

Re. \$ _____

This Instrument Prepared by:
Robert W. Batsel, Jr.
Gooding & Batsel, PLLC
1531 SE 36th Avenue
Ocala, FL 34471

Record and Return to:
Development Coordinator City of Ocala
Growth Management Department
201 SE 3rd Street, 2nd Floor
Ocala, FL 34471

AGREEMENT CONCERNING EASEMENTS FOR ENCROACHMENT

THIS AGREEMENT CONCERNING EASEMENTS FOR ENCROACHMENTS
("Agreement") is entered into this _____, 2022, by and between:

- City of Ocala, a Florida municipal corporation ("City"); and
- Richard B. VanEldik and Siglinda M. VanEldik, husband and wife ("Grantee").

WHEREAS:

- A. Grantee owns real property (the "Grantee Property") as described in the attached **Exhibit A**, upon which an existing residence and improvements have been constructed.
- B. City owns real property consisting of public right of way adjacent to the Grantee Property commonly known as Southeast 11th Street and Southeast 12th Terrace (also known as "Colfax Street") (collectively "City Property").
- C. Grantee has constructed fences which encroach onto the City Property (the "Encroaching Improvements").
- D. Portions of the Encroaching Improvements will encroach within a portion of City Property more particularly described and depicted on the attached **Exhibit B** ("Encroachment Areas").
- E. Grantee has requested City to permit Grantee to keep the Encroaching Improvements within the Encroachment Areas, and for the City to grant to Grantee easements for the maintenance of the Encroaching Improvements within the Encroachment Areas.
- F. City desires to grant the requested easements over the portions Easement Areas, which shall be subject to the terms and conditions of this Agreement.
- G. Further, City has constructed right of way known as Southeast 12th Street ("12th Street") upon a portion of Grantee's Property more particularly described and depicted on the attached **Exhibit C** ("City Easement Area").
- H. City has requested Grantee to permit City to keep 12th Street within the City Easement Area, for the operation and maintenance of right of way within the City Easement Area.
- I. Grantee desires to grant the requested easements over the portions Easement Areas, which shall be subject to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the matters set forth above (which are incorporated herein by reference), the exchange of the mutual promises set forth herein, and other good and valuable consideration, the parties hereto agree as follows:

1. **City Grant of Easements.**

- 1.1. Subject to the right of the City to terminate it as set forth herein, the City hereby grants to Grantee a non-exclusive easement ("Fence Easement") for the maintenance of a fence, over and across the Encroachment Areas.
- 1.2. The Easements granted hereby shall be appurtenant to the Grantee Property.
- 1.3. Intentionally omitted.
- 1.4. The City is not responsible for any damages to the Encroaching Improvements that may result through the exercise of its rights to use the Easement Area. Further, should the City determine, in its sole and absolute discretion, that relocation or removal of the Encroaching Improvements is necessary for City to exercise such rights in furtherance of its construction, operation or maintenance of the City Property or City utilities, then Grantee shall remove or relocate the Encroaching Improvements at its sole cost and expense.

2. **Termination.** The City will have the right to terminate this Agreement subject to the following terms and provisions:

- 2.1. Intentionally omitted.
- 2.2. Failure to Reconstruct. City will have the right to terminate the foregoing Easements if the Encroaching Improvements are removed, destroyed or demolished and Grantee does not: (a) commence with reconstruction thereof within ninety (90) days of receiving written notice from City; and (b) thereafter pursue reconstruction of the Encroaching Improvements to completion within a reasonable time thereafter.
- 2.3. Procedure. City shall provide Grantee with written notice of any termination hereunder. Upon termination of this agreement, Grantee will, within thirty (30) days of the date of such termination, commence with complete removal of the Encroaching Improvements from the Easement Areas and shall diligently pursue such efforts until completion. If Grantee fails to commence with removal of the Encroaching Improvements from the Easement Areas within such time period, or fails to cause for the complete removal within one hundred thirty (30) days of commencement of work, then the City is authorized to have the Encroaching Improvements removed from the Easement Areas, in which event Grantee agrees to reimburse the City for all costs incurred by the City in removing the Encroaching Improvements. Upon a termination of the Easement, Grantee shall execute and deliver to City a recordable instrument acknowledging that the Easements have been terminated.

3. **Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Easement Area to the general public, or for any public use or purpose whatsoever. No right, privileges or immunities of Grantee hereto shall inure to

the benefit of any third-party, nor shall any third-party be deemed to be a beneficiary of any of the provisions contained in this Agreement.

4. **Covenant Running With Land.**

4.1. This Agreement and the rights arising hereunder shall be deemed covenants running with the Grantee Property, and thus shall benefit, and be binding upon, Grantee and its respective legal representatives, heirs, successors and assigns.

4.2. Upon the transfer of title (including by foreclosure of a mortgage or other lien) of the Grantee Property:

4.2.1. The previous owner shall be deemed released from all obligations or liabilities arising after, but not prior to, such conveyance; and

4.2.2. The new owner shall be liable for all obligations and liabilities arising prior and subsequent to the transfer.

5. **Estoppel.** Upon request of Grantee, City shall promptly, and in no event later than thirty (30) days after a request from Grantee or any lender or mortgagee of Grantee, execute, acknowledge and deliver to Grantee and/or such lender or mortgagee, as the case may be, a certificate stating, that there are no violations or defaults under the terms of this Agreement as of the date of such certificate.

6. **Grantee Grant of Easement to City.**

6.1. Grantee hereby grants to City and the public a perpetual, non-exclusive easement ("Right of Way Easement") for the operation and maintenance of a public right of way (12th Street), including any resurfacing or reconstruction of same, over and across the City Easement Area.

6.2. The Easements granted hereby shall be appurtenant to the Grantee Property.

6.3. Intentionally omitted.

6.4. The Grantee is not responsible for any damages to 12th Street that may result through the exercise of its rights to use the Easement Area. Further, should the City determine, in its sole and absolute discretion, that relocation or removal of the 12th Street is necessary for City to exercise such rights in furtherance of its construction, operation or maintenance of 12th Street or City utilities, then City may remove or relocate 12th Street at its sole cost and expense.

6.5. Sections 1, 2, 3, or 4.2, above, do not apply to or in any way affect the City's rights arising under this Section 6.

7. **General Provisions.**

7.1. Attorneys' Fees. If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable

attorneys' fees, sales and use taxes, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges billed by the attorney to the prevailing party.

- 7.2. Jurisdiction and Venue. The parties acknowledge that a majority of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Marion County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought only in the courts of record of the State of Florida in Marion County or the United States District Court, Middle District of Florida, Ocala Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court or the right to bring an action or proceeding in any other court.
- 7.3. JURY WAIVER. EACH PARTY HEREBY COVENANTS AND AGREES THAT IN ANY LITIGATION, SUIT, ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT, AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO OF THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY THE OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.
- 7.4. Effective Date. The Effective Date of this Agreement will be the date of execution by the last of the parties hereto.
- 7.5. No Assignment. Except as set forth above, this Agreement may not be assigned in whole or in part by either party except with the prior written consent of the other party which may be withheld at the sole discretion of the non-assigning party.
- 7.6. Reference to Parties. Each reference herein to the parties shall be deemed to include their successors, permitted assigns, heirs, administrators, and legal representatives, all whom shall be bound by the provisions hereof.
- 7.7. Construction of Agreement. Each party acknowledges that all parties to this Agreement participated equally in the drafting of this Agreement and that it was

negotiated at arm's length. Accordingly, no court construing this Agreement shall construe it more strongly against one party than another.

- 7.8. Waiver. The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy hereunder. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any party in any circumstance shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.
- 7.9. Governing Law. This Agreement is and shall be deemed to be a contract entered into and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Florida.
- 7.10. Severability of Illegal Provisions. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. Should any portion of this Agreement be declared invalid for any reason, such declaration shall have no effect upon the remaining portions of this Agreement.
- 7.11. Section Headings. The section headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.
- 7.12. Rights of Third Parties. Unless expressly stated herein to the contrary, nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.
- 7.13. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.
- 7.14. Notice.
 - 7.14.1. All notices, requests, consents and other communications (each a "Communication") required or permitted under this Agreement shall be in writing (including emailed communication) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, emailed or mailed by Registered or Certified Mail (postage pre-paid), Return Receipt Requested, addressed as follows or to such other addresses as any party may designate by Communication complying with the terms of this paragraph:

- a. If to Grantee: _____

- b. If to City: City of Ocala, Attn: City Real Estate Officer, 1805 NE 30th Avenue, Building 700, Ocala, FL 34470; email: tltaylor@ocalafl.org.

7.14.2. Each such Communication shall be deemed delivered:

- a. On the date of delivery if by personal delivery;
- b. On the date of email transmission if by email (subject to paragraph 7.14.5); and
- c. If the Communication is mailed, on the earlier of: (a) the date upon which the Return Receipt is signed; or (b) the date upon which delivery is refused.
- d. Notwithstanding the foregoing, service by personal delivery delivered, or by email sent, after 5:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday or legal holiday.

7.14.3. If a Communication is delivered by multiple means, the Communication shall be deemed delivered upon the earliest date determined in accordance with the preceding subparagraph.

7.14.4. If the above provisions require Communication to be delivered to more than one person (including a copy), the Communication shall be deemed delivered to all such persons on the earliest date it is delivered to any of such persons.

7.14.5. Concerning Communications sent by email:

- a. The Communication shall not be deemed to have been delivered if the sender receives a message from the sender's or the recipient's internet service provider or otherwise that the email was not delivered or received;
- b. If the sender receives an automatic reply message indicating that the recipient is not present to receive the email (commonly referred to as an "out of the office message"), the email shall not be deemed delivered until the recipient returns;
- c. Any email that the recipient replies to, or forwards to any person, shall be deemed delivered to the recipient.
- d. The sender must print the email to establish that it was sent (though it need not do so at the time the email was sent); and

- 7.14.6. The sender shall maintain the digital copy of the email in its email system for a period of no less than one year after it was sent.
- 7.15. Amendment. No amendment to this Agreement shall be effective except those agreed to in writing and signed by both of the parties to this Agreement.
- 7.16. Entire Agreement. This Agreement, including exhibit, (if any) contains all agreements between the parties. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the parties, except to the extent reference is made thereto in this Agreement

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

SIGNATURE PAGES FOLLOW.]

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

City of Ocala, a Florida municipal corporation

Witness

Print Witness Name

Witness

Print Witness Name

Ire Bethea, Sr.
President, Ocala City Council

ATTEST:

Angel B. Jacobs
City Clerk

Approved as to form and legality

Robert W. Batsel, Jr.
City Attorney

STATE OF FLORIDA
COUNTY OF MARION

The foregoing instrument was acknowledged before me, in person, this _____ day of _____, 2022, by Ire Bethea, Sr., as City Council President of the City of Ocala, Florida, a Florida municipal corporation, on behalf of the City.

Notary Public, State of Florida
Name: _____

(Please print or type)

Commission Number:
Commission Expires:

Notary: Check one of the following:

____ Personally known OR

____ Produced Identification (if this box is checked, fill in blank below).

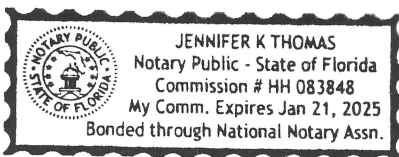
Type of Identification Produced: _____

Diane Hutchinson
Witness
Diane Hutchinson
Print Witness Name
Rebecca H. Miller
Witness
Rebecca H. Miller
Print Witness Name

[Signature]
Richard B. VanEldik
[Signature]
Siglinda M. VanEldik

STATE OF FLORIDA
COUNTY OF MARION

The foregoing instrument was acknowledged before me, in person, this 17 day of February, 2022, by Richard B. VanEldik and Siglinda M. VanEldik, who are _____ personally known to me or who produced _____ as identification.



[Signature]
Notary Public, State of Florida
Name: Jennifer K. Thomas
(Please print or type)

Commission Number: HH 083848
Commission Expires: 01/21/2025

Notary: Check one of the following:

- ☒ Personally known OR
☐ Produced Identification (if this box is checked, fill in blank below).
Type of Identification Produced: _____

EXHIBIT A
Grantee Property

LEGAL DESCRIPTION: ALL OF BLOCK "D", REPLAT OF "D" WOODLAND PARK, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK, K, PAGE 55, PUBLIC RECORDS OF MARION COUNTY, FLORIDA.

EXHIBIT B - 1 of 2 **Encroachment Areas**

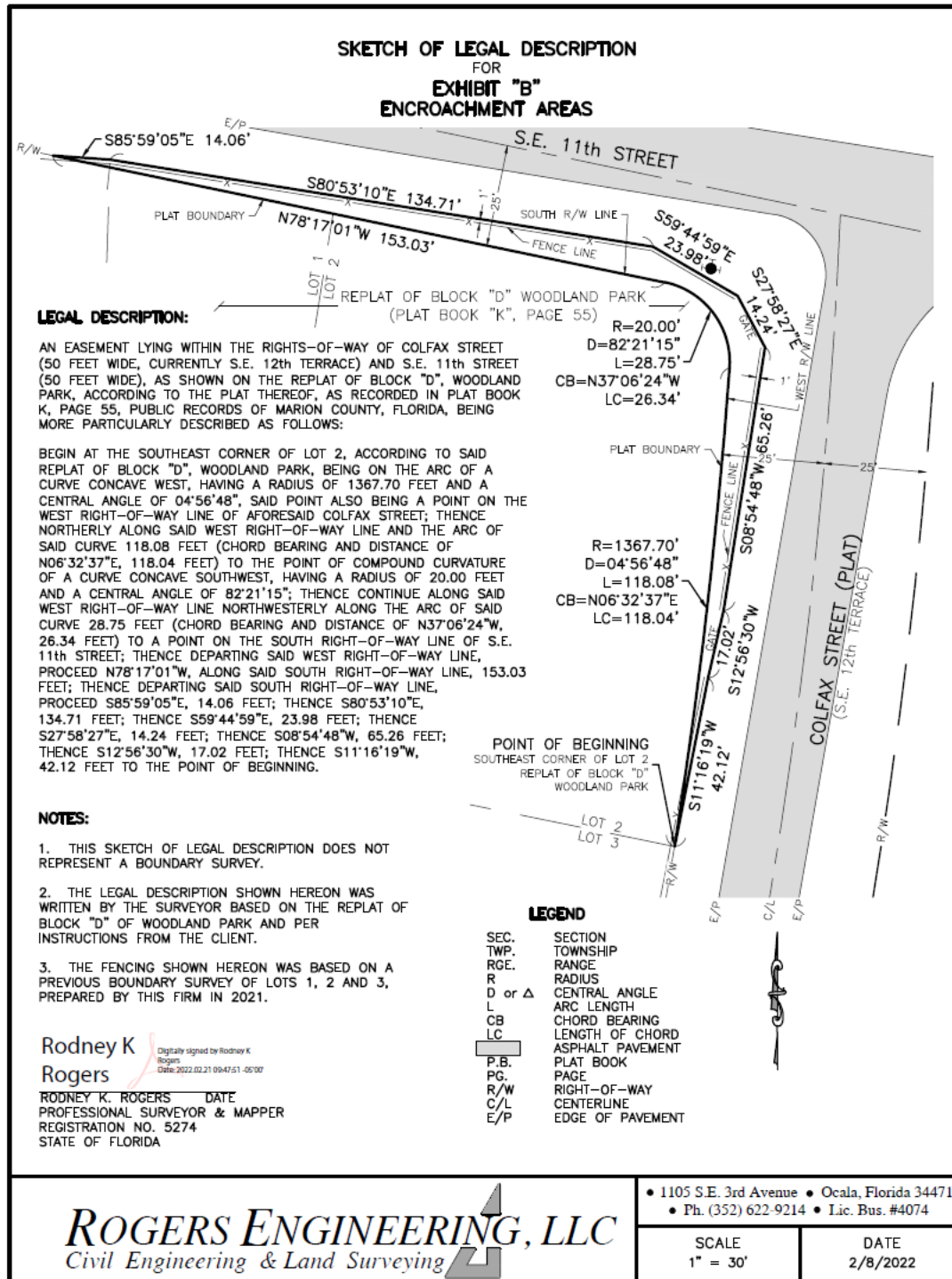


EXHIBIT B - 2 of 2 **Encroachment Areas**

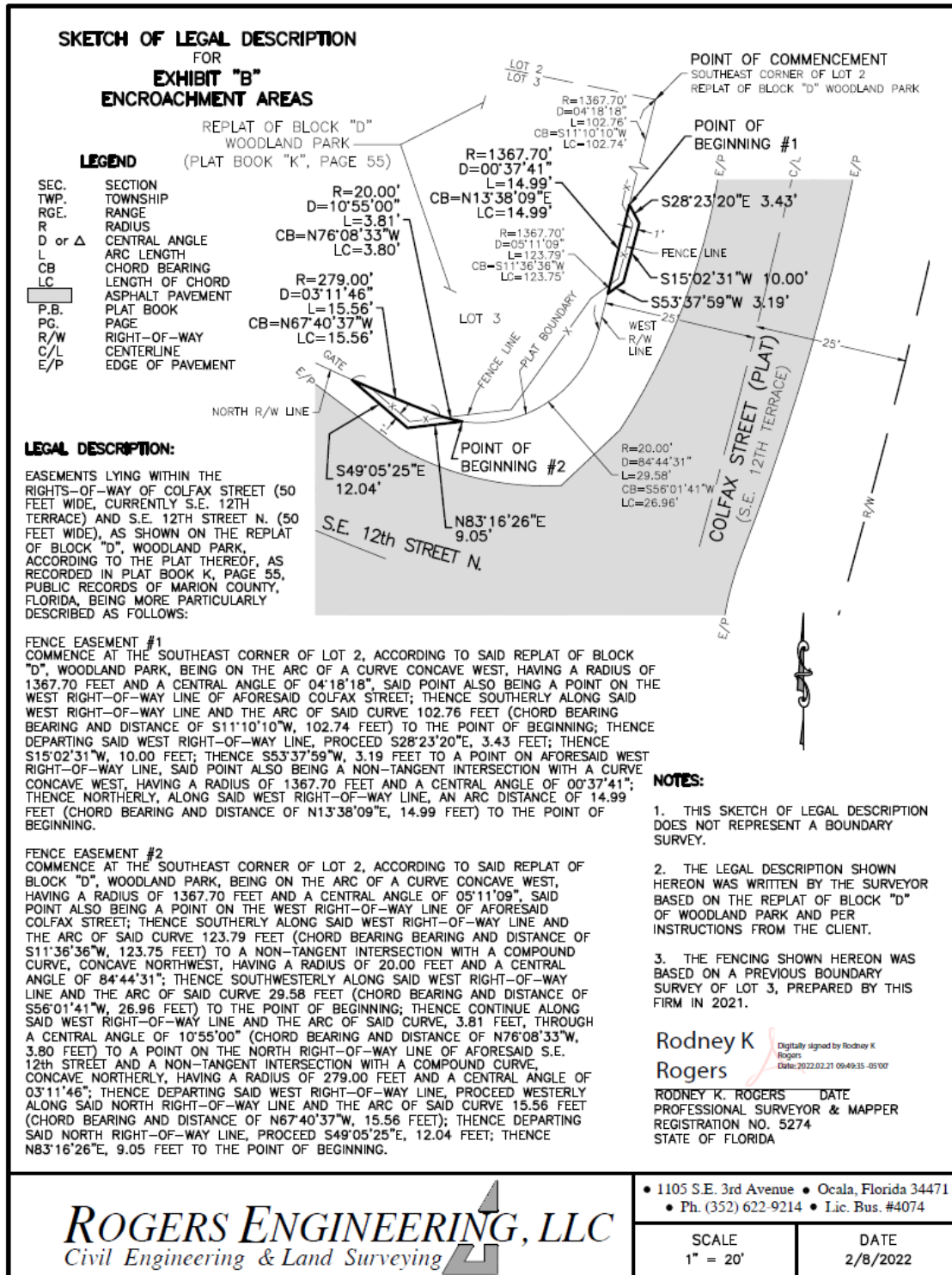


EXHIBIT C

City Easement Area

