



Orange County Government

Orange County
Administration Center
201 S Rosalind Ave.
Orlando, FL 32802-1393

Legislation Text

File #: 24-1734, **Version:** 1

Interoffice Memorandum

DATE: November 13, 2024

TO: Mayor Jerry L. Demings and County Commissioners

THROUGH: Mindy T. Cummings, Manager

FROM: Sara Solomon, Senior Title Examiner

CONTACT: Mindy T. Cummings, Manager

PHONE: 407-836-7090

DIVISION: Real Estate Management Division

ACTION REQUESTED:

Approval and execution of License Agreement by and between Orange County and Prose Horizon West Venture, LP, and authorization for the Manager of the Real Estate Management Division to exercise all delegations of authority expressly provided by the License Agreement for 23-E-103 Prose Horizon West Apartments - Offsite Improvements. District 1. **(Real Estate Management Division)**

PROJECT: 23-E-103 Prose Horizon West Venture LP - Offsite Improvements

PURPOSE: To provide for access over and through the licensed area for the installation of traffic markings upon the installation and construction of a traffic signal.

ITEM:

License Agreement

Cost: Donation

BUDGET: N/A

REVENUE: N/A

FUNDS: N/A

APPROVALS:

Real Estate Management Division

County Attorney's Office
Risk Management Division
Public Works Department

REMARKS: This action provides for access by Orange County to install traffic markings within the license area upon the installation and construction of a traffic signal adjacent to Avalon Road, as required by the permit.

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS
DEC 03 2024

LICENSE AGREEMENT

This License Agreement (“Agreement”) is made and entered into as of the last date signed below, (“Effective Date”) by and between ORANGE COUNTY, a charter county and political subdivision of the State of Florida, whose mailing address is P.O. Box 1393, Orlando, Florida 32802-1393 (“County”), and PROSE HORIZON WEST VENTURE, LP, a Delaware limited partnership, (“Licensor”), whose address is 7135 E. Camelback Road, Suite 300, Scottsdale, Arizona, 85251.

RECITALS

- A. Licensor owns certain real property located at 16810 Easthampstead Road, Winter Garden, Florida (the “Property”), also known as Parcel ID # 31-24-27-0316-01-000.
- B. The County owns that certain right-of-way for Avalon Road in the NE ¼ of Section 31, Township 24 South, Range 27 East, more specifically at the intersection of Avalon Road and Easthampstead Road (the “Intersection”).
- C. County desires to add a traffic signal in the Avalon Road right-of-way at the Intersection (“Traffic Signal”).
- D. County desires to restripe the ingress and egress lanes located on a portion of the Property (the “License Area”), which is more particularly depicted on Exhibit “A” attached hereto and hereby incorporated herewith, upon the installation and construction of the Traffic Signal and Licensor agrees thereto upon the terms and conditions set forth herein.

NOW THEREFORE, in consideration of use of the License Area, and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1) Recitals. The above referenced recitals are true and correct and hereby incorporated into this Agreement.

2) Term. The Term of this Agreement shall commence on the Effective Date and shall expire upon the installation of the Traffic Markings (defined hereinafter). This Agreement may be renewed for an additional period mutually agreed to upon written approval by both parties hereto. The Manager of the County’s Real Estate Department shall have the authority to exercise and approve this renewal option.

3) Use. During the Term of this Agreement, County shall have the non-exclusive right of access over and through the License Area for the installation of traffic markings on the pavement (“Traffic Markings”) upon the installation and construction of the Traffic Signal. County guarantees the Traffic Markings will include at least two (2) egress lanes with movements for a straight through traffic lane, right turn lane, and left turn lane. There is no fee for the County’s use of the License Area during the Term. County shall observe and comply with all applicable Federal, State, and local rules, orders, laws, and regulations pertaining to the use of the License Area.

4) Repair. The County shall install the Traffic Markings at its sole cost and expense and in a good and workmanlike manner. After the installation of the Traffic Markings, the County shall promptly: (i) remove all construction debris and equipment; and (ii) grade and restore the License Area to substantially the same condition as existed prior to commencement of such work. The County shall promptly repair, at its sole cost and expense, any damage to any other property not owned by the County, caused by County, or County's employees, agents, assigns, contractors, or representatives, exercising its rights under this Agreement including without limitation, landscaping, ground cover, planting, roadways, driveways, sidewalks, parking areas, and structures. In the event that County, or County's employees, agents, assigns, contractors, or representatives cause damage to the License Area or any other property not owned by the County in the exercise of the privileges granted herein, the County agrees to restore the License Area or any other property not owned by the County to its original condition and grade.

5) Indemnification. The County agrees to indemnify, defend, and hold harmless Licensor, and any of Licensor's affiliated entities, and their respective agents, employees, contractors, representatives, invitees, and licensees, of and from any and all claims, demands, suits, damages, expenses, penalties, fees, fines, proceedings, and liabilities (including, without limitation, costs of defense, investigation, and adjustment) arising out of or in connection with the County's use and occupancy of the License Area. The provisions of this Section 4 shall survive the expiration or earlier termination of this Agreement.

6) Insurance. County shall procure and maintain, for the duration of this Agreement, insurance of the types and limits specified below. Insurance carriers furnishing these coverages must be authorized to do business in the State of Florida, and must possess a minimum, current rating of A-Class VIII in the most recent edition of "Best's Key Rating Guide."

- a. Workers' Compensation - covering its employees with statutory workers' compensation limits, and no less than \$500,000.00 for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of Licensor and its agents, employees, and officials.
- b. Commercial General Liability - covering all operations including, but not limited to, Contractual, Products and Completed Operations and Personal Injury. The limits shall be not less than \$1,000,000.00 per occurrence and an aggregate limit of at least \$2,000,000.00. The Licensor shall be specifically named as an additional insured on all liability policies.
- c. Business Automobile Liability - covering all owned, non-owned and hired vehicles with limits of not less than \$1,000,000.00 per occurrence, Combined Single Limits (CSL) or its equivalent per occurrence.
- d. Pollution Legal Liability – Pollution Legal Liability with a limit of not less than one million dollars (\$1,000,000.00) per occurrence on a per-project basis.

Prior to entering upon the License Area, and during the duration of the Agreement, County shall file with the Licensor current certificates of all required insurance on forms acceptable to the Licensor and thirty (30) days prior written notice of cancellation or reduction in coverage, except ten (10) days prior written notice is allowed for cancellation due to non-payment of premium. The certificates shall be accompanied by the additional insured and waiver of subrogation endorsements for each policy that applies.

Failure of the Licensor to demand such certificates or other evidence of full compliance with these

insurance requirements or failure of the Licensor to identify a deficiency from evidence provided will not be construed as a waiver of County's obligation to maintain such insurance. It shall be the responsibility of County to ensure that all its contractors maintain adequate insurance. Failure of County to maintain adequate insurance coverage for itself or for any other persons or entities for which it is responsible, or to ensure that its contractors maintain adequate coverage, shall not relieve County of any contractual responsibility or obligation or liability.

7) Hazardous Waste and Materials. The County, its employees, agents, licensees, vendors, and suppliers shall not discharge any hazardous or toxic materials or waste on the License Area. The County shall indemnify, defend, and hold harmless the Licensor from and against any claims including without limitation third party claims for personal injury or property damage, actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, taxes, assessments, liabilities, settlement amounts, interest or losses, including reasonable attorney's fees and expenses, consultant fees, expert fees, and all other costs and expenses of any kind or nature that arise directly or indirectly in connection with the presence, release or threatened release of any hazardous substances by, through, or at the direction of the County, its employees, agents, vendors or suppliers, including but not limited to known contaminants in or into the air, soil, groundwater, surface water or improvements at, on, about, under or within the License Area, or any portion thereof, or elsewhere in connection with the transportation of hazardous substances to or from the License Area by, through, or at the direction of the County, its employees, agents, vendors or suppliers. Provided however, the County shall not be required to indemnify, defend, or hold harmless the Licensor from any claims resulting from the negligent or willful misconduct of the Licensor, or its employees, licensees, vendors, or other agents, or resulting from any environmental condition existing on the License Area or elsewhere which is not caused, disturbed or exacerbated by the County or its employees, agents, vendors or suppliers. The indemnification provisions contained herein shall survive the termination of this Agreement.

8) Default and Assignment. It is agreed between the parties hereto that if the County shall default and breach any other covenant or provision of this Agreement, then the Licensor, after giving the County twenty (20) days prior written notice of such default and an opportunity to cure, may terminate this Agreement and thereafter the County will cease use of the License Area. Neither party may assign its rights hereunder, or as hereinafter granted pursuant to the provisions hereof, in whole or in part, without the prior written consent of the other party.

9) Attorneys' Fees. The parties expressly agree that each party shall bear the cost of its own attorney and legal fees in connection with any dispute arising out of this Agreement, or the breach, enforcement, or interpretation of this Agreement, regardless of whether such dispute results in mediation, arbitration, litigation, all or none of the above, and regardless of whether such attorney and legal fees are incurred at trial, retrial, on appeal, at hearings or rehearing's, or in administrative, bankruptcy, or reorganization proceedings.

10) Notices. Any notice or demand to be given or that may be given hereunder shall be in writing and shall be (i) delivered by hand, or (ii) delivered through United States mail, postage prepaid, certified, return receipt requested and U.S. First Class Mail; addressed to the parties at the addresses shown on Page 1 of this Agreement. Any notice or demand that may be given hereunder shall be deemed complete (i) three (3) days after mailing of such notice or demand in the United States mail with proper postage affixed thereto, certified, return receipt requested and U.S. First Class Mail, or (ii) upon hand-delivery to the appropriate address as follows:

As to County: Orange County Administrator
P.O. Box 1393

Orlando, Florida 32802-1393

With Copy to: Orange County
Traffic Engineering, Public Works
Contact: Manager
4200 S. John Young Parkway
Orlando, Florida 32839
(

As to Licensor: Prose Horizon West Venture, LP
Address: 7135 E. Camelback Road, Suite 300,
Scottsdale, Arizona, 85251

With Copy to: Lowndes
Attn: Rebecca Wilson, Esq.
215 N. Eola Drive
Orlando, FL 32801
Phone: 407-843-4600
William.rebecca.wilson@lowndes-law.com

11) Applicable Law. The laws of the State of Florida shall govern the validity, performance, and enforcement of this Agreement. The parties to this Agreement further agree that any and all litigation arising from the terms of this Agreement and the subject matter contained herein shall be filed and heard in a court of competent jurisdiction located in Orange County, Florida. Should any federal claims arise for which the courts of the State of Florida lack jurisdiction, venue for those actions shall be in the Orlando Division of the U.S. Middle District of Florida. The invalidity or unenforceability of any provision of this Agreement shall not affect or impair any other provision. THE PARTIES HERETO WAIVE A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING IN ANY ACTION OR PROCEEDING BETWEEN THEM OR THEIR SUCCESSORS UNDER OR CONNECTED WITH THIS AGREEMENT OR ANY OF ITS PROVISIONS AND ANY NEGOTIATIONS IN CONNECTION HEREWITH.

[SIGNATURE PAGE TO FOLLOW]

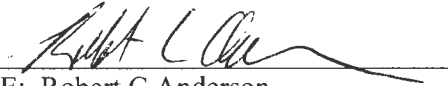
IN WITNESS WHEREOF, the County and Licensor have hereunto set their hands and seals as of the dates written below.

“LICENSOR”

PROSE HORIZON WEST VENTURE, LP, a
Delaware limited partnership

BY: PROSE HORIZONS WEST ALLIANCE
GP, LLC
a Delaware limited liability company
its sole general partner

By: PROSE HORIZON WEST ALLIANCE,
LLC
a Delaware limited liability company
its sole member

BY: 
NAME: Robert C Anderson
TITLE: Member
DATE: 10-22-24

COUNTY:

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners



Jerry L. Demings
for Jerry L. Demings
Orange County Mayor

Date:

12/03/2024
(mm/dd/yyyy)

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

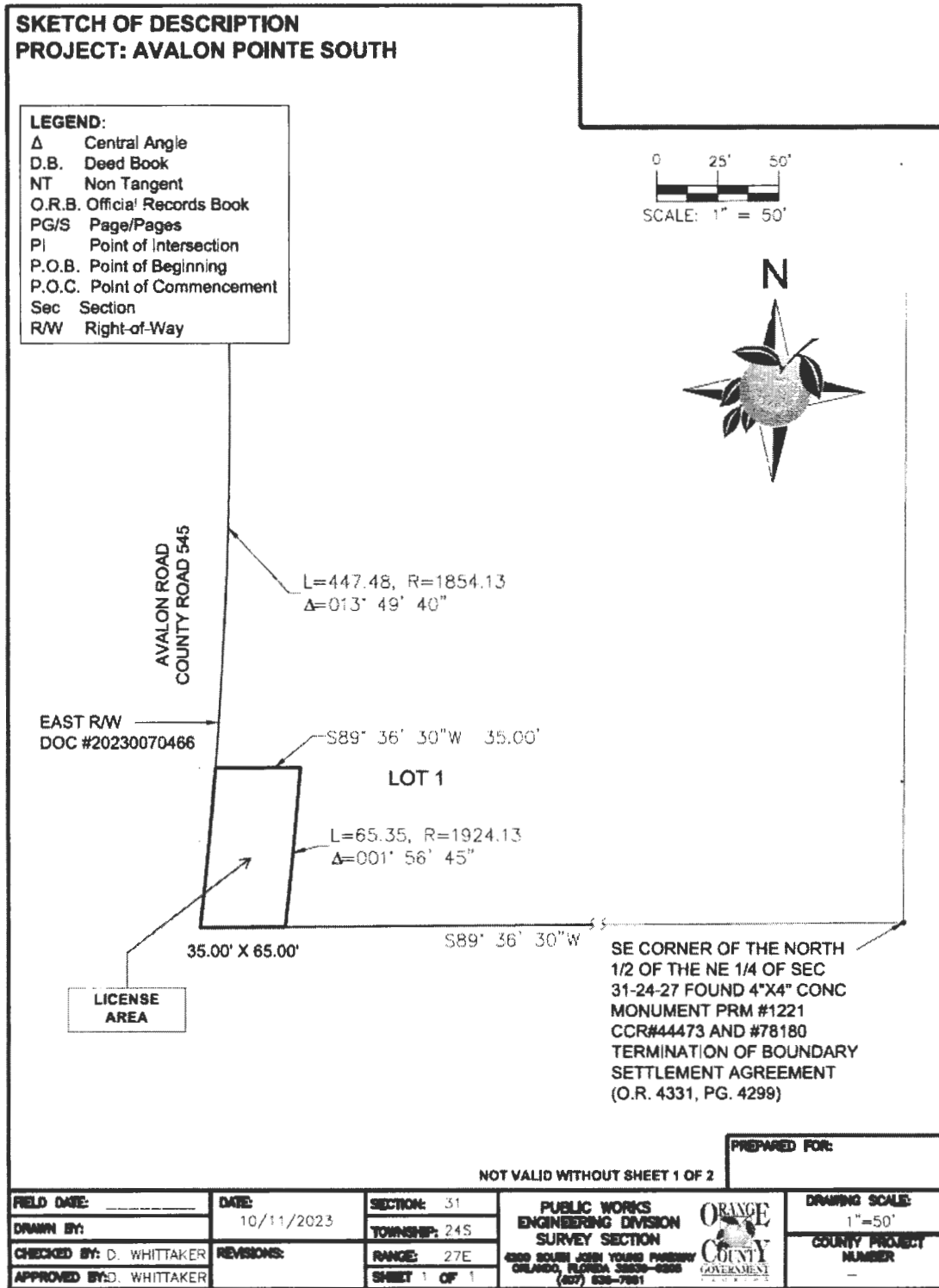
BY:

Jennifer Lara Klimetz
for Deputy Clerk

Jennifer Lara-Klimetz
Printed Name

EXHIBIT "A"

THE LICENSE AREA



PREPARED FOR: