



Legislation Text

File #: 24-1550, **Version:** 1

Interoffice Memorandum

DATE: October 8, 2024

TO: Mayor Jerry L. Demings and County Commissioners

THROUGH: Mindy T. Cummings, Manager

FROM: Steve Cochran, Acquisition Agent

CONTACT: Mindy T. Cummings, Manager

PHONE: 407-836-7090

DIVISION: Real Estate Management Division

ACTION REQUESTED:

Approval and execution of License Agreement for Right of Entry by and between Sun Belt Office II, LLC, and Orange County, and authorization for the Real Estate Management Division to exercise renewal options, execute a termination notice, and furnish notices, required or allowed by the License Agreement as needed for Shingle Creek Trail Phase 1, Segments 2 and 3 - Sun Belt Office II. District 6. **(Real Estate Management Division)**

PROJECT:

Shingle Creek Trail Phase 1, Segments 2 and 3 -
Sun Belt Office II

PURPOSE: To provide for temporary access for construction.

ITEM:

License Agreement

Term: Three years

Cost:

Year One - \$2,000 per month

Year Two - \$2,000 per month

Year Three - \$2,000 per month

Option: Two, six-month renewals

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BUDGET: Account No.: 1265-062-2119-3620

REVENUE: None

FUNDS: N/A

APPROVALS:

Real Estate Management Division

County Attorney's Office

Risk Management Division

Parks and Recreation Division

REMARKS: The Parks and Recreation Division is requesting this temporary access agreement for certain real property located at 1600 Southpark Center Loop, Orlando Florida 32819, Parcel ID 04-24-29-3045-00-080, to continue the construction of the Shingle Creek Trail in the area located between Destination Parkway and State Road 528.

This License Agreement will not be recorded.

~~OCT 29 2021~~
Project: Shingle Creek Trail Phase – 1 – Segment 2 & 3

**LICENSE AGREEMENT FOR RIGHT OF ENTRY
BY AND BETWEEN SUN BELT OFFICE II, LLC,
AND ORANGE COUNTY**

This License Agreement for Right of Entry (the “Agreement”) is made and entered into as of the last date signed below (“Effective Date”) by and between SUN BELT OFFICE II, LLC, a Delaware limited liability company authorized to conduct business in the State of Florida with a principal place of business at 700 S. Rosemary Avenue, Suite 204-145, West Palm Beach, FL 33401 (“Sun Belt”) 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 (“Orange County”) (singularly, “Party” and together, “Parties”).

RECITALS

- A. Sun Belt has an undivided interest in that certain real property located at 1600 Southpark Center Loop, Orlando, FL 32819 bearing Parcel Identification Number 04-24-29-3045-00-080, which is more particularly described in **Exhibit “A”** attached hereto and generally depicted in **Exhibit “B”** attached hereto (the “Property”).
- B. Orange County requires temporary rights for ingress and egress over the Property for the construction of the Shingle Creek Multi Use Trail (the “Trail”), as generally shown in **Exhibit “C”** attached hereto.
- C. Sun Belt has agreed to grant to Orange County a right of entry for ingress and egress over a portion of the Property, as depicted and labeled as the “Subject Area” on **Exhibit “B”** (the “Subject Area”), and the staging and storing of materials over a portion of the Property, as depicted and labeled as the “Laydown Area” on **Exhibit “B”** (the “Laydown Area”), together for access to and construction of the Trail.
- D. Orange County will access the Subject Area and Laydown Area via public roads such as Challen Court, SouthPark Center Loop and Cordova Park Drive (the “Roads”), as depicted on Plat entitled “GRAN PARK AT SOUTHPARK PHASE II” recorded in Plat Book 55, Pages 41 through 43, of the Public Records of Orange County, Florida.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

TERMS

- 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 three (3) years from the Effective Date or on the date of completion of the Trail, whichever occurs first (the “Term”). Orange County shall have the option to extend the Term for two

(2) additional periods of six (6) months each. Orange County shall exercise its extension option by written notice to Sun Belt given not less than thirty (30) days prior to the expiration of the Term or extension thereof.

This Agreement shall automatically terminate on the date that is one (1) year from the Effective Date if no construction of the Trail has commenced. In addition, this Agreement shall automatically terminate in the event construction of the Trail ceases and has not recommenced for a period greater than six (6) months.

3. License Fee. During the Term, the consideration for this Agreement is the payment by Orange County to Sun Belt of Two Thousand and No/100 Dollars (\$2,000.00) per month (prorated for the first month of this Agreement) on or before the first (1st) day of each month (“License Fee”).
4. Right of Entry; Purpose. In accordance with the terms of this Agreement (including without limitation Section 7), Sun Belt grants to Orange County and its employees, contractors, agents, and representatives (singularly, “Authorized Party” and collectively, “Authorized Parties”) a temporary license for ingress and egress to the Subject Area and Laydown Area subject to the terms, conditions, and obligations set forth herein and subject to all matters of record. Orange County and its Authorized Parties’ temporary rights under this Agreement are limited to the following terms and conditions: ingress and egress to the Subject Area at reasonable locations and times as set forth herein, at no cost to Sun Belt, and in a manner reasonably acceptable to Sun Belt for the following sole purposes located on the Laydown Area: (i) construction of the Trail (ii) storage and maintenance of the construction equipment, (iii) construction and material staging, and (iv) storage areas, together with the rights of ingress and egress to and from the Trail over the Subject Area (the “Work”). Any fees, permits, or other documentation required for construction, environmental disturbance, access, or use of the Laydown Area shall be paid for by Orange County at no cost to Sun Belt.
5. Indemnity. Without waiving its sovereign immunity and the statutory protections and limitations in Section 768.28, Florida Statutes, Orange County will release, hold harmless, defend, and indemnify Sun Belt and its officers, employees, contractors, agents, tenants, or representatives from and against all claims, damages, injuries, losses, releases, or costs arising out of or in any way related to and to the extent caused by the negligent or wrongful acts of Orange County and its Authorized Parties’ entrance on the Subject Area, the Laydown Area, and the Work. This indemnification shall survive the expiration or sooner termination of the Agreement. Orange County or its Authorized Parties shall be responsible for the safety and security of all persons and property directly or indirectly associated with Orange County and its Authorized Parties’ entrance upon the Subject Area, the Laydown Area, and/or the Work.
6. Insurance. Any Authorized Party working for Orange County performing this Work shall carry: (i) commercial general liability insurance in an amount of \$1,000,000 per occurrence, \$2,000,000 in the aggregate and (ii) statutory workers’ compensation coverage, no less than \$5,000,000 for Employer’s Liability. Insurance carriers furnishing these coverages must be authorized to do business in the State of Florida, must possess a

minimum, current rating of A-Class VIII in the most recent edition of “Best's Key Rating Guide”, and must possess investment grade credit quality. Sun Belt shall be listed as an additional insured under the insurance policies. Orange County must file with Sun Belt current certificates of all required insurance on forms acceptable to Sun Belt 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.

7. Notice Before Entry. Orange County and its Authorized Parties shall provide written notice (email will suffice) to Sun Belt at least three (3) business days before entering the Subject Area and/or Laydown Area to perform the Work. Orange County and its Authorized Parties will reasonably cooperate and coordinate the Work within the Subject Area and/or Laydown Area with representatives of Sun Belt. If a representative of Sun Belt reasonably believes that Orange County or its Authorized Parties’ Work or activity on the Subject Area and/or Laydown Area is creating or could create an interference with its ordinary use of the Subject Area and/or Laydown Area, then Sun Belt shall immediately notify Orange County in writing and Orange County shall immediately cease or cause the cessation of such Work or activity until the interference is remediated to Sun Belt’s reasonable satisfaction. Orange County and its Authorized Parties may only enter and exit the Subject Area and/or Laydown Area at the points of entry reasonably approved by Sun Belt. Orange County and its Authorized Parties shall not do any damage to the Subject Area and/or Laydown Area for Sun Belts’ ordinary use of the Subject Area and/or Laydown Area.
8. Non-Interference and Standards of Work. The Property is a vacant commercial property. Orange County and its Authorized Parties shall not materially interfere with or impair any use or activity being conducted on the Property, pedestrian or vehicular access to/from the Property, or the visibility of any signage situated on the Property and Orange County and its Authorized Parties shall not do any damage to the Property other than that associated with the Work. Orange County and its Authorized Parties’ exercise of their rights under this Agreement shall be conducted subject to applicable matters of record and in conformity with applicable laws and restrictions encumbering the Property.
9. Construction Status Updates. Orange County shall, on or before the fifteenth (15th) day of the first month of each quarter during the Term, submit to Sun Belt a written status report, showing accurately and in reasonable detail the status of construction of the Trail and projected completion date of the Trail, including, but not limited to, the following: physical progress of the Trail, permits, and construction schedule.
10. Fencing. Sun Belt and Orange County acknowledge and agree that the Laydown Area shall be fenced at no cost to Sun Belt. Both Sun Belt and Orange County may use the fence for signage to announce new construction “coming soon” or for directional signage.
11. Security. The Laydown Area shall be fully secured at no cost to Sun Belt. Security measures for the Laydown Area may include, but are not limited to, the following: lock and key, security guard, or video recording.

12. Coordination of Vehicular Access. In the event Sun Belt commences construction on the Property, Orange County and Sun Belt shall mutually agree upon a schedule determining vehicle delivery and access to the Property.
13. Relocation of the Subject Area and/or Laydown Area. Sun Belt and Orange County acknowledge that from time to time the Subject Area and/or the Laydown Area may be closed due to the development construction. In the event that the Subject Area and/or the Laydown Area are closed, then Sun Belt will provide a similar area in size and proximity to Orange County's construction site for a new Subject Area and/or Laydown Area. Sun Belt reserves and is hereby granted the right, upon not less than thirty (30) days' prior written notice to Orange County to reasonably relocate and to substitute as the Subject Area and/or the Laydown Area hereunder any other portion of the Property or to other property owned by Sun Belt along Southpark Center Loop, Orlando, FL 32819 for all uses and purposes as though licensed to Orange County at the time of the execution of this Agreement.
14. Condition of the Subject Area, the Laydown Area, the Property, and the Roads. During the Term Orange County shall use commercially reasonable efforts both to maintain the Subject Area, the Laydown Area, the Property, and the Roads in accordance with standards of good construction, and to remove waste materials, trash, debris, and other rubbish on a regular basis ("Maintenance Standards"). Orange County shall repair any damage to the Subject Area, the Laydown Area, the Property, and the Roads caused by Orange County and shall restore same to substantially the same condition in which it existed immediately prior to Orange County's performance of the Work. Orange County will reimburse Sun Belt for actual, reasonable costs incurred by Sun Belt for repair of any damage to Sun Belt's real property, and/or any damage to improvements that is not so restored by Orange County. This obligation shall survive the expiration or sooner termination of the Agreement.
15. Self-Help Rights. If Orange County fails to maintain the Subject Area, the Laydown Area, the Property, and the Roads in accordance with the Maintenance Standards by the date that is ninety (90) days after notice from Sun Belt to Orange County of Sun Belt's demand for Orange County to comply with the Maintenance Standards and Orange County is not otherwise diligently pursuing such (which for purposes of this Agreement shall mean that there has been no maintenance activity occurring for a period of ninety (90) days after receipt of notice from Sun Belt to Orange County) then Sun Belt may, at Sun Belt's sole discretion, elect to exercise self-help rights to perform such maintenance by providing written notice to Orange County. If Sun Belt elects to exercise its rights of self-help, Orange County agrees that Sun Belt shall not be liable for any costs, damages, injuries or claims not directly related to Sun Belt's exercise of self-help, or arising out of any occurrence or matter occurring prior to the date Sun Belt commences the exercise of its self-help rights; and Orange County shall indemnify and hold Sun Belt harmless from any such costs, damages, injuries or claims. Additionally, Orange County acknowledges that in the exercise of Sun Belt's right of self-help to complete maintenance of the Subject Area, the Laydown Area, the Property, and the Roads, Sun Belt will incur significant expenses, and therefore agrees that: Orange County shall reimburse Sun Belt for actual, reasonable out of pocket expenses incurred by Sun Belt in its exercise of its right of self-help, including all hard costs associated with the maintenance of the Subject Area, the Laydown Area, the

Property, and the Roads by any provider of Sun Belt's choice, soft costs including, but not limited to maintenance expenses and any such other expenses as are reasonably necessary under the circumstances. If Orange County fails to reimburse Sun Belt upon demand by Sun Belt of the amount to which Sun Belt is entitled to reimbursement pursuant to the terms hereof, Sun Belt shall have the right to pursue any and all remedies available under applicable law.

16. Environmental Condition. The execution of this Agreement by Sun Belt is not intended, nor should it be construed, as an admission of liability on the part of Sun Belt or Sun Belt's successors and assigns for any contamination discovered on the Property.
17. Attorney's 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, 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.
18. Governing Law. This Agreement will be construed and enforced in accordance with Florida law. The parties agree the venue for any litigation arising out of this License Agreement will be in the Ninth Judicial Circuit Court in and for the County of Orange within the state of 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(s). 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.
19. Entire Agreement. This Agreement, together with any amendments, constitutes the entire agreement between the parties regarding the matters described in this Agreement, and this Agreement supersedes any previous oral or written agreements between the parties. This Agreement may be signed in counterpart so long as all parties have executed the agreement.
20. Modifications and Amendments. The Agreement may be amended or modified only by a written instrument duly executed by an authorized representative of each Party. The Manager of the Real Estate Management Division will be hereby authorized, on behalf of Orange County, to furnish any notice required or allowed hereunder and to issue written extensions and approvals of any amendments or modifications to the Agreement.
21. Successors and Assigns. The terms, covenants, conditions, and provisions contained in this Agreement shall be binding upon and inure to the benefit of Sun Belt, and its respective successors and assigns. In the event that ownership or lease of all or a portion of the Subject Area and/or Laydown Area is transferred, the Agreement shall be assigned to the new owner or tenant. Notwithstanding the foregoing, transfer of a leasehold shall not release the underlying fee owner.

22. 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 address, and (iii) delivered by electronic mail. 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 or electronic delivery to the appropriate address as follows:

Any notice to Sun Belt required hereunder shall be delivered to:

Sun Belt Office, II, LLC
700 South Rosemary Avenue,
Suite 204-145
West Palm Beach, Florida 33401
Attn: Aaron K. Smith
Phone: (561) 266-4410
Email: aaron.smith@ppfreal.com

With a copy to:

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

Any notice to Orange County required hereunder shall be delivered to:

Orange County
Real Estate Management Division
400 East South Street, 5th Floor
Orlando, FL 32801
Attn: Mindy T. Cummings, Manager
Phone: (407) 836-7070
Email: mindy.cummings@ocfl.net

With a copy to:

Orange County Parks and Recreation Division
4801 West Colonial Drive
Orlando, Florida 32839
Attn: Cedric M. Moffett, Principal Planner
Phone: (407) 836-6200
Email: cedric.moffett@ocfl.net

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

{signatures appear on following page}

IN WITNESS WHEREOF, the Parties have executed this Agreement to be made effective as of the Effective Date.

SUN BELT:

SUN BELT OFFICE II, LLC,
a Delaware Limited Liability Company

By: _____

Name: ARON K. SMITH

Title: MANAGER

Dated: May 15, 2024



ORANGE COUNTY:

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: Beverly Brooks

for Jerry L. Demings
Orange County Mayor

Dated: 29 October 2024

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

By: Jennifer Lam-Klimetz
for Deputy Clerk

Printed Name: Jennifer Lam-Klimetz

Date: OCT 29 2024

EXHIBIT "A"

THE PROPERTY

[Parcel Identification Number 04-24-29-3045-00-080]

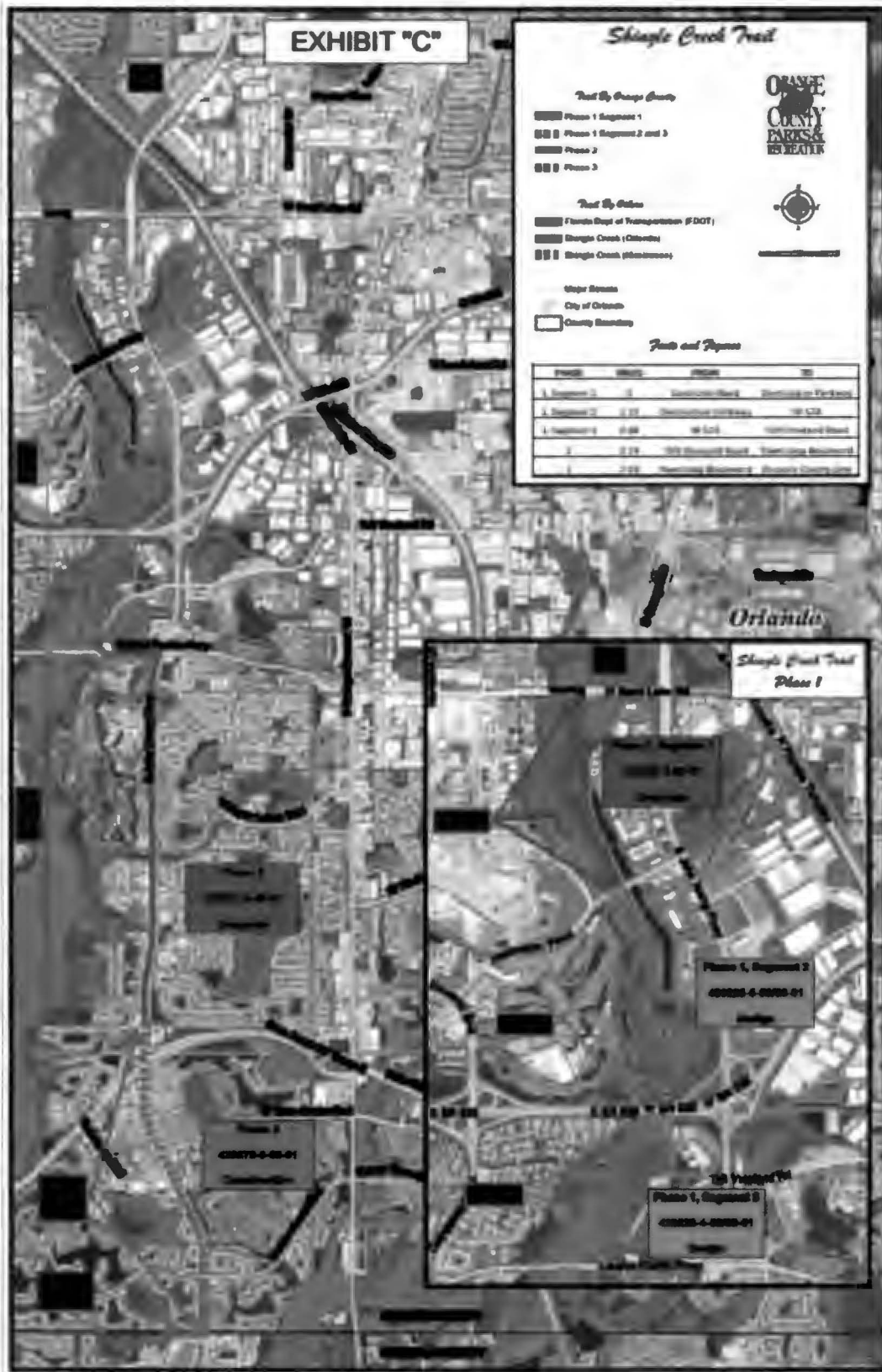
That part of Lot 8, GRAN PARK at SOUTHPARK PHASE II, according to the plat thereof, as recorded in Plat Book 55, Pages 41 through 43 of the Public Records of Orange County, Florida, described as follows:

Begin at the Southwest corner of said Lot 8; thence N 00° 27' 01" W, along the West line of said Lot 8 for a distance of 473.83 feet; thence departing said West line N 89° 33' 10" E, 252.14 feet; thence N 00° 26' 50" W, 126.19 feet to the Southeast corner of Lot 9 of said GRAN PARK at SOUTHPARK PHASE II; thence run the following eleven (11) courses along the boundary of said Lot 8; N 89° 32' 59" E, 89.00 feet; thence N 00° 26' 50" W, 34.00 feet to the point of curvature of a curve concave Westerly having a radius of 44.50 feet and a chord bearing of N 06° 05' 34" W; thence Northerly along the arc of said curve through a central angle of 11° 77' 28" for a distance of 8.77 feet to the point of reverse curvature of a curve concave Easterly having a radius of 188.00 feet and a chord bearing of N 06° 05' 34" W; thence Northerly along the arc of said curve through a central angle of 11° 77' 28" for a distance of 37.05 feet to the point of tangency; thence N 00° 26' 50" W, 356.65 feet to the point of curvature of a curve concave Easterly having a radius of 186.50 feet and a chord bearing of N 05° 36' 33" E; thence Northerly along the arc of said curve through a central angle of 12° 06' 45" for a distance of 39.43 feet to the point of compound curvature of a curve concave Southeasterly having a radius of 31.00 feet and a chord bearing of N 50° 36' 33" E; thence Northeasterly along the arc of said curve through a central angle of 77° 53' 15" for a distance of 42.14 feet to the point of tangency; thence N 89° 33' 10" E, 638.21 feet to the point of curvature of a curve concave Southwesterly having a radius of 25.00 feet and a chord bearing of S 45° 26' 50" E; thence Southeasterly along the arc of said curve through a central angle of 90° 00' 00" for a distance of 39.27 feet to the point of tangency; Thence S 00° 26' 50" E, 1074.76 feet to the Southeast corner of said Lot 8; thence S 89° 32' 59" W, 1034.29 feet to the point of beginning.

EXHIBIT "B"



EXHIBIT "C"



MCS