




Interoffice Memorandum

AGENDA ITEM

October 21, 2019

TO: Mayor Jerry L. Demings
—AND—
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Chairman 
Roadway Agreement Committee

SUBJECT: November 12, 2019 – Consent Item
First Amendment to Right-of-Way and Proportionate Share
Agreement for Heartwood
Chuluota Road: From Colonial Drive to Lake Pickett Road

The Roadway Agreement Committee has reviewed the First Amendment to the Right-of-Way and Proportionate Share Agreement for Heartwood ("First Amendment") by and between Home Dynamics Heartwood, LLC, and Orange County to amend the terms of the Right-of-Way and Proportionate Share Agreement for Heartwood ("Agreement") approved by the Board on January 9, 2018, and recorded as Document #20180036309. The First Amendment provides for a change of ownership from Home Dynamics Corporation to Home Dynamics Heartwood, LLC and to re-calculate creditable Right-of-Way to be conveyed due to the project entrance along Lake Pickett Road shifting because of sight distance concerns. The value of impact fee credits for eligible lands increases from \$17,350 to \$17,889 with this First Amendment.

The Roadway Agreement Committee approved the Amendment on September 18, 2019. The Specific Project Expenditure Report and Relationship Disclosure Forms are on file with the Transportation Planning Division.

If you have any questions, please feel free to contact me at 407-836-5393.

ACTION REQUESTED: Approval and execution of First Amendment to Right-of-Way and Proportionate Share Agreement for Heartwood Right-of-Way for Lake Pickett Road Improvements and Proportionate Share Contribution for Chuluota Road From Colonial Drive to Lake Pickett Road by and between Home Dynamics Heartwood, LLC and Orange County due to a change of ownership and a minor increase in impact fee creditable right-of-way to be conveyed. District 5

JVW/TC:fb
Attachment

BCC Mtg. Date: November 12, 2019

Prepared by and after recording return to:

Jim McNeil, Esq.
Akerman LLP
420 S. Orange Avenue, Suite 1200
Orlando, Florida 32801

Tax Parcel I.D. No.: 10-22-32-0000-00-016

**FIRST AMENDMENT TO
RIGHT-OF-WAY AND PROPORTIONATE SHARE AGREEMENT FOR
Heartwood**

**Right-of-Way for Lake Pickett Road Improvements and Proportionate Share Contribution for
Chuluota Road from Colonial Drive to Lake Pickett Road**

This First Amendment to Right-of-Way and Proportionate Share Agreement (the “**First Amendment**”), effective as of the latest date of execution (the “**Effective Date**”), is made and entered into by and between **Home Dynamics Heartwood, LLC**, a Florida limited liability company, whose mailing address is 4755 Technology Way, Suite 210, Boca Raton, FL 33431-3343 (the “**Owner**”) and **Orange County**, a charter county and political subdivision of the State of Florida (“**County**”), whose mailing address is c/o Orange County Administrator, Post Office Box 1393, Orlando, Florida 32802-1393 (“**Owner**” and “**County**” are collectively referred to herein as the “**Parties**”).

WITNESSETH:

WHEREAS, Owner’s affiliate, Home Dynamics Corporation, as Applicant, and County entered into that certain Right-of-Way and Proportionate Share Agreement for Heartwood approved by the Orange County Board of County Commissioners (“**BCC**”) on January 9, 2018 and recorded on January 18, 2018 as Document # 20180036309, in the Public Records of Orange County, Florida (the “**Original Agreement**”); and

WHEREAS, on or about March 16, 2018, Owner acquired the Property, as defined in the Original Agreement, as more particularly described in that certain Warranty Deed recorded on March 30,

2018, as Document # 20180190336, in the Public Records of Orange County, Florida and as shown on the project location map identified as Exhibit "A", and as more particularly described on Exhibit "B", both of which are attached hereto and incorporated herein by this reference, also referred to herein as Heartwood (the "Project"); and

WHEREAS, the location of the entrance to the Project from Lake Pickett Road was shifted during Preliminary Subdivision Plan review, in order to address issues related to sight distance, resulting in changes to the "Impact Fee Credit Eligible Lands" and "Non-Impact Fee Credit Eligible Lands," each as defined in the Original Agreement, to be dedicated to the County; and

WHEREAS, the shifting of the Project entrance requires amendment to the Original Agreement, in order to replace Exhibit "C" and Exhibit "D" and related to the recalculation of impact fee credits; and

WHEREAS, County and Owner therefore desire to amend certain terms and provisions of the Original Agreement as set forth below; and

WHEREAS, in all other respects, the original terms and provisions of the Original Agreement shall remain unchanged and in full force and effect.

NOW, THEREFORE, for and in consideration of the above premises, the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and County agree as follows:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Replacement of Exhibit "C". Exhibit "C" of the Original Agreement (the "Impact Fee Credit Eligible Lands") is hereby replaced by Exhibit "C" attached hereto and incorporated herein.

Section 3. Replacement of Exhibit "D". Exhibit "D" of the Original Agreement (the "Non-Impact Fee Credit Eligible Lands") is hereby replaced by Exhibit "D" attached hereto and incorporated herein.

Section 4. Revision to Value of Conveyed Lands. Section 2(d) of the Original Agreement is hereby revised to read as follows (with additional language indicated as underlined and deleted language indicated as ~~struck through~~):

(d) *Value of Conveyed Lands.* The value of the land to be conveyed by ~~Applicant~~ Owner to County has been determined in accordance with Section 23-95, Orange County Code, as may be amended from time to time.

The Parties hereby agree that the value of the Impact Fee Credit Eligible Lands to be conveyed by ~~Applicant~~ Owner to County, in return for credits against transportation impact fees to be paid in the future in connection with the Project (or another project to which Right-of-Way Credits (defined below) have been assigned by Applicant to Owner), ~~totals is Seventeen Thousand Three Hundred Fifty and 00/100 Dollars (\$17,350)~~ Seventeen Thousand Eight Hundred Eighty-Nine and 00/100 Dollars (\$17,889) (the “**Right-of-Way Credit Total**”). The Right-of-Way Credit Total results from an agreed-upon fair market value of \$75,000.00 per acre, or fraction thereof, and a total acreage of approximately ~~.23133~~ .23852 acre(s). The Right-of-Way Credit Total shall be the same regardless whether such lands are conveyed by deed or by plat. For County’s record keeping purposes, the Parties hereby agree that the value of the Non-Impact Fee Credit Eligible Lands to be conveyed to the County is Seventeen Thousand One Hundred Twenty-Three and 00/100 Dollars (\$17,123), based on an agreed-upon fair market value of \$75,000.00 per acre, or fraction thereof, and a total acreage of approximately 0.2283 acre(s).

Section 5. Revision to Notice. Section 7 of the Original Agreement is hereby revised to read as follows (with additional language indicated as underlined and deleted language indicated as struck through):

Notice. Any notice delivered with respect to this First Amendment or the Original Agreement shall be in writing and shall be deemed to be delivered (whether or not actually received) (i) when hand delivered to the person(s) hereinafter designated, or (ii) upon deposit of such notice in the United States

mail, postage prepaid, certified mail, return receipt requested, addressed to the person at the address set forth opposite the party's name below, or to such other address or to such other person as the party shall have specified by written notice to the other party delivered in accordance herewith:

As to Applicant Owner: David Schack
~~Home Dynamics Corporation~~ Home Dynamics Heartwood, LLC
4755 Technology Way, Suite 210
Boca Raton, FL 33431

With copy to: Jim McNeil, Esq.
Akerman LLP
420 S. Orange Avenue, Suite 1200
Orlando, FL 32801

As to Owner: Andre M. Roberge And Marielle S. Roberge
~~18600 Lake Pickett Road~~
~~Orlando, FL 32820~~

As to County: Orange County Administrator
P. O. Box 1393
Orlando, Florida 32802-1393

With copy to: Orange County Planning Community, Environmental, and
Development Services Department
Manager, Fiscal and Operational Support Division
201 South Rosalind Avenue, 2nd Floor
Orlando, Florida 32801

Orange County Planning Community, Environmental, and
Development Services Department
Manager, Transportation Planning Division
4200 South John Young Parkway
Orlando, Florida 32839

Orange County Planning Community, Environmental, and
Development Services Department
Manager, Planning Division
201 South Rosalind Avenue, 2nd Floor
Orlando, FL 32801

Section 6. Covenants Running with the Land. This First Amendment shall run with the Property and shall be binding upon and shall inure to the benefit and burden of the parties and of the heirs, legal representatives, successors, and assigns of Owner and any person, firm, corporation, or other

entity that may become the successor in interest to the Property. Notwithstanding the foregoing, however, the authority under Section 4 of the Original Agreement to instruct County to make deductions from Owner's road impact fee account shall remain with Owner unless expressly assigned in writing to another by Owner.

Section 7. Recordation of First Amendment. An executed original of this First Amendment shall be recorded, at Owner's expense, in the Public Records of Orange County, Florida within thirty (30) days of the Effective Date.

Section 8. Applicable Law. This First Amendment and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

Section 9. Time is of the Essence. Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this First Amendment and in the Original Agreement.

Section 10. Further Documentation. The parties agree that at any time following a request therefor by the other party, each shall execute and deliver to the other party such further documents and instruments reasonably necessary to confirm and/or effectuate the obligations of either party hereunder and the consummation of the transactions contemplated hereby.

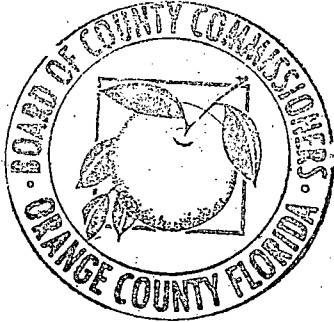
Section 11. Limitation of Remedies. County and Owner expressly agree that the consideration, in part, for each of them entering into this First Amendment is the willingness of the other to limit the remedies for all actions arising out of or in connection with this First Amendment. Accordingly, the remedies available to each party shall be as stated in the Original Agreement.

Section 12. Amendments. No amendment, modification, or other change to this Amendment or the Original Agreement shall be binding upon the parties unless in writing and executed by all the parties hereto.

Section 13. Counterparts. This First Amendment may be executed in up to three (3) counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

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



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: Byron W. Brooks

for Jerry L. Demings,
Orange County Mayor

Date: 12 Nov 19

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

By: Jennifer Klimetz
for Deputy Clerk

Printed name: Jennifer Klimetz

“OWNER”

Home Dynamics Heartwood, LLC, a Florida limited liability company

WITNESSES:

[Signature]
Print Name: Teresa Peterson

[Signature]
Print Name: LARISSA RUTSCH

By: Home Dynamics Corporation, a Florida corporation, as its Manager

By: [Signature]
Print Name: David Schack

Title: President

Date: 10/1/19

STATE OF FLORIDA
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me by David Schack, as President of Home Dynamics Corporation, a Florida corporation, as Manager of Home Dynamics Heartwood, LLC, a Florida limited liability company, who is known by me to be the person described herein and who executed the foregoing, this 1 day of October, 2019. He is personally known to me or has produced _____ as identification and did/did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 1 day of October, 2019

[Signature]
Notary Public

Print Name: Teresa Peterson

My Commission Expires: 8/25/23



Exhibit "A"

Project Location Map



Exhibit "B"

Legal Description and Sketch of Description for Property

[2 pages follow]

Legal Description

A portion of Section 10, Township 22 South, Range 32 East, Orange County, Florida, being more particularly described as follows:

BEGIN at the southwest corner of the Northwest 1/4 of the Southeast 1/4 of said Section 10; thence run N 00°37'10" W, along the west line thereof, a distance of 1,301.38 feet to a point on the southerly right-of-way line of State Road No. 420 (a 60.00 foot wide right-of-way); said point being a point on a non-tangent curve, concave northwesterly, having a radius of 440.27 feet; thence, on a chord bearing of N 57°56'12" E and a chord distance of 457.60 feet, run northeasterly, along the arc of said curve and along said southerly right-of-way line, a distance of 481.20 feet, through a central angle of 62°37'19" to a point 210.00 feet northerly of (when measured perpendicular to) the south line of the Southwest 1/4 of the Northeast 1/4 of said Section 10; thence run N 89°34'14" E, parallel with said south line, a distance of 57.35 feet to a point on a non-tangent curve, concave northwesterly, having a radius of 850.00 feet; thence, on a chord bearing of S 39°50'37" W and a chord distance of 148.48 feet, run southwesterly, along the arc of said curve, a distance of 148.67 feet, through a central angle of 10°01'17" to a point; thence run S 69°21'52" E, a distance of 423.44 feet; thence run N 84°07'02" E, a distance of 583.83 feet to a point on the east line of the Northwest 1/4 of the Southeast 1/4 of said Section 10; thence run S 00°42'51" E, along said east line, a distance of 1,332.67 feet to a point on the south line of the Northwest 1/4 of the Southeast 1/4 of said Section 10; thence run S 89°37'31" W, along said south line, a distance of 1,329.62 feet to the POINT OF BEGINNING.

Containing 40.74 acres, more or less.

Not a Boundary Survey.

The legal description was prepared by the Surveyor.

See Sheet 2 of 2 for sketch.

Lines shown hereon are radial unless noted NR (non-radial).

SKETCH OF DESCRIPTION ONLY - NOT A SURVEY

NO CORNERS WERE SET AND GANUNG-BELTON ASSOCIATES, INC. ASSUMES NO RESPONSIBILITY BEYOND ACCEPTED MATHEMATICAL CLOSURES. ALL BEARINGS AND DISTANCES SHOWN HEREON ARE SUBJECT TO FIELD VERIFICATION.

Sketch of Description

of

HEARTWOOD

situated in

**Section 10, Township 22 South, Range 32 East
Orange County, Florida**

PREPARED FOR:

Home Dynamics Corp.

JOB NO.

1517.5C

SKETCH OF DESCRIPTION NOT VALID WITHOUT THE ORIGINAL RAISED SEAL AND SIGNATURE OF A FLORIDA LICENSED SURVEYOR AND MAPPER. ADDITIONS OR DELETIONS TO THIS SKETCH OF DESCRIPTION BY SOMEONE OTHER THAN THE SIGNING PARTY IS PROHIBITED WITHOUT WRITTEN CONSENT OF THE SIGNING PARTY.

GBA LB No. 7194



GANUNG - BELTON ASSOCIATES, INC.

professional surveyors and mappers

SHEET

1 of 2

DATE

5/23/17

REV.

8/27/19

SCALE

As Noted

[Signature]
R. CLAYTON GANUNG
REG. P.L.S. NO. 4236

1275 E. Robinson Street, Orlando, FL 32801 (407) 894-6656



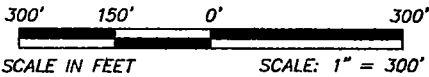
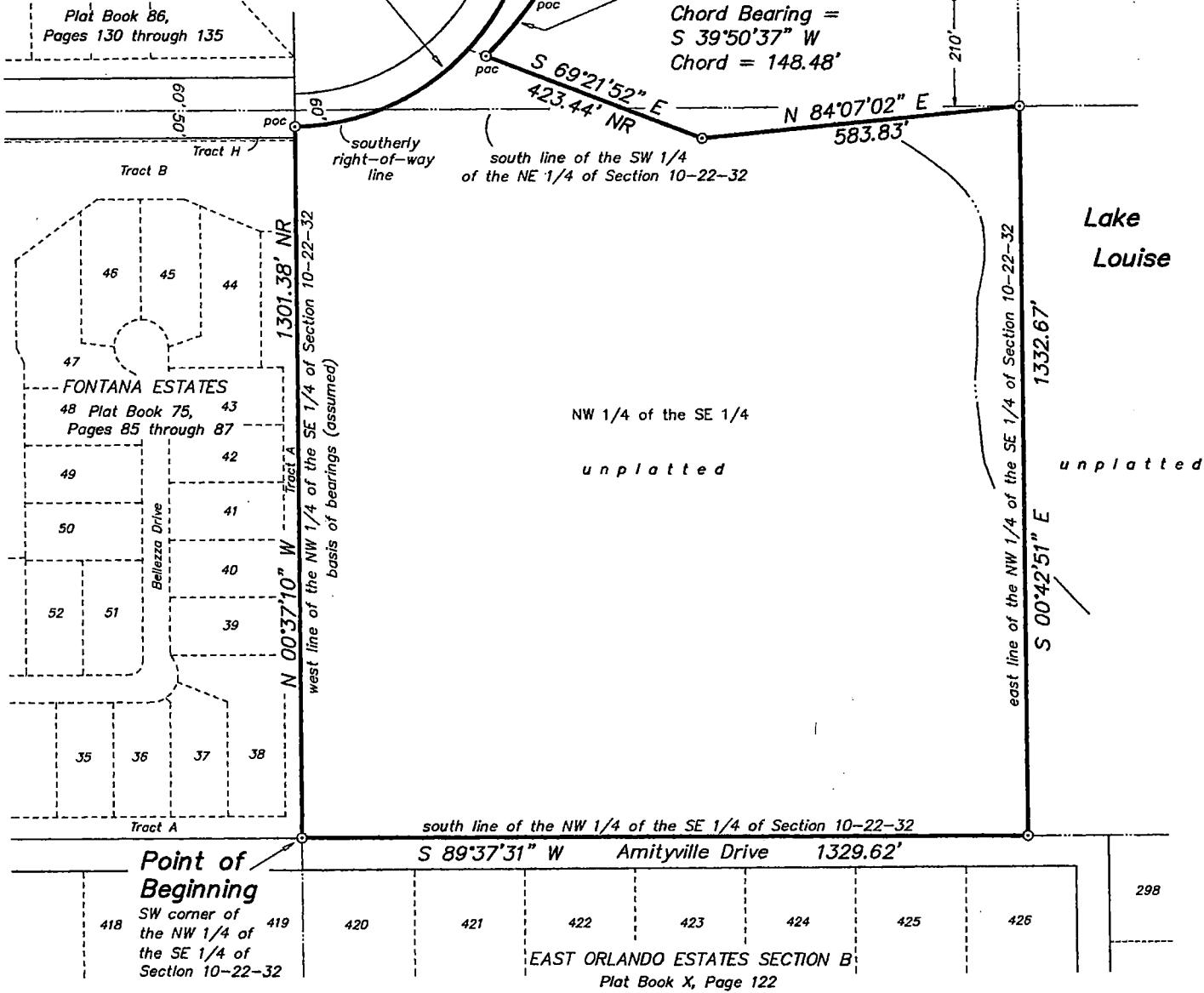
Δ = central angle
 R = radius
 L = arc length
 poc = point on curve
 NR = non-radial

$\Delta = 62^{\circ}37'19''$
 $R = 440.27'$
 $L = 481.20'$
 Chord Bearing =
 $N 57^{\circ}56'12'' E$
 Chord = 457.60'

$N 89^{\circ}34'14'' E$ unplatted
 57.35' NR

$\Delta = 10^{\circ}01'17''$
 $R = 850.00'$
 $L = 148.67'$
 Chord Bearing =
 $S 39^{\circ}50'37'' W$
 Chord = 148.48'

LAKE PICKETT RESERVE
 Plat Book 86,
 Pages 130 through 135



Sheet 2 of 2

See Sheet 1 of 2 for legal description.
 (GBA Job No. 1517.5C)

Exhibit "C"

**Legal Description and Sketch of Description
for Impact Fee Credit Eligible Lands**

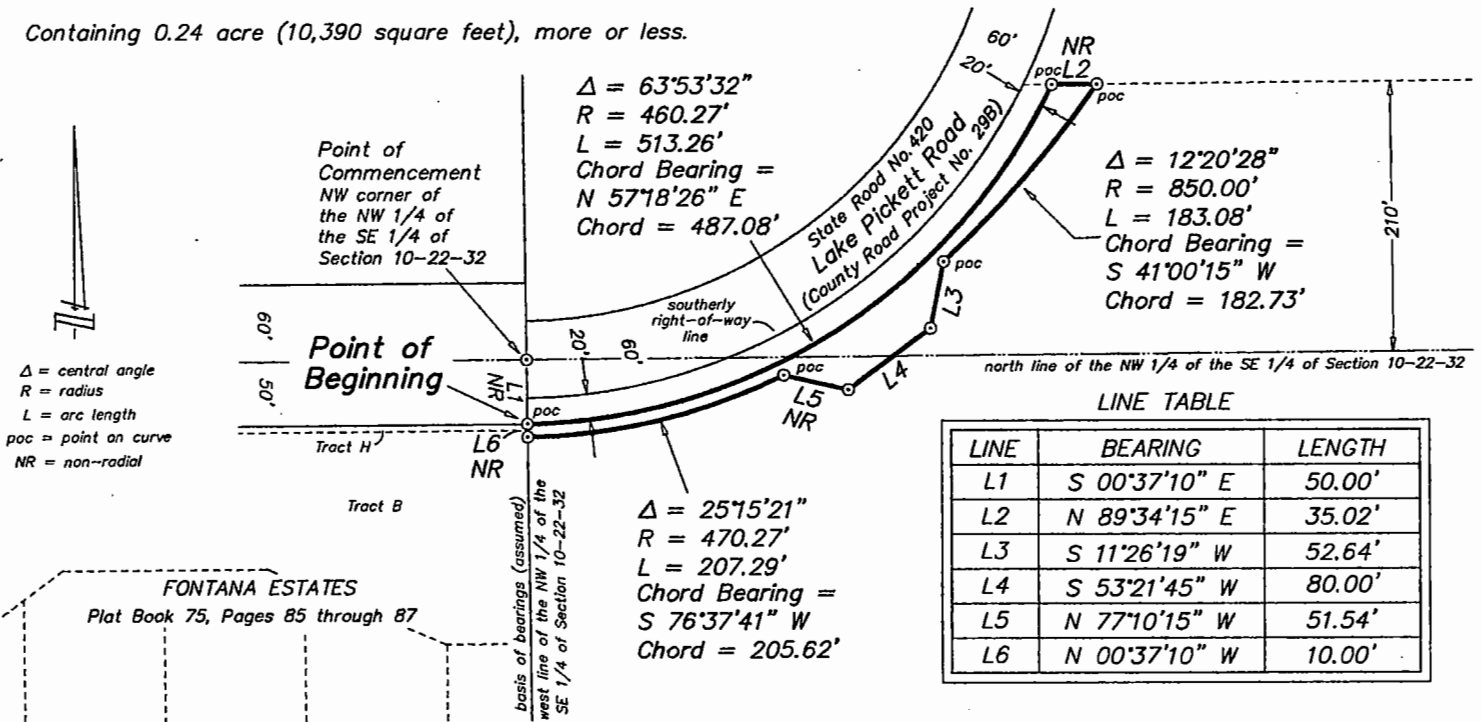
[1 page follows]

Legal Description

A portion of Section 10, Township 22 South, Range 32 East, Orange County, Florida, being more particularly described as follows:

Commence at the northwest corner of the Northwest 1/4 of the Southeast 1/4 of said Section 10; thence run S 00°37'10" E, along the west line thereof, a distance of 50.00 feet to a point 20.00 feet southerly of (when measured perpendicular to) the southerly right-of-way line of State Road No. 420 (a 60.00 foot wide right-of-way) for the POINT OF BEGINNING; said point being a point on a non-tangent curve, concave northwesterly, having a radius of 460.27 feet; thence, on a chord bearing of N 57°18'26" E and a chord distance of 487.08 feet, run northeasterly, parallel with said southerly right-of-way line and along the arc of said curve, a distance of 513.26 feet, through a central angle of 63°53'32" to a point 210.00 feet northerly of (when measured perpendicular to) the north line of the Northwest 1/4 of the Southeast 1/4 of said Section 10; thence run N 89°34'15" E, parallel with said north line, a distance of 35.02 feet to a point on a non-tangent curve, concave northwesterly, having a radius of 850.00 feet; thence, on a chord bearing of S 41°00'15" W and a chord distance of 182.73 feet, run southwesterly, along the arc of said curve, a distance of 183.08 feet, through a central angle of 12°20'28" to a point on a non-radial line; thence run S 11°26'19" W, a distance of 52.64 feet; thence run S 53°21'45" W, a distance of 80.00 feet; thence run N 77°10'15" W, a distance of 51.54 feet to a point on a non-tangent curve, concave northerly, having a radius of 470.27 feet; thence, on a chord bearing of S 76°37'41" W and a chord distance of 205.62 feet, run westerly, along the arc of said curve, a distance of 207.29 feet, through a central angle of 25°15'21" to a point on the aforesaid west line of the Northwest 1/4 of the Southeast 1/4 of said Section 10; thence run N 00°37'10" W, along said west line, a distance of 10.00 feet POINT OF BEGINNING.

Containing 0.24 acre (10,390 square feet), more or less.



Not a Boundary Survey.

The legal description was prepared by the Surveyor.

Lines shown hereon are radial unless noted NR (non-radial).

SKETCH OF DESCRIPTION ONLY - NOT A SURVEY

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Sketch of Description

of lands situated in

**Section 10, Township 22 South, Range 32 East
Orange County, Florida**

PREPARED FOR:

Home Dynamics Corp.

JOB NO.

1517.5B

SHEET

1 of 1

DATE

5/2/17

REV.

8/27/19

SCALE

1" = 150'

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GBA LB NO. 7194

[Signature]
R. CLAYTON GANUNG
REG. P.L.S. NO. 4236



GANUNG - BELTON ASSOCIATES, INC.

professional surveyors and mappers

1275 E. Robinson Street, Orlando, FL 32801 (407) 894-6656

Exhibit "D"

**Legal Description and Sketch of Description
for Non-Impact Fee Credit Eligible Lands**

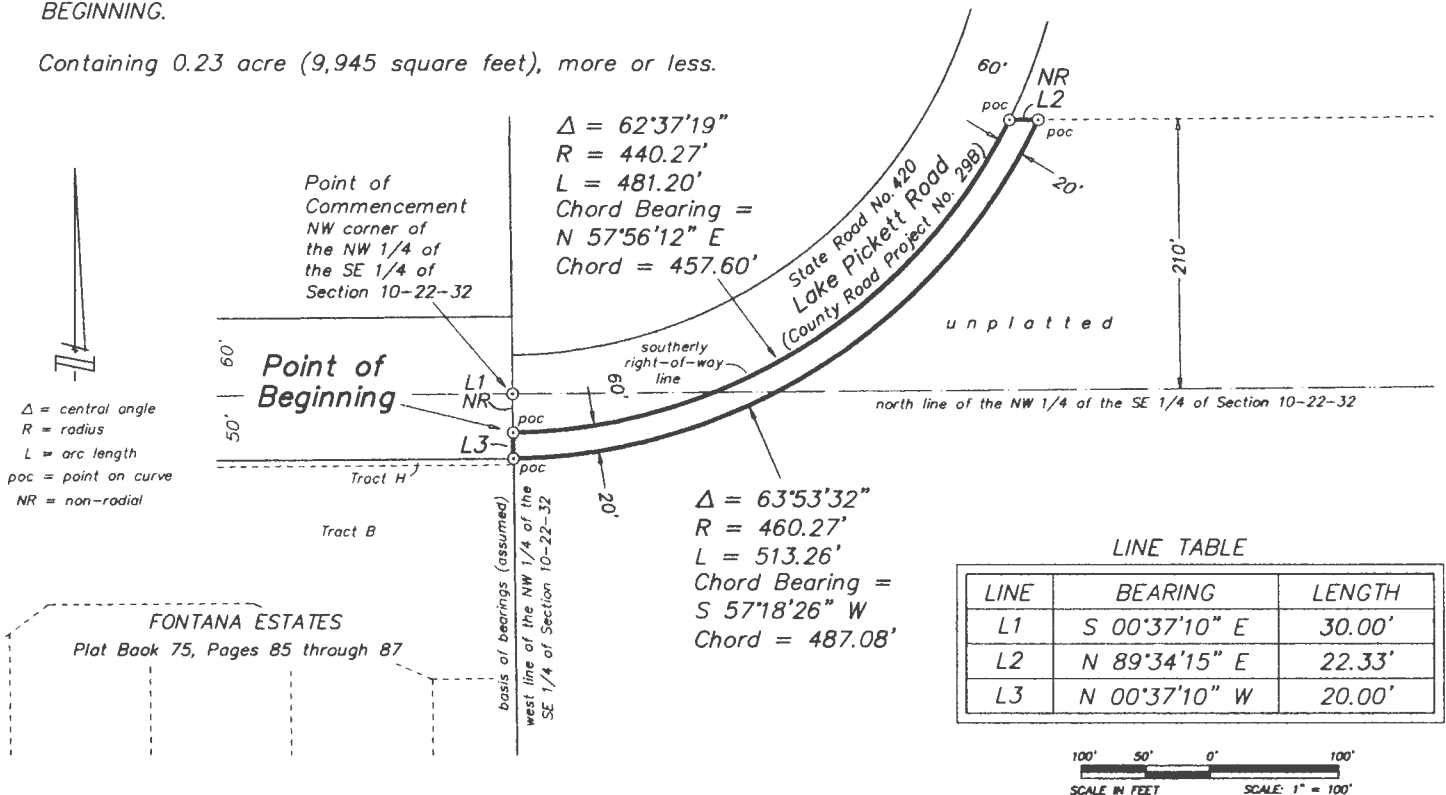
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Containing 0.23 acre (9,945 square feet), more or less.



Δ = central angle
 R = radius
 L = arc length
 poc = point on curve
 NR = non-radial

FONTANA ESTATES
 Plat Book 75, Pages 85 through 87

Not a Boundary Survey.
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 of lands situated in

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 Orange County, Florida**

PREPARED FOR: **Home Dynamics Corp.**

GANUNG - BELTON ASSOCIATES, INC.
 professional surveyors and mappers

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JOB NO. 1517.5A
 SHEET 1 of 1
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GBA LP No. 7494
 R. CLAYTON GANUNG
 REG. P.L.S. NO. 4236