This Instrument Prepared by:
Roy K. Payne, Esq.
Chief Assistant City Attorney
City Attorney's Office
City of Orlando
400 S. Orange Avenue
Orlando, FL 32802
(407) 246-3483
Roy.Payne@CityofOrlando.Net

RIGHT-OF-WAY ENCROACHMENT AND MAINTENANCE AGREEMENT

THIS RIGHT OF WAY ENCROACHMENT AND MAINTENANCE AGREEMENT (this "Agreement"), is made and entered into this 21st day of April, 2016, by and between the **City of Orlando, Florida**, a municipal corporation organized and existing under the laws of the State of Florida, whose address is 400 S. Orange Avenue, Orlando, Fl, 32802 (the "City"), and **Diane L. Loar** and **Elaine S. Harbilas** whose address is 818 E. Church Street, Orlando, FL, 32801-2925; (collectively the "Owner").

WITNESSETH

WHEREAS, the Owner is the owner of that certain real property located at 818 East Church Street, Orlando, Florida, 32801, as more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, the Owner has constructed certain brick driveway improvements located in the right-of-way for South Hyer Street, "Right-of-way", adjacent to the Property, (collectively, the "Improvements") and

WHEREAS, Section 61.230 of the Orlando City Code requires that the Owner enter into a binding agreement providing for the encroachment of the Improvements into the Right-of-Way and providing for removal of the Improvements under certain conditions; and

WHEREAS, absent exceptional circumstances, the City would not generally approve of the Owner's placement of the Improvements within the existing Right-of-Way described above; and

WHEREAS, the City has found exceptional circumstances in this case and has also found that construction and maintenance of the Improvements has not and will not compromise public safety and traffic flow in the area, and has therefore approved of the Improvements; and

WHEREAS, in consideration for the City's approval of the Improvements, the Owner has agreed, at its sole cost and expense, to maintain, repair, and operate said Improvements, in perpetuity, and

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WHEREAS, the parties hereto desire to memorialize their agreement.

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

1. Recitals. The above recitals are true and correct and hereby incorporated into the substantive body of this Agreement.

2. Encroachment. The City hereby grants permission for the encroachment of the Improvements into the Right-of-Way strictly limited to the area described and shown in Exhibit B, attached hereto and made a part hereof by reference.

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 Improvements, that may arise due to the City's operation and maintenance of its Right-of-Way.

4. Priority of City's Right-of Way. The Improvements shall not be operated or maintained in such a manner so as to interfere, in any way, with the City's operation or maintenance of its Right-of-Way.

5. Joinder and Consent. Simultaneously with the execution of this Agreement, the Owner hereby agrees to obtain a Joinder and Consent to this Agreement from any superior interest, right, title, lien, or encumbrance to the Property. The Joinder and Consent shall subordinate the particular interest to this Agreement.

6. Indemnification. The Owner agrees that it shall release, 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 the Owner, its tenants, agents, subcontractors, or anyone for whose act or acts any of them may be liable, for acts or omissions occurring in that portion of the street Right-of-Way on, under or through which the Improvements are constructed or resulting from the operation or maintenance of the Improvements, or arising, in any way, from this Agreement.

7. Insurance. Owner shall possess and maintain, at all times during construction, operation and maintenance of the Project within the City's Right-of-Way, general homeowner's liability insurance in an amount sufficient to protect the City from any covered liability, claims, damages, losses or expenses arising from or out of or in any was connected with construction, operation or maintenance of the Project within the City's Right-of-Way. City shall be named as an additional insured on the liability policy and City may request proof of such insurance at any time.

8. Improvements. In consideration for the City's consent to construction and maintenance of the Improvements within the Right-of-way, as described herein, the Owner agrees, at its sole cost and expense, to construct, maintain, repair and operate the Improvements, in perpetuity, consistent with reasonable engineering standards and all applicable laws, codes, and regulations.

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9. City Inspection. The City shall have the right, but not the obligation, to inspect the Improvements to determine whether they have been properly constructed and are being properly maintained. If the City determines, in its sole discretion, that the Improvements have not been properly constructed or are not being properly maintained, the City shall notify the Owner in writing of said determination and of the appropriate construction, repair or maintenance activities the Owner must undertake. The Owner shall have ten (10) days to make said repairs or accomplish said maintenance activities, after which time the City may perform such construction, repairs or maintenance and invoice the Owner for all reasonable costs associated therewith. If the Owner fails to pay the invoices within thirty (30) days of receipt thereof, the amount shall become a lien against the Property in the same manner as a special assessment lien, and enforced as provided by law. The City may conduct emergency repairs or maintenance activities on the Improvements without notice to the Owner. The cost of said emergency repairs shall be paid by the Owner in the manner described above, including the imposition of liens.

10. Notices. Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of the date and time the same are personally delivered, transmitted electronically (i.e., by telecopier device) or within three (3) days after depositing with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, or within one (1) day after depositing with Federal Express or other overnight delivery service from which a receipt may be obtained, and addressed as follows:

City:
City of Orlando, Florida
400 South Orange Avenue
Orlando, Florida 32802
Attn: Real Estate Management
Telephone: (407) 246-2680
Facsimile: (407) 246-3129

Owner:
Diane L. Loar
818 E. Church Street
Orlando, FL 32801-2925

and

Elaine S. Harbilas
818 E. Church Street
Orlando, FL 32801-2925

or to such other address as either party hereto shall from time to time designate to the other party by notice in writing as herein provided.

11. Modification. This Agreement may not be amended, modified, altered, or changed in any respect whatsoever, except by a further Agreement in writing duly executed by the parties and recorded in the Public Records of Orange County, Florida.

12. Successors and Assigns. The terms and conditions of this Agreement shall constitute covenants running with the land, and all rights and privileges granted herein shall be appurtenant

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to the lands herein described, and, except as hereinafter set forth, shall run with said lands forever and be binding upon and inure to the benefit of and be enforceable by the heirs, legal representatives, successors and assigns of the parties hereto and shall continue in perpetuity, unless otherwise modified in writing by the parties hereto.

13. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the transactions contemplated herein, and it supersedes all prior understandings or agreements between the parties.

14. Attorneys' Fees. In the event of any dispute hereunder or of any action to interpret or enforce this Agreement, any provision hereof or any matter arising herefrom, each party shall bear its own costs, fees and expenses, including, but not limited to, witness fees, expert fees, consultant fees, attorney (in-house and outside counsel), paralegal and legal assistant fees, costs and expenses and other professional fees, costs and expenses whether suit be brought or not, and whether in settlement, in any declaratory action, at trial or on appeal.

15. Section Headings. The section headings as used herein are for convenience of reference only and shall not be deemed to vary the content of this Agreement or the covenants, agreements, representations and warranties herein set forth, or limit the provisions or scope of any section herein.

16. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

17. Recording of Agreement. The Owner shall be responsible for recording this Agreement (including all costs associated therewith) within the Public Records of Orange County, Florida and shall send a copy of said recorded Agreement to the City within thirty (30) days of the execution of this Agreement.

18. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Florida.

19. Controlling Laws. 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.

20. Legal Counsel. Owner acknowledges that he has had ample opportunity to seek and consult with independent legal counsel prior to executing this Agreement, and that Owner represents and warrants that he has sought such independent legal advice and counsel or has knowingly and voluntarily waived such right.

21. 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 by any party or on any

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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.

22. Termination of License and Removal of Encroachment. City retains the right to revoke this license by notifying the Owner in writing at the address listed in the initial paragraph of this Agreement. Owner shall remove the Improvements, and any and all attendant encroachments, from the City's Right-of-Way, within thirty (30) days of the date of mailing of the written notice to Owner, whether or not the notice is received by Owner. If Owner fails to remove the Improvements and attendant encroachments, within the above-described timeframe, the City may remove same and charge the cost of removal to the Owner. Should Owner fail to pay the costs of City's removal of the Improvement and attendant encroachments within thirty (30) days of the City's request, the City may file a lien against the property described in Exhibit "A" to accrue interest at the statutory rate, and enforced as provided by law.

23. Effective Date. The effective date of this Agreement is the date of its execution by the last person to execute it.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date set forth above.

Signed in the presence of Two Witnesses:

Signature
Print Name: RICHARD W. FOURNIER

Signature
Print Name: ROBERT MANTONE

Diane L. Loar, Grantor

Diane L. Loar
Signature

Date: 4/21/2016

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing was acknowledged before me this 21st day of April, 2016, by _____ who X is personally known to me or ☐ who has produced _____ as identification.

NOTARY PUBLIC
My Commission Expires_____

Signatures Continue Next Page

Notary Public State of Florida
Helen Von Dollersen-Fournier
My Commission FF140123
Expires 07/09/2018

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Signed in the presence of Two Witnesses:

Signature
Print Name: RICHARD W. FOURNICA

Signature
Print Name: ROBERT MANTONE

Elaine S. Harbilas, Grantor

Signature

Date: 4/21/2014

STATE OF FLORIDA
COUNTY OF ORANGE

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

NOTARY PUBLIC
My Commission Expires_____

Notary Public State of Florida
Helen Von Dolteren-Fourner
My Commission FF140123
Expires 07/09/2018

ATTEST:

By: _____
Amy T. Iennaco, Interim City Clerk

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

By: _____
Mayor / Mayor Pro Tem

Date: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing was acknowledged before me this ___ day of _____, 2016 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: _____

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EXHIBIT A

Property Description:

LOTS 9 & 10, BLOCK E, REVISED PLAT OF J.W. WILMOTT'S ADDITION TO ORLANDO, according to the Plat thereof as recorded in Plat Book J, Page 47, Public Records of Orange County, Florida.

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SKETCH OF DESCRIPTION

EXHIBIT 'B' (pg. 1)

DESCRIPTION:

THAT PART OF S. HYER AVENUE, REVISED PLAT OF J.W. WILMOTT'S ADDITION TO ORLANDO ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK J, PAGE 47 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA,

BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF LOT 10, BLOCK "E", REVISED PLAT OF J.W. WILMOTT'S ADDITION TO ORLANDO, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK J, PAGE 47 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE N 00°43'54"W ALONG THE EAST LINE OF SAID LOT 10 AND THE WEST RIGHT OF WAY LINE OF S. HYER AVENUE, A DISTANCE OF 54.86 FEET TO THE **POINT OF BEGINNING**; THENCE CONTINUE N00°43'54"W A DISTANCE OF 18.05 FEET; THENCE DEPARTING SAID LOT LINE, RUN N89°16'06"E, A DISTANCE OF 8.86 FEET; THENCE S25°24'32"W, A DISTANCE OF 20.10 FEET TO THE **POINT OF BEGINNING.**

CONTAINING 80 SQUARE FEET, MORE OR LESS.

SURVEYORS NOTES:

1. This is not a boundary survey.
2. Bearings shown hereon are based on the West Right of Way line of S. Hyer Street, being S00°43'54"E, assumed.
3. All distances shown are in US Survey Feet.
4. This sketch was prepared without the benefit of a title insurance report. There may be other easements or documents affecting this property that a search of the public records will reveal.
5. Additions or deletions to this sketch is prohibited without written consent of the signing party.
6. Symbols shown hereon are not to scale and for informational purposes only.

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.

4/14/2016

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.

SEE SHEET 2 FOR SKETCH

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: 16-165 B	Drafted By: MER	Sheet: 1 of 2
Requested By: L. WEI	Checked By: RDA	
Date of Survey: NA	Date Drawn: 4/12/16	
Approved By: RDA	Scale: 1" = NA	

N:\GIS\EngSurvey\722\Marcia R\PROJECTS\16-165 CHURCH ST TCE\DWG\16-165 CHURCH ST TCE b.dwg 4/13/2016 RUSSELL, MARCIA F.

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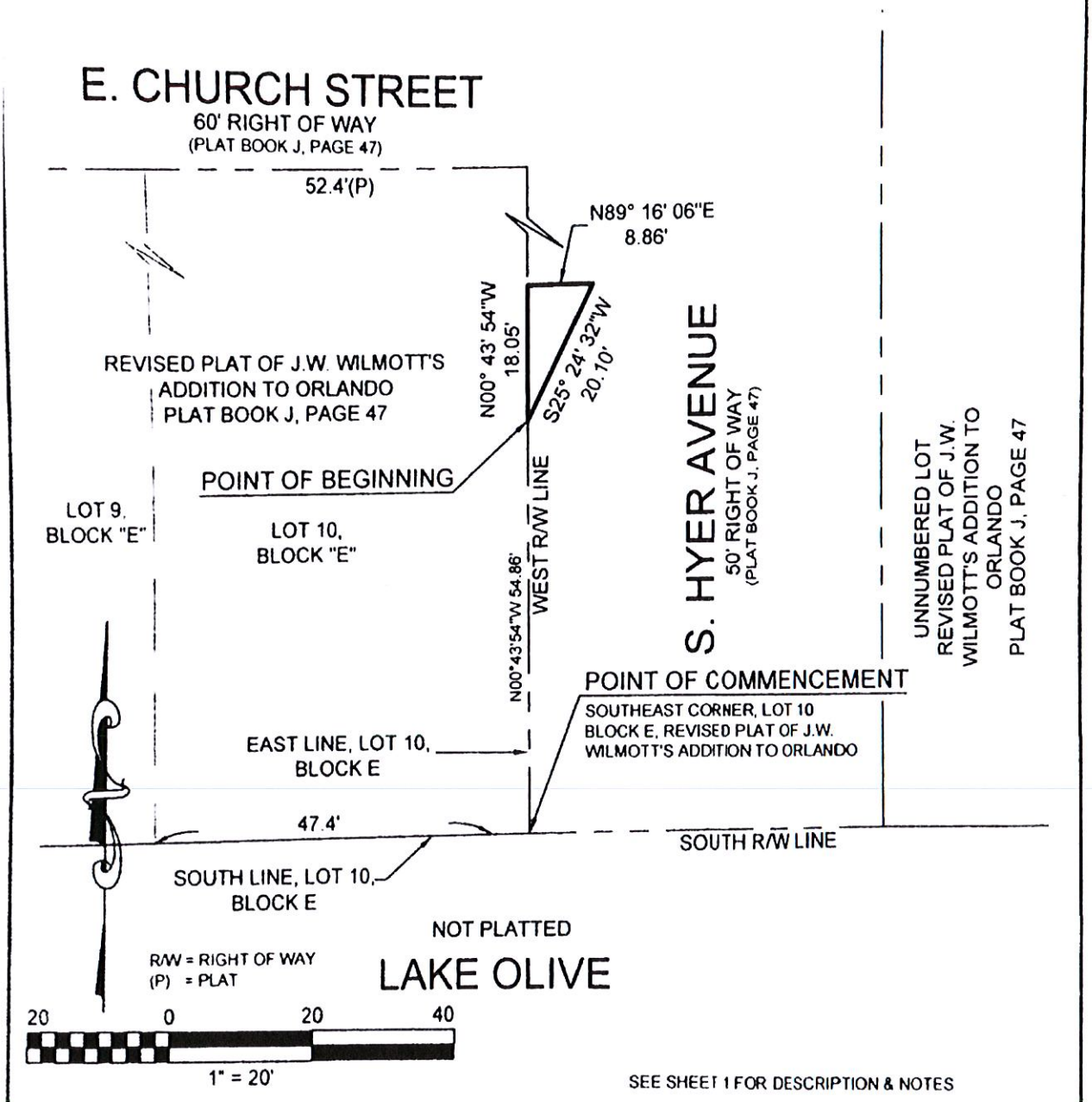
SKETCH OF DESCRIPTION

EXHIBIT 'B' (pg. 2)



SEE SHEET 1 FOR DESCRIPTION & NOTES

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: 16-165	Drafted By: MER	Sheet: 2 of 2
	Requested By: L. WEI	Checked By: RDA	
	Date of Survey: NA	Date Drawn: 4/12/16	
	Approved By: RDA	Scale: 1" = 20'	

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