



Interoffice Memorandum

AGENDA ITEM

March 4, 2022

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

FROM: Jon V. Weiss, P.E., Director
Planning, Environmental and Development
Services Department

CONTACT PERSON: **Joe Kunkel, P.E., DRC Chairman**
Development Review Committee
Public Works Department
(407) 836-7971

SUBJECT: March 22, 2022 — Consent Item
Adequate Public Facilities Agreement for Elysian PD
Case #APF-21-09-281 / District 1
(Related to LUP-21-05-152)

The proposed Elysian Planned Development (PD) contains 16.90 gross acres and is located east of Avalon Road and north of Seidel Road. The subject property is located within the Village H Special Planning Area of Horizon West and is designated as Apartment District on the Village H Special Planning Area map. Through rezoning application # LUP-21-05-152, the Elysian PD proposes 324 multi-family units.

Pursuant to Orange County Code Section 30-714, each property owner in a Horizon West PD is required to convey their proportionate share of Adequate Public Facilities (APF) lands, which are based on the ratio of required APF acres to net developable acres within the Special Planning Area. In the event that APF land requirements cannot be met within a particular PD, an owner may pay a fee to the County equal to the value of the ratio of required APF lands and based upon the average fair market value of land as established by an independent appraiser. For the Village H Special Planning Area, the adopted ratio of APF acres to net developable acres is 1.0 to 7.6. In lieu of payment, the owner may obtain APF credits through purchase from others who hold excess APF credits.

In order to satisfy the requirements of Chapter 30, Article XIV of the Orange County Code ("APF/TDR Ordinance"), the Elysian PD is subject to an APF Agreement that recognizes that the project is accountable for a minimum of 1.701 acres of APF lands. The total APF lands conveyed are zero acres, creating an APF deficit of 1.701 acres. In order to satisfy this deficit, the property owner has been assigned 1.158 acres of APF credits from another property owner in Village H, and has secured purchase of the remainder 0.543 APF credits via an Escrow Agent from a separate property owner in Village H.

The Adequate Public Facilities Agreement for Elysian PD by and between Elysian Luxury Living, LLC and Orange County received a recommendation of approval from the Development Review Committee on November 17, 2021, and has been placed on the March 22, 2022 Board consent agenda to be pulled for consideration with the associated

PD Land Use Plan. Upon approval by the Board, the Agreement will be recorded in the Public Records of Orange County, Florida.

ACTION REQUESTED: Approval and execution of Adequate Public Facilities Agreement for Elysian PD by and between Elysian Luxury Living, LLC and Orange County providing for the satisfaction of adequate public facility requirements for the project. District 1

Attachment
JWW/JHS/nt

This instrument prepared by and after
recording return to:

Paul N. Korte, Esq.
Swann Hadley Stump Dietrich & Spears, P.A.
200 E. New England Ave., Suite 300
Winter Park, FL 32789

2 Tax Parcel I.D. No(s): 05-24-27-0000-00-010

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ADEQUATE PUBLIC FACILITIES AGREEMENT
FOR ELYSIAN PD

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8 **THIS ADEQUATE PUBLIC FACILITIES AGREEMENT FOR ELYSIAN PD** (the
“Agreement”), effective as of the latter date of execution (the “Effective Date”), is made and entered
10 into by and between Elysian Luxury Living, LLC, a Florida limited liability company, with its
principal place of business at 7940 Via Dellagio Way, Suite 200, Orlando, FL 32819 (“Owner”) and
12 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”).

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RECITALS:

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18 A. OWNER is the fee simple owner of certain real property located in Orange
County, Florida, as generally depicted in Exhibit “A” and as more particularly described in Exhibit
“B,” both of which exhibits are attached hereto and made a part hereof by this reference (The “PD
20 Property”).

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B. The PD Property, also known as Elysian PD, is identified in the Orange County
Comprehensive Plan 2010-2030 (the “Comprehensive Plan”) Future Land Use Map with the
24 “Village” land use designation and constitutes a portion of Village H, in Horizon West, as same is
described and depicted in the Village H Specific Area Plan approved by the Board of County
26 Commissioners of Orange County, Florida (the “BCC”) on March 9, 2018 (the “Village H
SAP”).

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C. The PD Property is included in the Horizon West Village Land Use Classification
30 Area. The BCC adopted the Horizon West Village Land Use Classification Comprehensive
Policy Plan (“CPP”) amendment on June 5, 1995. The Horizon West Village Land Use
32 Classification was the result of a public-private partnership between the BCC and Horizon West,
Inc. The partnership conducted an extensive visioning and community consensus building process
34 that was summarized in the Horizon West Study Report issued February 7, 1995.

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D. The Elysian PD has relied on the prior approvals of the Horizon West Study and
the Village H SAP, and on the Village H SAP approvals and studies included in the SAP.

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E. The Village H SAP contemplates certain multi-family residential apartment uses within the PD Property.

F. OWNER desires to develop the PD Property in accordance with the Elyisan PD Land Use Plan LUP 21-05-152, submitted by OWNER to COUNTY, and with the PD zoning application on file with COUNTY.

G. The Goals, Objectives, and Policies contained in the Future Land Use Element of the Comprehensive Plan have been implemented through Chapter 30, Article XIV, of the Orange County Code (“APF/TDR Ordinance”) adopted by the BCC on May 20, 1997, as amended.

H. Division 2 of the APF/TDR Ordinance requires, in Section 30-712(b), that OWNER enter into a developer’s agreement identifying required adequate public facilities within the development and addressing the conveyance to the COUNTY of adequate public facilities lands prior to or in conjunction with PD approval, unless otherwise addressed in such agreement, pursuant to Section 30-714(c).

I. The parties have agreed that this Agreement constitutes the aforementioned developer’s agreement referenced in Division 2 of the APF/TDR Ordinance.

J. If Owner is unable to convey sufficient adequate public facilities lands to County, the APF/TDR Ordinance, at Sections 30-712(b) and 30-714(d), states that OWNER may make payment of an adequate public facility lands fee to COUNTY. Additionally, the APF/TDR Ordinance, at Section 30-714(g), allows for application of APF acreage credits to satisfy an APF deficit.

K. It is the intent of the parties that COUNTY will consider approval of the Elysian PD with its consideration of this Agreement.

L. The PD Property contains approximately 12.93 acres of **net** developable land, and both the Village H SAP and Section 30-714 of the APF/TDR Ordinance require 1 acre of public facilities acreage for every 7.6 acres of net developable land (the “APF Ratio”).

M. When applied to the PD Property, the APF Ratio equals approximately 1.701 acres of public facilities lands.

N. As shown on the Elysian PD Land Use Plan, and as described in this Agreement, OWNER is not providing any acreage of adequate public facilities land (the “APF Land”) to COUNTY, thereby creating an APF deficit of 1.701 acres.

76 O. Notwithstanding the foregoing, OWNER holds a credit in the amount of 1.158
77 acres of APF Land (the "Seidel West Credit") in accordance with that certain Assignment And
78 Assumption Agreement Relating To Vested Trips, Road Credits, And Other Development Rights
(Village H / Seidel West), recorded August 18, 2021, Document #20210504558, Public Records
80 of Orange County, Florida, pursuant to which Seidel West I, LLC, a Florida limited liability
company, assigned its interest in the foregoing credits for APF Land obtained by the conveyance
82 to COUNTY of 1.158 acres of land for the purpose of COUNTY'S improvements to County Road
545 by that certain Special Warranty Deed recorded December 21, 2018, Document
84 #20180740463, Public Records of Orange County, Florida, as required under that certain Village
H Horizon West Road Network Agreement (C.R. 545), recorded February 20, 2013, Document
86 #20130102097, Public Records of Orange County, Florida.

88 P. D.R. Horton, Inc., a Delaware corporation, holds a minimum of 0.543 APF acreage
credits (the "D.R. Horton Credits") which are to be conveyed to the escrow agent (the "Agent")
90 under that certain Amended And Restated Village H Cooperation Agreement recorded February
20, 2013, Official Records Book 10525, Page 1893, Public Records of Orange County, Florida
92 (the "Cooperation Agreement") prior to the date on which Buyer seeks approval for the Elysian
PD Land Use Plan from the BCC.

94 Q. In accordance with the requirements of the Cooperation Agreement, OWNER will
96 satisfy the APF deficit by purchasing 0.543 acreage credits of the D.R. Horton Credits through the
Agent under the terms of the Cooperation Agreement and asking the COUNTY to apply such APF
98 credits to satisfy the APF deficit.

100 **NOW THEREFORE**, for and in consideration of the above premises, the
mutual covenants and agreements set forth herein, and for other good and valuable consideration,
102 the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

104 **AGREEMENT**

106 1. Recitals. The above recitals are true and correct and are hereby incorporated as
material provisions of this Agreement by this reference.

108 2. APF Deficit. The Village H APF Ratio requires that Owner convey to County
110 approximately 1.701 acre(s) of APF Land. This Agreement provides for conveyance of
approximately 0.0 acre(s) of APF Land, thereby creating a 1.701-acre APF Deficit.

112 3. APF Acreage Credits / Fee.

114 Application of the Seidel West Credit results in a remaining APF deficit of 0.543 acre(s).

116 Prior to the time OWNER obtains approval for the Elysian PD Land Use Plan from the
BCC, OWNER, in accordance with the terms of the Cooperation Agreement, will obtain 0.543
118 APF acreage credits from the Agent out of the D.R. Horton Credits and shall provide to COUNTY
written confirmation from the Agent that the required number of APF credits have been
120 purchased. By this Agreement, Owner is requesting COUNTY to apply these credits toward the
APF deficit as they become available, which application will satisfy such APF deficit. If the D.R.
122 Horton Credits are not available at the time OWNER seeks approval for the Elysian PD Land Use
Plan from the BCC, then OWNER, in accordance with Section 5.2 of the Cooperation Agreement,
124 shall pay to Agent a fee-in-lieu of conveyance of APF Land, at such value per acre as is
established in accordance with Policy FLU 4.14.2 of the Village H SAP, obtain from Agent a
126 receipt document such payment and deliver a copy of such receipt to COUNTY.

128 4. Recording. Within thirty (30) days after the Effective Date, this Agreement shall
be recorded in the Public Records of Orange County, Florida, at Owner's expense

130 5. Limitation of Remedies. County and Owner expressly agree that the consideration,
132 in part, for each of them entering this Agreement is the willingness of the other to limit the
remedies for all actions arising out of or in connection with this Agreement.

134 a) Limitations on County's Remedies. Upon any failure by OWNER to perform its
136 obligations under this Agreement, COUNTY shall be limited strictly to only the following
remedies:

- 138 (i) action for specific performance; or
- (ii) action for injunction; or
- 140 (iii) the withholding of development permits and other approvals and/or
permits in connection with the Project and/or the PD Property; or
- 142 (iv) any combination of the foregoing.

144 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 and/or any portion of the PD
146 Property as County may lawfully elect.

148 b) Limitations on OWNER'S Remedies. Upon any failure by COUNTY to
perform its obligations under this Agreement, OWNER shall be limited strictly to only the
150 following remedies:

- 152 (i) action for specific performance; or
- (ii) action for injunction; or
- 154 (iii) action for declaratory judgment regarding the rights and
obligations of Owner; or

156 (iv) any combination of the foregoing.

158 Both parties expressly waive their respective rights to sue for damages of
160 any type for breach of or default under this Agreement by the other. Venue for any actions
162 initiated under or in connection with this Agreement shall be in the Circuit Court of the
Ninth Judicial Circuit in and for Orange County, Florida.

164 6. Binding Effect. This Agreement shall be binding upon and shall inure to the
166 benefit and burden of the parties hereto and their respective heirs, successors, and assigns and
shall run with title to the PD Property and be binding upon any person, firm, corporation, or other
entity acquiring any interest in all or any portion of the PD Property.

168 7. Severability. If any provision of this Agreement, the deletion of which
170 would not adversely affect the receipt of any material benefits by any party hereunder nor
172 substantially increase the burden of any party hereunder, shall be held to be invalid or
unenforceable to any extent by a court of competent jurisdiction, the same shall not affect
in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

174 8. Notices. Any notice delivered with respect to this Agreement shall be in writing
and shall be deemed to be delivered (whether or not actually received) (i) when hand delivered to
176 the person(s) hereinafter designated, or (ii) upon deposit of such notice in the United States mail,
postage prepaid, certified mail, return receipt requested, addressed to the person at the address set
178 forth opposite the party's name below, or to such other address or to such other person as the party
shall have specified by written notice to the other party delivered in accordance herewith.

180 COUNTY: Orange County, Florida
182 c/o County Administrator
Post Office Box 1393
184 Orlando, Florida 32802-1393

186 With copies to: Orange County Planning, Environmental,
and Development Services Department
188 Manager, Planning Division
Post Office Box 1393
190 Orlando, Florida 32802-1393

192 Orange County Planning, Environmental,
and Development Services Department
194 Manager, Transportation Planning Division
Orange County Public Works Complex

196 4200 S. John Young Parkway
Orlando, Florida 32839-8070

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200 OWNER: Elysian Luxury Living, LLC
Attn: Legal Department
202 7940 Via Dellagio Way, Suite 200
Orlando, FL 32819

204 9. Disclaimer of Third Party Beneficiaries. This Agreement is solely for the benefit
of the formal parties hereto and no right or cause of action shall accrue by reason hereof to or for
206 the benefit of any third party not a formal party hereto. Nothing in this Agreement, expressed or
implied, is intended or shall be construed to confer upon or give any person or entity any right,
208 remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof,
other than the parties hereto and their respective representatives, heirs, successors, and assigns.

210 10. Applicable Law. This Agreement and the provisions contained herein shall be
212 construed, controlled, and interpreted according to the laws of the State of Florida.

214 11. Interpretation. This Agreement shall not be construed more strictly against one
party than against the other merely by virtue of the fact that it may have been prepared by
216 counsel for one of the parties, it being recognized that all parties have contributed substantially
and materially to the preparation hereof. Captions and section headings in this Agreement are
218 provided for convenience only and shall not be deemed to explain, modify, amplify, or aid in the
interpretation, construction, or meaning of this Agreement.

220 12. Attorney Fees. Each party to this Agreement agrees to bear its own attorney and
222 other legal fees and costs in connection with all actions to be undertaken in compliance with, and
enforcement of, this Agreement.

224 13. Survival. The obligations of this Agreement shall survive the satisfaction of the
226 APF Deficit by OWNER.

228 14. Amendment. No amendment, modification, or other change to this Agreement
shall be binding upon the parties unless in writing and formally executed in the same manner as
230 this Agreement.

232 15. Entire Agreement. This Agreement embodies and constitutes the entire
understanding of the parties with respect to the subject matter addressed herein, and all prior or
234 contemporaneous agreement, understandings, representations, and statements, oral or written, are
merged into this Agreement.

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238 16. Counterparts. This Agreement may be executed in up to two (2) counterparts,
both of which taken together shall constitute one and the same instrument and any party or
signatory hereto may execute this Agreement by signing either such counterpart.

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242 17. Authority to Contract. The execution of this Agreement has been duly authorized
by the appropriate body or official of each party hereto.

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246 18. Termination; Effect of Annexation. This Agreement shall remain in effect so long
as the PD Property remains in unincorporated Orange County, Florida, unless the Parties terminate
it, in writing, with the same formality as its execution. If any portion of the PD Property is
proposed to be annexed into a neighboring municipality, County may, in its sole discretion,
248 terminate this Agreement upon notice to Owner.

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[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

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

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ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

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By: _____

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Jerry L. Demings
Orange County Mayor

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Date: _____

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

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By: _____

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Deputy Clerk

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Printed Name: _____

278 Elysian Luxury Living, LLC, a Florida limited liability
company

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282 By: CW Family, LLLP, a Florida limited liability limited
partnership, its manager

284 By: CW Family, LLC, a Florida limited liability company,
its general partner

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288 By: [Signature]
Charles Whittall, its manager

Date: March 8, 2022

WITNESSES:

292
294 [Signature]
Print Name: Amy Barnard

296
298 [Signature]
Print Name: Nelly Soto

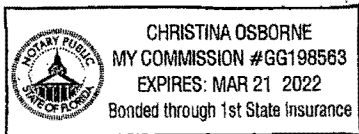
STATE OF FLORIDA
COUNTY OF ORANGE

302 The foregoing instrument was acknowledged before me by means of physical presence
304 or online notarization by Charles Whittall, as Manager of CW Family, LLC, a Florida limited
liability company, as General Partner of CW Family, LLLP, a Florida limited liability limited
306 partnership, as Manager of Elysian Luxury Living, LLC, a Florida limited liability company, on
behalf of said entities, who is known by me to be the person described herein and who executed
the foregoing, this 8th day of March, 2022. He is personally known to me or has
308 produced _____ as identification and did/did not take an oath.

310 WITNESS my hand and official seal in the County and State last aforesaid this 8th day
of March, 2022.

312 [Signature]
Notary Public
314 Print Name: Christina Osborne

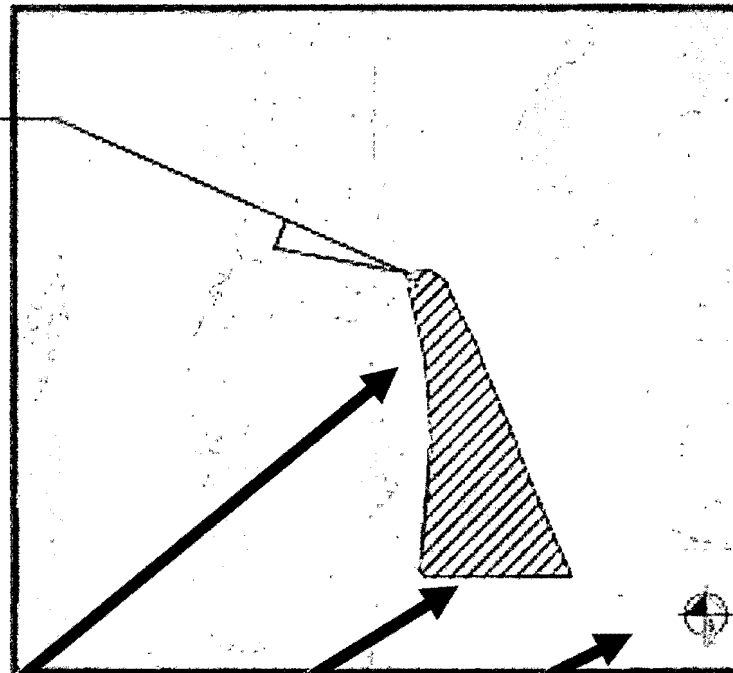
316 My Commission Expires: 3/21/22



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Exhibit "A"

Project area location map



VICINITY MAP

332 Avalon Road
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336 Seidel Road
338 SR 429
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Exhibit "B"

Legal Description
for the PD Property

COMMENCE AT THE SOUTH QUARTER (1/4) OF SECTION 5, TOWNSHIP 24 SOUTH, RANGE 27 EAST; THENCE, ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER (1/4) OF SAID SECTION 5, RUN SOUTH 89°37'03" WEST, A DISTANCE OF 1129.07 FEET; THENCE, LEAVING SAID SOUTH LINE, RUN NORTH 00°22'57" WEST, A DISTANCE OF 30.03 FEET TO THE NORTHERLY RIGHT-OF-WAY LINE OF SEIDEL ROAD TO THE POINT OF BEGINNING; THENCE, ALONG THE EASTERLY BOUNDARY LINES OF A PARCEL OF LAND GRANTED TO ORANGE COUNTY AS DESCRIBED IN OFFICIAL RECORDS INSTRUMENT NO. 20180740463 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, RUN THE FOLLOWING FOUR (4) COURSES: (1) NORTH 42°37'02" WEST, A DISTANCE OF 47.03 FEET; (2) NORTH 05°08'43" EAST, A DISTANCE OF 520.74 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT, CONCAVE WESTERLY, HAVING A RADIUS OF 2500.00 FEET, A CENTRAL ANGLE OF 20°24'28", A CHORD BEARING OF NORTH 05°03'31" WEST AND A CHORD DISTANCE OF 885.76 FEET; (3) THENCE RUN NORTHERLY, ALONG THE ARC OF SAID CURVE, A DISTANCE OF 890.46 FEET TO THE POINT OF REVERSE CURVATURE OF A CURVE TO THE RIGHT, CONCAVE EASTERLY, HAVING A RADIUS OF 1275.00 FEET, A CENTRAL ANGLE OF 04°54'26", A CHORD BEARING OF NORTH 12°48'32" WEST AND A CHORD DISTANCE OF 109.17 FEET; (4) THENCE RUN NORTHERLY, ALONG THE ARC OF SAID CURVE, A DISTANCE OF 109.20 FEET TO A POINT OF NON- TANGENCY; THENCE, DEPARTING SAID EASTERLY BOUNDARY LINES AND CONTINUING ALONG SAID RIGHT-OF-WAY, RUN SOUTH 83°37'08" WEST, A DISTANCE OF 3.05 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF AVALON ROAD (COUNTY ROAD NO. 545) (A VARIABLE WIDTH PUBLIC RIGHT-OF-WAY); THENCE, ALONG SAID EASTERLY RIGHT-OF- WAY LINE, RUN NORTH 06°23'32" WEST, A DISTANCE OF 7.41 FEET; THENCE, DEPARTING SAID EASTERLY RIGHT-OF-WAY LINE, RUN NORTH 83°36'28" EAST, A DISTANCE OF 50.00 FEET; THENCE RUN NORTH 06°23'32" WEST, A DISTANCE OF 35.00 FEET; THENCE RUN SOUTH 83°36'28" WEST, A DISTANCE OF 50.00 FEET TO A POINT ON SAID EASTERLY RIGHT-OF- WAY LINE; THENCE, ALONG SAID EASTERLY RIGHT OF WAY LINE, RUN NORTH 06°23'32" WEST, A DISTANCE OF 46.44 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF STATE ROAD NO. 429 (WESTERN BELTWAY) (A VARIABLE WIDTH, LIMITED ACCESS PUBLIC RIGHT-OF-WAY) AS DESCRIBED IN ORANGE COUNTY RIGHT OF WAY MAPS, WESTERN BELTWAY, PROJECT NO. 75320-6460-653, ORANGE COUNTY, FLORIDA; THENCE, ALONG SAID RIGHT-OF-WAY LINE, RUN THE

378 FOLLOWING EIGHT (8) COURSES: (1) NORTH 83°34'05" EAST, A DISTANCE OF 126.44 FEET;
380 (2) THENCE RUN SOUTH 54°07'45" EAST, A DISTANCE OF 105.21 FEET; (3) THENCE RUN
382 SOUTH 16°56'48" WEST, A DISTANCE OF 51.88 FEET; (4) THENCE RUN SOUTH 26°57'08" EAST,
384 A DISTANCE OF 313.29 FEET TO THE NON-TANGENT POINT OF CURVATURE OF A CURVE
386 TO THE LEFT, CONCAVE EASTERLY, HAVING A RADIUS OF 5899.58 FEET, A CENTRAL
388 ANGLE OF 03°25'58", A CHORD BEARING OF SOUTH 21°54'47" EAST AND A CHORD DISTANCE
390 OF 353.40 FEET; (5) THENCE RUN SOUTHERLY, ALONG THE ARC OF SAID CURVE, A
DISTANCE OF 353.45 FEET; (6) THENCE RUN SOUTH 23°37'46" EAST, A DISTANCE OF 124.74
FEET; (7) THENCE RUN SOUTH 20°43'01" EAST, A DISTANCE OF 300.37 FEET; (8) THENCE RUN
SOUTH 23°37'46" EAST, A DISTANCE OF 573.33 FEET TO A POINT ON SAID NORTHERLY
RIGHT-OF-WAY LINE OF SEIDEL ROAD; THENCE, ALONG SAID NORTHERLY RIGHT-OF-
WAY LINE, RUN SOUTH 89°37'03" WEST, A DISTANCE OF 785.62 FEET TO THE POINT OF
BEGINNING.