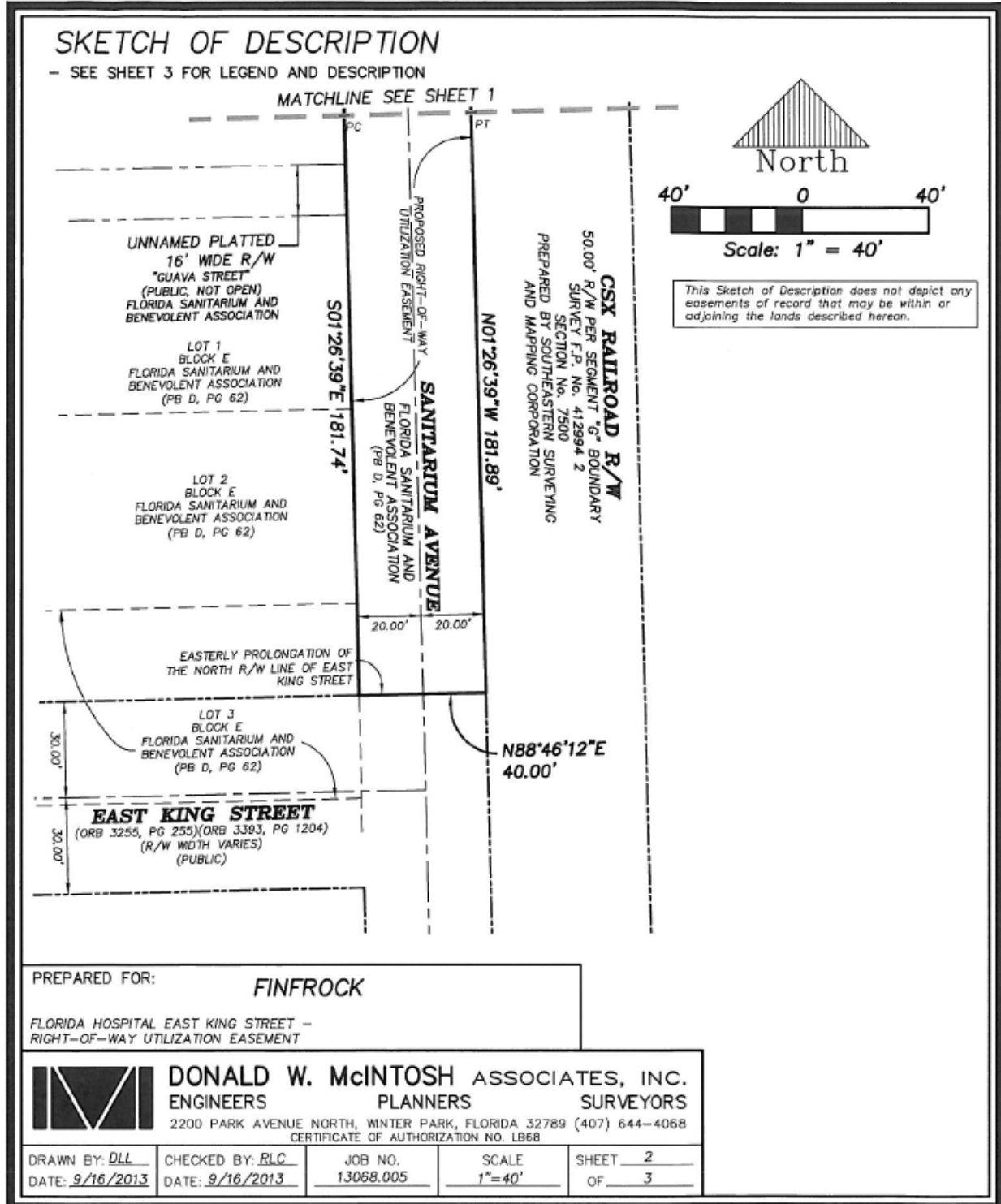
EXHIBIT "A"



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CS# 13-304(D)

EXHIBIT "A" (continued)



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CS# 13-304(D)

SKETCH OF DESCRIPTION

— SEE SHEET 1 FOR SKETCH

DESCRIPTION:

That part of Sanitarium Avenue, FLORIDA SANITARIUM AND BENEVOLENT ASSOCIATION, according to the plat thereof, as recorded in Plat Book "D", Page 62, of the Public Records of Orange County, Florida, lying South of the Easterly prolongation of the North line of Block "D" of said plat and lying North of the Easterly prolongation of the North right-of-way line of East King Street as described in Official Records Book 3255, Page 255, and Official Records Book 3393, Page 1204, of said Public Records.

Containing 0.377 acres (16,406 square feet) more or less and being subject to any rights-of-way, restrictions and easements of record.

SURVEYORS NOTES:

1. This Sketch of Description is not a Survey.
2. Bearings based on the East Right-of-way line of McRae Avenue, being S01°20'17"E, an assumed meridian.
3. All adjoining Rights-of-way, subdivisions and information on adjoining properties shown hereon are from information shown on County Tax Assessor Maps. The undersigned surveyor and Donald W. McIntosh Associates, Inc. did not attempt, nor were required to do a title search regarding such information. Users of this survey are placed on notice that reliance on such information is at their own peril, in this regard.
4. This sketch does not reflect or determine ownership.
5. Legal Description shown hereon was prepared by Donald W. McIntosh Associates, Inc. based on information provided by client.

PREPARED FOR:

FINFROCK

FLORIDA HOSPITAL EAST KING STREET —
RIGHT-OF-WAY UTILIZATION EASEMENT



DONALD W. MCINTOSH ASSOCIATES, INC.
ENGINEERS PLANNERS SURVEYORS

2200 PARK AVENUE NORTH, WINTER PARK, FLORIDA 32789 (407) 644-4068
CERTIFICATE OF AUTHORIZATION NO. LB68

DRAWN BY: DLL
DATE: 9/16/2013

CHECKED BY: RLC
DATE: 9/16/2013

JOB NO.
13068.005

SCALE
N/A

SHEET 3
OF 3

LEGEND

C	CENTERLINE
(C)	COMPUTED
DB	DEED BOOK
LB	LICENSED BUSINESS
(F)	FIELD
No.	NUMBER
ORB	OFFICIAL RECORDS BOOK
(P)	PLAT
PB	PLAT BOOK
PG	PAGE
PGS	PAGES
PC	POINT OF CURVATURE
POB	POINT OF BEGINNING
POC	POINT OF COMMENCEMENT
R/W	RIGHT-OF-WAY
N/A	NOT APPLICABLE

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