

THIS INSTRUMENT PREPARED BY:

Wesley C. Powell
Assistant City Attorney
City of Orlando
400 S. Orange Avenue
Orlando, FL 32801
(407) 246-2295

RIGHT-OF-WAY ENCROACHMENT AGREEMENT

THIS AGREEMENT, is made and entered into this ___ day of _____, 2016, by and between Joseph F. Kirby, hereinafter referred to as "**KIRBY**", and the City of Orlando, a Florida municipal corporation, hereinafter referred to as "**CITY**".

RECITALS:

WHEREAS, **KIRBY** is the owner of certain real property located at 3109 Helen Street, Orlando, Florida 32804, and more particularly described as follows:

The South ½ of Lot 14 and the North 40 feet of Lot 15, Block K, ANDERSON PARK SUBDIVISION, according to the plat thereof as recorded in Plat Book J, Page 30, Public Records of Orange County, Florida

WHEREAS, the **KIRBY** Property is located adjacent to certain **CITY** right-of-way located at 3114 Oberlin Avenue, Orlando, Florida 32804, and more particularly described as follows:

The South ½ of Lot 13 and the North ½ of Lot 14, Block "K", Anderson Park Subdivision, as shown on the plat thereof recorded in Plat Book J, Page 30, Public Records of Orange County, Florida (the "Right-of-Way"); and

WHEREAS, **KIRBY** desires to install and maintain landscaping upon the Right-of-Way; and

WHEREAS, the **CITY** will permit the installation and location of the landscaping upon the Right-of-Way provided that **KIRBY** agrees to maintain the Right-of-Way; and

WHEREAS, **KIRBY** is required to enter into this Agreement in order to allow the landscaping to encroach into the Right-of-Way in compliance with Section 61.203 of the **CITY's** Land Development Code.

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

1. Preamble Incorporated. The foregoing recitals are true and correct and are incorporated herein as part of this Agreement.

2. Encroachment. The **CITY** hereby grants permission for **KIRBY** to install and maintain landscaping upon the Right-of-Way, as shown on Exhibit A attached hereto and incorporated herein, by reference (“Landscaping”). If **KIRBY**’s installation of the Landscaping or use of the Right-Of-Way damages or interferes with any of the **CITY**’s existing utilities located within the Right of Way, then **KIRBY** shall reimburse the **CITY** for the cost of repairing such damage or interference. The Landscaping shall comply with the requirements of the City’s Land Development Code. In addition to the Landscaping, Kirby may install and maintain a fence upon the Right-of-Way (“Fence”) provided that Kirby obtains the prior, written consent of the City, and any applicable permits.

3. Reservation of Rights. The **CITY** reserves the right to utilize and enter the Right-of-Way for the location, installation, maintenance, and repair of any utilities located or to be located upon and under the Right-of-Way.

4. Submittals by KIRBY. Prior to the installation of the Landscaping, **KIRBY** shall submit two (2) sets of plans to the **CITY**. The plans, including the type, height and location of the Landscaping in the Right-of-Way, shall be reviewed and approved in writing by the **CITY** prior to installation. Prior to the installation of the Fence, **KIRBY** shall submit two (2) sets of plans to the **CITY**. The plans, including the type, height and location of the Fence in the Right-of-Way, shall be reviewed and approved in writing by the **CITY** prior to installation.

5. Existing Utilities. The location, installation, maintenance and repair of the Landscaping shall not interfere with any existing utilities located within, upon or under the Right-of-Way.

6. Maintenance and Repair. **KIRBY** shall maintain the Landscaping, Fence and Right-of-Way in good condition and repair during the term of this Agreement, including mowing, landscaping and general maintenance and repair.

7. Removal of Landscaping and Fence. The **CITY**, at its sole discretion, shall have the right to terminate this Agreement and require **KIRBY** to remove the Landscaping (and Fence, if applicable), or any portion thereof at **KIRBY**’s sole cost and expense. **KIRBY** shall remove the Landscaping (and Fence, if applicable) and restore the Right-of-Way to its prior condition within thirty (30) days of **KIRBY**’S receipt of written notice from the **CITY** for removal.

8. Indemnification. **KIRBY** 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 tort, intentional action, negligent act or omission of **KIRBY**, their tenants, agents, subcontractors, or anyone for whose act or acts any of them may be liable, relating to the encroachment of the Landscaping (and Fence, if applicable) into the Right-of-Way.

9. Recording. **KIRBY** will record this Agreement, at its expense, in the Public Records of Orange County, Florida, where it shall be a covenant running with the land and encumber the

Property.

10. 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. **KIRBY** shall comply with all applicable federal, state, and local laws, ordinances, rules and regulations pertaining to the installation, maintenance, and repair of the Landscaping in the Right-of-Way.

11. Entire Agreement. 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.

12. Severability. 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. **KIRBY** acknowledges that they have had ample opportunity to seek and consult with independent legal counsel prior to executing this Agreement, and **KIRBY** represents and warrants that they have sought such independent legal advice and counsel or have knowingly and voluntarily waived such right.

14. Attorney's Fees. **KIRBY** agrees that they shall be liable for reasonable attorney's fees incurred by **CITY**, if **CITY** is required to take any actions, through litigation or otherwise, to enforce this Agreement.

15. Negotiation. The parties to this Agreement acknowledge that all terms of this Agreement were negotiated at arms 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.

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

Joseph F. Kirby

Sign: _____

Witnesses:

Sign Name: _____

Print Name: _____

Sign Name: _____

Print Name: _____

**STATE OF FLORIDA
COUNTY OF ORANGE**

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by Joseph F. Kirby, who is personally known to me or has produced _____ as identification.

Notary Public
Commission Expires:

SIGNATURES CONTINUED ON FOLLOWING PAGE

CITY OF ORLANDO

Mayor / Pro Tem

Attest:

Amy Iennaco, Interim City Clerk

**STATE OF FLORIDA
COUNTY OF ORANGE**

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by _____, and _____, to me known as the Mayor/ Pro Tem and Interim City Clerk respectively, of the City of Orlando, who acknowledged before me that they executed the foregoing instrument for the purposes therein expressed, and that they were duly authorized to do so.

Notary Public
Commission Expires:

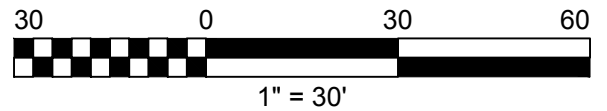
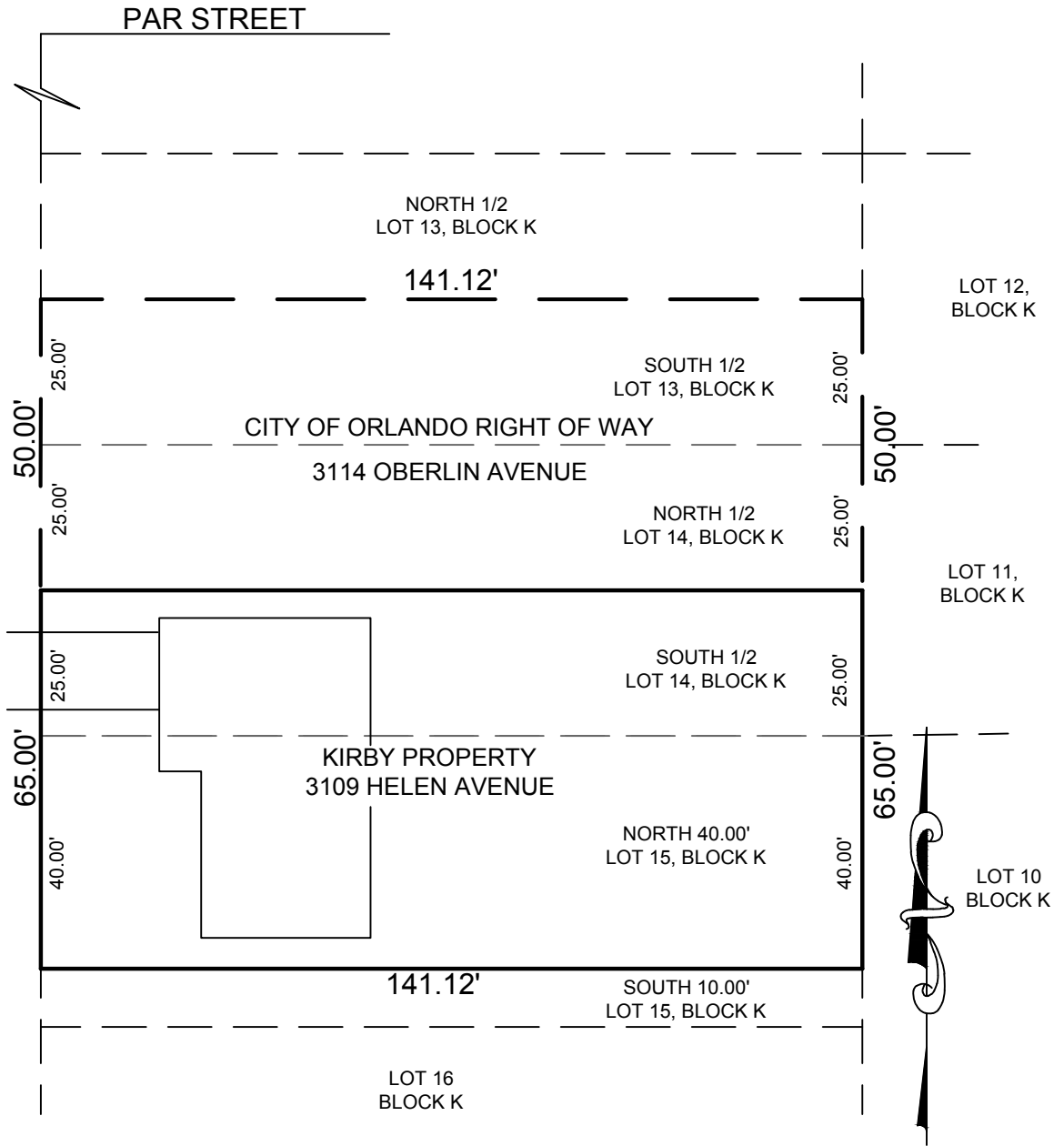
APPROVED AS TO FORM AND LEGALITY
for the use and reliance of the
City of Orlando, Florida, only.

_____, 2016.

City Attorney
Orlando, Florida

EXHIBIT

HELEN STREET
50' RIGHT OF WAY



CITY OF ORLANDO

Survey Services Section
400 South Orange Avenue, 8th Floor
Orlando, Florida 32802
p. 407.246.3319 f. 407.246.2892

Project Number: 16-045

Requested By: McNEALY

Date of Survey:

Approved By: RDA

Drafted By: MER

Checked By: RDA

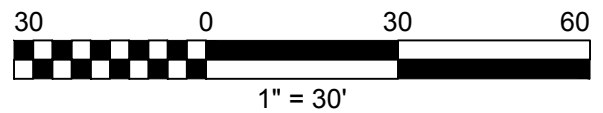
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1 of 1

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