




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
Second Amendment to Adequate Public Facilities
and Right of Way Agreement for Village I, Spring Grove – Northeast
Planned Development (County Road 545)
(Related to CDR-18-10-352)

The Roadway Agreement Committee has reviewed a Second Amendment to Adequate Public Facilities and Right of Way Agreement for Village I, Spring Grove – Northeast Planned Development (County Road 545) ("Second Amendment") by and among Columnar Partnership Holding I, LLC, KHOV Winding Bay II, LLC, and Orange County to amend the terms of the Adequate Public Facilities and Right of Way Agreement for Village I, Spring Grove – Northeast Planned Development ("Agreement") approved by the Board on July 28, 2016 and recorded as Document #20160390723, as amended. This Second Amendment provides for the conveyance of 3.56 acres of Adequate Public Facilities (APF) road right-of-way for County Road 545 (Avalon Road) and 2.0 acres for a utility tract, which has previously been conveyed, totaling of 5.56 acres of APF dedication. These conveyances leave a deficit of 2.26 acres of required APF which will be satisfied with the transfer of APF credits from another property owner in Village I. Various sections of the Agreement have also been revised through the Second Amendment to delineate terms between the two conveying owners.

The Roadway Agreement Committee approved the Amendment on June 5, 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 Second Amendment to Adequate Public Facilities and Right of Way Agreement for Village I, Spring Grove – Northeast Planned Development (County Road 545) by and among Columnar Partnership Holding I, LLC, KHOV Winding Bay II, LLC, and Orange County to adjust the APF acreage requirements. District 1

JVW/HEGB:fb
Attachment

BCC Mtg. Date: November 12, 2019

Prepared by and after recording return to:

Christopher P. Roper
Akerman LLP
420 South Orange Avenue, Suite 1200
Orlando, Florida 32801
(407) 423-4000

Tax Parcel I.D. No(s): 17-24-27-0000-00-003, 17-24-27-0000-00-012, 17-24-27-0000-00-013, 17-24-27-7825-00-010, 17-24-27-7825-00-020, 17-24-27-7825-00-030, 17-24-27-7825-00-040, 17-24-27-7825-00-050, 17-24-27-7825-01-001, 17-24-27-7825-15-002, 17-24-27-7825-15-003, 17-24-27-7825-15-004, 17-24-27-7825-15-011 & 20-24-27-0000-00-009

**SECOND AMENDMENT TO
ADEQUATE PUBLIC FACILITIES AND RIGHT OF WAY AGREEMENT
FOR VILLAGE I, SPRING GROVE - NORTHEAST PLANNED DEVELOPMENT
(COUNTY ROAD 545)**

THIS SECOND AMENDMENT TO ADEQUATE PUBLIC FACILITIES AND RIGHT OF WAY AGREEMENT FOR VILLAGE I, SPRING GROVE – NORTHEAST PLANNED DEVELOPMENT (COUNTY ROAD 545) (the “Second Amendment”), effective as of the latest date of execution (the “Effective Date”), is made and entered into by and among **COLUMNAR PARTNERSHIP HOLDING I, LLC**, an Indiana limited liability company, with its principal place of business at 5956 Sherry Lane, Suite 1000, Dallas, Texas 75225 (“Columnar”), and **KHOV WINDING BAY II, LLC**, a Florida limited liability company, with its principal place of business at 90 Matawan Road, Fifth Floor, Matawan, NJ 07747 (“KHOV”) (Columnar and KHOV are sometimes hereinafter referred to as individually as an “Owner” and collectively as the “Owners”) and **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”) (“Owners” and “County” are collectively referred to herein as the “Parties”).

RECITALS:

A. **WHEREAS**, on or about July 20, 2016, Spring Grove, LLC (“Spring Grove”), Columnar and County entered into that certain Adequate Public Facilities and Right of Way Agreement for Village I, Spring Grove – Northeast PD (the “Original Agreement”) recorded on July 28, 2016, as Document #20160390723, Public Records of Orange County, Florida;

B. **WHEREAS**, on or about March 30, 2018, KHOV acquired a portion of the Spring Grove Property as more particularly described in that certain Special Warranty Deed recorded on April 3, 2018, as Document # 20180197480, in the Public Records of Orange County, Florida;

C. **WHEREAS**, on or about November 14, 2018, Spring Grove, Columnar, KHOV, and County entered into that certain First Amendment to the Adequate Public Facilities and Right of

Way Agreement for Village I, Spring Grove – Northeast PD (the “First Amendment”) recorded on November 27, 2018, as Document # 20180682748, Public Records of Orange County, Florida;

D. **WHEREAS**, on or about December 28, 2018, KHOV acquired the remainder of the Spring Grove Property from Spring Grove as more particularly described in that certain Special Warranty Deed recorded on January 2, 2019, as Document # 20190003230, in the Public Records of Orange County, Florida, thereby leaving Columnar and KHOV as the sole remaining owners of the PD Property;

E. **WHEREAS**, Owners desire to modify the Project in order to develop residential uses on the School Site, as defined in the Original Agreement, due to the relocation of the proposed Middle School to another property located outside of the Project but within the Village I SAP and, in connection therewith, have submitted the Spring Grove - Northeast PD Land Use Plan Change Determination Request (CDR #18-10-352) to County (the “Change Determination”);

F. **WHEREAS**, County and Owners desire to amend the Original Agreement, as revised by the First Amendment (collectively, the “Agreement”), in order to reflect the above and other terms and conditions as set forth below;

G. **WHEREAS**, in all other respects, the original terms of the 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, the Parties agree as follows:

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

2. Capitalized Terms. Any capitalized terms not defined herein shall have the same definition as in the Agreement.

3. KHOV Property. KHOV is the successor in interest and current owner of the Spring Grove Property, as described in Exhibit “A” of the Original Agreement, less and except those lands conveyed to the County by the Winding Bay – Phase 1A Plat, recorded at Plat Book 97, Page 141, Public Records of Orange County, Florida. Accordingly, where the words “Spring Grove Property” appear throughout the Agreement, the words “KHOV Property” are hereby substituted in their place.

4. Columnar Property. The School Site will no longer be used for its original purpose as contemplated in the Agreement. Accordingly, where the words “School Site” appear throughout the Agreement, the words “Columnar Property” are hereby substituted in their place.

5. Recital F. Recital F. of the Original Agreement is hereby revised to read as follows (with additional language indicated as underlined and deleted language indicated as ~~struck through~~):

“Owners desire to develop the PD Property in accordance with the Northeast PD LUP, submitted by Owners to County pursuant to Change Determination Request (CDR #18-10-352) (“PD Land Use Plan”), and with the PD zoning application for Change Determination Request (CDR #18-10-352) on file with County (the “Project”).”

6. Recital I. Recital I. of the Original Agreement is hereby revised to read as follows (with additional language indicated as underlined and deleted language indicated as ~~struck through~~):

“The Parties have agreed that this Agreement constitutes the aforementioned developer’s agreement referenced in Division 2 of the APF/TDR Ordinance and addresses conveyance of (i) the road rights-of-way necessary to serve development with connections to an arterial roadway, as reflected on the PD Land Use Plan (the “APF Roads”); (ii) ~~a middle school site (the “School Site”)~~; (iii) a site for a water facility designated as a Utility Tract (the “APF Utility Tract”); and (iii~~v~~) an access and utility easement or tract connection (the “Access/Utility Conveyance”) necessary to serve the APF Utility Tract.”

7. Recital L. Recital L. of the Original Agreement is hereby revised to read as follows (with additional language indicated as underlined and deleted language indicated as ~~struck through~~):

“The PD Property contains approximately ~~60.80~~ 56.68 acres of **net** developable land, and both the Village I SAP and Section 30-714 of the APF/TDR Ordinance require 1 acre of public facilities acreage for every 7.25 acres of net developable land (the “APF Ratio”).”

8. Recital M. Recital M. of the Original Agreement is hereby revised to read as follows (with additional language indicated as underlined and deleted language indicated as ~~struck through~~):

“When applied to the PD Property, the APF Ratio requires approximately ~~8.39~~ 7.82 acres of public facilities lands.”

9. Recital N. Recital N. of the Original Agreement is hereby deleted in its entirety and replaced with the following:

“The Owners have provided or are providing a total of approximately **5.56** acres of adequate public facilities land from the Project (the “APF Land”) consisting of approximately **3.56** acres for APF Roads as shown on the PD Land Use Plan and approximately **2.0** acres which were previously conveyed to the County for an APF Utility Tract, thereby creating an APF deficit of **2.26** acres. A legal description and sketch of description for the APF Road ROW is attached hereto as **Exhibit “D”** and made a part hereof by reference.”

10. Exhibit D. **Exhibit “D”** in the Original Agreement is hereby replaced with **Exhibit “A”** attached hereto and incorporated herein.

11. APF Road. Section 2.a) of the Original Agreement is hereby deleted in its entirety and replaced with the following:

APF Road. Right(s)-of-way for the following transportation improvement /road (depicted as APF Road ROW on the Northeast PD Land Use Plan) (collectively the “APF Road ROW”):

C.R. 545

Approximately 3.56 acres

12. School Site. Section 2.b) of the Original Agreement is hereby deleted in its entirety and replaced with the following: “b) Intentionally deleted.”

13. APF Utility Tract. Section 2.c) of the Original Agreement is hereby amended to reflect that Owners’ obligations with respect to the APF Utility Tract and Access/Utility Conveyance have been satisfied. Such obligations were satisfied by the conveyance to and acceptance by the County of that certain Special Warranty Deed recorded at Document # 20180175181 and that certain Access and Utility Easements recorded at Document # 20180175182, in the Public Records of Orange County, Florida.

14. Section 3 of the Original Agreement is hereby revised to read as follows (with additional language indicated as underlined and deleted language indicated as ~~struck through~~):

“APF Surplus Deficit. The Village I APF Ratio requires that Owners convey to County approximately ~~8.39~~ **7.82** acres of APF Lands. This Agreement provides for conveyance of

approximately ~~27.76~~ 5.56 acres of APF Lands, thereby creating a ~~19.37~~ 2.26 acre APF surplus deficit.”

15. Section 4 of the Original Agreement is hereby deleted in its entirety and replaced with the following:

“APF Acreage Credits. Columnar and Withers, LLC (collectively, “APF Credit Assignors”), have obtained or will obtain approximately 34.13 APF acreage credits within Village I. Owners and APF Credit Assignors have asked County to apply a portion of these credits toward the APF deficit for the Project. The County hereby approves the transfer of 2.26 APF acreage credits to the PD Property and application of such APF acreage credits satisfies the APF deficit for the Project. Withers, LLC, has executed a joinder attached to this Second Amendment acknowledging the foregoing transfer of APF acreage credits to the PD Property.”

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

“Conveyance Procedure.

a) *APF Road ROW*. The conveyance of the APF Road ROW shall be by plat dedication or general warranty deed, free and clear of all liens and encumbrances, except for easements of record acceptable to County, if any. If by plat dedication, the rest of this paragraph and the following paragraphs (d), (e), and (f) will not apply. The Owner of the applicable APF Road ROW immediately prior to its conveyance to the County (the “Conveying Owner”) Owners shall pay all costs associated with the conveyance of ~~the~~ such APF Road ROW, including all recording fees and documentary stamps related to such conveyance. Ad valorem taxes in connection with the conveyance of the applicable APF Road ROW shall be prorated as of the date of transfer of title and said prorated amount shall be paid by ~~Owners~~ the Conveying Owner to the Orange County Tax Collector, in escrow, pursuant to Section 196.295, Florida Statutes, unless the conveyance occurs between November 1 and December 31 of the year of conveyance, in which case ad valorem taxes shall be paid in full by ~~Owners~~ the Conveying Owner for the year of conveyance.

b) Intentionally deleted.

c) *Utility Tract*. The APF Utility Tract ~~shall be conveyed to the County by general warranty deed, free and clear of all liens and encumbrances, except for easements of record acceptable to County, if any, prior to approval of the first construction plan set within Village I. Conveyance of the Access/Utility Conveyance shall occur at the same time as conveyance of the APF Utility Tract. Conveyance of APF Land by deed or easement shall be in accordance with the~~

~~process described in this Agreement. Conveyance of APF Land by plat shall be in accordance with the County's platting process.~~ has been conveyed to and accepted by the County pursuant to that certain Special Warranty Deed recorded at Document # 20180175181 and that certain Access and Utility Easements recorded at Document # 20180175182, in the Public Records of Orange County, Florida.

d) *Title Policy.* No less than thirty (30) days prior to conveyance, ~~Owners~~ the applicable Conveying Owner shall deliver to County, at ~~Owners'~~ such Conveying Owner's sole cost and expense, an updated commitment to issue an Owner's Policy of Title Insurance naming County as the insured (the "Title Commitment"). The original Owner's Policy of Title Insurance (the "Title Policy") shall be delivered to County within thirty (30) days after the conveyance of the APF Land.

e) *Environmental Audit.* No less than thirty (30) days prior to conveyance, ~~Owners~~ the applicable Conveying Owner shall submit to County a current (within 6 months of conveyance to County) Phase I environmental audit of the areas encompassed by the APF Land. The Phase I environmental audit shall be conducted in accordance with the requirements of the All Appropriate Inquiries Final Rule, or with the standards set forth in the American Society for Testing and Materials (ASTM) E-1527-13. In the event the Phase I environmental audit presents a matter of concern, as determined by County, then prior to the conveyance, ~~Owners~~ the Conveying Owner shall submit to County a Phase II environmental audit. The Phase II environmental audit shall be conducted in accordance with the requirements of the AAIFR and ADTM E-1903-11. If the Phase II environmental audit is performed and reveals the need for remediation to the APF Land, one of the following events shall occur: (i) ~~Owners~~ the Conveying Owner shall remediate the APF Land to County's satisfaction prior to the conveyance; or (ii) ~~Owners~~ the Conveying Owner and County shall negotiate and enter into a separate agreement whereby ~~Owners~~ the Conveying Owner shall pay the full cost of remediation; or (iii) County may terminate this Agreement at its option as to the Conveying Owner's property.

f) *Compliance with Section 286.23, Florida Statutes.* ~~Owners~~ The Conveying Owner shall execute and deliver to County the "Disclosure of Beneficial Interests" required pursuant to section 286.23, Florida Statutes.

g) *Value of APF Lands and Entitlement to Impact Fee Credits.* The APF/TDR Ordinance contemplates the ~~Owners'~~ the Conveying Owners' entitlement to obtain impact fee credits for certain APF Land conveyances, in accordance with Chapter 23 of the Orange County Code (the "Impact Fee Ordinance"). ~~The Owners~~ Each Conveying Owner is are entitled to obtain transportation impact fee credits at the rate of \$22,500 per acre for conveyance of the APF Road ROW conveyed by such Conveying Owner. ~~Owners shall be entitled to obtain school impact fee credits for the conveyance of the School Site in accordance with the applicable provisions of this~~

~~Agreement and Chapter 23 of the Orange County Code.~~ Any impact fee credits for APF Lands that are awarded by the County may be assigned, sold, or transferred pursuant to County Code.”

17. 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~~):

“As an alternative to conveyance prior to or in connection with Planned Development approval, Owners have elected to convey at a later time, as contemplated by Sec. 30-714 of the APF/TDR Ordinance. The Parties agree that, prior to conveyance to County for its intended purpose, Owners the applicable Conveying Owner shall have the reasonable right to grade and to import or export fill material upon the APF Land, subject to and in accordance with an approved grading permit and/or excavation fill permit. Further, Owners the Conveying Owner agrees to relinquish control of the APF Land and convey such APF Land to County ~~in accordance with the following schedule (the “Conveyance Schedule”): (i) for the School Site, not later than six (6) months following Owners’ receipt of a written notice therefor as provided in Section 5b) above; and (ii) for all other APF Lands, within sixty (60) days of Owners’~~ the Conveying Owner’s receipt of a written demand therefor from County. The requirement for APF Land to be conveyed before the Project can proceed beyond five percent (5%) of the PD Property’s entitlements no longer applies to the Project. This is based on the County Board of County Commissioners’ approval of a waiver from Section 30.714(c) on November 13, 2018, and the conditions set forth in said waiver have been satisfied by the Owners. Owners acknowledge and agree that any development in connection with the PD Property shall not proceed beyond five percent (5%) of the PD Property’s entitlements prior to conveyance to the County of at least 8.39 acres of APF Lands or such lesser amount of APF Lands as may be approved by the County Board of County Commissioners. For purposes of this Agreement, the Parties agree that 5% of development is defined as 24 single family residential units (attached or detached). Notwithstanding anything herein to the contrary, (a) the foregoing does not imply that any waiver to Sec. 30-714 of the APF/TDR Ordinance will be granted by the County Board of County Commissioners, and (b) the Owners shall be required to convey all APF Lands to the County in accordance with the Conveyance Schedule.”

18. Section 9 of the Original Agreement is hereby revised to read as follows (with additional language indicated as underlined and deleted language indicated as ~~struck through~~):

“Award of Impact Fee Credits. Promptly upon County’s approval of any Environmental Assessments and Title Commitment required under Section 5, and upon approval and acceptance of the General Warranty Deed or in the case of conveyance by plat dedication, County’s acceptance of the plat dedication, County shall credit on its books to the account of Owners the applicable Conveying Owner, for purposes of Article IV of Chapter 23 of the

Orange County Code and any successor code provisions (the “Impact Fee Ordinance”), the aforementioned amount of impact fee credits to which ~~Owners~~ such Conveying Owner is ~~are entitled, for each type of dedication under the Impact Fee Ordinance, including, but not limited to,~~ transportation impact fee credits. Such transportation impact fee credits may only be used in transportation impact fee zone 4. Thereafter, as impact fees become payable from time to time in connection with the Project, and if so instructed by ~~Owners~~ the Conveying Owner County shall deduct such amounts payable from such Owner’s account that is applicable to the a particular impact fee payment. ~~For example, park impact fee credits may only be used to satisfy obligations for the payment of park impact fees, and school impact fee credits may only be used to satisfy obligations for payment of school impact fees. For purposes of determining the valuation of the land for the School Site, the value shall be, at a minimum, \$10,000 per acre; provided, however, that the value of the School Site may be increased to \$22,500 per acre if the Owner satisfies the following conditions prior to or after conveyance of such parcel to the County:~~

- ~~(i) potable water and sanitary sewer lines of adequate capacity are extended to the boundary of the applicable school site;~~
- ~~(ii) the master drainage system for the PD is designed and constructed to serve the applicable school site;~~
- ~~(iii) the school site shall be directly served by a public road contiguous thereto; and~~
- ~~(iv) the school site is developed and filled to buildable grade.~~

For purposes of the foregoing, County shall make deductions from such Conveying Owner’s account from time to time only upon receipt of written direction from ~~Owners~~ the Conveying Owner (or from such person or entity to whom such Conveying Owners expressly may assign this authority, in writing, in the future) to effect the particular deduction. Nothing herein shall prevent ~~Owners~~ the Conveying Owners from assigning transportation impact free credits as provided for in Section 23-95(e) of the Orange County Code, as may be amended from time to time.

The parties acknowledge that the County is in the process of finalizing a road network agreement (“Road Network Agreement”) with property owners in the Village I SAP that addresses, among other things, the widening of County Road 545 through the Village, as contemplated by that certain Horizon West Village I Term Sheet initially accepted by the County Board of County Commissioners on November 13, 2018. Therefore, to the extent the Project becomes subject to the Road Network Agreement and there exists a conflict between this Agreement and the Road Network Agreement as it pertains to the

timing or manner of conveyance of the APF Road Right-of-Way to the County or to the timing or manner in which transportation impact fee credits are awarded in connection therewith, the parties hereby agree that the Road Network Agreement shall control to the extent of such conflict.”

19. Covenants Running with the Land. This Second Amendment shall run with the PD 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 Owners and any person, firm, corporation, or other entity that may become the successor in interest to the PD Property. Notwithstanding the foregoing, however, the authority under Section 9 of the Agreement to instruct County to make deductions from a Conveying Owner’s road impact fee account shall remain with such Owner, unless expressly assigned in writing to another by such Conveying Owner.

20. Recordation of Second Amendment. An executed original of this Second Amendment shall be recorded, at Owners’ expense, in the Public Records of Orange County, Florida within thirty (30) days of the Effective Date.

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

22. Time is of the Essence. Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this Second Amendment and in the Agreement.

23. 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.

24. Limitation of Remedies. Section 15.a) of the Agreement is hereby revised to read as follows (with additional language indicated as underlined and deleted language indicated as ~~struck through~~):

“a) Limitations on County’s Remedies. Upon any failure by any Owner to perform its obligations under this Agreement, the County shall be limited strictly to only the following remedies:

- (i) action for specific performance against such Owner; or
- (ii) action for injunction against such Owner; or

- (iii) the withholding of development permits and other approvals and/or permits in connection with such Owner's property within the Project ~~the Project and /or the PD Property~~; or
- (iv) the right to set off, against the amounts of impact fees to be credited in favor of ~~Owners~~ a Conveying Owner under this Agreement, (A) any amounts due to County from such Conveying Owners under this Agreement but remaining unpaid and (B) the cost to County of performing any action or actions required to be done under this Agreement by a Conveying Owners, but which such Conveying Owners ~~have~~ has failed or refused to do when required; or
- (v) any combination of the foregoing.

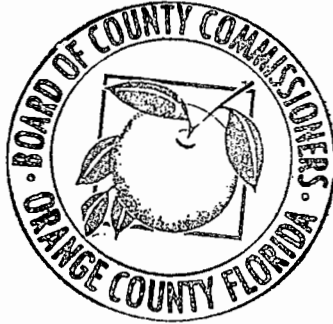
In addition to the foregoing, nothing in this Agreement prohibits or estops County from exercising its power of eminent domain with respect to the APF Land or any portion of the PD Property as County may lawfully elect.”

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

26. Counterparts. This Second Amendment may be executed in up to four (4) counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

[Signatures appear on the following pages.]

IN WITNESS WHEREOF, the Parties have caused this Second 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: *Jerry L. Demings*
for Jerry L. Demings, Orange County Mayor

Date: 13 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

Signed, sealed and delivered
in the presence of:

**COLUMNAR PARTNERSHIP HOLDING I,
LLC**, an Indiana limited liability company

By: COLUMNAR HOLDINGS, LLC, an
Indiana limited liability company, its sole
Member

Melody F. Ellsperman

Printed Name: Melody F. Ellsperman

By: Daniel A. Traylor
Daniel A. Traylor, President

Title: President

Margaret A. Bernick

Printed Name: Margaret A. Bernick

Date: 07/12/2019

STATE OF INDIANA
COUNTY OF VANDERBURGH

The foregoing instrument was acknowledged before me this 12th day of
July, 2019, by Daniel A. Traylor, as President of COLUMNAR HOLDINGS, LLC,
an Indiana limited liability company, sole Member of **COLUMNAR PARTNERSHIP HOLDING
I, LLC**, an Indiana limited liability company, on behalf of such company, who [] is personally
known to me or [] has produced _____ as identification.

(Notary Stamp)

Donna M. Bush

Signature of Notary Public

Print Name: Donna M. Bush

Notary Public, State of Indiana

Commission Expires: 01/20/2024

Commission No. 677213



DONNA M. BUSH
Resident of Vanderburgh County, IN
Commission Expires: January 20, 2024

Signed, sealed and delivered
in the presence of:

KHOV WINDING BAY II, LLC,
a Florida limited liability company

Guy Trussell
Printed Name: Guy Trussell

By: [Signature]
Kyle Upper, Division President

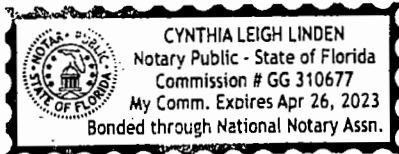
[Signature]
Printed Name: ED KASSIK

Date: 7-22-2019

STATE OF Florida
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 22 day of July,
2019, by Kyle Upper, as Division President of **KHOV WINDING BAY II, LLC**, a Florida
limited liability company, on behalf of such company, who is personally known to me or
 has produced _____ as identification.

(Notary Stamp)



[Signature]
Signature of Notary Public
Print Name: Cynthia Leigh Linden
Notary Public, State of Florida
Commission Expires: April 26 2023

JOINER AND CONSENT BY MORTGAGEE

The undersigned, Valley National Bank, hereby joins in and consents to this Second Amendment as the mortgagee on a portion of the property described in the hereinabove Second Amendment for the express purpose of acknowledging and agreeing to the terms contained in this Second Amendment.

WITNESS:

Valley National Bank

Patricia Botsolas
Print Name: **PATRICIA BOTSOLAS**
BANK OFFICER

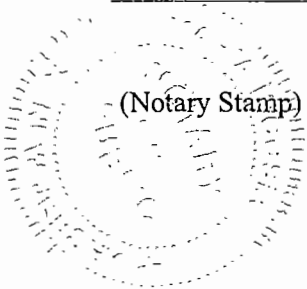
By: [Signature]
Name: **ALFRED SORRENTINO, JR.**
Title: **First Senior Vice President**

This 18th day of July, 2019.

Print Name: _____

STATE OF new jersey
COUNTY OF passaic

The foregoing instrument was acknowledged before me this 18th day of july, 2019 by Alfred Sorrentino, Jr. as FSVP of Valley National Bank, on behalf of said entity, who is personally known to me or has produced _____ as identification.



[Signature]
Signature of Notary Public

Print Name: **MARIA NICOSIA**
Notary Public, State of **NEW JERSEY**
MY COMMISSION EXPIRES APRIL 13, 2021
Commission Expires: _____

JOINDER AND CONSENT BY WITHERS, LLC

The undersigned, on behalf of Withers, LLC, a Delaware limited liability company registered to do business in the State of Florida as Withers Properties, LLC, with its principal place of business at 5956 Sherry Lane, Suite 1000, Dallas, Texas 75225, hereby joins in and consents to this Second Amendment as co-owner of the APF acreage credits being transferred to the PD Property in accordance with Section 14 of this Second Amendment, for the sole and limited purpose of consenting to such transfer.

WITNESS:

Melody F. Ellsperman

Print Name: Melody F. Ellsperman

Margaret A. Bernick

Print Name: Margaret A. Bernick

Withers, LLC, a Delaware limited liability company, registered to do business in the State of Florida as Withers Properties, LLC

By: CH II Withers, LLC, a Delaware limited liability company, its sole Manager

By: Daniel A. Traylor
Daniel A. Traylor, Manager

This 12th day of July, 2019.

STATE OF INDIANA

COUNTY OF VANDERBURGH

The foregoing instrument was acknowledged before me this 12th day of July, 2019 by Daniel A. Traylor, as Manager of CH II Withers, LLC, a Delaware limited liability company, the manager of Withers, LLC, a Delaware limited liability company registered to do business in the State of Florida as Withers Properties, LLC, on behalf of the company, who [] is personally known to me or [] has produced _____ as identification.

(Notary Stamp)



DONNA M. BUSH
Resident of Vanderburgh County, IN
Commission Expires: January 20, 2024

Donna M. Bush

Signature of Notary Public

Print Name: Donna M. Bush

Notary Public, State of Indiana

Commission Expires: 01/20/2024

Commission No. 677213

Exhibit "A"

**Legal Description and Sketch of
Description for the APF Land (less APF Utility Tract)**

[See attached 5 pages]

LEGAL DESCRIPTION
THIS IS NOT A SURVEY

A STRIP OF LAND LYING IN THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 24 SOUTH, RANGE 27 EAST, DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 20 FOR A POINT OF REFERENCE; THENCE RUN SOUTH 89°49'03" WEST, ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 20, A DISTANCE OF 1180.06 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF COUNTY ROAD 545, (AVALON ROAD), ACCORDING TO ROAD BOOK 3, PAGES 116 AND 117 AND DEED BOOK 402, PAGE 316 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA BEING A POINT ON A NON-TANGENT CURVE CONCAVE NORTHWESTERLY; THENCE RUN SOUTHWESTERLY ALONG SAID EASTERLY RIGHT-OF-WAY LINE AND SAID NON-TANGENT CURVE, HAVING A RADIUS OF 987.93 FEET, A CENTRAL ANGLE OF 42°42'02", AN ARC LENGTH OF 736.27 FEET, A CHORD LENGTH OF 719.35 FEET AND A CHORD BEARING OF SOUTH 22°11'28" WEST TO THE POINT OF TANGENCY; THENCE RUN SOUTH 43°32'29" WEST, ALONG SAID EASTERLY RIGHT-OF-WAY LINE, 95.73 FEET TO THE POINT OF BEGINNING, SAID POINT BEING A POINT ON A NON-TANGENT CURVE CONCAVE NORTHWESTERLY; THENCE DEPARTING SAID EASTERLY RIGHT-OF-WAY LINE, RUN SOUTHWESTERLY ALONG SAID NON-TANGENT CURVE, HAVING A RADIUS OF 2143.00 FEET, A CENTRAL ANGLE OF 12°53'23", AN ARC LENGTH OF 482.10 FEET, A CHORD LENGTH OF 481.09 FEET AND A CHORD BEARING OF SOUTH 37°05'48" WEST TO THE POINT OF TANGENCY, SAID POINT LYING 54.00 FEET EASTERLY OF (PERPENDICULAR MEASURE) SAID EASTERLY RIGHT-OF-WAY LINE; THENCE RUN SOUTH 43°32'29" WEST, PARALLEL WITH SAID EASTERLY RIGHT-OF-WAY LINE, 290.26 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH HALF OF THE NORTHWEST QUARTER OF SAID SECTION 20; THENCE RUN NORTH 89°58'44" WEST, ALONG SAID SOUTH LINE, 74.47 FEET TO SAID EASTERLY RIGHT-OF-WAY LINE; THENCE RUN NORTH 43°32'29" EAST, ALONG SAID EASTERLY RIGHT-OF-WAY LINE, 819.59 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED STRIP OF LAND LIES IN ORANGE COUNTY, FLORIDA AND CONTAINS 0.79 ACRES MORE OR LESS.

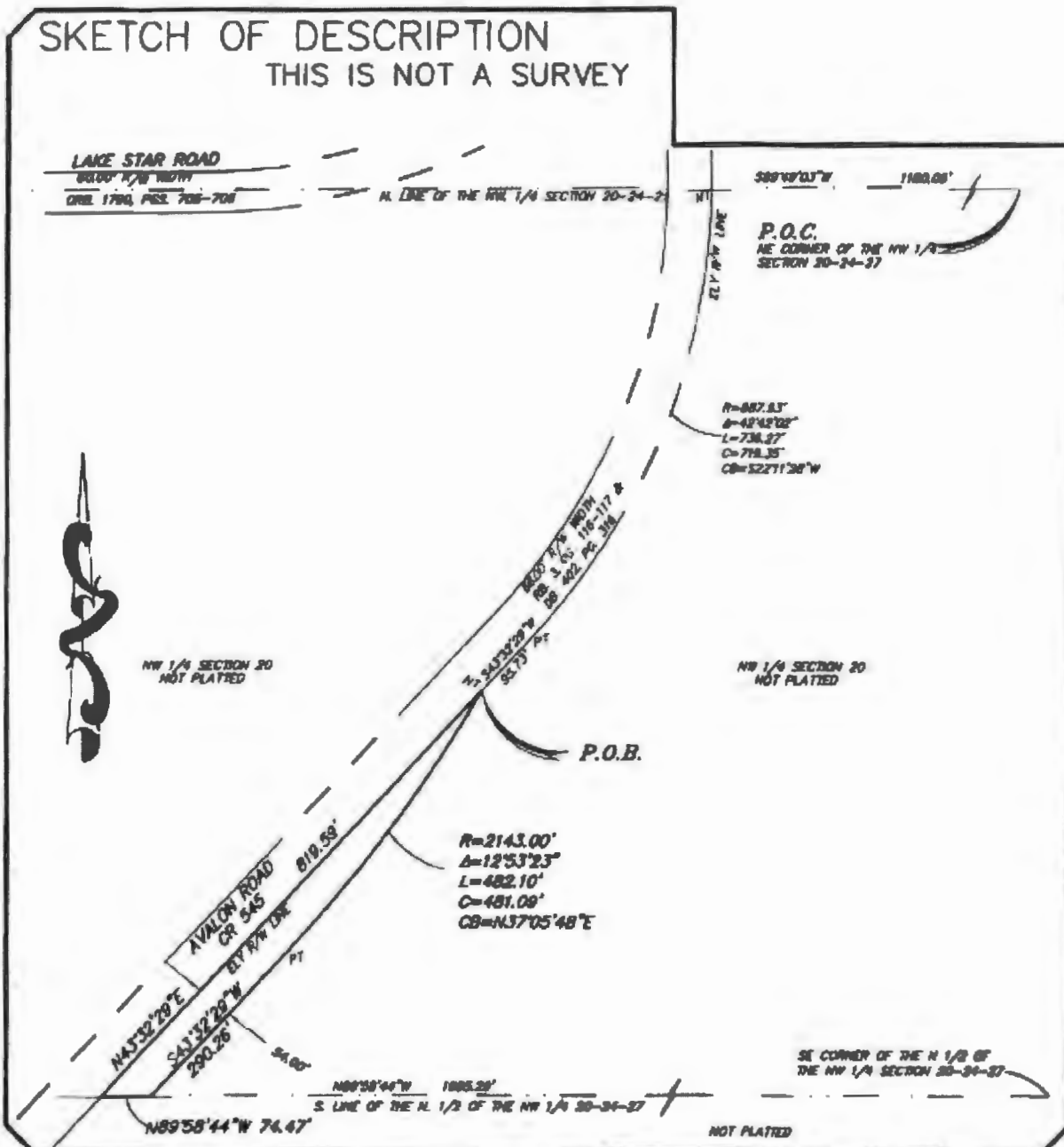
SHEET 1 OF 2
 SEE SHEET 2
 FOR SKETCH OF
 DESCRIPTION



SURVEYOR'S NOTES: SKETCH 5

1. THIS SKETCH IS NOT VALID UNLESS SIGNED AND SEALED WITH AN EMBOSSED SURVEYOR'S SEAL.
2. BEARINGS SHOWN HEREON ARE ASSUMED AND BASED ON THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 24 SOUTH, RANGE 27 EAST, BEING SOUTH 89°49'03" WEST.
3. THE LEGAL DESCRIPTION WAS PREPARED WITHOUT BENEFIT OF TITLE.
4. THE ADJOINING RECORDING INFORMATION SHOWN HEREON WAS OBTAINED FROM THE ORANGE COUNTY PROPERTY APPRAISER PUBLIC ACCESS SYSTEM.
5. DELINEATION OF THE LANDS SHOWN HEREON ARE AS PER THE CLIENT'S INSTRUCTIONS.

JOB NO. 20180026	CALCULATED BY: SEJ	FOR THE LICENSED BUSINESS # 6723 BY:
DATE: 2-13-18	DRAWN BY: SEJ	 JAMES L. RICKMAN P.S.M. # 5833
SCALE: 1"=200'	CHECKED BY: MR	
FIELD BY: N/A		



LEGEND: P.O.C. POINT OF COMMENCEMENT P.O.B. POINT OF BEGINNING CR. OFFICIAL RECORDS BOOK PG(S) PAGE(S) R/W. RIGHT-OF-WAY RB. ROAD BOOK		R. RADIUS Δ. CENTRAL ANGLE L. ARC LENGTH C. CHORD LENGTH CB. CHORD BEARING PC. POINT OF CURVATURE		PT. POINT OF TANGENCY NT. NON-TANGENT CR. COUNTY ROAD DB. DEED BOOK			
JOB NO. 20180088	DATE 2-13-19	SCALE 1"=200'	FIELD BY. N/A	CALCULATED BY. SEJ	DRAWN BY. SEJ	CHECKED BY. MR	SHEET 2 OF 2 SEE SHEET 1 OF 2 FOR LEGAL DESCRIPTION

LEGAL DESCRIPTION
THIS IS NOT A SURVEY

A STRIP OF LAND LYING IN THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 24 SOUTH, RANGE 27 EAST, DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 17 FOR A POINT OF REFERENCE; THENCE RUN SOUTH 89°49'03" WEST, ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 17, A DISTANCE OF 1180.06 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF COUNTY ROAD 545, (AVALON ROAD), ACCORDING TO ROAD BOOK 3, PAGES 116 AND 117 AND DEED BOOK 402, PAGE 316 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA BEING A POINT ON A NON-TANGENT CURVE CONCAVE WESTERLY; THENCE RUN NORTHERLY ALONG SAID EASTERLY RIGHT-OF-WAY LINE AND SAID NON-TANGENT CURVE, HAVING A RADIUS OF 987.93 FEET, A CENTRAL ANGLE OF 12°13'03", AN ARC LENGTH OF 210.66 FEET, A CHORD LENGTH OF 210.26 FEET AND A CHORD BEARING OF NORTH 05°16'04" WEST TO THE POINT OF TANGENCY; THENCE RUN NORTH 11°22'36" WEST, ALONG SAID EASTERLY RIGHT-OF-WAY LINE, 93.63 FEET TO THE POINT OF BEGINNING; THENCE RUN NORTH 11°22'36" WEST, ALONG SAID EASTERLY RIGHT-OF-WAY LINE, 2394.80 FEET TO A POINT ON THE NORTH LINE OF SAID SOUTHWEST QUARTER OF SECTION 17; THENCE RUN NORTH 89°57'03" EAST, ALONG SAID NORTH LINE, 55.07 FEET TO A POINT LYING 54.00 FEET EAST OF (PERPENDICULAR MEASURE) SAID EASTERLY RIGHT-OF-WAY LINE; THENCE DEPARTING SAID NORTH LINE, RUN SOUTH 11°22'36" EAST, PARALLEL TO SAID EASTERLY RIGHT-OF-WAY LINE, 1905.94 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE WESTERLY; THENCE RUN SOUTHERLY ALONG SAID CURVE, HAVING A RADIUS OF 2143.00 FEET, A CENTRAL ANGLE OF 12°53'23", AN ARC LENGTH OF 482.10 FEET, A CHORD LENGTH OF 481.09 FEET AND A CHORD BEARING OF SOUTH 04°55'55" EAST TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED STRIP OF LAND LIES IN ORANGE COUNTY, FLORIDA AND CONTAINS 2.77 ACRES MORE OR LESS.

SHEET 1 OF 3
 SEE SHEETS 2 AND 3
 FOR SKETCH OF
 DESCRIPTION

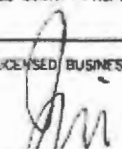


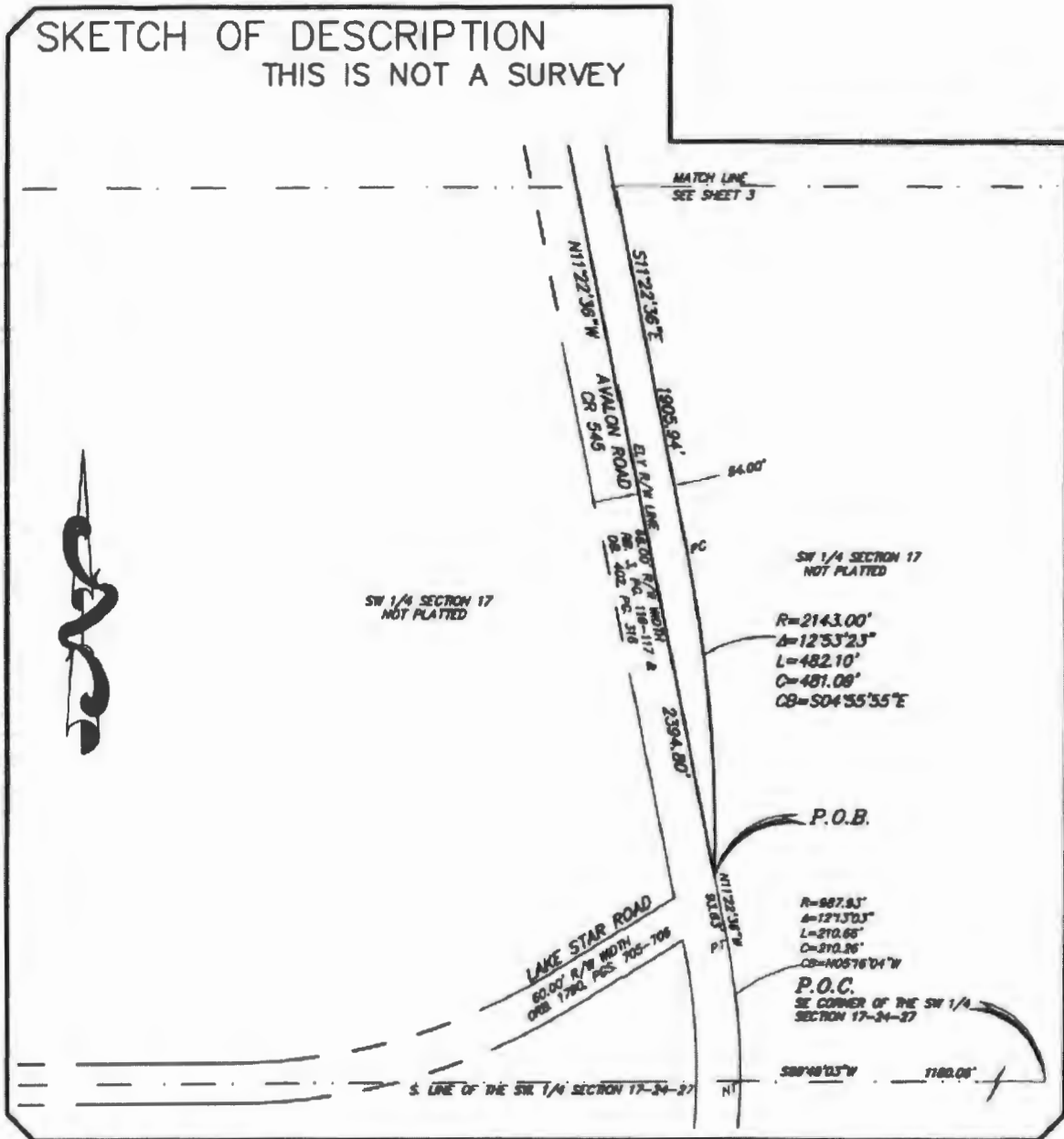
**ALLEN
 COMPANY**


16 East Plant Street
 Winter Garden, Florida 34787 • (407) 854 5355

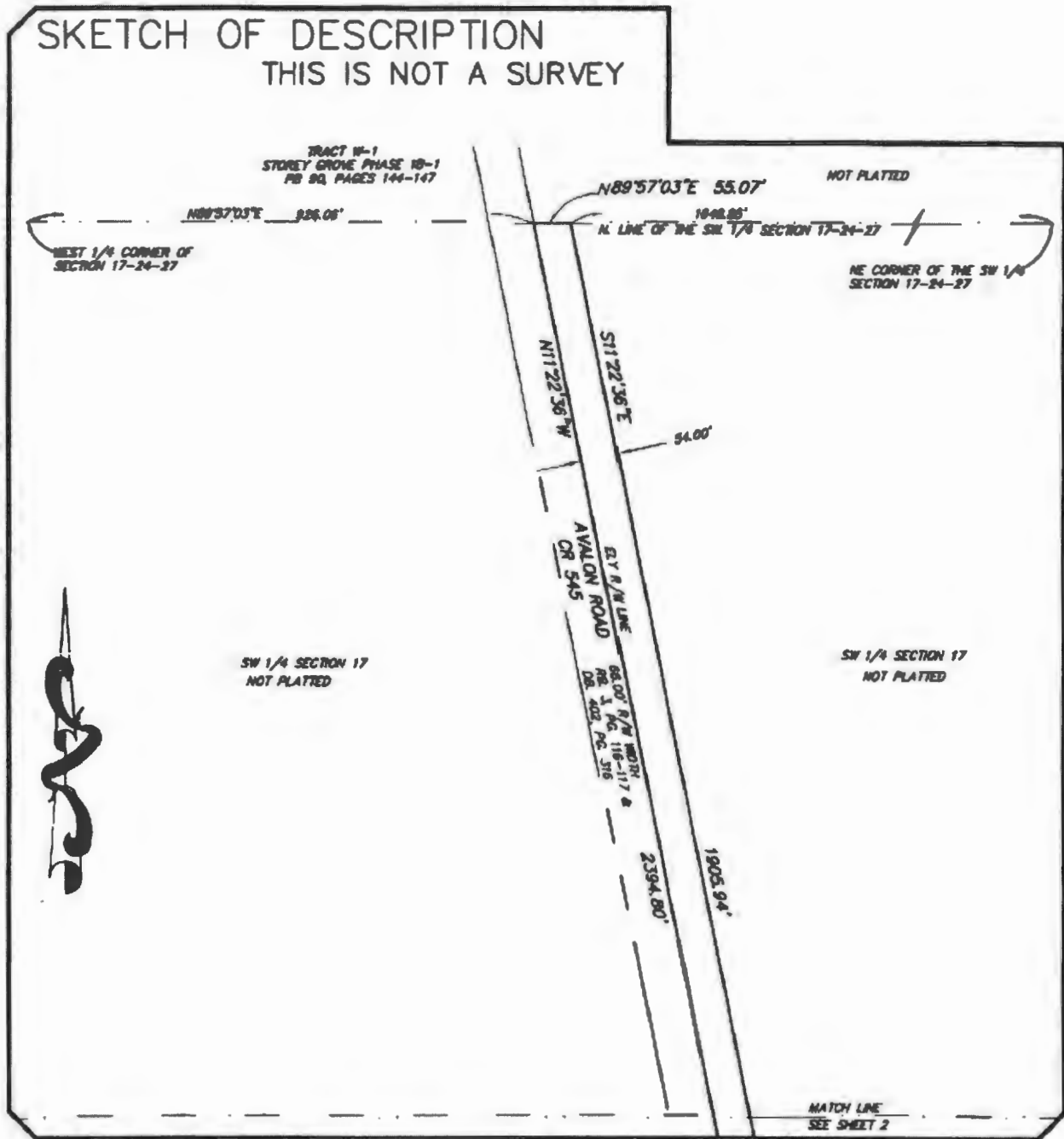
SURVEYOR'S NOTES: SKETCH 4

- THIS SKETCH IS NOT VALID UNLESS SIGNED AND SEALED WITH AN EMBOSSED SURVEYOR'S SEAL.
- BEARINGS SHOWN HEREON ARE ASSUMED AND BASED ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 24 SOUTH, RANGE 27 EAST, BEING SOUTH 89°49'03" WEST.
- THE LEGAL DESCRIPTION WAS PREPARED WITHOUT BENEFIT OF TITLE.
- THE ADJOINING RECORDING INFORMATION SHOWN HEREON WAS OBTAINED FROM THE ORANGE COUNTY PROPERTY APPRAISER PUBLIC ACCESS SYSTEM.
- DELINEATION OF THE LANDS SHOWN HEREON ARE AS PER THE CLIENT'S INSTRUCTIONS.

JOB NO. 20180028	CALCULATED BY: SEJ	FOR THE LICENSED BUSINESS # 6723 BY:
DATE: 2-13-18	DRAWN BY: SEJ	 JAMES L. RICHMAN P.S.M. # 5833
SCALE: 1"=200'	CHECKED BY: MR	
FIELD BY: N/A		



 ALLEN COMPANY 16 East Plant Street Winter Garden, Florida 34787 • (407) 854-5355	LEGEND: P.O.C.....POINT OF COMMENCEMENT P.O.B.....POINT OF BEGINNING PB.....PLAT BOOK PG(S).....PAGE(S) R/W.....RIGHT-OF-WAY RB.....ROAD BOOK R.....RADIUS Δ.....CENTRAL ANGLE L.....ARC LENGTH C.....CHORD LENGTH CB.....CHORD BEARING PC.....POINT OF CURVATURE PT.....POINT OF TANGENCY NT.....NON-TANGENT CR.....COUNTY ROAD DB.....DEED BOOK	SKETCH 4
	JOB NO. 20180038 DATE: 2-13-19 SCALE: 1"=300' FIELD BY: N/A	CALCULATED BY: SEJ DRAWN BY: SEJ CHECKED BY: MR



**ALLEN
&
COMPANY**

16 East Plant Street
 Winter Garden, Florida 34787 • (407) 854-5355

LEGEND:		R.....RADIUS	PT.....POINT OF TANGENCY
P.O.C.....POINT OF COMMENCEMENT	A.....CENTRAL ANGLE	L.....ARC LENGTH	NT.....NON-TANGENT
P.O.B.....POINT OF BEGINNING	C.....CHORD LENGTH	CR.....COUNTY ROAD	DB.....DEED BOOK
PB.....PLAT BOOK	CB.....CHORD BEARING	PC.....POINT OF CURVATURE	
PG(S).....PAGE(S)			
R/W.....RIGHT-OF-WAY			
RB.....ROAD BOOK			

JOB NO. 20180028
 DATE: 2-13-19
 SCALE: 1"=300'
 FIELD BY: N/A

CALCULATED BY: SEJ
 DRAWN BY: SEJ
 CHECKED BY: MR

SKETCH 4

**SHEET 3 OF 3
SEE SHEET 1 OF 3 FOR
LEGAL DESCRIPTION**