



Interoffice Memorandum

REAL ESTATE MANAGEMENT ITEM 7

DATE: January 18, 2024

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

THROUGH: Mindy T. Cummings, Manager *MTC*
Real Estate Management Division

FROM: Sara Solomon, Senior Title Examiner *SS/MTC*
Real Estate Management Division

CONTACT PERSON: **Mindy T. Cummings, Manager**

DIVISION: **Real Estate Management Division**
Phone: (407) 836-7090

ACTION REQUESTED: Approval and execution of Temporary Construction Easement by and between Orange County and The School Board of Orange County, Florida, and authorization to record instrument.

PROJECT: Waterleigh Site 47-E-4 Horizon West Village H N. Elementary School
District 1

PURPOSE: To provide temporary means of construction access, vehicular access, and pedestrian ingress and egress as a requirement of development.

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Real Estate Management Division
Agenda Item 7
January 18, 2024
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ITEM: Temporary Construction Easement
Cost: Donation
Size: 12,136 square feet

APPROVALS: Real Estate Management Division
County Attorney's Office
Risk Management Division
Parks and Recreation Division

REMARKS: The County is executing the Temporary Construction Easement to show acceptance of the terms and conditions.

Grantee to pay all recording costs.

APPROVED

BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS

FEB 06 2024

Prepared by and return to:

Jad M. Brewer, Esq.
Orange County Public Schools
6501 Magic Way, Bldg. 200
Orlando, Florida 32809

Project: 47-E-4/Horizon West Village H N. Elementary School

This document constitutes a conveyance from a state agency or instrumentality to an agency of the state and is not subject to documentary stamp tax. Department of Revenue Rules 12B-4.014(10), F.A.C.

TEMPORARY CONSTRUCTION EASEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT (“Agreement”) is made as of the Effective Date (hereinafter defined) by and between **ORANGE COUNTY**, a charter county and political subdivision of the State of Florida, whose address is P.O. Box 1393, Orlando, Florida 32802-1393 (**“Grantor”**) and **THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA**, a public corporate body organized and existing under the Constitution and laws of the State of Florida, with its principal offices at 445 West Amelia Street, Orlando, Florida, 32801 (**“Grantee”**).

WITNESSETH:

WHEREAS, Grantor is the fee simple owner of that certain real property consisting of approximately 5 (five) acres located in Orange County, Florida, as more particularly described in **Exhibit “A”** attached hereto and incorporated herein by this reference (**“Property”**); and

WHEREAS, Grantee is undertaking the construction and installation of certain improvements adjacent to the Property (**“Construction Project”**); and

WHEREAS, Grantee requires a temporary, non-exclusive construction easement over, under, and across a portion of the Property for its Construction Project, as more particularly depicted and legally described in **Exhibit “B”** attached hereto and incorporated herein by this reference (**“Easement”**); and

WHEREAS, Grantor has agreed to grant to Grantee a temporary, non-exclusive construction easement over, under, and across a portion of the Property in accordance with the terms and conditions more specifically set forth herein.

NOW THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Recitals.** The recitals set forth above are true and correct and hereby incorporated into the terms of this Agreement.

2. **Grant of Temporary Construction Easement.** Grantor hereby grants, bargains, sells, releases, conveys and confirms unto Grantee, a temporary, non-exclusive construction easement to Grantee over, under, and across that portion of the Property depicted and legally described in **Exhibit “B” (“Easement”)** for the purpose of providing Grantee the right to construct the Construction Project, and as a temporary means of construction access, vehicular and pedestrian ingress and egress for the Construction Project, and all rights incidental thereto. The Easement does include the right of Grantee to use the areas within the Easement for additional work space. The right to use the Easement may be extended by Grantee to its employees, agents, licensees, contractors, consultants, subcontractors, business invitees and other persons having contact with the Construction Project (collectively, **“Grantee’s Affiliates”**). All rights not reasonably necessary hereunder are expressly reserved to Grantor. Nothing contained in this Easement shall be deemed to constitute a grant or dedication to the general public or for any public purpose whatsoever.

3. **Duration of Easement.** All covenants, rights and obligations related to the Easement shall automatically terminate upon the earlier of (i) the completion of the Construction Project; or (ii) two (2) years from the Effective Date hereof, unless sooner terminated as provided herein or extended by the mutual consent of the parties hereto (**“Termination”**). Upon Termination, this Agreement shall be deemed null and void and of no further force or effect and the parties hereto shall be relieved of any further rights and obligations hereunder.

4. **Maintenance of the Easement.** Grantee agrees to maintain the Easement, and to pay all costs and expenses in connection therewith. Grantee, or its successors and assigns, at its sole cost and expense, shall maintain, replace and repair, to the extent necessary, the Easement in (i) a good state of repair and condition and (ii) accordance with all applicable governmental regulations. In the event Grantee, or Grantee’s Affiliates, disturb or damage any areas, facilities, improvements or property within the Easement or Property, including, without limitation, any paving, curbing, sidewalks, recreational facilities and landscaping, (collectively, **“Disturbed Area”**), Grantee shall, at its sole cost and expense, promptly repair, replace and restore any Disturbed Area on the Property to its original condition. Grantee shall not make any use of the Easement that would weaken, diminish or impair the lateral or subjacent support to an improvement located on the Property

5. **Indemnity.** For actions attributable to the exercise of its rights under this easement, GRANTEE will indemnify and hold harmless GRANTOR, its agents, employees and elected officials to the extent provided in Section 768.28, Fla. Stat., as same may be amended from time to time. Nothing herein shall be construed as: (a) a waiver of Grantee’s nor Grantor’s sovereign immunity or the protections or provisions provided under Section 768.28, Florida Statutes, as same may be amended from time to time, or (b) an agreement by Grantor or Grantee to pay a claim or a judgment which exceeds the limits per claim or per occurrence set forth for tort liability in Section 768.28, Florida Statutes, as same may be amended from time to time, which limits are hereby made applicable to all manner of claims against Grantor or Grantee related to

this easement and are not confined to tort liability. The terms of this paragraph shall survive any termination of this easement.

6. **Defaults.** In the event Grantee fails to comply with or perform any of the conditions to be complied with or any of the covenants or obligations to be performed by Grantee under the terms and provisions of this Agreement, Grantor may send a written notice to Grantee demanding performance of the unfulfilled obligation. If Grantee fails to cure such non-performance within fifteen (15) calendar days of the delivery of such notice, Grantor, in Grantor's sole discretion, shall be entitled to (i) exercise any and all rights and remedies available to Grantor at law and in equity, including without limitation the right of specific performance and injunction; or (ii) terminate this Agreement. All of the remedies permitted or available to a party under this Agreement or at law or in equity shall be cumulative and not alternative, and the invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy. Nothing contained herein shall be construed as a waiver of Grantor's sovereign immunity beyond the limits described in Section 768.28, Florida Statutes, as same made by amended from time to time.

7. **Notices.** Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly received as of: (i) the date and time the same are personally delivered, transmitted electronically (i.e., facsimile or e-mail); (ii) within three (3) days after depositing with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested; or (iii) within one (1) day after depositing with Federal Express or other overnight delivery service from which a receipt may be obtained, and addressed as follows:

Grantor: Orange County Real Estate Management Division
P.O. Box 1393
Orlando, Florida 32802-1393
Attn: Mindy T. Cummings, Manager
Telephone: (407)836-7070

Copy to: Orange County Attorney's Office
P. O. Box 1393
Orlando, Florida 32802-1393
Telephone: (407) 836-7320

Grantee: The School Board of Orange County, Florida
445 West Amelia Street
Orlando, Florida 32801
Attn: General Counsel
Telephone: (407) 317-3411
Facsimile: (407) 317-3341

Copy to: Orange County Public Schools
Real Estate Management

Attn: Harold Jenkins
6501 Magic Way, Bldg. 200
Orlando, Florida 32809
Telephone: (407) 317-3700 (ext. 202-5108)
Facsimile: (407) 317-3792

-and-

Orange County Public Schools
Facilities Services
Attn: Jad Brewer, Esq.
6501 Magic Way, Bldg. 200
Orlando, Florida 32809
Telephone: (407) 317-3700 (ext. 202-5906)
Facsimile: (407) 317-3751

or to such other address as either party hereto shall from time to time designate to the other party by notice in writing as herein provided.

8. **General Provisions.** No failure of either party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, personal representatives, successors, and assigns. Time is of the essence of this Agreement. Wherever, under the terms and provisions of this Agreement, the time for performance falls upon a Saturday, Sunday, or Legal Holiday, such time for performance shall be extended to the next business day. The headings inserted at the beginning of each paragraph are for convenience only, and do not add to or subtract from the meaning of the contents of each paragraph. This Agreement and the provisions contained herein shall be construed and interpreted in accordance with and controlled and governed by the laws of the State of Florida, with venue and jurisdiction for any proceeding in Orange County, Florida. This Agreement contains the entire agreement of the parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

9. **Attorneys' Fees and Waiver of Jury Trial.** In the event of any dispute hereunder or of any action to interpret or enforce this Agreement, any provision hereof or any matter arising herefrom, each party shall bear its own attorneys' fees, costs, and expenses, including, but not limited to, witness fees, expert fees, consultant fees, paralegal and legal assistant fees, costs and expenses and other professional fees, costs and expenses whether suit be brought or not, and whether in settlement, in any declaratory action, in mediation, arbitration,

bankruptcy or administrative proceeding, or at trial or on appeal. Notwithstanding the foregoing, nothing contained herein shall be construed or interpreted (a) to alter, amend or waive the Grantor's sovereign immunity of the State of Florida, or its agencies, or any defenses thereto, beyond the waiver provided in Section 768.28, Florida Statutes; or (b) as the consent of the Grantor to be sued. 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.

10. **Rules and Regulations.** Prior to Grantee exercising its rights granted hereunder, Grantee shall obtain and maintain all necessary or required permits, approvals and licenses for the Construction Project.

11. **Counterparts.** This Agreement may be executed in two or more counterpart copies, each of which shall be deemed to constitute one original document. The parties may execute different counterparts of this Agreement, and, if they do so, the signatures pages from the different counterparts may be combined to provide one integrated document and taken together shall constitute one and the same instrument.

12. **Amendments to Agreement.** Any amendment to this Agreement shall not be binding upon any of the parties hereto unless such amendment is in writing and executed by the parties hereto. Grantor does hereby confer upon the Manager of its Real Estate Management Division, and Grantee does hereby confer upon the Superintendent, or Superintendent's designee, the authority to amend this Agreement or provide any consent or approval set forth herein, without formal approval from Grantor or Grantee, respectively, provided such amendment or consent does not substantially alter or modify the terms herein.

13. **Effective Date.** The effective date of this Agreement shall be the date upon which the last of the parties hereto executes this Agreement ("**Effective Date**").

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement in manner and form sufficient to bind them as of the Effective Date.

Signed and sealed in the presence of:

“GRANTEE”

Dilsette Zayas
Print Name: Dilsette Zayas
445 West Amelia
Orlando, Florida 32801
Ambia Henley
Print Name: Ambia Henley
445 West Amelia
Orlando, Florida 32801

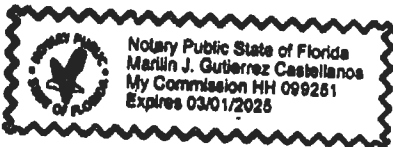
THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA, a body corporate and political subdivision of the State of Florida

By: Teresa Jacobs
Teresa Jacobs, as Chair

Date: 1/9/24

STATE OF FLORIDA)
) s.s.:
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 9th day of January, 2024, by Teresa Jacobs, as Chair of The School Board of Orange County, Florida, a public corporate body and political subdivision of the State of Florida, on behalf of The School Board. She is personally known to me or has produced _____ (type of identification) as identification and has acknowledged that he/she signed the instrument voluntarily for the purpose expressed in it.



AFFIX NOTARY STAMP

Marilyn Gutierrez Castellanos
NOTARY PUBLIC OF FLORIDA
Print Name: Marilyn Gutierrez
Commission No.: 099251
Expires: 03/01/2025

[ADDITIONAL SIGNATURE PAGES TO FOLLOW]

THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA, a body corporate and political subdivision of the State of Florida

Signed and sealed in the presence of:

Deborah M. McNeill
Print Name: Deborah M. McNeill
445 West Amelia Street, Orlando, Florida 32801

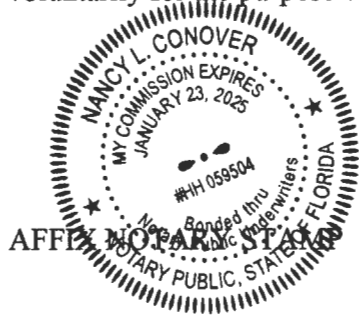
Aranka Henley
Print Name: Aranka Henley
445 West Amelia Street, Orlando, Florida 32801

Attest: Maria F. Vazquez
Maria F. Vazquez, Ed.D., as its Superintendent

Date: 12-14-2023

STATE OF FLORIDA)
) s.s.:
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 14 day of December, 2023, by Maria F. Vazquez, Ed.D., as Superintendent of The School Board of Orange County, Florida, a public corporate body and political subdivision of the State of Florida, on behalf of The School Board. She is personally known to me or has produced _____ (type of identification) as identification and has acknowledged that he/she signed the instrument voluntarily for the purpose expressed in it.



Nancy L. Conover
NOTARY PUBLIC OF FLORIDA
Print Name: Nancy L. Conover
Commission No.: _____
Expires: _____

Approved as to form and legality by legal counsel to The School Board of Orange County, Florida, exclusively for its use and reliance.

By: Jad M. Brewer
Jad M. Brewer, Staff Attorney
III/Planning and Real Estate
Date: December 12, 2023

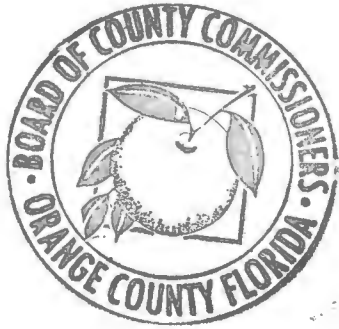
Reviewed and approved by Orange County Public Schools Chief Facilities Officer

By: Rory Salimbene
Rory Salimbene, Chief Facilities Officer
Date: Dec 12, 2023

“GRANTOR”

ORANGE COUNTY, FLORIDA,

By: Board of County Commissioners



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

Date: 6 February 2024

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

By: *Jennifer Lara-Kimetz*
for Deputy Clerk

Printed Name: Jennifer Lara-Kimetz

Project: 47-E-4/Horizon West Village H N. Elementary School

EXHIBIT "A"

Legal Description

Portion of Orange County Property Appraiser's Parcel Identification No. 07-24-27-7507-11-661

EXHIBIT "B"
Easement

**SKETCH OF DESCRIPTION
TEMPORARY
CONSTRUCTION EASEMENT
SITE 47-E-W-4**

SECTION 7, TOWNSHIP 24 SOUTH, RANGE 27 EAST
ORANGE COUNTY, FLORIDA

LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN SECTION 7, TOWNSHIP 24 SOUTH, RANGE 27 EAST, ORANGE COUNTY FLORIDA, BEING A PORTION OF TRACT APF-1, WATERLEIGH PHASES 3B, 3C, AND 3D, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 100, PAGES 61-87, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF SAID TRACT APF-1; THENCE ALONG THE WEST LINE OF SAID TRACT APF-1, N00°37'36"W, A DISTANCE OF 150.01 FEET; THENCE DEPARTING SAID WEST LINE OF TRACT APF-1, N89°22'24"E, A DISTANCE OF 40.00 FEET; THENCE S00°37'36"E, A DISTANCE OF 120.00 FEET; THENCE N89°21'27"E, A DISTANCE OF 204.54 FEET; THENCE S00°38'33"E, A DISTANCE OF 30.00 FEET TO THE NORTH RIGHT-OF-WAY OF ATWATER BAY DRIVE (73 FOOT RIGHT-OF-WAY) PER PLAT BOOK 99, PAGES 54-63, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE ALONG SAID NORTH RIGHT-OF-WAY OF ATWATER BAY DRIVE, S89°21'27"W, A DISTANCE OF 244.54 FEET TO THE POINT OF BEGINNING.


CONTAINING 12136 SQUARE FEET OF LAND, MORE OR LESS.

SURVEYOR'S NOTES

1. THE PURPOSE OF THIS SKETCH OF DESCRIPTION IS TO PROVIDE A LEGAL DESCRIPTION FOR A TEMPORARY CONSTRUCTION EASEMENT.
2. THE BASIS OF BEARINGS FOR THIS SKETCH IS GRID NORTH, STATE PLANE COORDINATE SYSTEM, FLORIDA EAST, NAD 83, NGS ADJUSTMENT OF 2011. THE NORTH RIGHT-OF-WAY LINE OF ATWATER BAY DRIVE, WHICH IS RECORDED TO BEAR S89°21'27"W, ACCORDING TO THE PLAT OF WATERLEIGH PHASES 3B, 3C, 3D AS RECORDED IN PLAT BOOK 100, PAGES 61-87, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.
3. THE PROPERTY DEPICTED ON THIS SKETCH IS SUBJECT TO ALL EASEMENTS AND RESTRICTIONS OF RECORD.
4. THIS LEGAL DESCRIPTION IS INCOMPLETE UNLESS ACCOMPANIED BY A SKETCH OF THE PROPERTY DESCRIBED HEREIN.
5. THIS IS NOT A SURVEY.

THIS SKETCH OF DESCRIPTION OR THE COPIES THEREOF ARE NOT VALID WITHOUT THE SIGNATURE AND SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

REVISION: 6 DEC 2023 - ADDRESSED COMMENTS

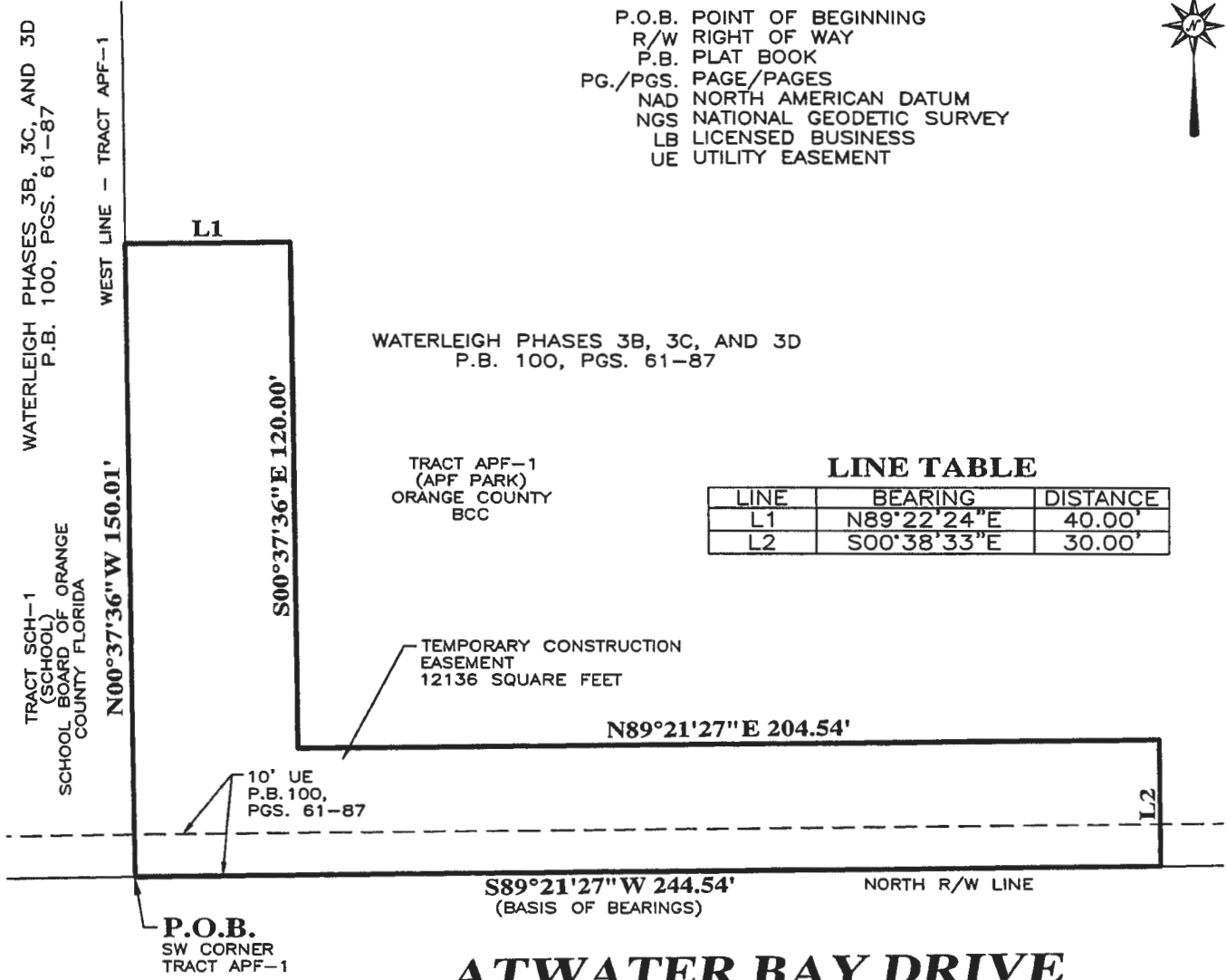
 <p>LEADING EDGE LAND SERVICES INCORPORATED</p> <p>8802 EXCHANGE DRIVE ORLANDO, FLORIDA 32809 PHONE: (407) 351-6730 FAX: (407) 351-9691 WEB: www.leadingedgels.com</p> <p>FLORIDA LICENSED BUSINESS NUMBER LB 6846</p>	<p>SKETCH OF DESCRIPTION FOR WELBRO</p>	<p>DATE OF DRAWING: 6 NOV 2023</p>
	<p>SURVEYOR'S CERTIFICATION</p> <p>I, THE UNDERSIGNED FLORIDA LICENSED SURVEYOR AND MAPPER, DO HEREBY CERTIFY THAT I HAVE COMPLETED THIS SKETCH IN ACCORDANCE WITH FLORIDA ADMINISTRATIVE RULE 51-17 STANDARDS OF PRACTICE FOR PROFESSIONAL SURVEYORS AND MAPPERS.</p> <p align="right">DATE: 12/06/2023</p> <p>JEFFERY D. HOPIUS PROFESSIONAL SURVEYOR AND MAPPER NUMBER 6610</p>	<p>MANAGER: JDH CADD: JAA</p> <p>PROJECT NUMBER: 285-23012</p> <p>FIELD BOOK NUMBER: N/A</p> <p>LAST FIELD WORK: N/A</p> <p>CREW CHIEF(S): N/A</p> <p>COMPUTER FILE: 285012SD4.DWG</p> <p>SCALE: N/A SHEET 1 OF 2</p>

**SKETCH OF DESCRIPTION
TEMPORARY
CONSTRUCTION EASEMENT
SITE 47-E-W-4**

SECTION 7, TOWNSHIP 24 SOUTH, RANGE 27 EAST
ORANGE COUNTY, FLORIDA

LEGEND

- P.O.B. POINT OF BEGINNING
- R/W RIGHT OF WAY
- P.B. PLAT BOOK
- PG./PGS. PAGE/PAGES
- NAD NORTH AMERICAN DATUM
- NGS NATIONAL GEODETIC SURVEY
- LB LICENSED BUSINESS
- UE UTILITY EASEMENT

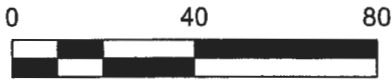


LINE TABLE

LINE	BEARING	DISTANCE
L1	N89°22'24\"E	40.00'
L2	S00°38'33\"E	30.00'

ATWATER BAY DRIVE

73' RIGHT OF WAY
PER P.B. 99, PGS. 54-63



GRAPHIC SCALE 1"=40'

THIS SKETCH OF DESCRIPTION OR THE COPIES THEREOF ARE NOT VALID WITHOUT THE SIGNATURE AND SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER. (SEE SHEET 1)

REVISION: 6 DEC 2023 -- ADDRESSED COMMENTS

<p>LEADING EDGE LAND SERVICES INCORPORATED</p> <p>8802 EXCHANGE DRIVE ORLANDO, FLORIDA 32809 PHONE: (407) 351-6730 FAX: (407) 351-9691 WEB: www.leadingedgels.com</p> <p>FLORIDA LICENSED BUSINESS NUMBER LB 6846</p>	<p>SKETCH OF DESCRIPTION FOR WELBRO</p>	<p>DATE OF DRAWING: 6 NOV 2023</p>
	<p>THIS SKETCH IS INCOMPLETE UNLESS ACCOMPANIED BY A LEGAL DESCRIPTION OF THE PROPERTY DEPICTED HEREIN</p>	<p>MANAGER: JDH CADD: JAA</p> <p>PROJECT NUMBER: 285-23012</p> <p>FIELD BOOK NUMBER: N/A</p> <p>LAST FIELD WORK: N/A</p> <p>CREW CHIEF(S): N/A</p> <p>COMPUTER FILE: 285012SD4.DWG</p> <p>SCALE: 1" = 40' SHEET 2 OF 2</p>

THIS IS NOT A SURVEY