

This instrument prepared by:  
**David J. Bass, Esq.**  
Assistant City Attorney  
Orlando City Hall  
400 S. Orange Ave.  
Orlando, Florida 32801

Orange County Parcel Identification Number:  
See Legal Description in Section A Below

Space above reserved for use by records agency.

### DECLARATION OF RESTRICTIVE COVENANT

**THIS DECLARATION OF RESTRICTIVE COVENANT** (hereinafter referred to as the "Declaration") is made in the City of Orlando, County of Orange, State of Florida by and between the **CITY OF ORLANDO, FLORIDA**, a Florida municipal corporation duly established, organized, and existing under, and by virtue of, the laws of the State of Florida (hereinafter "City"), having its principal place of business at Orlando City Hall, 400 S. Orange Ave., Orlando, Florida 32801, and the **STATE OF FLORIDA, DEPARTMENT OF ENVIRONMENTAL PROTECTION**, an executive department of the State of Florida, duly established, organized, and existing under, and by virtue of, the laws of the State of Florida, and having its principal place of business at 3900 Commonwealth Blvd., Tallahassee, Florida 32399 (hereinafter referred to as the "Grantee"). Wherever used in this Declaration, the terms "Grantor", "Grantors" and "Grantee" include any and all successors and assigns of those entities.

#### WITNESSETH

A. Grantors are the owners (by way of Plat dedication) of that certain real property situated in Orange County, Florida, and is an approximate 270-foot long, 20-foot wide alley located between Nashville Avenue on the west and Norton Avenue on the east within the City limits of Orlando, Florida (hereinafter referred to as the "Property"), shown on Exhibit A, and more particularly described as follows:

BEGIN AT THE SOUTHWEST CORNER OF LOT 10, BLOCK "B", COMMERCIAL PLACE ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK P, PAGE 24 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; SAID POINT ALSO BEING ON THE NORTH LINE OF A 20 FOOT ALLEY; THENCE S87°43'58"E ALONG SAID NORTH LINE, A DISTANCE OF 270.30 FEET TO THE WEST RIGHT OF WAY LINE OF NORTON AVENUE; THENCE S01°27'32"W ALONG SAID WEST RIGHT OF WAY LINE A DISTANCE OF 20.00 FEET TO THE NORTHEAST CORNER OF LOT 20, BLOCK B, SAID COMMERCIAL PLACE; THENCE N87°43'58"W ALONG THE SOUTH LINE OF AFORESAID 20 FOOT ALLEY, A DISTANCE OF 270.31 FEET TO THE EAST RIGHT OF WAY LINE OF NASHVILLE AVENUE; THENCE N01°29'02"E ALONG SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING.

**B.** The Florida Department of Environmental Protection Facility Identification Number for the Property as of the date of this Declaration is COM\_302567.

**C.** As of the date of this Declaration, the Property is used by City primarily as an access alleyway known as Nashville Alley.

**D.** The discharge of volatile organic compounds (VOCs) including ethylbenzene and xylenes on the Property is documented in the following report and letter that are incorporated by reference:

1. Removal Action Report, AECOM Technical Services, July 26, 2010.
2. Review of Laboratory Analytical Data letter from FDEP, February 24, 2014.

**E.** The report and letter noted in Recital D sets forth the nature and extent of the contamination described in Recital D that is located on the Property. The report and letter confirm that contaminated soil and groundwater as defined in Chapter 62-780, Florida Administrative Code (F.A.C.) exists on the Property. Also, these reports document that groundwater contamination does not extend beyond the Property boundaries, that the extent of groundwater contamination does not exceed  $\frac{1}{4}$  acre, and the groundwater contamination is not migrating.

**F.** It is the intent and purpose of the restrictions in this declaration to (1) reduce or eliminate risk to the environment caused by the contamination, (2) reduce or eliminate risk to users and occupants of the Property caused by the contamination, and (3) reduce or eliminate the risk that contaminants associated with the release migrate from the source area.

**G.** The Grantee has agreed to issue a Site Rehabilitation Completion Order with Conditions (hereinafter referred to as the "Order") upon the recording of this Declaration. The Grantee may unilaterally revoke the Order if the conditions contained in this Declaration or in the Order are not complied with. Additionally, in the event that concentrations of petroleum chemicals of concern associated with the Release increase above levels approved by the Order, or if a subsequent discharge occurs at the site, Grantee may require site rehabilitation to reduce concentrations of contamination to levels allowed by applicable rules. The Order relating to Florida Department of Environmental Protection Facility COM\_302567 can be found by contacting the FDEP Central District.

**H.** Grantors deem it desirable and in the best interest of all present and future owners of the Property, also described in Exhibit A to this Declaration (Exhibit "A" is attached and shows the "Restricted Area"), that an Order be obtained and that the Property be held subject to certain restrictions, all of which being fully set forth hereinafter.

**NOW, THEREFORE,** to induce the Grantee to issue the Order, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the undersigned parties, Grantors hereby declare as follows:

1. The foregoing recitals are true and correct and are hereby incorporated into this Declaration.

2. Grantors hereby impose on the Property the following restrictions and obligations:

- a. There shall be no use of groundwater from the Property.
- b. There shall be no drilling for groundwater in the Property.
- c. Wells may not be installed within the Property except for monitoring wells pre-approved in writing by Grantee's Division of Waste Management, in addition to any authorizations in writing required by the Division of Water Resource Management and the Water Management Districts.
- d. There shall be no stormwater swales, stormwater detention facilities, stormwater retention facilities, or ditches within the Property.
- e. Dewatering activities are prohibited within the Property unless a plan addressing the appropriate handling, treatment, and disposal of extracted groundwater is pre-approved by Grantee's Division of Waste Management.
- f. Contaminated soil may not be excavated from the Property as shown on "Exhibit A" unless a plan addressing the appropriate handling, treatment, and disposal of excavated soil is approved by Grantee.
- g. The Property as shown on Exhibit A shall be permanently covered and maintained with an impermeable material (cap) or 2 feet of soil with test parameter concentrations below Chapter 62-777, FAC cleanup target levels that prevents human exposure and prevents water infiltration (hereinafter referred to as "the Engineering Control"). An Engineering Control Maintenance Plan (ECMP) shall be maintained that includes the frequency of inspections and monitoring and the criteria for determining when the Engineering Control has failed. The ECMP is attached as "Exhibit B".
- h. Nothing herein shall limit any other legal requirement regarding the construction methods and precautions that must be taken to minimize the risk of exposure while conducting work in contaminated areas.
- i. For any dewatering activities in the Restricted Area, a plan pre-approved by FDEP's Division of Waste Management must be in place to address and ensure the appropriate

handling, treatment, and disposal of any extracted groundwater that may be contaminated.

3. In the remaining paragraphs, all references to Grantors and Grantee shall also mean and refer to their respective successors and assigns.

4. For the purpose of monitoring the restrictions contained in this Declaration, Grantee is hereby granted a right of entry upon and shall have access to the Property at reasonable times and upon reasonable notice to Grantors.

5. It is the intention of Grantors that the restrictions contained in this Declaration touch and concern the Property, run with the land and with the title to the Property, and apply to and be binding upon and inure to the benefit of the Grantors and Grantee, and to any and all parties hereafter having any right, title, or interest in the Property or any part thereof. Grantee may enforce the terms and conditions of this Declaration by injunctive relief and other appropriate legal remedies. Any forbearance on behalf of Grantee in exercising its rights in the event of the failure of Grantors to comply with the provisions of this Declaration shall not be deemed or construed as a waiver of Grantee's rights hereunder. This Declaration shall continue in perpetuity unless otherwise modified in writing by Grantors and Grantee as provided in paragraph 7 hereof. The restrictions and obligations contained in this Declaration may also be enforced in a court of proper jurisdiction by any other person, firm, corporation, or government agency that is substantially benefited by this Declaration. If the Grantors do not or will not be able to comply with any or all of the provisions of this Declaration, the Grantors shall notify the Grantee in writing within three (3) calendar days. Additionally, Grantors shall notify Grantee thirty (30) days prior to any conveyance or sale, granting or transferring the Property or portion thereof, to any heirs, successors, assigns or grantees, including, without limitation, the conveyance of any security interest in said Property.

6. In order to ensure the perpetual nature of the restrictions in this Declaration, Grantors shall reference the restrictions contained in this Declaration in any subsequent lease or deed of conveyance, including the recording book and page of record of this Declaration. Furthermore, prior to the entry into a landlord-tenant relationship with respect to the Property, the Grantors agree to notify in writing all proposed tenants of the Property of the existence and contents of this Declaration of restrictive Covenant.

7. This Declaration is binding until a release or covenant is executed by Grantors and Grantee and is recorded in the official county land records. To receive prior approval from Grantee to remove restrictions contained in this Declaration, cleanup target levels established pursuant to Florida Statutes and state rules must have been achieved. This Declaration may be modified in writing only. Any subsequent amendment must be executed by both Grantors and Grantee, and must be recorded by Grantors in the official county land records.

8. If any provision of this Declaration is held to be invalid by any court of proper jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions of this Declaration. All such other provisions shall continue unimpaired and in full force and effect.

9. Grantors covenant and represent that on the date of execution of this Declaration that Grantors are seized of the Property by way of Plat dedication and has good right to create, establish, and impose this restrictive covenant on the use of the Property.

\*\*[Remainder of this page intentionally left blank. Grantor's signature page to follow immediately hereafter.]\*\*

**GRANTOR, CITY OF ORLANDO, FLORIDA, SIGNATURE PAGE**

ATTEST:

CITY OF ORLANDO, FLORIDA, a municipal corporation,  
organized and existing under the laws  
of the State of Florida

By: \_\_\_\_\_

Amy Iennaco, Interim City Clerk

By: \_\_\_\_\_

Mayor / Mayor Pro Tem

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_  
by \_\_\_\_\_, Mayor Pro Tem and \_\_\_\_\_, City Clerk, who is  
personally known to me who did (did not) take an oath.

\_\_\_\_\_

Name

Notary Public

Serial Number: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

Approved as to form and legality for the use  
and reliance of the City of Orlando, Florida only

\_\_\_\_\_, 20\_\_

By: \_\_\_\_\_

Assistant City Attorney

**GRANTEE, FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION,**  
**SIGNATURE PAGE**

**IN WITNESS WHEREOF, Grantee, the Florida Department of Environmental Protection, has executed this instrument as of the day and year first written hereinabove.**

Approved as to form and legality for the use and reliance of the Florida Department of Environmental Protection, only:

\_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

**Florida Department of Environmental Protection, an executive department of the State of Florida:**

\_\_\_\_\_

Valerie K. Huegel  
Program Administrator  
Petroleum Restoration Program  
Division of Waste Management  
2600 Blair Stone Road  
Mail Station 4500  
Tallahassee, FL 32399-2400

Attestation:

\_\_\_\_\_

\_\_\_\_\_  
Print Name

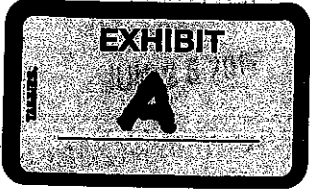
\_\_\_\_\_  
Title

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing Declaration of Restrictive Covenant was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of the Florida Department of Environmental Protection, an executive department of the State of Florida, on behalf of the department. He/she is personally known to me.

\_\_\_\_\_

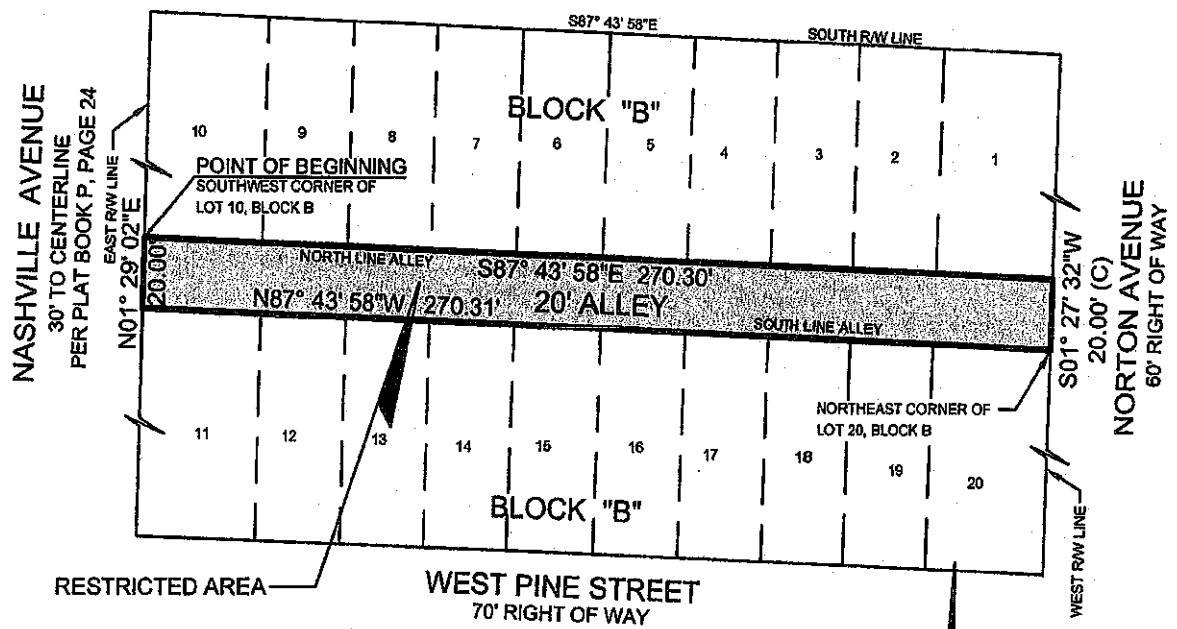
# SKETCH & DESCRIPTION



BEGIN at the Southwest corner of Lot 10, Block "B", Commercial Place according to the plat thereof as recorded in Plat Book P, page 24 of the Public Records of Orange County, Florida; said point also being on the north line of a 20 foot Alley; thence S87°43'58" E along said north line, a distance of 270.30 feet to the West right of way line of Norton Avenue; thence S01°27'32"W along said West right of way line a distance of 20.00 feet to the northeast corner of Lot 20, Block B, said Commercial Place; thence N87°43'58"W along the South line of aforesaid 20 foot Alley, a distance of 270.31 feet to the East right of way line of Nashville Avenue; thence N01°29'02"E along said East right of way line, a distance of 20.00 feet to the POINT OF BEGINNING.

**WEST CENTRAL BOULEVARD**  
30' TO CENTERLINE PER PLAT BOOK P, PAGE 24

Containing 5406 square feet, more or less.



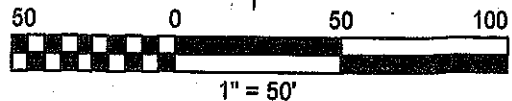
1. This is not a Boundary Survey.
2. Bearings shown hereon are based on the South R/W line of West Central Boulevard, being S87°43'58"E an assumed datum. All distances shown are in US Survey Feet.

I hereby certify that this sketch has been prepared under my direction and that this sketch has been prepared in accordance with the adopted "Standards of Practice" as required by Chapter 5J-17 Florida Administrative Code pursuant to Section 472.027, Florida State Statutes.

*Richard D. Allen* 6/24/2015

Richard D. Allen  
Professional Surveyor and Mapper No. 6922

This sketch is not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper.

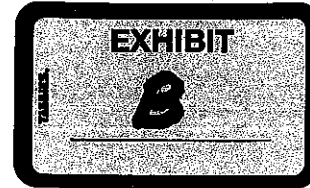


**CITY OF ORLANDO**  
Survey Services Section  
400 South Orange Avenue, 8th Floor  
Orlando, Florida 32802  
p. 407.246.3319 f. 407.246.2892

Project Number: 15-057	Drafted By: MER
Requested By: ALEXANDER	Checked By: RDA
Date of Survey: 4/17/15	Date Drawn: 6/23/15
Approved By: RDA	Scale: 1" = 50'

Sheet:  
1 of 1





July 27, 2015

Mr. Richard Lott  
Florida Department of Environmental Protection  
Central District  
3319 Maguire Boulevard  
Suite 232  
Orlando, FL 32803-3767

Re: Engineering Control Maintenance Plan  
Nashville Alley  
Orlando, Orange County, Florida  
WCO Site No: COM\_302567  
PSI Project Number: 06632346

Dear Mr. Lott:

Professional Service Industries, Inc. (PSI) has prepared this Engineering Control Maintenance Plan (ECMP) for the above-referenced property. The City of Orlando is seeking a restricted closure for the property.

The subject property is a roadway located between and parallel to West Central Boulevard to the north and West Pine Street to the south in Orlando, Orange County, Florida. The road is bound by Nashville Avenue on the west and Norton Avenue on the east. The 20-foot alley is owned by the City of Orlando, and is located in Section 27, Township 22 South, Range 29 East.

#### Project Background

According to a July 26, 2010 Removal Action (RA) Report prepared by AECOM Technical Services, Inc. (AECOM), the City of Orlando contracted Marion Dunn Contracting, Inc. (Marion Dunn) to install a 3-foot concrete stormwater pipe in the alley in April 2010. In preparation of the utility work and associated dewatering activities, the City of Orlando contracted an environmental consultant to collect soil and groundwater samples for laboratory analysis in March 2010. The laboratory results identified volatile organic compounds (VOCs) in the soil and groundwater, including ethylbenzene and total xylenes at concentrations above Chapter 62-777, Florida Administrative Code (FAC) cleanup target levels.

Subsequent to identifying the soil and groundwater impacts, the City of Orlando contracted AECOM to assist in evaluating the best management practices of the affected media during the utility installation activities. AECOM performed historical review of the area surrounding the alley in an attempt to identify a potential source of the impacts. Several potential sources of environmental impacts were identifying on the surrounding properties.

During the excavation of the site for the stormwater pipe installation, AECOM screened the excavated soil with an organic vapor analyzer equipped with a flame ionization detector (OVA-FID). Soil exhibiting elevated OVA-FID readings and/or staining or odors was segregated and

temporarily stockpiled at the site. AECOM collected one composite soil sample for laboratory analysis for waste characterization. The impacted soil was subsequently removed from the site for disposal at the JED Solid Waste Management Facility (landfill) located in St. Cloud, Florida. The details of the OVA-FID screening results and a copy of the non-hazardous waste manifests for the impacted soil were provided in AECOM's July 2010 RA Report.

AECOM was contracted by the Florida Department of Environmental Protection (FDEP) Site Investigation Section (SIS) to further evaluate the potential source of the soil and groundwater impacts identified and to perform supplemental assessment activities. The assessment activities were performed in May and December 2011 and were documented in AECOM's May 11, 2012 Nashville Alley Site Investigation Report. The report indicates that a definitive source of the impacts was not able to be determined. The report recommended periodic groundwater sampling of Monitoring Wells MW-1 and MW-2 to evaluate trends in the groundwater concentrations.

In 2013, the FDEP requested that the City of Orlando perform a groundwater sampling event for Monitoring Wells MW-1 through MW-4. In September 2013, the City of Orlando collected groundwater samples from the four wells, which indicated that residual groundwater impacts were still present in Monitoring Well MW-1. The laboratory analytical data was subsequently submitted to the FDEP.

A February 24, 2014 FDEP comment letter stated that based on the results of the previous site assessment activities performed by AECOM and the 2013 groundwater sampling event performed by City of Orlando personnel, the "site assessment is complete". On January 14, 2015, City of Orlando and PSI personnel met with FDEP personnel to discuss regulatory closure for the subject property. It was determined that the City of Orlando would pursue a No Further Action (NFA) With Conditions for the residual soil and groundwater impacts under the roadway.

#### Proposed Engineering Control

The subject property is still developed as an asphalt-paved roadway. Therefore, the proposed engineering controls (ECs) for the property are the existing asphalt cover and the previously tested top 2 feet of soil with test parameter concentrations below Chapter 62-777, FAC cleanup target levels. Both of the ECs will minimize the chance for human exposure to the residual impacted soil.

The Restricted Area (RA) is identified on the attached boundary survey figures provided in Attachment A. This ECMP provides a plan for continued maintenance of the EC at the site in the following section.

#### Inspection and Maintenance Procedures

City of Orlando personnel will perform a visual inspection of the asphalt pavement in the area of interest on a quarterly basis. The quarterly inspection will be recorded and maintained by the City of Orlando for as long as the deed restriction is in place. Should significant damage to the pavement (i.e., cracking wider than 1/4-inch, holes, etc.) be observed, the City of Orlando commits to repairing the pavement within 30 days of identifying the damage. The repairs will be sufficient to ensure that the EC continues to operate effectively to prevent human exposure to the underlying soil.

In the event that disturbance or removal of the asphalt pavement or top 2 feet of soil is required for maintenance purposes or a change in use of the property will result in demolition of the

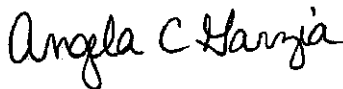
July 27, 2015

pavement, the owner of the property will inform the FDEP prior to undertaking such activities. During the site work, site personnel will utilize proper personal protective equipment (PPE, i.e., gloves) and tools to minimize human contact with the soil. The pavement and/or soil will either be replaced at the end of these activities, or the remaining impacted soil will be removed to below Chapter 62-777, FAC Soil Cleanup Target Levels (SCTLs) for proper off-site disposal.

If you have any questions regarding the information contained herein, or if we can be of additional service, please contact the undersigned at (407) 304-5560.

Sincerely,

**PROFESSIONAL SERVICE INDUSTRIES, INC.**



Angela C. Garzia, P.E.  
Regional Engineer



Andy Acosta, P.G.  
Project Geologist

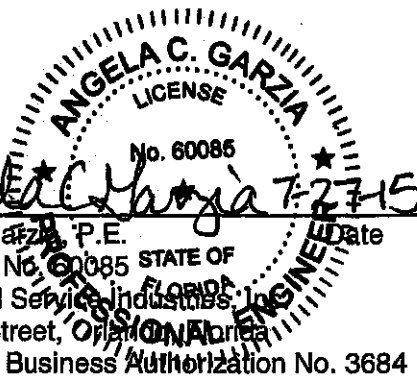
Attachments

cc: Mr. Dan Dashtaki – City of Orlando  
Mr. David Bass – City of Orlando

ACG/ALA:acg  
07-15 ECMP.docx

### Professional Engineer's Certification

In accordance with the provisions of Florida Statutes, Chapter 471, this **Engineering Control Maintenance Plan** has been prepared under my responsible charge and direct supervision. This work was performed in accordance with generally accepted professional engineering practices pursuant to Chapter 471 of the Florida Statutes and is in conformance with Chapter 62-780, Florida Administrative Code. The data, findings, recommendations, specifications or professional opinions were prepared solely for the use of the City of Orlando and the Florida Department of Environmental Protection. PSI makes no other warranty, either expressed or implied, and is not responsible for the interpretation by others of these data.



Angela C. Garzia, P.E.  
Florida P.E. No. 60085  
Professional Service Industries, Inc.  
1748 33rd Street, Orlando, Florida  
Engineering Business Authorization No. 3684

**ATTACHMENT A**  
**Boundary Survey Figures**

# SKETCH & DESCRIPTION

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RECEIVED

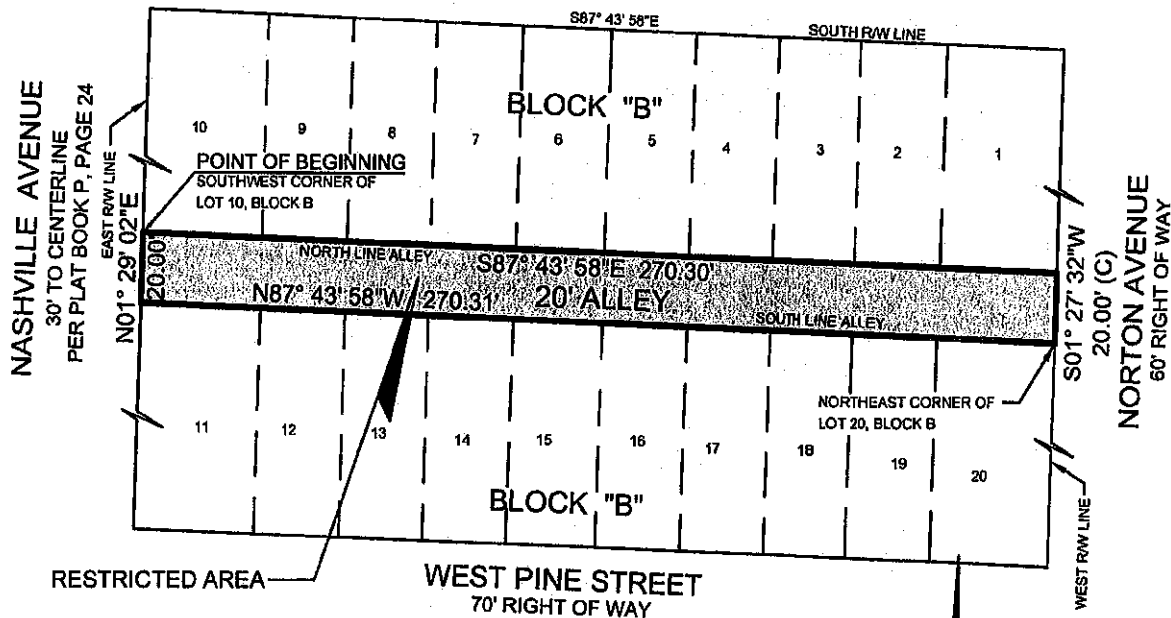
JUN 25 2015

WASTEWATER DIVISION

## WEST CENTRAL BOULEVARD

30' TO CENTERLINE PER PLAT BOOK P, PAGE 24

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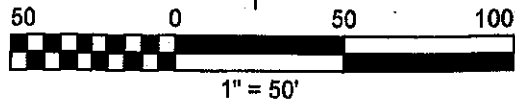
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*Richard D. Allen* 6/24/2015

Richard D. Allen  
Professional Surveyor and Mapper No. 6922

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 <b>CITY OF ORLANDO</b> Survey Services Section 400 South Orange Avenue, 8th Floor Orlando, Florida 32802 p. 407.246.3319 f. 407.246.2892	Project Number: 15-057	Drafted By: MER	Sheet: <b>1</b> of <b>1</b>
	Requested By: ALEXANDER	Checked By: RDA	
	Date of Survey: 4/17/15	Date Drawn: 6/23/15	
	Approved By: RDA	Scale: 1" = 50'	

