



Interoffice Memorandum

APPROVED BY ORANGE
COUNTY BOARD OF COUNTY
COMMISSIONERS

BCC Mtg. Date: September 20, 2016

REAL ESTATE MANAGEMENT ITEM 1

DATE: September 2, 2016

TO: Mayor Teresa Jacobs
and the
Board of County Commissioners

THROUGH: Ann Caswell, Manager *AC*
Real Estate Management Division

FROM: Robin Giove, Lease Program Manager *RJG*
Real Estate Management Division

CONTACT PERSON: Ann Caswell, Manager

DIVISION: Real Estate Management
Phone: (407) 836-7082

ACTION REQUESTED: APPROVAL AND EXECUTION OF GROUND LEASE AGREEMENT BETWEEN JOURNEY CHRISTIAN CHURCH, INC. AND ORANGE COUNTY AND DELEGATION OF AUTHORITY TO THE REAL ESTATE MANAGEMENT DIVISION TO EXERCISE RENEWAL OPTIONS AND EXECUTE ESTOPPEL CERTIFICATES, IF NEEDED

PROJECT: Journey Church Neighborhood Park
File #8001
1965 S. Orange Blossom Trail
Apopka, Florida
(INVEST)

District 2

PURPOSE: To provide for access, construction, operation, and maintenance of a neighborhood park as part of the Invest Program.

ITEM: Ground Lease Agreement
Cost: \$3,500 per year
Size: 1.36 acres
Term: 20-years
Options: Two, 5-year renewals

APPROVALS: Real Estate Management Division
County Attorney's Office
Parks and Recreation Division
Capital Projects Division
Risk Management Division

REMARKS: The annual use fee (cost) may escalate by no more than 5%, once every five (5) years. The lease includes the right to use eleven (11) parking spaces with the right to convert one of them to handicap parking at County's expense. Landlord shall maintain the parking area.

A file labeled "BCC Agenda Backup" containing a copy of this agenda item and all supporting documentation is in the top drawer of the BCC file cabinet in the supply room adjacent to Commissioner Thompson's office.

APPROVED

BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS

SEP 20 2016

JOURNEY CHRISTIAN CHURCH, INC.

and

ORANGE COUNTY

GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (“**Agreement**”) made as of the date fully executed below, by and between **JOURNEY CHRISTIAN CHURCH, INC.**, a Florida not-for-profit corporation, hereinafter referred to as “**LANDLORD**,” and **ORANGE COUNTY**, a charter county and political subdivision of the State of Florida, hereinafter referred to as “**TENANT**,” hereinafter collectively referred to as the “**Party**” or “**Parties**.”

WITNESSETH

1. **PROPERTY:** In consideration of \$1.00 and the mutual covenants of the respective Parties hereto, each to the other to be performed by them at the time and in the manner hereinafter provided, LANDLORD does hereby lease and let unto TENANT, and TENANT does hereby lease from LANDLORD, a portion of the land located at 1965 S. Orange Blossom Trail, Apopka, Florida, hereinafter referred to as the “**Property**,” as further defined by the sketch and description attached hereto as **Exhibit “A,”** and made a part hereof. The Property is located within a parcel of land having a parcel number of 24-21-28-0000-00-077, hereinafter referred to as the “**Parcel**.”

2. **USE AND RIGHTS:** This Agreement is made on the express condition that TENANT shall use the Property for a public neighborhood park. LANDLORD hereby grants TENANT permission to construct and maintain playgrounds, pavilions, sidewalks, parking lots, fencing, and other structures commonly associated with a neighborhood park. TENANT shall not use or permit the use of the Property for any other purpose, without the written consent of LANDLORD. LANDLORD grants TENANT use of the Property twenty-four (24) hours a day, seven (7) days a week. LANDLORD grants TENANT, its officers, directors, employees, agents,

guests, invitees, contractors, and service providers unrestricted rights of ingress and egress to and from the Property.

LANDLORD grants TENANT the right to use eleven (11) parking spaces, the location of which are depicted on Exhibit "A," as designated parking for the Property, hereinafter referred to as the "Parking Area." TENANT has the right to convert one of the parking spaces in the Parking Area to handicap parking at TENANT'S expense. TENANT may install LANDLORD approved signage in and on the Parking Area. LANDLORD shall maintain the Parking Area. TENANT to be responsible for any damage caused by TENANT to the Parking Area.

3. TERM AND RENEWAL OPTION: This Agreement shall be for an initial term of twenty (20) years, commencing upon the date fully executed below. TENANT shall have the option to renew this Agreement for two (2) additional terms of five (5) years each by notifying LANDLORD in writing prior to the expiration of the then current term of its intent to renew. The Manager of TENANT'S Real Estate Management Division shall be authorized to approve and exercise these renewal options. Pursuant to section 125.031, Florida Statutes, rental shall not be paid from ad valorem taxes.

4. POSSESSION: As of the date fully executed below, LANDLORD shall grant TENANT continued possession and use of the Property and all terms and conditions set forth in this Agreement shall immediately commence.

5. USE FEE: TENANT shall pay LANDLORD an annual use fee of three thousand five hundred dollars (\$3,500.00) per year. At LANDLORD'S sole discretion, said use fee is subject to escalate, by no more than five percent (5%), once every five (5) years during the initial term or any renewal term of this Agreement. LANDLORD shall provide TENANT written notice of any such escalation no less than 90 days prior to the new use fee becoming effective.

6. MAINTENANCE: TENANT shall, at its sole cost and expense, keep and maintain the Property and all TENANT directed improvements, fixtures, furnishings and equipment installed in or used on the Property, hereinafter referred to as "Improvements," in good repair and in clean, attractive and safe condition, reasonable wear and tear excepted. TENANT shall pay all charges for water, gas, electricity, sewer, telephone, and other utility services installed, connected or consumed on the Property.

7. TITLE TO IMPROVEMENTS: Notwithstanding other provisions of this Agreement, TENANT shall have title to all Improvements constructed or installed on the Property by

TENANT. LANDLORD has no right to claim ownership of any Improvements during the term of this Agreement without TENANT'S prior written consent.

8. ASSIGNMENT AND SUBLETTING: TENANT shall not assign this Agreement, or sublet the Property without LANDLORD'S written consent. If LANDLORD consents to any sublease or assignment, TENANT shall not be released from liability under this Agreement, and such consent shall not be deemed a waiver of the requirement for LANDLORD'S consent to any subsequent assignment or sublease.

9. ALTERATIONS: TENANT shall pay for all charges for labor, services and materials used in connection with any Improvements to the Property undertaken by TENANT.

10. SIGNS: TENANT may install signage upon the Property at TENANT'S expense. Any and all signage is subject to approval by LANDLORD. Upon termination of this Agreement, TENANT will remove signage at TENANT'S expense and repair any damages caused by such removal.

11. INSURANCE: Without waiving its right to sovereign immunity as provided in Section 768.28, Florida Statutes, TENANT acknowledges to commercially purchase or maintain a certified self-insurance program for General Liability and Automobile Liability with coverage limits of not less than the limited sovereign immunity limits as set forth in Section 768.28, Florida Statutes. TENANT agrees to maintain Workers' Compensation & Employers' Liability covering its employees and officials in accordance with Florida Statute 440. Tenant shall require any and all contractors either constructing or maintaining the Property to procure and maintain liability insurance and workers' compensation at such types and amounts as to adequately protect Tenant and Landlord.

12. INDEMNIFICATION: TENANT, to the extent provided in Section 768.28, Florida Statutes, shall indemnify, defend (if requested by LANDLORD), and hold harmless the LANDLORD, its officials, and employees from all claims, actions, losses, suits, judgments, fines, liabilities, costs and expenses (including attorney's fees) attributable to its negligent acts or omissions, or those of its officials and employees acting within the scope of their employment, or arising out of or resulting from TENANT'S negligent performance under this Agreement. Notwithstanding the foregoing, nothing contained in this Agreement shall be construed as a waiver of TENANT'S sovereign immunity. Any claims against TENANT must comply with the procedures found in § 768.28, Florida Statutes. The provisions of this paragraph shall survive

the expiration of this Agreement.

13. LIABILITY OF TENANT: All property of any kind that may be on the Property during the continuance of this Agreement shall be at the sole risk of TENANT, except that LANDLORD shall be liable for damage to TENANT'S property to the extent arising from the wrongful act of LANDLORD.

14. ACCESS TO PROPERTY: LANDLORD shall have the right to enter the Property, during TENANT'S normal business hours, after 48-hour notice to TENANT, and in the presence of TENANT for the purpose of inspecting or conducting tests upon the same, except in an emergency, at which time no notice shall be required to inspect, maintain, repair or make replacements, additions or alterations to the Property.

15. DEFAULT AND REMEDIES: An event of Default under this Agreement shall occur if LANDLORD or TENANT fails to perform or observe any term, covenant or condition of this Agreement and such Party fails to cure such failure within thirty (30) days after receiving written notice thereof (or such longer period if the default cannot reasonably be cured within thirty (30) days and the Party has commenced to cure and thereafter proceeds diligently).

If the defaulting Party fails to correct the default, the other Party shall be entitled to any and all remedies available at law and in equity. Additionally, either Party may on behalf of the defaulting Party perform any obligations the defaulting Party failed to perform, and the cost of the performance will be payable by the defaulting Party upon demand.

If LANDLORD fails to perform its obligations under this Agreement and such failure interferes with TENANT'S use of the Property, as allowed herein, and continues for more than 60 days after written notice from TENANT to LANDLORD of such failure, then TENANT shall have the right and option to cancel this Agreement by giving written notice to LANDLORD within 15 days after the end of such 60 day period.

16. COVENANT AGAINST LIENS: The interest of LANDLORD in the Property shall not be subject in any way to any liens, including construction liens, for improvements to or other work performed with respect to the Property by or on behalf of TENANT. TENANT shall have no power or authority to create any lien or permit any lien to attach to the present estate, reversion, or other estate of LANDLORD in the Property or in the Parcel and all mechanics, materialmen, contractors, artisans, and other parties contracting with TENANT or its representatives or privies with respect to the Property or any part of the Parcel are hereby

charged with notice that they must look to TENANT to secure payment of any bill for work done or material furnished or for any other purpose during this Agreement. The foregoing provisions are made with express reference to § 713.10, Florida Statutes. Notwithstanding the foregoing provisions, TENANT, at its expense, shall cause any lien filed against the Property or the Parcel for work or materials claimed to have been furnished to TENANT to be discharged of record or properly transferred to a bond pursuant to § 713.24, Florida Statutes, within twenty (20) days after receipt of notice thereof. Further, TENANT agrees to, defend, and save LANDLORD harmless from and against any damage or loss, including reasonable attorneys' fees, incurred by LANDLORD as a result of any such lien. TENANT shall notify every contractor making improvements to the Property that the interest of LANDLORD in the Property shall not be subject to liens for improvements to or other work performed with respect to the Property by or on behalf of TENANT.

17. WAIVER: One or more waivers of any covenant or condition by either Party shall not be construed as a waiver of a subsequent breach of the same covenant or conditions by the other Party, and the consent or approval by either Party to or of any act by the other Party requiring consent or approval shall not be construed a consent or approval to or of any subsequent similar act by the other Party.

18. CONDEMNATION: If the whole or any part of the Property hereby leased shall be taken by any public authority under the power of eminent domain, then the term of this Agreement shall cease on the part so taken from the day the possession of that part shall be required for any public purpose, and if such portion of the Property is so taken as to destroy the usefulness of the Property for the purpose for which the Property were leased, then, from that day, this Agreement shall terminate.

The Parties agree that LANDLORD shall give TENANT notice of the filing of an action in eminent domain within ten (10) days of LANDLORD receiving such notice, even if the action has been filed by TENANT.

19. OBSERVANCE OF LAWS: The laws of the State of Florida shall govern this Agreement. The Parties agrees to observe, comply with and execute promptly at its expense during the term hereof, all laws, rules, requirements, orders, directives, codes, ordinances and regulations of any and all governmental authorities or agencies, of all municipal departments, bureaus, boards and officials, and of insurance carriers, due to its use or occupancy of the

Property. All additions, alterations, installations, partitions, or changes shall be in full compliance with the aforementioned authorities.

20. RELATIONSHIP OF THE PARTIES: Nothing contained herein shall be deemed or construed by the Parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or joint venture between the Parties hereto, it being understood and agreed that neither the method of computation of rent, nor any other provision contained herein, shall be deemed to create any relationship between the Parties hereto other than the relationship of LANDLORD and TENANT. Whenever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders.

21. QUIET ENJOYMENT: LANDLORD covenants and agrees that TENANT, upon TENANT'S compliance with the covenants and conditions herein, shall and may peaceably and quietly have, hold and enjoy the Property for the term of this Agreement.

22. NOTICES: Any notice provided for in this Agreement must, unless otherwise expressly provided herein, be in writing, and be forwarded by registered or certified mail, return receipt requested, postage prepaid, or nationally recognized overnight courier service such as FedEx or UPS. Such notices shall be deemed served, given and delivered on the earlier of the following: (i) the date of actual receipt; (ii) the third business day after any registered or certified notice was deposited in a sealed envelope in the United States mail, postage prepaid; (iii) the next business day after any notice was delivered (on a business day) to a receipted overnight delivery service; or (iv) the first attempted delivery date of any notice hereunder (regardless of whether the recipient of said notice accepted same). Either Party may change its address to any other address in the United States of America by notice in writing given to the other party in the manner herein provided.

TENANT shall forward all notices to LANDLORD at the following address:

Journey Christian Church, Inc.
1965 S. Orange Blossom Trail
Apopka, Florida 32703

LANDLORD shall forward all notices to TENANT at the following address:

Manager
Orange County Real Estate Management Division
P.O. Box 1393
Orlando, FL 32802

With a copy to:

County Attorney
Orange County Government
P.O. Box 1393
Orlando, FL 32802

23. SUBORDINATION: LANDLORD reserves the right to sell, assign, transfer, mortgage or convey any and all rights it may have in the Parcel, the Property or this Agreement, and to subject this Agreement to the lien of any mortgage now or hereafter placed upon the Parcel or the Property. However, the subordination of this Agreement to any mortgage hereafter placed upon the building or the Property shall be upon the express condition that this Agreement is recognized by LANDLORD'S mortgagee and that the rights of TENANT hereunder shall remain in force despite any default in performance of LANDLORD, or foreclosure proceedings with respect to any such mortgage, provided TENANT is not in default in any of its obligations hereunder. Within twenty (20) days of TENANT'S receipt of the request of LANDLORD, TENANT shall execute any and all instruments deemed by LANDLORD necessary to subordinate this Agreement, and the rights given TENANT by this Agreement, to such mortgages, as described above. For this purpose, the Manager of TENANT'S Real Estate Management Division is authorized to execute said instruments.

Any sale by LANDLORD of the Parcel or LANDLORD'S interest under this Agreement shall release and discharge LANDLORD from any and all further obligations under this Agreement, with exception to any default occurring prior to said transfer, provided that the purchaser of the building or LANDLORD'S interest under this Agreement shall recognize this Agreement and that the rights of TENANT hereunder shall remain in force and the obligations, of LANDLORD shall be assumed in full by the new owner, despite such sale. Upon the request of LANDLORD, TENANT, or the subsequent owner, an Assignment and Amendment of Lease Agreement shall be executed by TENANT, LANDLORD, and subsequent owner to acknowledge the ownership change and modify those paragraphs related to the sale and conveyance. The Manager of TENANT'S Real Estate Management Division is authorized to execute said agreement.

24. ESTOPPEL CERTIFICATE: TENANT shall, at any time and from time to time upon not less than twenty (20) days prior written request from LANDLORD, execute, acknowledge and

deliver to LANDLORD a written certificate stating: (i) whether this Agreement is in full force and effect; (ii) whether this Agreement has been modified or amended and, if so, identifying and describing any such modification or amendment; (iii) the date to which rent has been paid; (iv) whether TENANT knows of any default on the part of LANDLORD and, if so, specifying the nature of such default; (v) that the improvements have been fully completed by LANDLORD in accordance with this Agreement and the plans and specifications approved by TENANT, and that TENANT is in full and complete possession thereof; and (vi) any other matters relevant to this Agreement as reasonably requested. The Manager of TENANT'S Real Estate Management Division is authorized to execute said Estoppel Certificate.

25. HAZARDOUS SUBSTANCES: As used in this Agreement, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Agreement, "Environmental Law" means Federal laws and laws of the jurisdiction where the Property are located that relate to health, safety or environmental protection.

TENANT shall not cause or permit the presence, use, disposal, storage or release of any Hazardous Substances on or in the Property. TENANT shall not do anything affecting the Property that is in violation of any Environmental Law. The preceding two (2) sentences shall not apply to the presence, use or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal maintenance and office uses.

Each Party shall promptly give the other written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which such Party has actual knowledge. If a Party learns or is notified by any government or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, such Party will immediately notify the other Party and the Party responsible for such condition shall promptly take all necessary remedial actions in accordance with Environmental Law.

LANDLORD shall indemnify and hold TENANT fully harmless for any liabilities and remedial actions of Hazardous Substances for which LANDLORD is responsible under this Agreement. LANDLORD'S indemnification obligations under this Agreement shall survive the expiration or early termination of this Agreement.

26. SURRENDER AND HOLDOVER: Upon the expiration or early termination of this Agreement, TENANT agrees to peacefully surrender and yield possession of the Property to LANDLORD, without notice, in good order and condition, and pursuant to all applicable federal, state, and local laws. TENANT shall remove any Improvements within sixty (60) days following the termination or expiration of this Agreement unless TENANT and LANDLORD agree in writing to leave certain Improvements in place. The Improvements the Parties agree to leave in place and those not removed by TENANT shall become the sole property of LANDLORD sixty (60) days following the termination or expiration of this Agreement. TENANT shall reasonably repair, at its expense, any damage to the Property caused by removing an Improvement.

27. SUCCESSORS AND ASSIGNS: The covenants, provisions, and agreements herein contained shall in every case be binding upon and inure to the benefit of the Parties hereto respectively and their respective heirs, executors, administrators, successors and assigns, as applicable, except that the right of TENANT to assign TENANT'S interest under this Agreement is and shall be subject to the written consent of LANDLORD as hereinabove provided, which provision it is not intended to waive, qualify or alter in any manner whatsoever by this clause or any other clause herein referring to assigns.

28. BROKERS: TENANT represents and warrants to LANDLORD that neither it nor its officers or agents nor anyone acting on its behalf has dealt with any real estate broker in the negotiating and making of this Agreement.

29. PARCEL TITLE: LANDLORD represents and warrants that it has title to the Parcel and legal authority to enter into the lease of the Parcel to TENANT.

30. JURY WAIVER: LANDLORD and TENANT waive trial by jury in any action, proceeding, or counterclaim involving any matter whatsoever arising out of or in any way connected with (i) this Agreement, (ii) the relationship of LANDLORD and TENANT, (iii) TENANT'S use or occupancy of the Property, or (iv) the right to any statutory relief or remedy.

31. LEASE APPROVAL PROCESS: LANDLORD consents to TENANT'S lease approval process and shall deliver to TENANT three (3) original Agreements executed by LANDLORD.

Approximately six (6) weeks from delivery by LANDLORD, TENANT will place the LANDLORD signed Agreement on the agenda for a Board of County Commissioners meeting. Upon approval by the Board of County Commissioners, this Agreement shall be fully executed.

32. FISCAL FUNDING: In accordance with Florida State constitutional and statutory regulations, in the unlikely event funds are not appropriated by TENANT'S budgetary process (which TENANT covenants to make good faith efforts to request and pursue) in any succeeding fiscal year for the operation and funding of the entire applicable County department utilizing the Property (i.e. not solely as a line item decision not to fund this particular Agreement), TENANT shall notify LANDLORD of such occurrence and this Agreement shall be deemed to terminate at the expiration of the last fiscal year for which funds were appropriated.

33. SOVEREIGN IMMUNITY. Nothing contained herein shall be construed as a waiver of TENANT'S sovereign immunity pursuant to section 768.28, Florida Statutes, as may be amended.

34. ENTIRE AGREEMENT: This Agreement and the attached exhibits constitute the entire Agreement between LANDLORD and TENANT with respect to the subject matter hereof. No prior written, contemporaneous or subsequent oral promises or representations shall be binding. This Agreement shall not be modified or amended in any respect except by a written agreement executed by or on behalf of the Parties hereto, in the same manner as executed herein.

(SIGNATURE PAGE TO FOLLOW)

IN WITNESS WHEREOF, the Parties hereto have hereunto executed this Ground Lease Agreement as of the date fully executed below.

ATTEST/WITNESS:

[Handwritten signature]

Print Name: CLAYTON MARTINEZ

[Handwritten signature]

Print Name: Christina Sheets

LANDLORD:

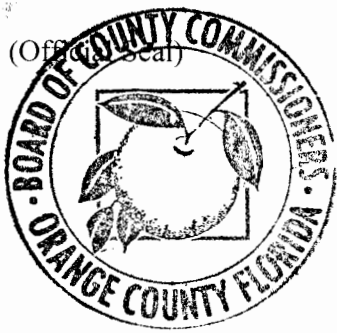
JOURNEY CHRISTIAN CHURCH, INC.

By: *[Handwritten signature]*

Name: Tim Hudspeth

Title: Chairman, Elder

Date: 8/19/16



TENANT:

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *[Handwritten signature]*

Teresa Jacobs
Orange County Mayor

Date: 9.20.16

ATTEST:

Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: *[Handwritten signature]*

for Deputy Clerk

Date: SEP 20 2016

Exhibit "A"

Property Sketch and Description

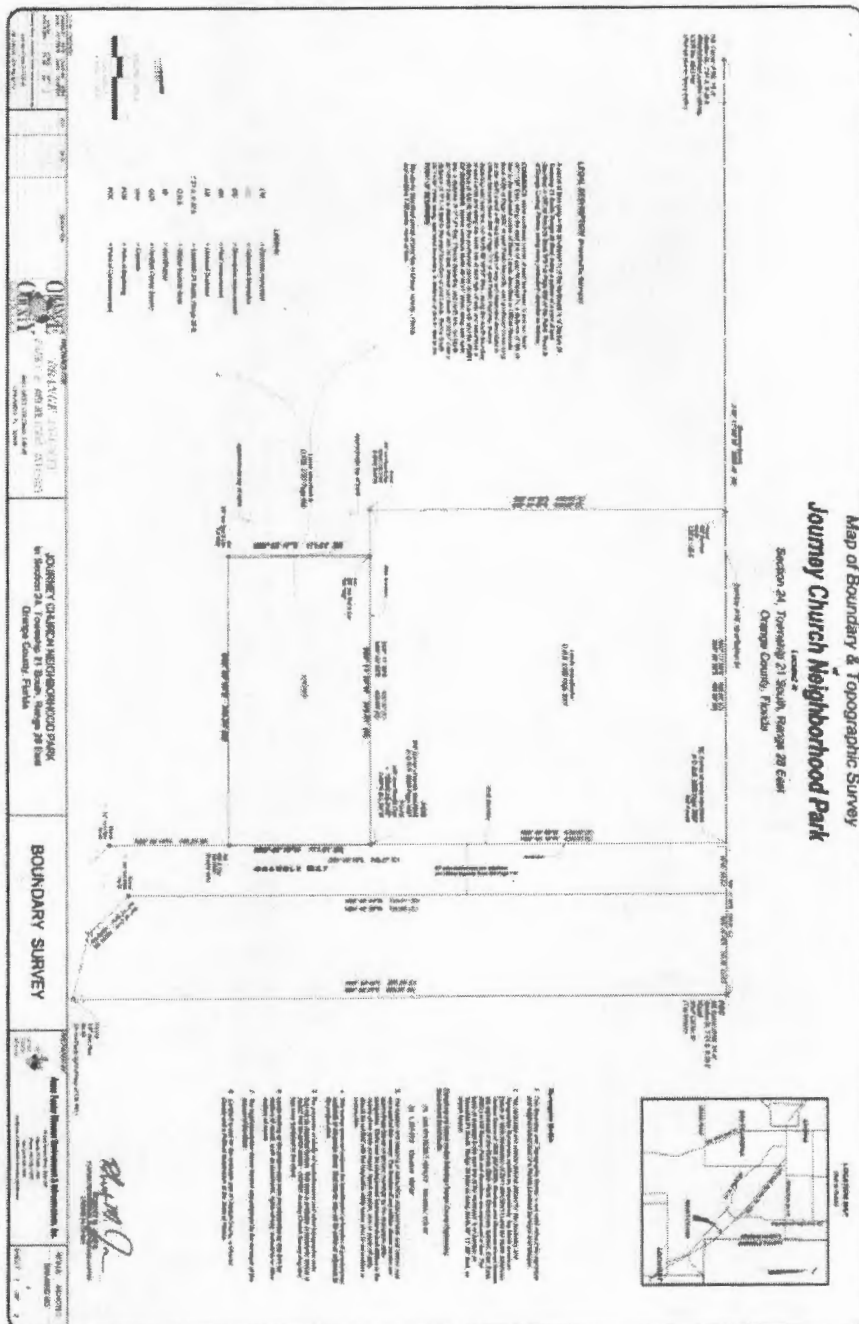


Exhibit "A" continued
Property Sketch and Description

LEGAL DESCRIPTION (Prepared by Surveyor)

A parcel of land lying in the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 24 , Township 21 South, Range 28 East, being a portion of a tract of land described in Official Records Book 5767 at Page 998 of the Public Records of Orange County, Florida, being more particularly describe as follows;

COMMENCE at the southeast corner of said Northeast $\frac{1}{4}$ and run North $00^{\circ}11'59''$ East, along the east line of said Northeast $\frac{1}{4}$, a distance of 180.00 feet to the southeast corner of those Lands described in Official Records Book 5386 at Page 3007 of said Public Records, said southeast corner lying on the north line of a 60 foot wide right-of-way and easement described in Official Records Book 866 at Page 115 of said Public Records; thence departing said east line, run North $89^{\circ}46'19''$ West, along the south boundary of said Lands and along the north line of said right-of-way and easement, a distance of 430.00 feet to the southwest corner of said Lands and the **POINT OF BEGINNING**; thence continue North $89^{\circ}46'19''$ West, along said north line, a distance of 171.01 feet; Thence departing said north line, run North $00^{\circ}09'46''$ East a distance of 345.34 feet; thence run South $89^{\circ}55'47''$ East a distance of 171.24 feet to the west boundary of said Lands; thence South $00^{\circ}11'59''$ West, along said west boundary, a distance of 345.81 feet to the **POINT OF BEGINNING**.

The above described parcel of land lies in Orange County , Florida and contains 1.36 acres, more or less.