



Interoffice Memorandum

November 16, 2023

TO: Mayor Jerry L. Demings
-AND-
County Commissioners

FROM: Joseph C. Kunkel, P. E., Director, Public Works Department

CONTACT PERSON: Dale V. Mudrak, P. E., Manager
Development Engineering Division

PHONE NUMBER: (407) 836-7974

SUBJ: Use Agreement Between Greenway Park DRI, LLC and Orange
County

Greenway Park DRI, LLC, a Florida limited liability company (GPDR) with a principal place of business at 6900 Tavistock Lakes Boulevard has applied for the approval of a Use Agreement for the property located at 15904 Wyndham Lakes Boulevard, Orlando Florida 32824.

These documents would allow GPDR to install, construct, and maintain improvements inside of a drainage easement dedicated to Orange County in order that the property may be utilized and developed. The use agreement has been revised from the standard version and has been reviewed and approved by the County Attorney's Office.

Staff recommends approval of the Use Agreement for recording.

Action Requested: Approval and execution of Use Agreement between Greenway Park DRI, LLC and Orange County for recording. District 4.

DVM/CMK

Attachment

BCC Mtg. Date: November 28, 2023

Prepared by:

Robyn Noren
Tavistock Development Company
6900 Tavistock Lakes Boulevard, Suite 200
Orlando, FL 32827

Return to:

Orange County Attorney's Office
Attn: Whitney Evers
P.O. Box 1393
Orlando, FL 32802-1393

Tax parcel ID No.: 28-24-30-0321-01-000

**USE AGREEMENT BETWEEN
GREENEWAY PARK DRI, LLC AND ORANGE COUNTY**

THIS AGREEMENT (the "**Agreement**") is entered into by and between Greeneway Park DRI, LLC, a Florida limited liability company ("**GPDRI**") with a principal place of business at 6900 Tavistock Lakes Boulevard, Suite 200, Orlando, Florida 32827, and Orange County, a charter county and political subdivision of the State of Florida (the "**County**"), with a mailing address at P.O. Box 1393, Orlando, FL 32802-1393.

RECITALS

WHEREAS, a multifamily residential project on a certain parcel of real property (the "**Property**"), as more particularly described in Exhibit "A," attached hereto and incorporated herein by this reference, has been or is being constructed and is located in the unincorporated area of Orange County; and

WHEREAS, GPDRI, as fee simple owner of the Property, will assure the perpetual and continuous maintenance of the Property; and

WHEREAS, GPDRI desires to obtain a Right-of-Way Utilization Permit (the "**Permit**") from County, whereby GPDRI will be allowed to install, construct, and maintain the following improvements: Asphalt Paving & Parking Spaces, Concrete Sidewalks, Curbs, Curb Ramps, Water Mains, Gravity Sewer Mains, Electric utility lines, Communication utility lines, Perimeter Fence,

Irrigation, Sod, and Landscaping (collectively, the “**Improvement(s)**”) in that certain drainage easement dedicated to the perpetual use of the public via Plat Book 71, Page 145-149, Public Records of Orange County, Florida located within the Property (the “**Dedicated Area**”), said Dedicated Area being more particularly described in Exhibit “B,” attached hereto and incorporated herein by reference; and

WHEREAS, the work associated with the Improvement(s) is detailed in Exhibit “C,” attached hereto and incorporated herein by reference; and

WHEREAS, County requires that GPDRI be solely responsible for the fulfillment of certain commitments and covenants to assure the perpetual and continuous maintenance of any such Improvement(s), which commitments and covenants are more particularly set forth herein.

NOW, THEREFORE, in consideration of the foregoing and of the terms and conditions set forth herein, the parties agree as follows:

1. **RECITALS**. The foregoing recitals are true and correct and form a material part of this Agreement.
2. **RIGHT-OF-WAY UTILIZATION PERMIT**. Any such Permit issued by County to GPDRI shall be subject to the terms of this Agreement. GPDRI shall not, while installing or maintaining the Improvement(s), damage or disturb any portion of the Dedicated Area without prior written approval by County and County’s prior written approval of a plan to restore the Dedicated Area. Nothing contained herein or by virtue of the issuance of the Permit shall be deemed to modify any portion of the Dedicated Area.

3. **IMPROVEMENTS.** Any improvement that, in County's sole opinion, may impede the functional operation of planned, proposed, or existing underdrains shall not be permitted under this Agreement. The Improvement(s) shall be established and maintained in such a manner as will not interfere with the use of the Dedicated Area by the public nor create a safety hazard on such Dedicated Area. If County determines, in its sole discretion, that the Improvements do present a safety hazard, then GPDRI, at its sole expense and at no cost to County, shall relocate the Improvement(s) in such a manner as to eliminate the hazard, to the satisfaction of County.

4. **REMOVAL/RELOCATION.** If, in the sole opinion of County, the Improvement(s) interferes with any construction, reconstruction, alteration, improvement(s), or maintenance which County desires to perform on, around, or under the Dedicated Area, or if County desires removal for any reason, then written notice of such shall be sent to GPDRI. GPDRI shall commence efforts to remove or relocate the Improvement(s) as requested by County, and to County's satisfaction, within thirty (30) days of said notice or, in the event such notice is returned as undeliverable to GPDRI's address listed above, within thirty (30) days of the first date of publication of legal notice, which publication shall appear in not less than two weekly issues of a newspaper of general circulation in Orange County, Florida. Such relocation or removal shall be completed to the County's satisfaction within ninety (90) days, or such later date as agreed to by the County. Any such relocation or

removal of the Improvement(s) shall be at no cost or expense to County.

5. **INDEMNIFICATION.** To the fullest extent permitted by law, GPDRI shall defend, indemnify, and hold harmless County from and against all claims, damages, losses, and expenses, including reasonable attorney fees and costs, arising out of, or resulting from, the performance of their operations under this Agreement. GPDRI shall defend, indemnify, and hold harmless County (and any governmental body or utility authority properly using the Dedicated Area, collectively the “**Governmental Entities**”) from and against all expenses, costs, or claims for any damages to the Improvement(s) which may result from the use of the Dedicated Area by the Governmental Entities due to maintenance, construction, installation, or other proper use by the Governmental Entities within the Dedicated Area.

6. **INSURANCE.**

GPDRI shall, or shall cause its contractor(s) to, procure and maintain, throughout the construction of the Improvement(s), insurance with limits and terms as specified below:

- a) Commercial General Liability insurance for all operations including but not limited to contractual, products, and completed operations, and personal injury with limits of not less than \$1,000,000 per occurrence and an aggregate limit of at least twice the per occurrence limit;

- b) Workers’ Compensation insurance with statutory workers’ compensation limits and no less than \$500,000 for Employers’ Liability with a waiver of

subrogation in favor of the County, its consultants, agents, employees, and officials;

c) Business automobile liability insurance for all owned, non-owned, and hired vehicles with limits of not less than \$1,000,000 per occurrence; and

d) Pollution liability coverage for all operations on County property with limits of not less than \$1,000,000 per occurrence.

GPDRI shall be responsible for ensuring that each of its contractors and subcontractors of every tier procure and maintain the insurance specified above and shall furnish to the County evidence of such insurance prior to commencement of construction. The County shall be listed as an additional insured on all insurance policies required herein, except workers' compensation. All coverage shall be primary and not contributory with any insurance or self-insurance maintained by the County. County shall be notified at least thirty (30) days prior to any material change, cancellation, non-renewal of any policy required herein.

7. **REMEDIES.** Upon any failure by GPDRI to perform its obligations under this Agreement, County shall have the following remedies:

- (i) action for specific performance; or
- (ii) action for injunction; or
- (iii) any combination of the foregoing.

8. **RECORDING.** This Agreement shall be recorded in the Public Records of Orange County, Florida within thirty (30) days of its execution. Promptly upon execution of this Agreement, GPDRI shall pay (or cause to be paid) to County an amount equal to

the applicable cost of recording this Agreement in the Public Records of Orange County, Florida.

9. **COVENANTS RUNNING WITH THE LAND.** The provisions of this Agreement shall constitute covenants running with the land or an equitable servitude upon the land, as the case may be, applicable to all of the Property described herein or any portion thereof. Furthermore, this Agreement shall be binding on all parties having any right, title, or interest in the Property described herein, or any portion thereof, and their heirs, personal representatives, successors, and assigns. GPDRI declares that the Property described in this Agreement and any portion thereof shall be held, sold, and conveyed subject to the provisions of this Agreement. This Agreement shall inure to the benefit of and be enforceable by County and its legal representatives, successors, and assigns.
10. **DURATION.** The provisions, restrictions, and covenants of this Agreement shall run with and bind the land for a period of twenty-five (25) years from the date this Agreement is recorded in the Public Records of Orange County, Florida. Thereafter, this Agreement shall be automatically extended for successive periods of ten (10) years each, unless a written instrument agreeing to revoke said provisions, restrictions, and covenants is approved by a majority of the Orange County Board of County Commissioners and GPDRI. No such agreement to revoke shall be effective until said written instrument has been signed, acknowledged, and recorded in the Public Records of Orange County, Florida. Notwithstanding any of the above

provisions, County shall have the right to cancel this Agreement upon thirty (30) days prior written notice to GPDRI. No such cancellation shall be effective until a written instrument has been executed and acknowledged by the Board of County Commissioners and recorded in the Public Records of Orange County, Florida.

11. **AMENDMENT**. The provisions, restrictions, and covenants of this Agreement shall not be modified or amended except in a written instrument approved by a majority of the Orange County Board of County Commissioners and by GPDRI. No such modification or amendment shall be effective until said written instrument has been signed, acknowledged, and recorded in the Public Records of Orange County, Florida.
12. **COMPLIANCE WITH APPLICABLE LAWS**. GPDRI shall comply with all applicable state laws and county ordinances, including the Orange County Right-of-Way Utilization Regulations.
13. **DISCLAIMER OF COUNTY RESPONSIBILITY**. Nothing contained herein shall create any obligation on the part of County to maintain or participate in the maintenance of the Improvement(s).
14. **EFFECTIVE DATE**. This Agreement shall take effect upon being recorded in the Public Records of Orange County, Florida.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective duly authorized representatives on the dates set forth below.



COUNTY

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

Date: November 28, 2023

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Jennifer Ann - Kline*
Deputy Clerk

I hereby acknowledge receipt of this notice and further acknowledge that I have read and understand all the provisions contained herein.

GPDRI

GREENEWAY PARK DRI, LLC, a
Florida limited liability company

By: *[Signature]*

Print Name: Daniel J. Young

Title: Vice President

Date: _____

[Signature]

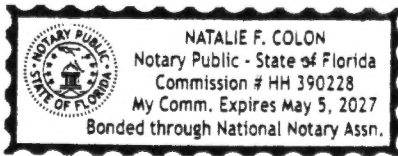
Print Name: Natalie E. Colon

[Signature]

Print Name: Marilyn S. Gaye

**STATE OF FLORIDA
COUNTY OF ORANGE**

The foregoing instrument was acknowledged before me by means of physical presence / online notarization, this 28th day of August, 2023 by Daniel J. Young as Vice President of Greenway Park DRI, LLC, a Florida limited liability company, on behalf of the limited liability company, who is personally known to me.



[Signature]
Signature of person taking acknowledgement
Name typed, printed
or stamped: _____
Title or rank: _____

EXHIBIT "A"

Legal Description and Sketch of Property

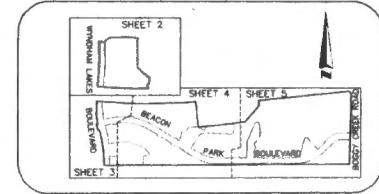
Lot 1, BEACON PARK BOULEVARD, according to the Plat thereof, as recorded in Plat Book 71, Pages 145 – 149, inclusive, Public Records of Orange County, Florida.

BEACON PARK BOULEVARD

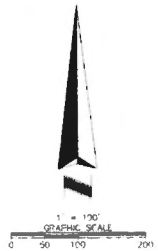
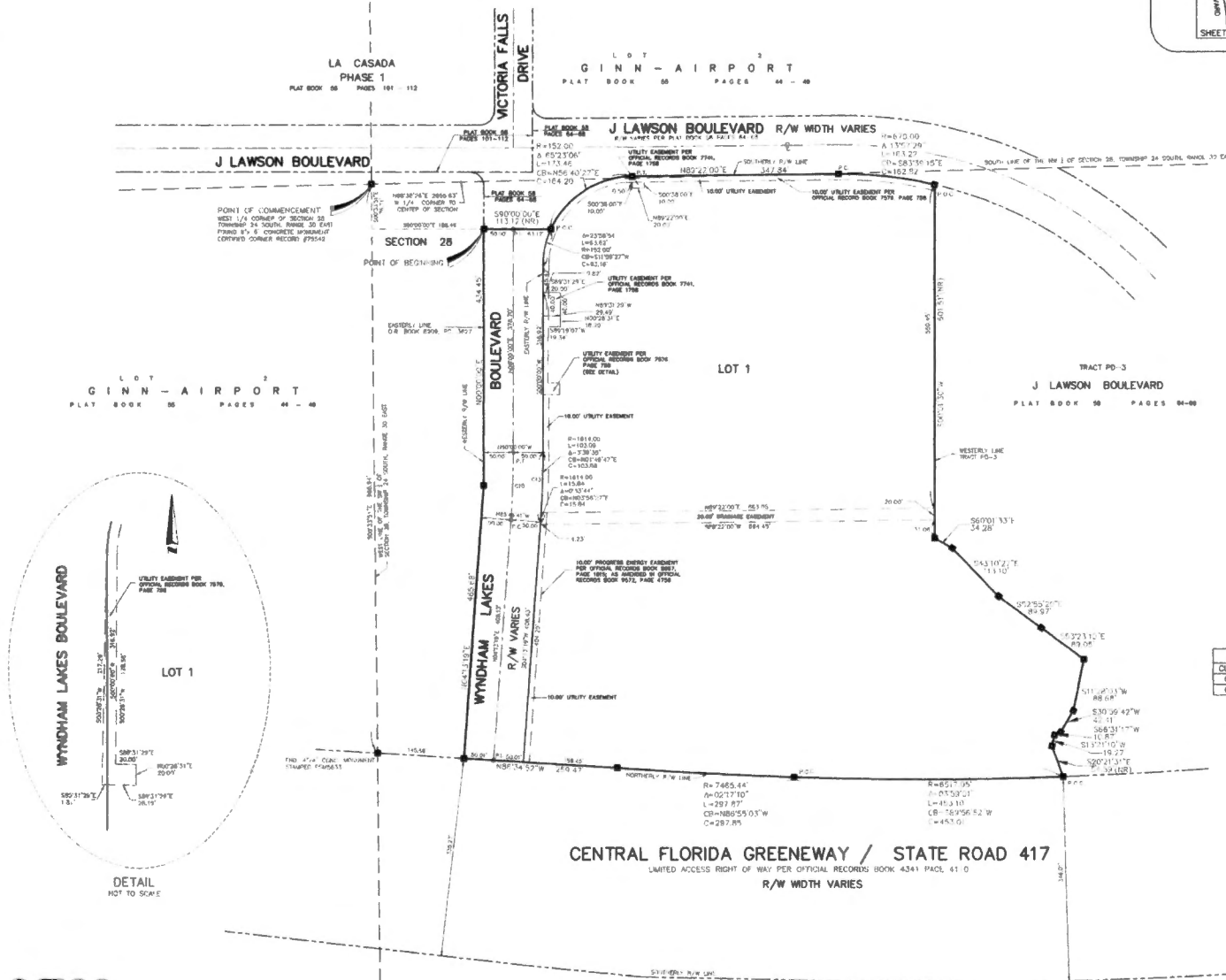
SHEET 2 OF 5

PLAT BOOK 71 PAGE 146

A REPLAT OF A PORTION OF LOTS 1 AND 2, GINN-AIRPORT AS RECORDED IN PLAT BOOK 55, PAGES 44-49 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA LYING IN SECTION 28, TOWNSHIP 24 SOUTH, RANGE 30 EAST, ORANGE COUNTY, FLORIDA



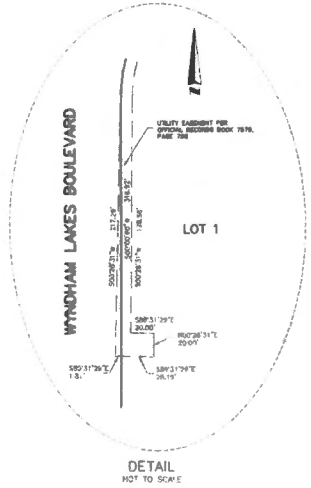
SHEET INDEX NOT TO SCALE



LEGEND AND ABBREVIATIONS

- P: PLAT
- A: ARC
- R: RADIUS
- C: CHORD
- D: DISTANCE
- F: FEET
- M: METERS
- S: SQUARE FEET
- AC: ACRES
- P.C.: POINT OF CURVATURE
- P.O.C.: POINT ON A CURVE
- P.T.: POINT OF TANGENCY
- P.L.: POINT OF INTERSECTION
- P.M.: POINT OF MEASUREMENT
- P.A.: POINT OF ANGLE
- P.O.A.: POINT OF ANGLE
- P.L.A.: POINT OF LOCATION
- P.L.L.: POINT OF LOCATION
- P.L.S.: POINT OF LOCATION
- P.L.T.: POINT OF LOCATION
- P.L.U.: POINT OF LOCATION
- P.L.V.: POINT OF LOCATION
- P.L.W.: POINT OF LOCATION
- P.L.X.: POINT OF LOCATION
- P.L.Y.: POINT OF LOCATION
- P.L.Z.: POINT OF LOCATION
- P.L.AA: POINT OF LOCATION
- P.L.AB: POINT OF LOCATION
- P.L.AC: POINT OF LOCATION
- P.L.AD: POINT OF LOCATION
- P.L.AE: POINT OF LOCATION
- P.L.AF: POINT OF LOCATION
- P.L.AG: POINT OF LOCATION
- P.L.AH: POINT OF LOCATION
- P.L.AI: POINT OF LOCATION
- P.L.AJ: POINT OF LOCATION
- P.L.AK: POINT OF LOCATION
- P.L.AL: POINT OF LOCATION
- P.L.AM: POINT OF LOCATION
- P.L.AN: POINT OF LOCATION
- P.L.AO: POINT OF LOCATION
- P.L.AP: POINT OF LOCATION
- P.L.AQ: POINT OF LOCATION
- P.L.AR: POINT OF LOCATION
- P.L.AS: POINT OF LOCATION
- P.L.AT: POINT OF LOCATION
- P.L.AU: POINT OF LOCATION
- P.L.AV: POINT OF LOCATION
- P.L.AW: POINT OF LOCATION
- P.L.AX: POINT OF LOCATION
- P.L.AY: POINT OF LOCATION
- P.L.AZ: POINT OF LOCATION

CURVE	LENGTH	RADIUS	CENTRAL ANGLE	CHORD BEARING	CHORD
C10	115.25	1564.00'	041.318°	N02°06'30"E	115.25
C13	118.95'	1684.00'	041.318°	N02°06'30"E	118.95



ASM
AMERICAN
SURVEYING
& MAPPING INC.
CORPORATION OF FLORIDA (PUBLIC COMPANY)
1650 N. WINDY BAY BLVD., SUITE 100
ORANGE COUNTY, FLORIDA 32137
(407) 266-1719

MATCHLINE
SEE SHEET 3 OF 5

EXHIBIT "B"

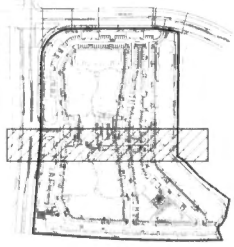
Legal Description and Sketch of Dedicated Area

That certain 20.00' Drainage Easement, as shown within Lot 1, BEACON PARK BOULEVARD, according to the Plat thereof, as recorded in Plat Book 71, Pages 145 – 149, inclusive, Public Records of Orange County, Florida.

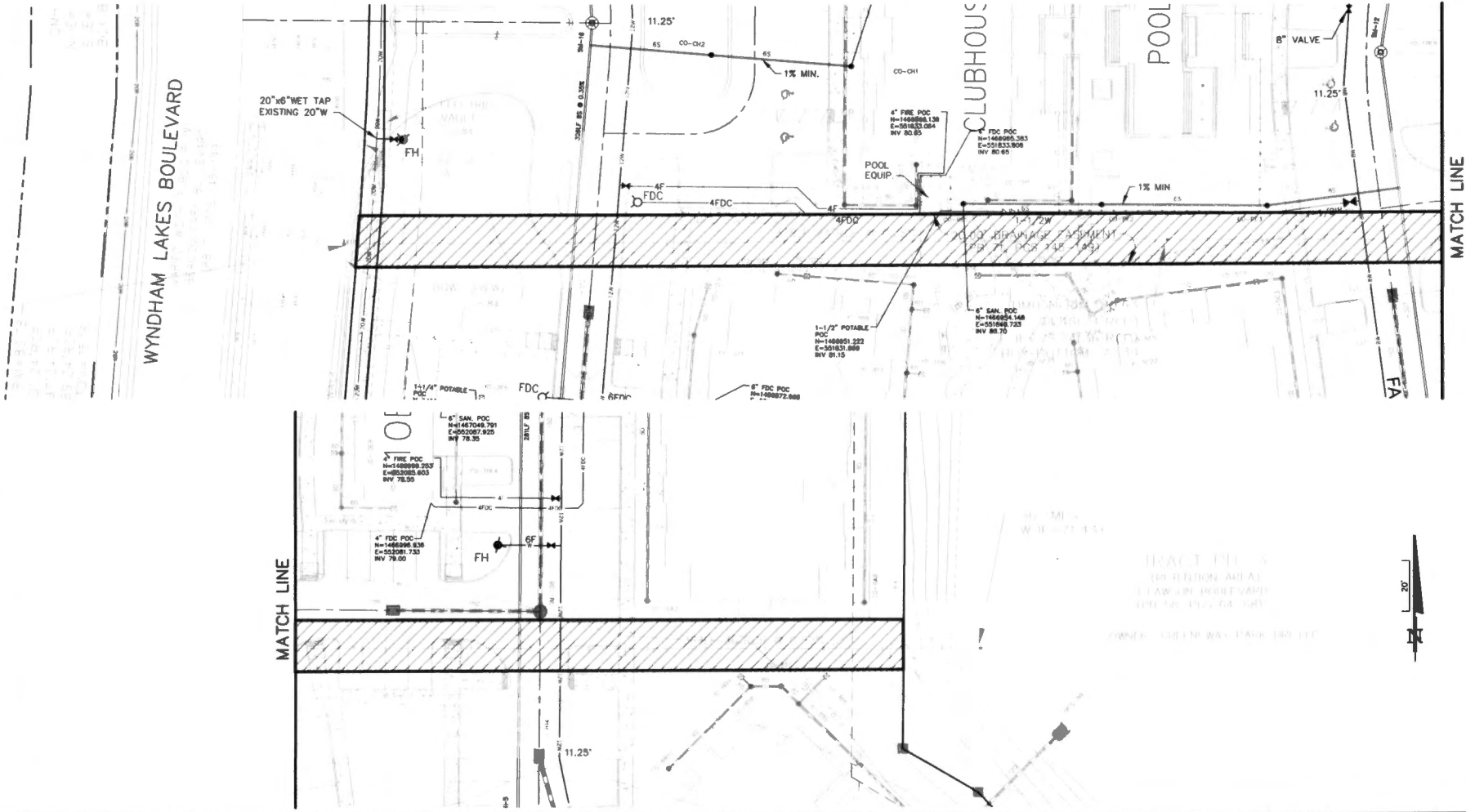
DONALD W. MCINTOSH ASSOCIATES, INC. RESERVES THE EXCLUSIVE COPYRIGHT AND PROPERTY RIGHTS TO THIS DRAWING WHICH MAY NOT BE REPRODUCED, CHANGED, OR COPIED IN ANY FORM OR MANNER, NOR CAN IT BE ASSIGNED TO ANY PARTY WITHOUT DONALD W. MCINTOSH ASSOCIATES, INC.'S WRITTEN CONSENT.

GENERAL NOTES:

1. SEE DEVELOPMENT NOTES, SPECIFICATIONS & LEGEND SHEET C002 & C003 FOR ADDITIONAL INFORMATION.
2. THE SCALE OF THIS DRAWING MAY HAVE CHANGED DUE TO REPRODUCTION.
3. I, MICHAEL C. SPURLOCK, P.E. HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE ALL EXISTING UTILITIES HAVE BEEN FIELD LOCATED AND THE LOCATION AND ELEVATION DEPICTED ON THESE PLANS IS BASED ON ACTUAL SURVEY, GROUND PENETRATING RADAR, SOFT DIG EXCAVATIONS, AND OTHER INDUSTRY METHODS. I FURTHER CERTIFY THAT ALL MEASURES HAVE BEEN TAKEN WITH REGARD TO UTILITY PROVIDERS' NOTIFICATION TO MARK UTILITIES IN ACCORDANCE WITH CHAPTER 556 F.S., SUNSHINE STATE ONE CALL.



KEY MAP



SHEET	KELSON APARTMENTS (g.k.a.: GINN PROPERTY PD) GREENWAY II APARTMENTS ORANGE COUNTY, FLORIDA PROJECT # 21-111	DESIGNED/ DRAWN BY CHECKED BY DATE SCALE JOB NUMBER
	 DONALD W. MCINTOSH ASSOCIATES, INC. PLANNERS SURVEYORS 2600 PARK AVENUE NORTH WINTER PARK, FL 32789 407-844-4088	

EXHIBIT "C"

Detailed description of Improvement(s)

- **SUPPLEMENTAL MAINTENANCE** – Trimming of shrubs, palms, trees, flora forming part of the landscape of the multi-family site and grounds
- **INSTALL LANDSCAPING** – Planting of shrubs, palms, trees forming part of the landscape of the site and grounds
- **INSTALL HARDSCAPE** – Brick pavers, concrete walkways, road asphalt, and curb
- **ILLUMINATION** – Parking areas and walkways
- **PLACEMENT OF MULCH**
- **PLACEMENT OF SOD**