



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE ~~07/15/2008~~
7/22/2008

SUBJECT: PROPOSED LICENSE AGREEMENT FOR 5780 SWEETWATER BLVD.




DEPARTMENT: COMMUNITY DEVELOPMENT

RECOMMENDED MOTION: To approve and to authorize the Mayor and City Manager to act on behalf of the City to execute the License Agreement for 5780 Sweetwater Blvd.

SUMMARY: The property owner of 5780 Sweetwater Blvd. is requesting permission to allow a concrete paver driveway apron within the right-of-way of Sweetwater Blvd., a 50-foot wide City right-of-way. Concrete driveway aprons are standard; however the paver driveway was installed all the way to the edge of the pavement of Sweetwater Blvd. during house construction (see attached photo). A separate building permit for the paver driveway has been applied for to allow time to process the license agreement without holding up the C/O for the house. Final approval of the driveway building permit is pending City Council approval of the license agreement. City departments have reviewed this request and approve this material.

The license agreement has the effect of requiring the property owner to maintain and, if necessary, to replace these improvements with the accepted standard construction requirements of the City. Further, should the property owner fail to abide by this agreement, the City is provided with the ability to take the necessary corrective action at the expense of the property owner.

ATTACHMENTS: Ordinance Resolution Budget Resolution
 Other Supporting Documents and Contract

DEPARTMENT HEAD		Wayne Clark, Director of Community Development	Date 4/30/08
FINANCE DEPARTMENT	N/A	Approved as to Budget Requirements	Date -
CITY ATTORNEY		Approved as to Form and Legality	Date 7.12.08
CITY MANAGER		Approved Agenda Item For:	7/22/08

COUNCIL ACTION: Approved as Recommended Disapproved
 Tabled Indefinitely Continued to Date Certain Approved with Modification

Return Recorded Document to:
City of Port Orange
1000 City Center Circle
Port Orange FL 32119

Parcel No. 6317-01-00-0050

LICENSE AGREEMENT

This Space Reserved for Recording Data

THIS **LICENSE AGREEMENT** is made and entered into this _____ day of _____, 2008, by and between the City of Port Orange, Florida, a chartered municipal corporation ("City") as "Licensor", and WESLEY G. NEGRINI and KATHERINE R. NEGRINI, 5780 Sweetwater Blvd., Port Orange FL 32127, as "Licensee."

PREMISES

WHEREAS, the City Council of the City of Port Orange has adopted Resolution No. 95-64, which establishes City policy regarding improvements within City rights-of-way by private citizens, homeowners associations, and developers; and

WHEREAS, the City agrees that the improvement plan for the driveway paving improvements depicted on **Exhibit "A,"** attached hereto and incorporated herein by reference, comes within the intent of established City policy; and

WHEREAS, the improvement plan encompasses part of a City right-of-way known as Sweetwater Boulevard, a 50-foot wide City right-of-way, as depicted in **Exhibit "A,"** attached hereto and incorporated herein by reference; and

WHEREAS, the Licensees, WESLEY G. NEGRINI and KATHERINE R. NEGRINI, are the owners of real property abutting Sweetwater Boulevard located in the Sweetwater Estates subdivision, the legal description of that property is as follows:

Lot 5, SWEETWATER ESTATES, according to the plat thereof, recorded in Map Book 27, Page 213, Public Records of Volusia County, Florida.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties agree as follows:

1. The City hereby grants to the Licensee a license to enter upon and to utilize the right-of-way known as Sweetwater Boulevard located and situated in Port Orange, Volusia County, Florida, as depicted in **Exhibit "A"** for the purpose of installation,

maintenance, repair, replacement and removal of paving improvements, to-wit: concrete paver driveway as extended into the driveway apron (hereinafter "improvements") approved by the City as depicted in **Exhibit "A."**

2. All improvements, uses and activities shall comply with the policies established in Resolution No. 95-64 and with the terms and conditions of this License Agreement and exhibit(s) hereto.

3. The Licensee jointly and severally assumes all responsibility for the maintenance and, if necessary, replacement of the improvements described herein and as depicted in **Exhibit "A."**

4. The Licensee agrees, upon thirty (30) days written notice from the City, to maintain, repair or replace all improvements which require maintenance, repair or replacement. If no remedy is made within the specified time, the City reserves the right to remove all improvements without further notice to the Licensee and at the sole cost and expense of the Licensee.

5. The City reserves the right to request removal of the improvements depicted in **Exhibit "A"** in the event that the City needs to utilize the property for City purposes, such as road, bike path, public utility installation or maintenance, drainage improvement or other public uses. The City shall endeavor to give at least thirty (30) days prior notice to the Licensee. If the improvements are not removed within the time specified by the City, or in cases where emergency work by the City becomes necessary the City may remove or cause to be removed the improvements without any liability to the City or obligation to replace same upon completion of the City project.

6. The Licensee agrees that no improvements shall be made except as depicted in **Exhibit "A"** or subsequently approved amendments thereto. However, improvements may be maintained, repaired, replaced and removed.

7. The license granted by this License Agreement shall be effective during the period from the date of execution by all parties until terminated in accordance with the provisions specified herein.

8. Any party may terminate this License Agreement upon giving thirty (30) days prior written notice to the other party, after which time this License Agreement shall be of no force and effect. Upon termination by any party, the City shall have the option of requiring all improvements to be removed or abandoned in place by the Licensee or maintained in their present state by the City and without further right or obligation by the Licensee. If the Licensee is voluntarily or involuntarily dissolved or ceases to function in accordance with the articles of incorporation and by-laws of such corporation, or Licensee terminates this Agreement or otherwise fails to remain in good standing and in compliance with this Agreement, the City may maintain and repair the improvements and the City shall not be obligated to either maintain or repair the improvements and the City shall not be liable for either undertaking or failing to maintain or repair the improvements. All costs and expenses

of the City resulting from maintenance or repair of the improvements, including administrative expenses, attorney's fees and costs, and expenses incurred in establishing and operating a special district, shall be chargeable to and assessed by the City jointly and severally against the lot located within the subdivision as described in **Exhibit "A."** The City shall have the right to enforce collection of assessments for such costs and expenses by a lien jointly and severally against the lot, which lien shall include interest at the then highest lawful rate of interest and attorneys' fees and costs for collection thereof. The City shall have the right to establish a special district and to utilize any methods or procedures provided by law or ordinance for imposition and collection of the assessments described herein.

9. This license is given to the Licensee as an accommodation to the Licensee without any consideration. The Licensee acknowledges the legal title of the City to the right-of-way property described herein and agrees never to deny such title or to claim title in the Licensee's name.

10. The license is personal to the Licensee and shall not inure to the successors or assigns of the Licensee. The rights, privileges and permission granted herein shall not be assignable by the Licensee in whole or in part. Upon the sale or transfer by the Licensee of title to the real property adjoining the right-of-way upon which the improvements are located, the City shall have the immediate right to remove the improvements for which this license is granted; subject, however, to application made by the successor property owner for and due diligence in obtaining approval by the City of a new license agreement for the existing improvements to remain in the right-of-way.

11. The Licensee shall exercise the rights, privileges and permission granted herein at the Licensee's own risk. The Licensee shall not claim any damages from the City for any injuries or damages in connection with or on account of the exercise of such rights, privileges or permission, the condition of the City's property, or the use of the property. The Licensee shall indemnify and hold harmless the City, its officers, employees and agents, from and against all claims, damages, losses and expenses, including reasonable attorneys' fees and costs, arising out of, resulting from, or in any way connected with the condition of the City's property, the use of the property, the exercise of the license granted by this License Agreement, the failure on the part of the Licensee to comply with any of the provisions specified herein, or the City's removal of any improvements depicted in **Exhibit "A"** or otherwise permitted by this License Agreement. The City shall not be liable to the Licensee if for any reason the Licensee's use of the property is hindered or disturbed.

12. All notices required to be given by any party shall be in writing, addressed to all other parties, and delivered by certified mail, telegram or in person to: Attention: City Manager, City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129, for the City; and to WESLEY G. NEGRINI and KATHERINE R. NEGRINI, 5780 Sweetwater Boulevard, Port Orange FL 32127, for the Licensees, or as otherwise designated in writing to all respective parties.

13. This Agreement shall be recorded in the Public Records of Volusia County,

Florida. Upon execution of this Agreement, the Licensees agree to pay the City an amount equal to the applicable cost of recording this Agreement in the Public Records of Volusia County, Florida.

14. This License Agreement constitutes the entire agreement between the parties. There are no further or other agreements or understandings, written or oral, in effect between the parties, relating to the subject matter hereof. This License Agreement may be amended or modified only by an instrument of equal formality signed by the respective parties.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement on the respective dates below.

WITNESSES:

LICENSOR
CITY OF PORT ORANGE, FLORIDA
a chartered municipal corporation

Printed Name: _____

By: _____
Allen Green, Mayor

Printed Name: _____

Attest: _____
Kenneth W. Parker, City Manager

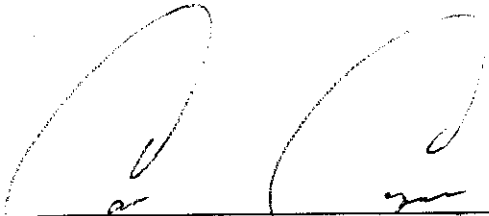
Printed Name: _____

Date: _____

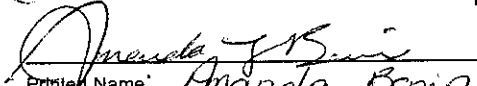
Printed Name: _____


(Corporate Seal)

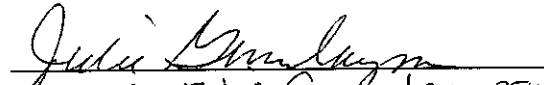
LICENSEE:



Printed Name: CATHERINE Campbell

By: 
WESLEY G. NEGRINI


Printed Name: Amanda Benin

By: 
KATHERINE R. NEGRINI


Printed Name: Julie Gundrum


Printed Name: Cathy Dougherty

Date: 6-24-08

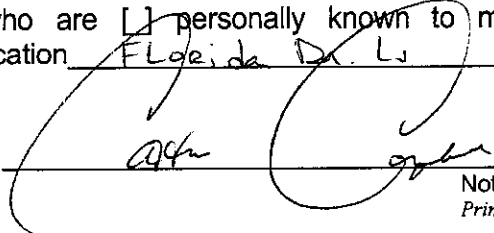
STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by Allen Green and Kenneth W. Parker, the Mayor and City Manager, respectively, duly authorized to execute the foregoing LICENSE AGREEMENT on behalf of the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation, and who are personally known to me, or have produced _____ as identification.

Notary Public, State of Florida at Large
Printed name, commission and expiration:

STATE OF FLORIDA
COUNTY OF VOLUSIA

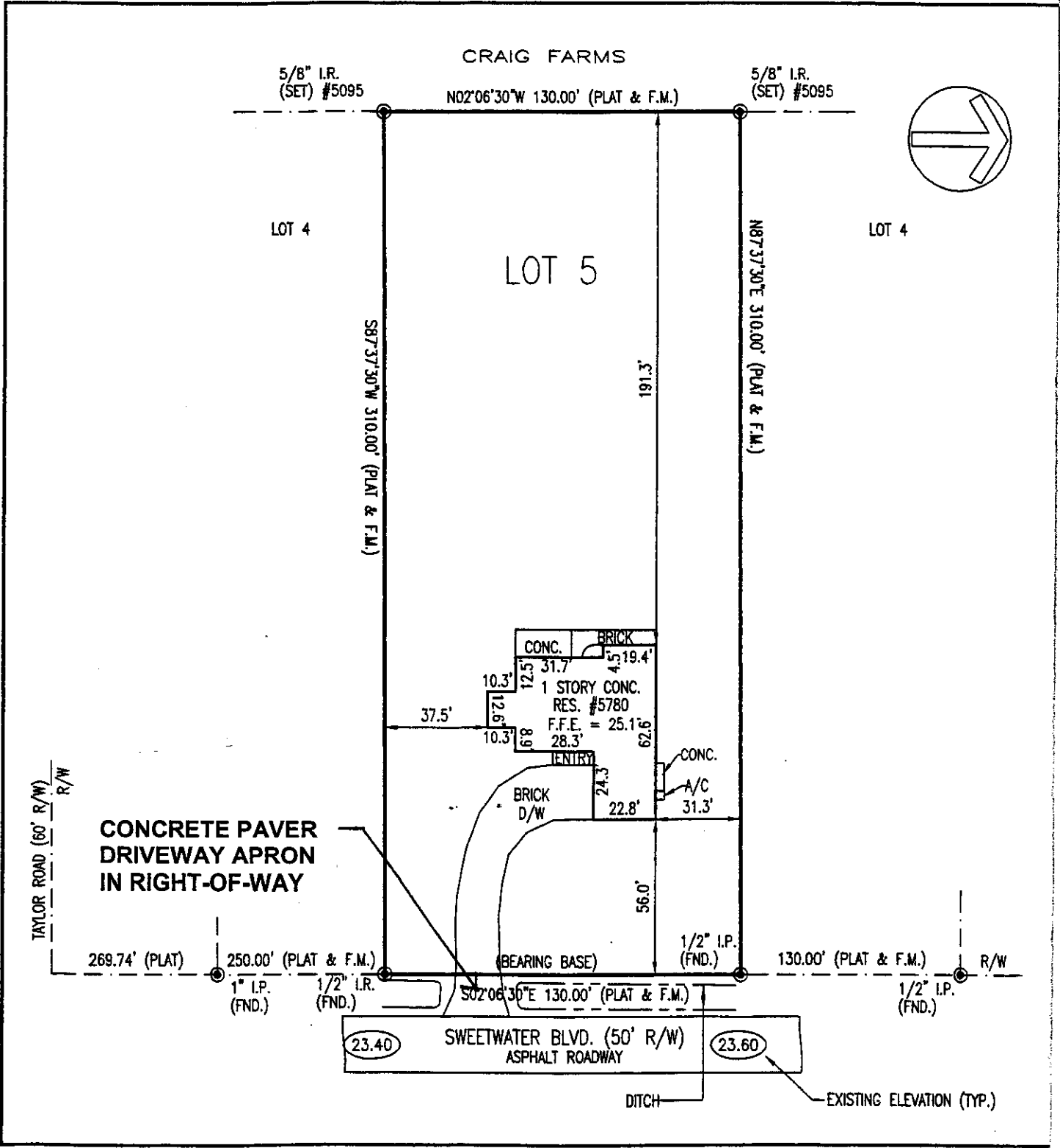
The foregoing instrument was acknowledged before me this 24 day of JUNE, 2008, by **WESLEY G. NEGRINI and KATHERINE R. NEGRINI**, the Licensee/Owners of the real property which is the subject of the foregoing License Agreement, and who are personally known to me, or have produced the following as identification: Florida D.L.



Notary Public, State of Florida at Large
Printed name, commission and expiration:

Landscape License Agreement
CPO FORM: 06/20/2008







**5780 SWEETWATER BLVD.
CONCRETE PAVER DRIVEWAY**

PHOTO TAKEN JUNE 10, 2008