

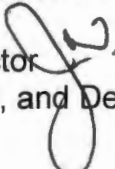


**Interoffice Memorandum**

**AGENDA ITEM**

February 28, 2020

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

**FROM:** Jon V. Weiss P.E., Director   
Planning, Environmental, and Development Services Department  
(407) 836 - 5393

**SUBJECT:** March 10, 2020 – Consent Item  
Developer's Agreement Regarding Flemings Road

The Spring Grove Jaffers PD is located in Horizon West Village I generally west of County Road 545 (Avalon Road) and south of Flemings Road. On October 30, 2018, the Board approved the Spring Grove – Jaffers Planned Development / Village I – Phase 1 & 2 – Parcel W-16 & a portion of W-17 Preliminary Subdivision Plans (PSP) (now known as the Encore at Ovation) for 139 single family homes. During staff's technical review of the PSP, it was represented that the property had or would have dedicated public access to County Road 545 via Flemings Road. Based on the PSP approval, the property was sold to M/I Homes of Orlando, LLC ("M/I Homes") and construction plans were approved by the County. Most of the required subdivision infrastructure has now been completed.

Subsequent to the County's approval, it became known that a 325 foot long portion of Flemings Road connecting to County Road 545 was never dedicated to the County, precluding legal public access to the project from County Road 545. Moreover, it also became known to the County that a lawsuit had been filed in late 2018 between private parties about who owns the underlying Flemings Road property. The lawsuit remains pending today. Dedicated public access is a requirement for the legal, official subdivision of the property via the recording of the plat. County approval of the plat is dependent on Flemings Road right of way connecting with County Road 545 being conveyed or until alternative public access to County Road 545 is constructed.

The developer, M/I Homes, desires to enter into the Developer's Agreement Regarding Flemings Road ("Agreement") to formalize certain provisions regarding the County's commitments to expedite and issue development permits. These include expedited permitting to allow M/I Homes to construct an alternative public access road to County Road 545 (the Southern Connector Road) and the release of a limited number of residential building permits prior to plat recording at certain phases of road construction. The Agreement expressly states that the plat shall not be recorded and

Certificates of Occupancy shall not be issued for any residential home until such time as Flemings Road right of way is conveyed or a Certificate of Completion has been issued for the new Southern Connector Road. Additionally, in the Agreement, M/I Homes releases the County from any claim relating to delays of any County approvals or its purported prior reliance on certain County records relating to Flemings Road.

**ACTION REQUESTED: Approval and execution of Developer's Agreement Regarding Flemings Road by and between M/I Homes of Orlando, LLC and Orange County. District 1**

JVW/JP  
Attachments

BCC Mtg. Date: March 10, 2020

This instrument prepared by and  
after recording return to:

Joel D. Prinsell  
Deputy County Attorney  
Orange County Attorney's Office  
201 S. Rosalind Ave., 3<sup>rd</sup> Floor  
Orlando, Florida 32802-1393

**DEVELOPER'S AGREEMENT**  
**REGARDING FLEMINGS ROAD**

This is a Developer's Agreement (the "Agreement") by and between **M/I Homes of Orlando, LLC**, a Florida limited liability company ("Developer"), and **Orange County**, a Charter County and political subdivision of the State of Florida ("County").

**RECITALS**

WHEREAS, the Preliminary Subdivision Plans for Horizon West Village I – Spring Grove Jaffers PD – Phases 1 and 2 ("Encore at Ovation") were approved by the County to be developed with one hundred thirty-nine (139) single family residential units;

WHEREAS, the Developer is seeking the County's approval to record the plats for Phases 1 and 2 of the Encore at Ovation;

WHEREAS, the sketch and legal description of Phases 1 and 2 of the Encore at Ovation property (the "Property") is attached hereto and incorporated herein by this reference as **Appendix "A"**;

WHEREAS, the Developer is the sole owner of the Property;

WHEREAS, the Property has direct access to the Flemings Road public right-of-way created by Deed Book 505, Page 197 in October 1937, and Deed Book 509, Page 483 in January

1938;

**WHEREAS**, County Road 545 (“CR 545”) to the east of the Property, also known as Avalon Road, is the County road that is closest to Flemings Road and Phases 1 and 2 of the Encore at Ovation;

**WHEREAS**, a thirty foot (30’) wide section of the easterly approximate 324 feet of Flemings Road between the existing easterly terminus of the Flemings Road right-of-way created by Deed Book 505, Page 197, and Deed Book 509, Page 483, on the west, and CR 545, on the east (the “Arnold Road Segment”) is titled in the name of JJJR Properties, LLC, a Florida limited liability company (“JJJR”);

**WHEREAS**, JJJR is a named defendant in a pending case styled *John R. Arnold, M.D., et al, vs. John R. Arnold, Jr., et al*, Ninth Judicial Circuit Court Case No. 2018-CA-003900, that involves a dispute between JJJR and members of the Arnold family over the ownership of the Arnold Road Segment (the “Arnold Case”);

**WHEREAS**, incident to the Arnold Case, a *lis pendens* has been filed against the Arnold Road Segment, thereby preventing the Arnold Road Segment from being conveyed to the County;

**WHEREAS**, as such, the County asserts that, through no fault of the County’s, the ownership dispute regarding the Arnold Road Segment prevents legal, safe, and adequate vehicular access by the public and residents of Phases 1 and 2 between the Encore at Ovation and CR 545; and

**WHEREAS**, the County further asserts that, prior to the County’s approval of the

Preliminary Subdivision Plans for Phases 1 and 2 of the Encore at Ovation, it was represented to the County by the Developer's predecessor in interest, or agents or representatives of the Developer's predecessor in interest, that the Property had, or would have, legal, safe, and adequate vehicular access over the Arnold Road Segment to CR 545.

**NOW, THEREFORE,** for good and valuable mutual consideration, the receipt of which is hereby mutually acknowledged, the parties agree as follows:

**Section 1. Recitals.** The foregoing recitals are true and correct, and are incorporated herein by reference.

**Section 2. County Road 545 Connection Options.** Subject to the terms herein, the Developer, at its sole discretion and option, may pursue either or both of the following options, either concurrently or not concurrently:

(a) the Developer shall convey (or cause to be conveyed) to the County, but at no cost to the County, the Arnold Road Segment, in fee simple and in a manner consistent with normal County conveyance procedures; or

(b) The Developer shall, at no cost to the County, permit, design and construct, or cause to be permitted, designed and constructed, consistent with County road construction standards, a two-lane paved road that is rural cross section, in part, and the remainder part an adequate public facilities ("APF") road, each part with a right-of-way at least seventy feet (70') in width, which connects with CR 545 (to the east) at a point south of the Arnold Road Segment intersection with CR 545, then runs west from CR 545 and then north to connect with Flemings Road, all as generally depicted in **Appendix "B"** attached hereto and incorporated herein by reference (the

“Southern Connector Road”), and in such event the design of the Southern Connector Road, including its intersection with CR 545, shall be subject to review and approval by the County; provided, the County will process the design, permitting and applications related to the Southern Connector Road on an expedited basis as an “E” project.

**Section 3. Plats; Certificates of Occupancy.** Provided the Developer has satisfied all the requirements for platting Phases 1 and 2 of the Encore at Ovation (the “Plats”), then upon the conveyance of the Arnold Road Segment pursuant to Section 2(a), or the County’s issuance of a certificate of completion for the Southern Connector Road pursuant to Section 2(b), whichever occurs first:

(a) The County shall approve the Plats for recording in the Official Records of Orange County, Florida; and

(b) One hundred thirty-nine (139) certificates of occupancy (“CO” or “CO’s”) shall be available to Developer for completed single-family residences within Encore at Ovation.

**Section 4. Building Permits; Potential Closure of Flemings Road; Maintenance of Southern Connector Road.**

(a) If the Developer opts to construct the Southern Connector Road as provided in Section 2(b), then prior to recording of the Plats the County shall make building permits (“Permits”) available to the Developer pursuant to the following schedule:

*[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.]*

Number of Building Permits Released	Trigger for Release
25	Upon the issuance of a Notice of Commencement regarding construction of the Southern Connector Road.*
30	Upon the County's inspection and approval of the complete road base of the Southern Connector Road.
25	Upon completion of the County's final inspection for the Southern Connector Road, the County's issuance of the punch list, and the Developer posting a one-year maintenance surety in a form acceptable to the County.
59 (All remaining Permits)	Upon the County's issuance of a certificate of completion for the Southern Connector Road.

*\* The Developer may submit the initial 25 building permit applications to the County for review after the Effective Date of this Agreement.*

(b) If the Developer opts to construct the Southern Connector Road as provided in Section 2(b), then upon issuance of a certificate of completion for the Southern Connector Road, the County may close or block Flemings Road with appropriate signage at or near the location where the Southern Road Connector intersects with Flemings Road, and Flemings Road may remain closed by the County unless and until the Arnold Road Segment has been conveyed to the County.

(c) If the Developer opts to construct the Southern Connector Road as provided in Section 2(b), the Developer shall be responsible for maintaining the Southern Connector Road for one year after the date the County issues the certificate of completion.

**Section 5. Limited Purpose and Scope of Agreement; Future Development Beyond Phases 1 and 2 of Encore at Ovation.** The scope and purpose of this Agreement is limited to setting forth the roadway requirements that must be met in order for the County to be

able to approve the Plats for recording and issue COs for homes in Phases 1 and 2 of the Encore at Ovation. Notwithstanding the preceding sentence, Flemings Road, including the Arnold Road Segment, shall be constructed and completed by the Developer to County rural standards between the westernmost entrance to Flemings Road from Phases 1, 2 and 3, on the west, to CR 545, including intersection improvements at CR 545, on the east, prior to the issuance of any certificate of completion for any infrastructure for any phase of development beyond Phases 1 and 2. Accordingly, after the Arnold Road Segment has been conveyed to the County and the Developer is ready to commence constructing such improvements to Flemings Road, the County shall allow the Developer to proceed with such improvements, including over the portion of Flemings Road that may have been closed or blocked by the County pursuant to Section 4(b).

**Section 6. Time of the Essence.** Time is of the essence and the parties shall expedite completion and/or satisfaction of their respective obligations herein on a commercially reasonable basis including, without limitation, expedited handling by the County of all design, permits, inspections and the certificate of completion regarding the Southern Connector Road.

**Section 7. Recording.** This Developer's Agreement shall be recorded by the County at the Developer's expense.

**Section 8. Covenants Running with the Land.** This Developer's Agreement shall run with the Property and shall be binding upon and inure to the benefit of the Developer and any successors and assigns to the Property, or any portion thereof.

**Section 9. Term; Residential Purchasers.** The terms and conditions of this Agreement shall terminate upon the County's issuance to the Developer of the one hundred



thirty-ninth (139<sup>th</sup>) CO within the Encore at Ovation, except for Section 4(b) and (c), the second sentence of Section 5, and Section 10, which shall survive termination. Also, this Agreement is personal to the Developer, and shall not apply to third party purchasers of residential lots with a home constructed thereon ("Homebuyer(s)"), except that each Homebuyer shall be subject to the requirement in this Agreement that a CO shall not and cannot be issued for a home unless and until the Developer has satisfied Section 2(a) or 2(b) and the Plats have been approved and recorded.

**Section 10. Release, Waiver, Discharge, and Covenant not to Sue by the Developer.**

The Developer voluntarily, unconditionally and irrevocably releases, waives, discharges, and covenants not to sue or file any other claim for judicial or other relief against the County based in whole or in part on any claim arising on or before the Effective Date of this Agreement relating to the Developer's inability to have the Plats for Phases 1 and 2 approved and recorded and any COs issued for Phases 1 and 2 before complying with the terms of Section 2(a) or 2(b) of this Agreement, including but limited to any claim by the Developer: (a) that a 2008 Right-of-Way Identification Map prepared by Professional Engineering Consultants, Inc., on behalf of the County for an Avalon Road (CR 545) project allegedly showed or led the Developer to conclude that the Arnold Road Segment afforded legal, safe and adequate access to the Property from CR 545; (b) that the County approved the Preliminary Subdivision Plans for Phases 1 and 2 when the County allegedly knew, or should have known, that there was an issue about the Property having legal, safe and adequate access to CR 545; (c) that the Developer

purchased the Property in alleged good faith reliance on its belief that legal, safe and adequate access existed between the Property and CR 545 at the time the Developer executed a contract to purchase, or purchased, the Property; and/or (d) that the County could not properly withhold approving the Plats or issuing COs for Phases 1 and 2 unless and until the Developer or another party satisfied the terms of Section 2(a) or 2(b).

**Section 11.** **Effective date.** This Developer's Agreement shall become effective upon the date of execution by the Developer or the date of execution by the County, whichever date is later (the "Effective Date").

*[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.]*

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

Signed, sealed and delivered  
in the presence of:

**“DEVELOPER”**

**M/I Homes of Orlando, LLC,  
a Florida limited liability company**

Katherine Hanchi  
Print Name: Katherine Hanchi

By: [Signature]  
David G. Byrnes, Vice President

[Signature]  
Print Name: Angela G. Galati

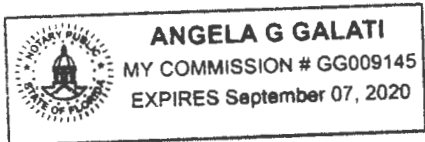
Title: VICE PRESIDENT  
Date: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged  in person before me or \_\_\_\_\_ by online notarization this 2 day of March, 2020 by David G. Byrnes as Vice President, of M/I Homes of Orlando, LLC, a Florida limited liability company, who is personally known to me.

(NOTARY SEAL)

[Signature]  
Notary Public, State of Florida  
Name: Angela G. Galati  
Notary Commission No.: GG009145  
My Commission Expires: Sept. 7, 2020





**"COUNTY"**

**ORANGE COUNTY, FLORIDA**

By: Board of County Commissioners

By: *Bryan W. Burks*  
*for* Jerry L. Demings, County Mayor

Date: *10 March 2020*

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

By: *Katie Smith*  
Deputy Clerk

Print Name: Katie Smith

## Appendix "A"

### (Legal Description of the Property)

#### Phase 1

A portion of Section 19, Township 24 South, Range 27 East, Orange County, Florida, described as follows:

Commence at the southwest corner of the Southwest 1/4 of the Southwest 1/4 of said Section 19; thence run N 00°13'04" E, along the west line of the Southwest 1/4 of the Southwest 1/4 of said Section 19, a distance of 441.28 feet for the POINT OF BEGINNING; thence continue N 00°13'04" E, along said west line, a distance of 883.58 feet to a point on the north line of the Southwest 1/4 of the Southwest 1/4 of said Section 19; thence run N 89°00'27" E, along the north line thereof, a distance of 1471.85 feet to a point on the east line of the Southwest 1/4 of the Southwest 1/4 of said Section 19; thence run S 00°05'11" W, along said east line, a distance of 365.36 feet; thence, departing said east line, run S 89°00'27" W, a distance of 181.59 feet; thence run S 00°59'33" E, a distance of 24.70 feet; thence run S 89°00'27" W, a distance of 52.00 feet to a point of curvature of a non-tangent curve, concave southwesterly, having a radius of 15.00 feet; thence, on a chord bearing of S 45°59'33" E and a chord distance of 21.21 feet, run northwesterly along the arc of said curve, a distance of 23.56 feet, through a central angle of 90°00'00" to the point of tangency thereof; thence run S 89°00'27" W, a distance of 289.00 feet; thence run S 00°59'33" E, a distance of 30.85 feet to a point of curvature of a curve, concave easterly, having a radius of 889.53 feet and a central angle of 07°57'55"; thence run southerly, along the arc of said curve, a distance of 123.66 feet to the point of tangency thereof; thence run S 08°57'28" E, a distance of 155.41 feet to a point of curvature of a curve, concave westerly, having a radius of 274.00 feet and a central angle of 09°01'55"; thence run southerly, along the arc of said curve, a distance of 43.19 feet to the point of tangency thereof; thence run S 00°04'27" W, a distance of 175.48 feet; thence run N 89°55'32" W, a distance of 975.66 feet to the POINT OF BEGINNING.

#### Phase 2

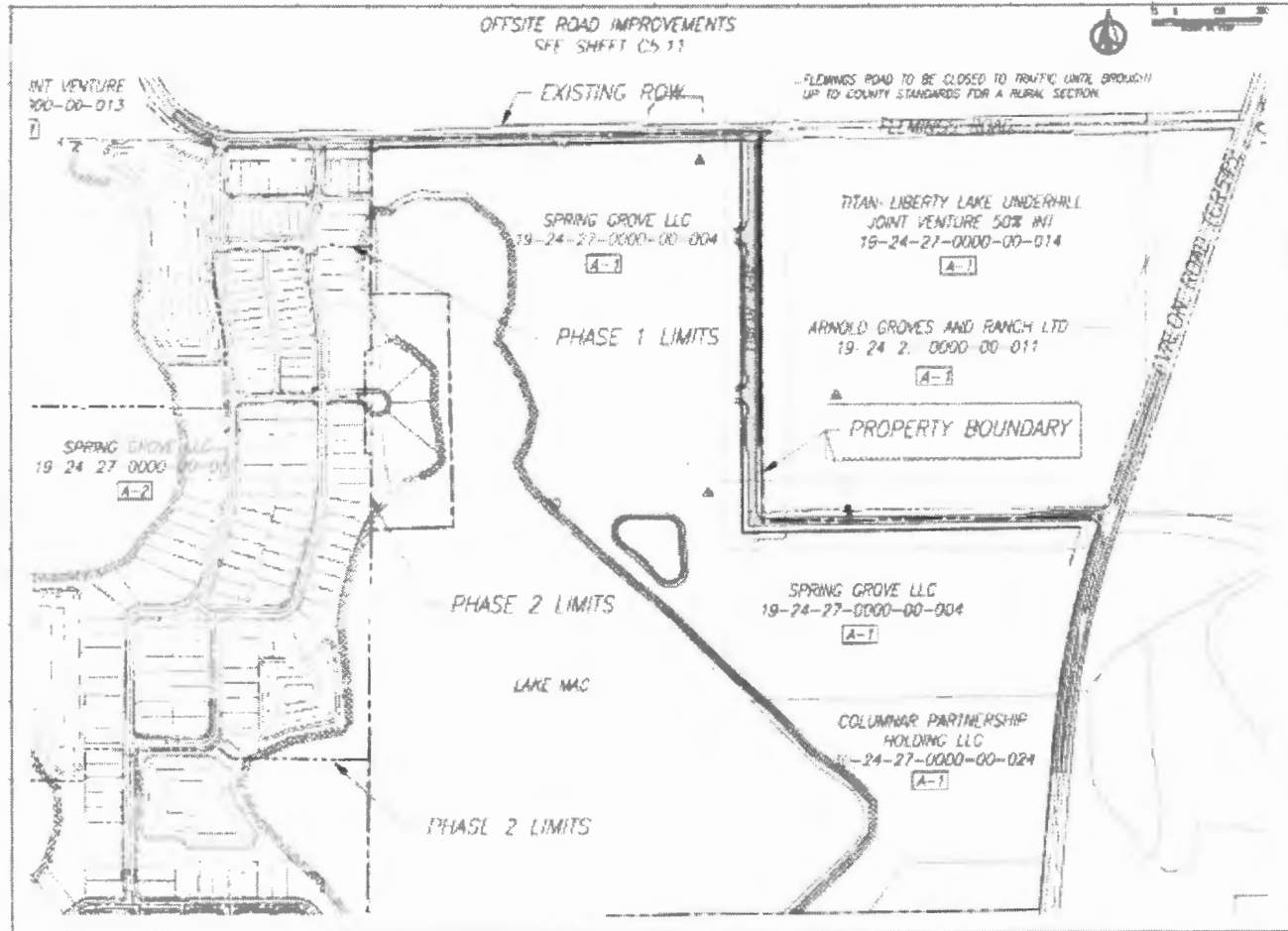
A portion of Sections 19 and 30, Township 24 South, Range 27 East, Orange County, Florida, described as follows:

BEGIN at the southwest corner of the Southwest 1/4 of the Southwest 1/4 of said Section 19; thence run N 00°13'04" E, along the west line of the Southwest 1/4 of the Southwest 1/4 of said Section 19, a distance of 441.28 feet; thence, departing said west line, run S 89°55'32" E, a distance of 975.66 feet; thence run N 00°04'27" E, a distance of 175.48 feet to a point of curvature of a curve, concave westerly, having a radius of 274.00 feet and a central angle of 09°01'55"; thence run northerly, along the arc of said curve, a distance of 43.19 feet to the point of tangency thereof; thence run N 08°57'28" W, a distance of 155.41 feet to a point of curvature of a curve, concave easterly, having a radius of 889.53 feet and a central angle of 07°57'55"; thence run northerly, along the arc of said curve, a distance of 123.66 feet to the point of tangency thereof; thence run N 00°59'33" W, a distance of 30.85 feet; thence run N 89°00'27" E, a distance of 289.00 feet to a point of curvature of a curve, concave southwesterly, having a radius of 15.00 feet and a central angle of 90°00'00"; thence run southeasterly, along the arc of said curve, a distance of 23.56 feet to the end of said curve; thence run N 89°00'27" E, a distance of 52.00 feet; thence run N 00°59'33" W, a distance of 24.70 feet; thence run N 89°00'27" E, a distance of 181.59 feet to a point on the east line of the Southwest 1/4 of

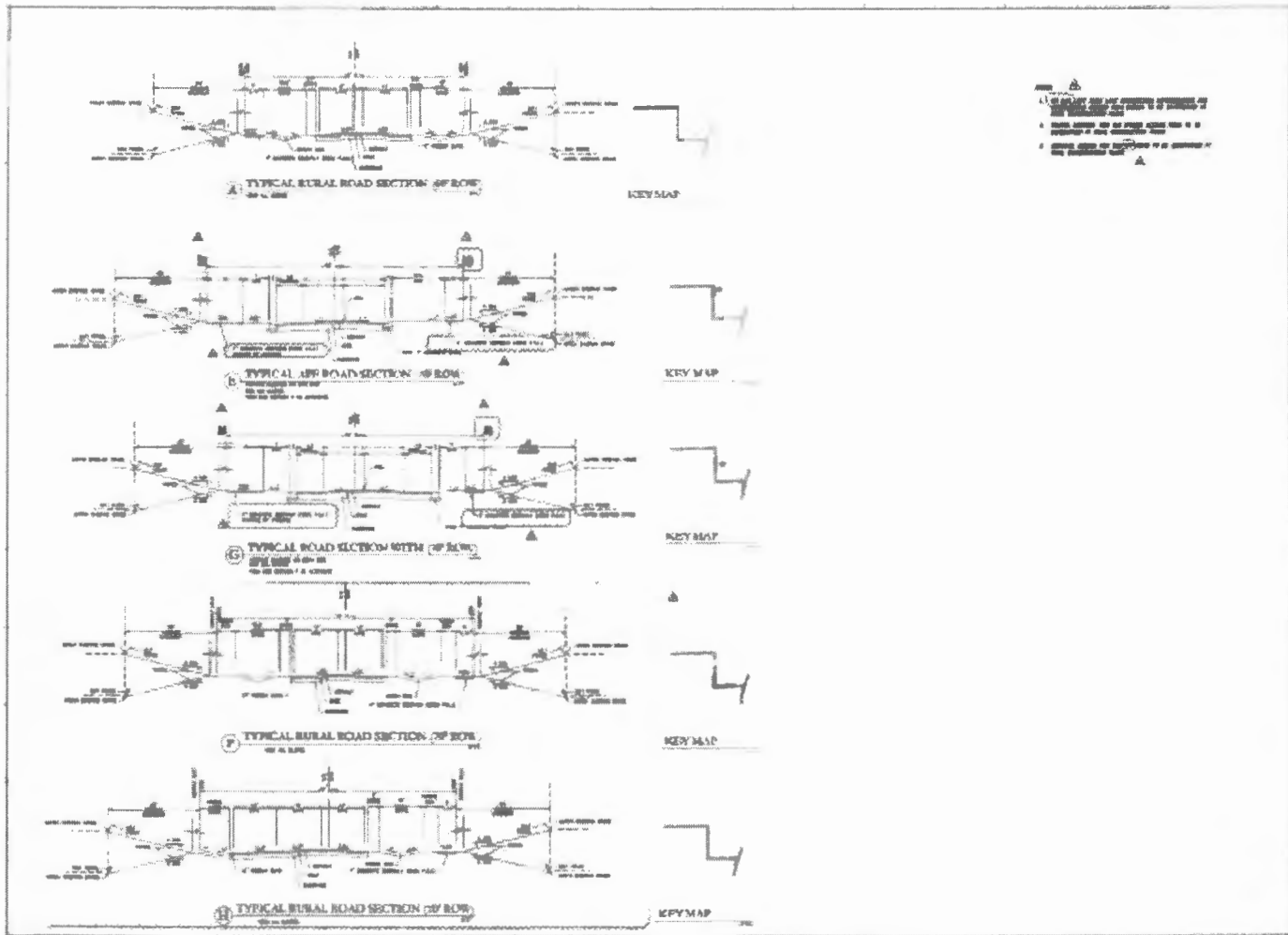
the Southwest 1/4 of said Section 19; thence run S 00°05'11" W, along said east line, a distance of 960.69 feet to a point on the east line of the West 1/2 of the Northwest 1/4 of said Section 30; thence run S 00°46'47" W, along said east line, a distance of 784.88 feet; thence, departing said east line, run N 89°13'13" W, a distance of 426.86 feet; thence run S 86°04'22" W, a distance of 38.94 feet; thence run N 50°54'00" W, a distance of 72.86 feet to a point of curvature of a non-tangent curve, concave northerly, having a radius of 67.00 feet; thence, on a chord bearing of S 71°02'18" W and a chord distance of 43.87 feet, run westerly along the arc of said curve, a distance of 44.69 feet, through a central angle of 38°13'12" to the point of tangency thereof; thence run N 89°51'06" W, a distance of 210.00 feet to a point of curvature of a curve, concave southeasterly, having a radius of 15.00 feet and a central angle of 89°07'19"; thence run southwesterly, along the arc of said curve, a distance of 23.33 feet to the end of said curve; thence run N 89°51'06" W, a distance of 52.00 feet; thence run N 00°08'54" E, a distance of 18.07 feet; thence run N 89°51'06" W, a distance of 125.00 feet; thence run S 00°00'00" E, a distance of 110.20 feet; thence run N 89°51'06" W, a distance of 500.65 feet to a point on the west line of the Northwest 1/4 of said Section 30; thence run N 00°09'46" E, along said west line, a distance of 830.25 feet to the POINT OF BEGINNING.

**Appendix "B"**

(Sketch or Depiction of the Southern Connector Road)



NO.	DESCRIPTION	DATE
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**HORIZON WEST VILLAGE I - SPRING GROVE JAFFERS FD PHASE 3 IMP/DP PARCEL 9-16 & A PORTION OF W-17 PROP. 11 24**

Advised To: ORANGE COUNTY, FL

As of: 10/1/2011

OPPOSITE TYPICAL SECTIONS

CSH

PROFESSIONAL ENGINEER

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Appendix "B"  
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