




Interoffice Memorandum

AGENDA ITEM

March 4, 2022

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

FROM: Jon V. Weiss, P.E., Chairman
Roadway Agreement Committee 

SUBJECT: April 5, 2022 – Consent Item
First Amendment to Right-of-Way Agreement Avalon Groves PD-
South Parcel
C.R. 545 (Avalon Road)

The Roadway Agreement Committee has reviewed the First Amendment to Right-of-Way Agreement Avalon Groves PD-South Parcel C.R. 545 (Avalon Road) (the "First Amendment") by and between Prose Horizons West Venture, LP and Orange County to amend the terms of the Right-of-Way Avalon Groves PD – South Parcel C.R. 545 (Avalon Road) ("Original Agreement") approved by the Board on December 14, 2021 and recorded as Document #20220013091. The Original Agreement provided for the conveyance right-of-way by the Owner in return for transportation impact fee credits. The First Amendment expressly states that the Owner waives any right, claim, or entitlement to transportation impact fees credits for the conveyance, and additionally provides for a possible extension of up to a 120 days for right-of-way conveyance.

The Roadway Agreement Committee recommended approval of the First Amendment on February 16, 2022. The Specific Project Expenditure Report and Relationship Disclosure Forms are on file with the Transportation Planning Division.

If you have any questions, please feel free to contact me at 407-836-5393.

ACTION REQUESTED: Approval and execution of First Amendment to Right-of-Way Agreement Avalon Groves PD-South Parcel C.R. 545 (Avalon Road) by and between Prose Horizons West Venture, LP and Orange County to donate the right-of-way to Orange County and extend the time frame for conveyance. District 1

JVW/tc:
Attachment

BCC Mtg. Date: Apr. 5, 2022

Prepared by and after recording return to:
M. Rebecca Wilson
Lowndes Law Firm
215 N. Eola Drive
Orlando, FL 32801

Tax Parcel I.D. No.: 31-24-27-0000-00-016

**FIRST AMENDMENT TO
RIGHT-OF-WAY AGREEMENT**

AVALON GROVES PD-SOUTH PARCEL

C.R. 545 (AVALON ROAD)

This First Amendment to Right-of-Way Agreement (the “First Amendment”), effective as of the latest date of execution (“Effective Date”), is made and entered into by and between Prose Horizons West Venture, LP, a Delaware limited partnership (“Owner”), whose mailing address is 7135 East Camelback Road, Suite 360, Scottsdale, Arizona 85251 and Orange County, a charter county and political subdivision of the state of Florida (“County”), whose mailing address is c/o Orange County Administrator, Post Office Box 1393, Orlando, Florida 32802-1393.

WITNESSETH:

WHEREAS, Owner is the fee simple owner of certain real property, as shown in the project location map identified as Exhibit “A”, and as more particularly described on “Exhibit B” (legal description and sketch of description), both of which are attached hereto and incorporated herein by this reference (the “Property”); and

WHEREAS, Hartzog Road Property, LLC, Owner’s predecessor in interest to the Property, entered into that certain Right-of-way Agreement approved by the Orange County Board of

County Commissioners on December 14, 2021, and recorded on January 6, 2022, as Instrument Number 20220013091 of the Public Records of Orange County, Florida (the “Agreement”); and

WHEREAS, Owner desires, and County agrees, to amend certain terms and provisions of the Agreement to provide for Owner’s waiver of any right, claim, or entitlement to transportation impact fees, as set forth below; and

WHEREAS, in all other respects, the original terms of the Agreement shall remain unchanged and in full force and effect.

NOW, THEREFORE, for and in consideration of the above premises, the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and County (the “Parties”) agree as follows:

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

Section 2. Conveyance of Land to County by Owner.

Subsection 2(a) of the Agreement is hereby deleted and replaced with the following:

(a) *Conveyed Lands.* Within one hundred twenty (120) days after the Effective Date of this Amendment, Owner shall convey to County, by plat dedication or warranty deed, marketable fee simple title free and clear of all liens and encumbrances, except for easements acceptable to the County, if any, to those lands described in the legal description and sketch of description attached hereto as Exhibit “C” and incorporated by this reference (the “Conveyed Lands”). In the event the conveyance does not occur within the aforesaid 120 days, the Manager of the Real Estate Management Division, or a designee, may grant an extension of up to 120 days for the conveyance to take place.

Section 3. Transportation Impact Fee Credits.

Section 3 of the Agreement is hereby deleted and replaced with the following:

Section 3. Transportation Impact Fee Credits. The Owner hereby waives any right, claim or entitlement to Transportation Impact Fee Credits for contributions of land that might otherwise have been available to the Owner, his [her, its] heirs, successors or assigns, pursuant to the County's Transportation Impact Fee Ordinance, Chapter 23, Section 23-95, Orange County Code, and any amendments thereto, for the conveyance of the Property.

Section 4. Notice. Any notice delivered with respect to this First Amendment or the Agreement shall be in writing and shall be deemed to be delivered (whether or not actually received) (i) when hand delivered to 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 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.

As to Owner: Prose Horizons West Venture, LP
7135 E. Camelback Road, Suite 360
Scottsdale, Arizona 85251

With a copy to: Alliance Residential Company
222 West Comstock Avenue, Suite 115
Winter Park, Florida 32789

M. Rebecca Wilson
Lowndes Law Firm
215 N. Eola Drive
Orlando, Florida 32801

As to County: Orange County Administrator
 P.O. Box 1393
 201 S. Rosalind Ave
 Orlando, FL 32802-1393

With a copy to: Orange County Planning, Environmental,
 and Development Services Department
 Manager, Transportation Planning Division
 Orange County Public Works Complex
 4200 S. John Young Parkway
 Orlando, Florida 32839-9205

Section 5. *Covenants Running with the Land.* This First Amendment shall run with the Property and shall be binding upon and shall inure to the benefit and burden of the parties and of the heirs, legal representatives, successors, and assigns of Owner and any person, firm, corporation, or other entity that may become the successor in interest to the Property.

Section 6. *Recordation of First Amendment.* An executed original of this First Amendment shall be recorded, at Owner's expense, in the Public Records of Orange County, Florida within thirty (30) days of the Effective Date.

Section 7. *Applicable Law.* This First Amendment and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

Section 8. *Time is of the Essence.* Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this First Amendment and in the Agreement.

Section 9. *Further Documentation.* The parties agree that at any time following a request therefor by the other party, each shall execute and deliver to the other party such further documents and instruments reasonably necessary to confirm and/or effectuate the obligations of either party hereunder and the consummation of the transactions contemplated hereby.

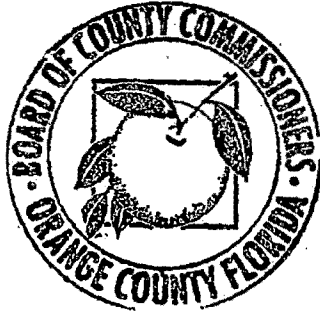
Section 10. Limitation of Remedies. County and Owner expressly agree that the consideration, in part, for each of them entering into this First Amendment is the willingness of the other to limit the remedies for all actions arising out of or in connection with this First Amendment. Accordingly, the remedies available to each party shall be as stated in the Agreement.

Section 11. Amendments. No amendment, modification, or other change to this Amendment or the Agreement shall be binding upon the parties unless in writing and executed by all the parties hereto.

Section 12. Counterparts. This First Amendment may be executed in up to three (3) counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

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



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Jerry L. Demings*

for Jerry L. Demings,
Orange County Mayor

Date: April 5, 2022

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

By: *Katie Smith*
Deputy Clerk

Printed name: **Katie Smith**

“OWNER”

Prose Horizons West Venture, LP, a Delaware limited partnership

By: Prose Horizons West Alliance GP, LLC, a Delaware limited liability company, general partner

By: Prose Horizons West Alliance LLC, a Delaware limited liability company, its sole member

By: Robert C Anderson

Print Name: Robert C Anderson

Title: Member

Date: 3-14-22

WITNESSES:

[Signature]

Print Name: Steve Matrak

[Signature]

Print Name: ALFONSO ORANDO

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me, a Notary Public, by means of physical presence or online notarization this 14th day of March, 2022, by Robert C Anderson, member of Prose Horizons West Alliance, LLC a Delaware limited liability company, sole member of Prose Horizons West Alliance GP, LLC a Delaware limited liability company, general partner of Prose Horizons West Venture, LP, a Delaware limited partnership, on behalf of said limited partnership, who is personally known to me or has produced (type of identification) _____ as identification.



SUSAN M. MARET
Commission # HH 178068
Expires September 19, 2025
Bonded Thru Budget Notary Services

Susan M. Maret
Notary Public

Print Name: Susan M Maret

My Commission Expires: Sept 19, 2025

Exhibit “A”

Project Location Map

[See attached 1 page]

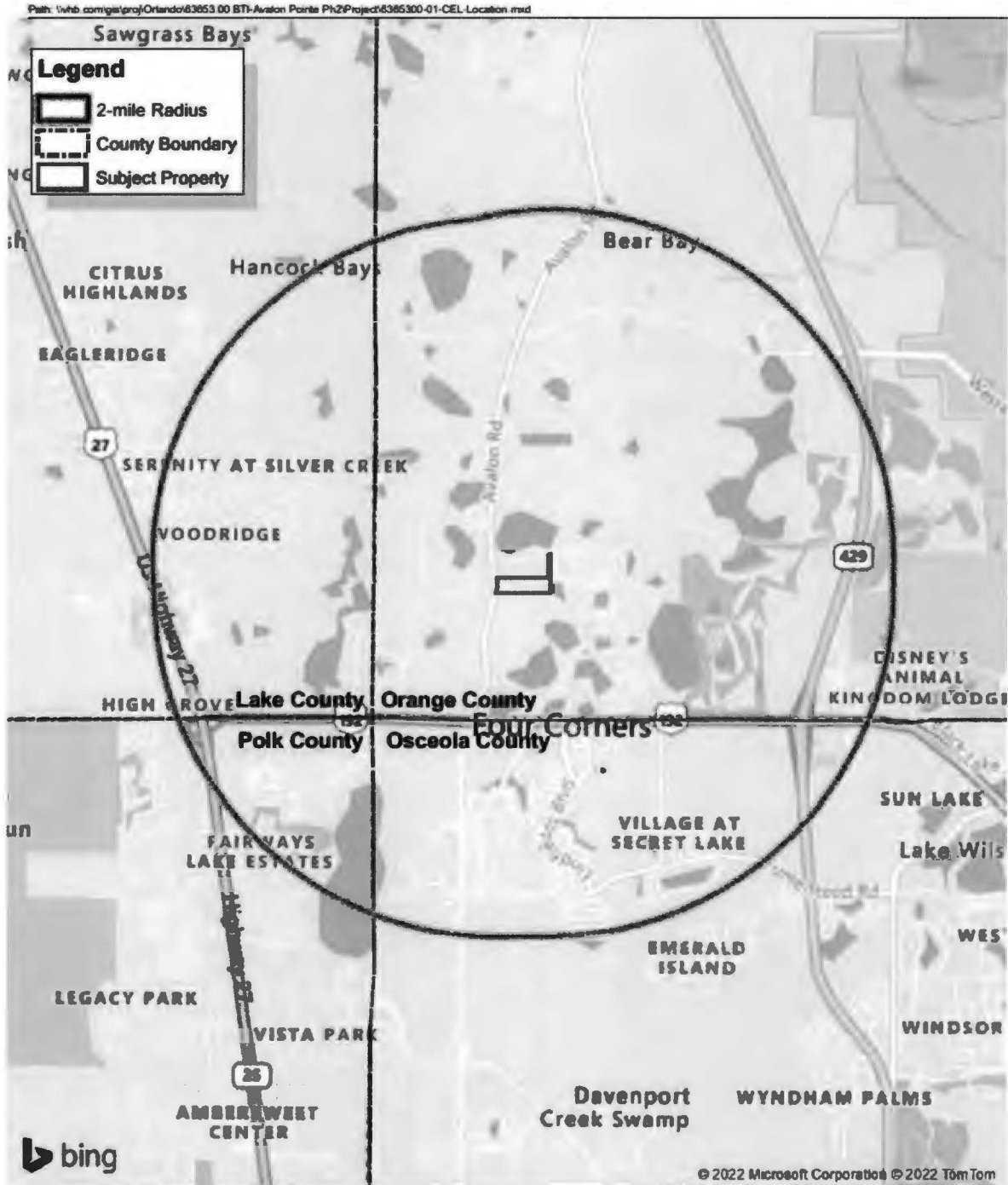


Exhibit "B"

Legal Description

Parcel #1:

The North 1/2 of the Northeast 1/4 of Section 31, Township 24 South, Range 27 East, lying and being in Orange County, Florida;

LESS AND EXCEPT that portion thereof North of the clay road known as Hartzog Road and the paved road known as Avalon Road, State Highway 545;

ALSO LESS AND EXCEPT that portion lying West of State Road 545 as previously conveyed in Official Records Book 3512, Page 785, Public Records of Orange County, Florida;

ALSO LESS AND EXCEPT any portion of the land conveyed in Official Records Book 5734, Page 410; Public Records of Orange County, Florida;

ALSO LESS AND EXCEPT any portion of the land conveyed in Official Records Book 6090, Page 463, Public Records of Orange County, Florida.

Parcel #4:

A part of the North 1/2 of the Northeast 1/4 of Section 31, Township 24 South, Range 27 East, (Less that portion thereof North of Hartzog Road and West of Avalon Road), Orange County, Florida; more particularly described as follows:

From the Southeast corner of the North 1/2 of the Northeast 1/4 of said Section 31; run thence South 88°55'22" West along the South line of the North 1/2 of the Northeast 1/4 of said Section 31, a distance of 631.40 feet for a Point of Beginning; continue thence South 88°55'22" West along said South line a distance of 1038.40 feet to a point on the Easterly right of way line of Avalon Road (also known as State Road No. 545) said point being nontangent on a curve concave Northwesterly, having a radius of 1271.07 feet; from a chord bearing North 01°47'47" East, run thence Northeasterly along the arc of said curve and along said Easterly right of way line, through a central angle of 20°03'34", an arc distance of 445.01 feet to a point of tangency; thence North 08°14'00" West along said Easterly right of way line, a distance of 513.41 feet to the South right of way line of Hartzog Road; thence South 89°01'00" East along said South right of way line, a distance of 595.40 feet; thence South 00°59'00" West a distance of 99.32 feet; thence South 78°59'50" East a distance of 136.10 feet; thence South 11°00'10" West a distance of 100.00 feet; thence South 78°59'50" East a distance of 88.00 feet; thence South 11°00'10" West a distance of 230.00 feet; thence South 78°59'50" East a distance of 243.48 feet; thence South 54°00'23" East a distance of 126.03 feet; thence South 01°04'38" East a distance of 334.41 feet to the Point of Beginning.

Parcel #5:

Commence at the Southeast corner of the North Half of the Northeast Quarter of Section 31, Township 24 South, Range 27 East, Orange County, Florida; thence run South 88 degrees 55 minutes 22 seconds West, along the South line of the North Half of the Northeast Quarter of said Section 31, a distance of 631.40 feet; thence run North 01 degree 04 minutes 38 seconds West, a distance of 334.41 feet; thence run North 54 degrees 00 minutes 23 seconds West, a distance of 126.03 feet to the POINT OF BEGINNING; thence run North 78 degrees 59 minutes 50 seconds West, a distance of 243.48 feet; thence run North 11 degrees 00 minutes 10 seconds East, a distance of 230.00 feet; thence run North 78 degrees 59 minutes 50 seconds West, a distance of 88.00 feet; thence run North 11 degrees 00 minutes 10 seconds East, a distance of 100.00 feet; thence run North 78 degrees 59 minutes 50 seconds West, a distance of 136.10 feet; thence run North 00 degrees 59 minutes 00 seconds East, a distance of 99.32 feet to a point on the Southerly right of way line of Hartzog Road; thence run South 89 degrees 01 minutes 00 seconds East along said right of way line, a distance of 145.20 feet to a point of curvature; thence run with the arc of a curve to the left, having for its elements, a radius of 1462.69 feet, a central angle of 18 degrees 52 minutes 55 seconds, a chord which bears North 81 degrees 32 minutes 33 seconds East, a chord distance of 479.85 feet, an arc distance of 482.03 feet; thence departing said curve and right of way line, run South 10 degrees 51 minutes 18 seconds East (non radial), a distance of 307.60 feet to a point of curvature; thence run with the arc of a curve to the right, having for its elements, a radius of 191.00 feet, a central angle of 76 degrees 32 minutes 28 seconds, a chord which bears South 27 degrees 24 minutes 56 seconds West, a chord distance of 236.60 feet, an arc distance of 255.16 feet to a point of tangency; thence run South 65 degrees 41 minutes 10 seconds West, a distance of 92.42 feet; thence run South 71 degrees 24 minutes 01 seconds West, a distance of 95.25 feet to the POINT OF BEGINNING.

Less

A part of the North 1/2 of the Northeast 1/4 of Section 31, Township 24 South, Range 27 East, Orange County, Florida;
being more particularly described as follows:

Commencing at the Northeast corner of the Northeast Quarter of said Section 31; thence run South 00°22'41" West along the East line of said Northeast Quarter for a distance of 126.27 feet to a point on the Southerly right of way line of Hartzog Road as recorded in Official Records Book 3390, Page 523 and Deed Book 841, Page 293 of the Official Records of Orange County, Florida, said point being on a non tangent curve concave Southeasterly having a radius of 1252.32 feet, with a chord bearing of South 70°47'31" West, and a chord distance of 37.15 feet; thence run Southwesterly along said Southerly right of way line through a central angle of 01°41'59" along the arc of said curve for a distance of 37.15 feet to the point of Point of Beginning; thence departing said right of way line run South 00°22'41" West for a distance of 679.96 feet; thence run South 89°36'30" West for a distance of 1542.59 feet; thence run South 00°23'30" East for a distance of 16.70 feet; thence run South 89°36'30" West for a distance of 50.00 feet; thence run North 07°37'22" West for a distance of 16.83 feet; thence run South 89°36'30" West for a distance of 32.80 feet to a point on the East right of way line of Avalon

Road, State Road 545 according to Road Book 3, Page 121 and Official Records Book 9078, Page 4456 of the Public Records of Orange County, Florida; thence run North 07°32'20" West along said right of way line for a distance of 447.27 feet to the intersection with the aforesaid Southerly right of way line of Hartzog Road; thence run South 88°19'20" East for a distance of 740.60 feet to the point of curvature of a curve, concave Northerly having a radius of 1462.69 feet, with a chord bearing of North 77°54'40" East, and a chord distance of 696.15 feet; thence run Easterly through a central angle of 27°32'00" along the arc of said curve for a distance of 702.89 feet to a point of tangency; thence run North 64°08'40" East for a distance of 170.04 feet to the point of curvature of a curve, concave Southeasterly having a radius of 1252.32 feet, with a chord bearing of North 67°02'36" East, and a chord distance of 126.66 feet; thence run Northeasterly through a central angle of 05°47'51" along the arc of said curve for a distance of 126.71 feet to the POINT OF BEGINNING.

Exhibit “C”

**Legal Description and Sketch of Description
for Conveyed Lands**

[See attached 2 pages]

DESCRIPTION

A parcel of land located in the northeast quarter of Section 31, Township 24 South, Range 27 East, Orange County, Florida. Said parcel being more particularly described as follows:

COMMENCE at the southeast corner of the North 1/2 of the northeast 1/4 of said Section 31; thence South 89° 36' 30" West along the South line of the North 1/2 of the northeast 1/4 of said Section 31, a distance of 1,615.76 feet to the POINT OF BEGINNING; thence continue South 89° 36' 30" West along the South line of the North 1/2 of the northeast 1/4 of said Section 31, a distance of 54.02 feet to a point on the easterly right of way line of Avalon Road (State Road 545), being a point on a non-tangent curve concave westerly, having a radius of 1271.07 feet, a central angle of 020° 04' 16" and a chord of 442.99 feet that bears North 02° 29' 48" East; thence the following courses along the easterly right of way line and the arc of said curve a distance of 445.27 feet to the point of tangency; thence North 07° 32' 20" West, 66.14 feet to a point on the South line of lands described in Document # 20210348867 of the Public Records of Orange County, Florida; thence leaving said easterly right of way line, run North 89° 36' 30" East along said South line, 32.80 feet; thence leaving said South line, run South 07° 37' 22" East, 62.15 feet to a point on a non-tangent curve concave westerly, having a radius of 1854.13 feet, a central angle of 013° 49' 40" and a chord of 446.39 feet that bears South 00° 18' 09" East; thence along the arc of said curve a distance of 447.48 feet to the POINT OF BEGINNING.

Said parcel contains 0.45 acres, more or less.

NOTES

1. THIS SKETCH OF DESCRIPTION IS NOT A SURVEY.
2. THIS SKETCH AND DESCRIPTION IS NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND SEAL OF THE FLORIDA LICENSED SURVEYOR AND MAPPER LISTED BELOW.
3. THE LAND DESCRIPTION HEREON WAS WRITTEN BY THIS SURVEYOR AT THE DIRECTION OF THE CLIENT.
4. BEARINGS SHOWN HEREON ARE ASSUMED AND BASED ON THE SOUTH LINE OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 31, TOWNSHIP 24 SOUTH, RANGE 27 EAST, BEING SOUTH 89° 36' 30" WEST, ASSUMED.

CERTIFICATION

I HEREBY STATE THAT THIS SKETCH AND DESCRIPTION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF; AND THAT THIS SKETCH AND DESCRIPTION MEETS THE STANDARDS OF PRACTICE FOR FLORIDA SURVEYORS AND MAPPERS, AS SET FORTH IN CHAPTER 5J-17 OF THE FLORIDA ADMINISTRATIVE CODE, PURSUANT TO CHAPTER 472.027, FLORIDA STATUTES.

DATE OF PLAT OR MAP: _____

OCT-27
2021

Wm David McChery, JR., P.S.M.
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA LICENSE NO. 4853

SECTION 31, TOWNSHIP 24 SOUTH, RANGE 27 EAST - ORANGE COUNTY, FLORIDA



Vanasse Hangen Brustlin, Inc.

Landmark Center Two
225 E. Robinson St., Suite 300
Orlando, FL 32801
407.839.4006 / FAX 407.839.4008
Licensed Business # 7153

DRAWN BY: CAP	CHECKED: WMD
PROJECT # 63653.00	
DRAWING: 63653.00 Sk&Desc ROW	
Dedication.dwg	
DRAWING DATE: 10/20/2021	
SHEET 1 OF 2	

SKETCH & DESCRIPTION
Right of Way Dedication

ISSUED FOR:
BTI Partners



0 50 100
1 : 100 U.S. SURVEY FEET

NOT PLATTED
PARCEL NUMBER
31-24-27-0000-00-063
OWNER: (NOW/FORMERLY)
PROSE AVALON POINTE VENTURE LP

LEGEND & ABBREVIATIONS

- R = RADIUS
- L = ARC LENGTH
- Δ = CENTRAL ANGLE
- CHB = CHORD BEARING
- CHD = CHORD DISTANCE
- P.T. = POINT OF TANGENCY
- P.N.T. = POINT OF NON-TANGENCY
- CCR = CERTIFIED CORNER RECORD
- PRM = PERMANENT REFERENCE MONUMENT

AVALON ROAD (STATE ROAD 545)

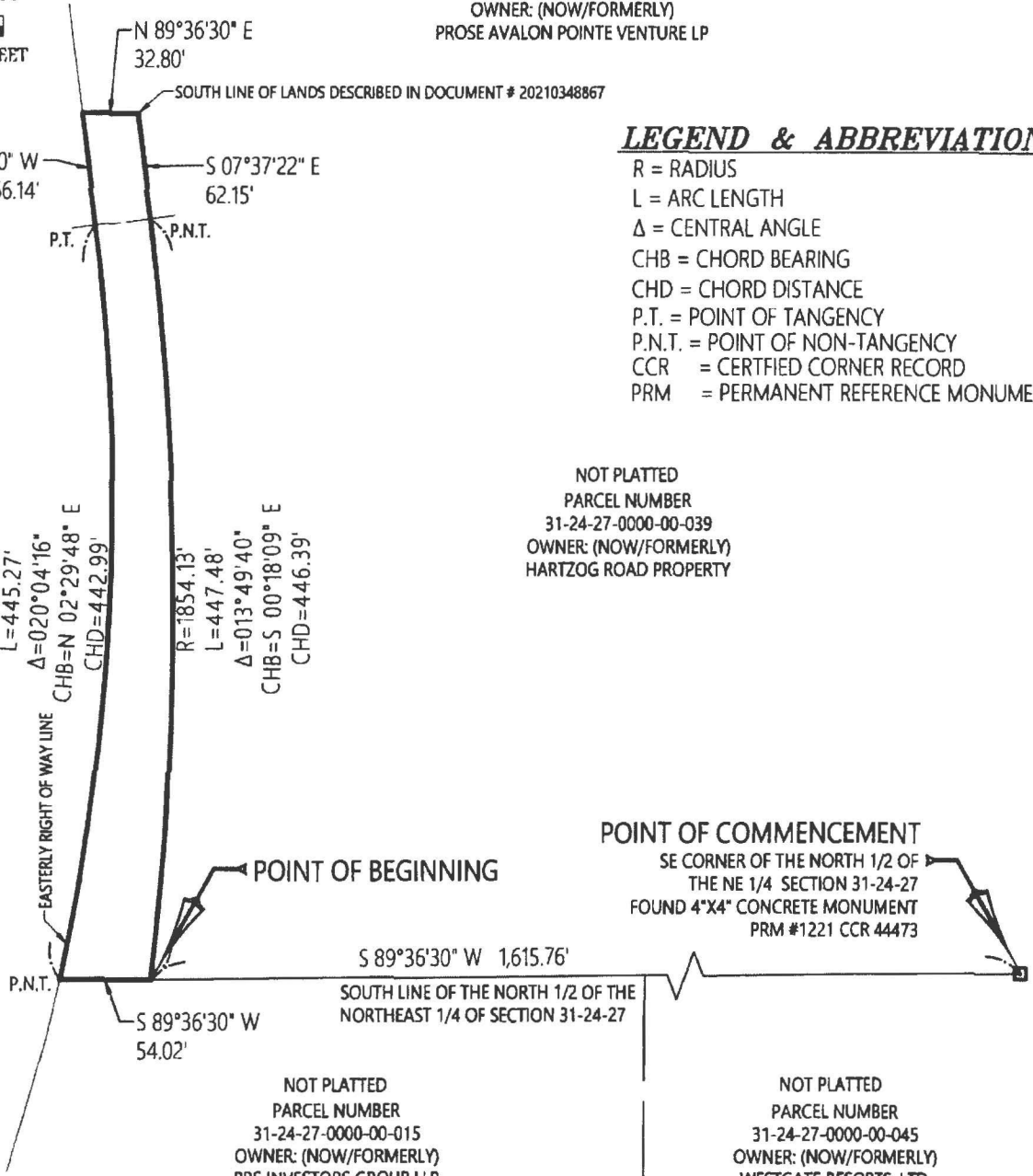
RIGHT OF WAY VARIES
ROAD BOOK 3, PAGE 121
OFFICIAL RECORDS BOOK 9078, PAGE 4456

R=1271.07'
L=445.27'
 $\Delta=020^{\circ}04'16''$
CHB=N 02°29'48" E
CHD=442.99'

R=1854.13'
L=447.48'
 $\Delta=013^{\circ}49'40''$
CHB=S 00°18'09" E
CHD=446.39'

NOT PLATTED
PARCEL NUMBER
31-24-27-0000-00-039
OWNER: (NOW/FORMERLY)
HARTZOG ROAD PROPERTY

NOT PLATTED
PARCEL NUMBER
31-24-27-0000-00-045
OWNER: (NOW/FORMERLY)
WESTGATE RESORTS, LTD.



SEE SHEET 1 OF 2 FOR DESCRIPTION, CERTIFICATION AND NOTES

SECTION 31, TOWNSHIP 24 SOUTH, RANGE 27 EAST - ORANGE COUNTY, FLORIDA



Landmark Center Two
225 E. Robinson St., Suite 300
Orlando, FL 32801
407.839.4006 / FAX 407.839.4008
Licensed Business # 7153

Vanasse Hangen Brustlin, Inc.

DRAWN BY: CAP	CHECKED: WMD
PROJECT # 63653.00	
DRAWING: 63653.00 Sk&Desc ROW	
Dedication.dwg	
DRAWING DATE: 10/20/2021	
SCALE: 1" = 100'	SHEET 2 OF 2

**SKETCH & DESCRIPTION
Right of Way Dedication**

ISSUED FOR:
BTI Partners