

LICENSE AGREEMENT

(1311 E. NEW HAVEN – FRONT STREET PARK)

THIS LICENSE AGREEMENT (“Agreement”), is entered into this _____ (the “Effective Date”), between the CITY OF MELBOURNE, a Florida municipal corporation (the “CITY”), and BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (the “LICENSEE”).

RECITALS

WHEREAS, LICENSEE owns real property located at 1311 E. New Haven Ave., Melbourne, FL 32901, on which is situated a building utilized by LICENSEE and containing a 240 square foot open-air porch; and

WHEREAS, LICENSEE desires to build a screen enclosure around said porch; and

WHEREAS, approximately three square feet of LICENSEE’s porch encroach on the CITY’s real property known as Front Street Park; and

WHEREAS, the CITY and LICENSEE desire to enter into a license agreement permitting LICENSEE to use the portion of Front Street Park on which LICENSEE’s porch encroaches; and

NOW, THEREFORE, in consideration of the mutual promises herein, the parties hereby agree as follows:

1. Recitals. The recitals set forth above in this Agreement are incorporated into the body of this Agreement and made a part hereof as if fully set forth herein.
2. License Granted. Subject to the terms and conditions of this Agreement, the CITY hereby grants a license to LICENSEE to use of a portion of Front Street Park, which is generally depicted on the survey attached as Exhibit A as the 3.06 square foot portion of LICENSEE’s porch that encroaches on the CITY’s Front Street Park (the “Licensed Area”), incorporated herein by reference. The LICENSEE’s use of the Licensed Area is limited as set forth in Section 3 of this Agreement.
3. Permitted Use of the Licensed Area. LICENSEE’s use of the Licensed Area is limited to those functions that LICENSEE already utilized the Licensed Area for prior to this Agreement, and maintaining the Licensed Area in accordance with Section 4 of this Agreement. The CITY also permits LICENSEE and its employees, representatives, agents, contractors and invitees reasonable access to the Licensed Area in compliance with all applicable laws, regulations and ordinances.
4. Operation, Maintenance, and Repairs of the Licensed Area. LICENSEE acknowledges and agrees to the following terms of this Agreement:
 - a. LICENSEE shall be responsible for the maintenance of the Licensed Area and all improvement or equipment thereon during the term of this Agreement.
 - b. LICENSEE shall repair all damage on and to the Licensed Area caused by the LICENSEE at its sole cost and expense.
 - c. LICENSEE may make capital improvements to the Licensed Area, such as erecting a screen enclosure around the Licensed Area, but shall not further encroach on to the CITY’s property in any way.

5. Utilities. LICENSEE agrees that it shall pay for all utilities associated with the Licensed Area.
6. Term and Termination. This Agreement shall commence on the Effective Date and continue for as long as the Licensed Area exists. Any further encroachment by LICENSEE on Front Street Park shall result in immediate termination of this Agreement.
7. Indemnification; Sovereign Immunity. LICENSEE covenants and agrees, to the extent permitted by law, to indemnify the CITY and hold the CITY harmless from and against costs, liabilities, expenses, claims, damages, or obligations, including but not limited to bodily injury (including death), property damage, or nuisance, caused or alleged to be caused by LICENSEE and arising out of or pertaining to LICENSEE's use of the Licensed Area. Nothing herein shall constitute a waiver by either party of sovereign immunity provided by law. Further, nothing herein shall be construed as consent by a state agency or subdivision of the state to be sued by third parties in any matter arising out of any contract or this License Agreement.

No provision of this License Agreement shall require the LICENSEE to insure, indemnify, hold harmless, or assume liability for the CITY's negligence, waive the LICENSEE's sovereign immunity provided by law, or otherwise impose liability on the LICENSEE for which it would not otherwise be responsible.
8. Insurance. LICENSEE agrees that, during the term of this Agreement, LICENSEE shall be insured in accordance with all applicable State laws and regulations.
9. Condition of the Licensed Area Not Warranted. LICENSEE acknowledges that it has examined the Licensed Area, has found the same satisfactory for its purposes, and accepts the Licensed Area in its existing condition. The CITY does not warrant or represent that the Licensed Area is suitable for the purposes for which it is licensed to be used under the terms of this Agreement.
10. No Vesting; No Encumbrances of Liens. This Agreement does not operate to vest any interest or right whatsoever. This Agreement constitutes a license for utilization of the Licensed Area and does not act to convey any ownership or easement rights in favor of the LICENSEE, its successors or assigns. LICENSEE's interest in the Licensed Area is not subject to liens or encumbrances, and LICENSEE agrees that neither the LICENSEE nor any person, firm, or corporation furnishing any materials or labor for any work in the Licensed Area shall have any right to place a lien upon the Licensed Area.
11. Assignment. LICENSEE shall not sublet nor sublicense the Licensed Area or the license granted in this Agreement. LICENSEE shall not assign this Agreement without the approval of the CITY. The City Manager is authorized to approve assignments of this Agreement on behalf of the CITY.
12. Interpretation. The parties acknowledge that this Agreement has been mutually negotiated and drafted by all parties hereto. Consequently, this Agreement shall not be interpreted more harshly against any one party as drafter of this Agreement.
13. Severability. Invalidity of any one section, clause, or word hereof, or the application thereof in specific circumstances, by judgment, court order, or administrative hearing or order, shall not affect any other provisions or applications in other circumstances, all of which shall remain in full force and effect.

14. Jurisdiction; Venue. This Agreement is made under the laws of the State of Florida, and any dispute that arise under or related to this Agreement will be governed by the laws of Florida. The parties agree that venue for any legal action involving this Agreement will be in Brevard County, Florida. **ANY TRIAL TO ENFORCE OR INTERPRET THIS AGREEMENT SHALL BE NON-JURY.**

15. Entire Agreement; Amendment. This Agreement, including any and all exhibits attached hereto, constitutes the entire agreement between the parties. This Agreement may be modified only by a writing signed by all parties hereto.

16. Effective Date. The Effective Date of this Agreement shall be the date on which the CITY executes this Agreement.

IN WITNESS WHEREOF, the CITY and the LICENSEE have caused this Agreement to be signed by their respective officers who are authorized to do so, as of the day and year first stated above.

Signed in the presence of:

CITY OF MELBOURNE,
a Florida municipal corporation

BREVARD COUNTY, FLORIDA by and
through its Board of County Commissioners

Shannon M. Lewis
City Manager

Rita Pritchett, Chair
As approved by the Board on _____

(City Seal)

(County Seal)

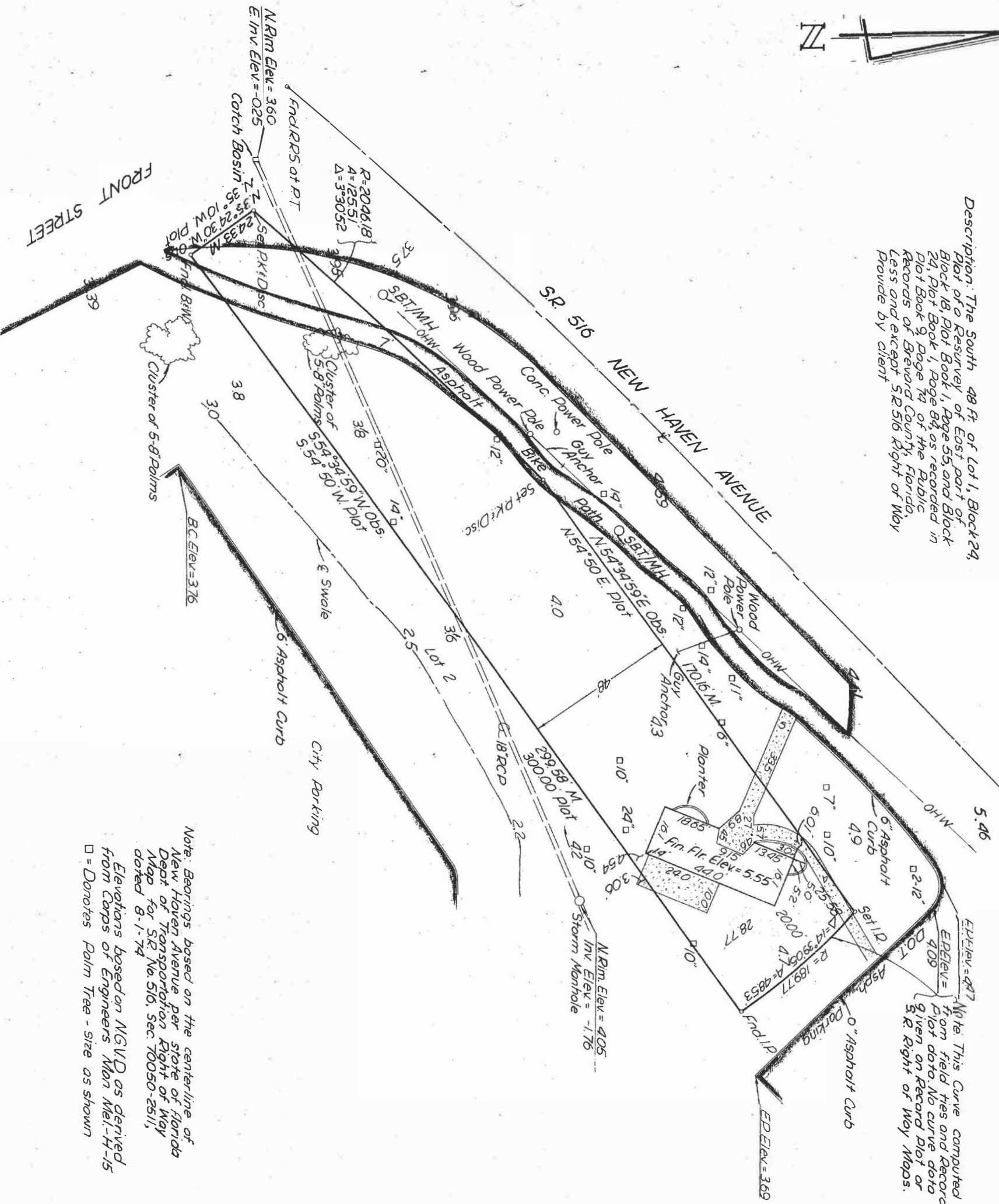
Attest: _____
Kevin McKeown
City Clerk

Attest: _____
Rachel Sadoff
Clerk

EXHIBIT A
DEPICTION OF LICENSED AREA



Description: The South 48 Ft. of Lot 1, Block 24, Plot of a Resurvey of East part of Block 18, Plot Book 1, Page 55, and Block 24, Plot Book 1, Page 84, as recorded in Plot Book 9, Page 74 of the Public Records of Brevard County, Florida, Less and except SR 516 Right of Way Provide by client



Note: Bearings based on the centerline of New Haven Avenue per state of Florida Dept. of Transportation Right of Way Map for S.R. No. 516, Sec. 70050-2511, dated 8-1-74
Elevations based on NGVD as derived from Corps of Engineers Mon. Mel-H-15
□ = Denotes Palm Tree - size as shown

TYPE: Bndry & Loc. of Imprv.
DATE: 7 Dec. 1984
PROJECT NO.: 84-752
DWN. BY: M. Batchelor
CHK. BY: R. Briel
SCALE: 1" = 20'
SHEET: 1 OF 1

BRIEL & ASSOCIATES LAND SURVEYORS
Post Office Box 2799
Satellite Beach, Florida 32937
(305) 777-4075

PLAT OF SURVEY FOR
BREVARD COUNTY
COMMISSIONERS OFFICE

Certified correct to the best of my knowledge and belief in conformity with minimum technical standards set forth by the Board of Land Surveyors, pursuant to Chapter 349, F.S.
ROBERT R. BRIEL, Florida Professional Land Surveyor, No. 3699
This survey is prepared for the exclusive use of the client and is not valid without the embossed Surveyor's SEAL.