



## Interoffice Memorandum

**AGENDA ITEM**

May 6, 2021

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

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

SUBJECT: June 8, 2021 – Consent Item  
Traffic Signal Funding Agreement Alta Avalon at Core Academy PD/UNP  
Avalon Road (CR 545)

The Roadway Agreement Committee has reviewed the Traffic Signal Funding Agreement Alta Avalon at Core Academy PD/UNP (Avalon Road (CR 545)) ("Agreement") by and between Avalon Real Estate Limited LLC and Orange County that provides funding for the design and construction of a traffic signal at the intersection of Avalon Road (CR 545) and Phil Ritson Way to address public safety concerns. Section 3 of the Fourth Amendment to Village H Horizon West Road Network Agreement, recorded as Doc. #20190634374, recognized that a traffic signal at this intersection may be warranted in the future, however, the Village H Road Network Agreement did not provide a mechanism by which the signal was to be funded, designed, or constructed.

Within 90 days of the effective date of this Agreement, Avalon Real Estate Limited LLC shall pay improvement funds in the amount of \$812,787 to Orange County to use for the design and construction of the traffic signal improvements at Avalon Road and Phil Ritson Way. The improvement funds largely represent the advance payment of transportation impact fees (minus an existing credit account) for the Owner's multi-family development. In return for the payment of the improvement funds, the Owner will receive transportation impact fee credits in the amount of the payment.

The Roadway Agreement Committee recommended approval of the Agreement on March 3, 2021. 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 Traffic Signal Funding Agreement Alta Avalon at Core Academy PD/UNP (Avalon Road (CR 545)) by and between Avalon Real Estate Limited LLC and Orange County providing for a funding payment in the amount of \$812,787 to be utilized by the County for the design and construction of a traffic signal at the Intersection of Avalon Road (CR 545) and Phil Ritson Way and providing transportation impact fee credits in the amount of the funding payment. District 1

JVW/tc/ep/fb  
Attachment

BCC Mtg. Date: June 8, 2021

Prepared by and after recording return to:  
Juli Simas James, Esquire  
Shutts & Bowen LLP  
300 S. Orange Avenue, Suite 1600  
Orlando, Florida 32801

Tax Parcel I.D. No.: A portion of 32-23-27-0000-00-007

**TRAFFIC SIGNAL FUNDING AGREEMENT**  
**ALTA AVALON AT CORE ACADEMY PD/UNP**  
**(AVALON ROAD (CR 545))**

This Traffic Signal Funding Agreement (the “Agreement”), effective as of the latest date of execution (the “Effective Date”), is made and entered into by and between AVALON REAL ESTATE LIMITED LLC (“Owner”), a Delaware limited liability company, whose mailing address is 11661 San Vincente Boulevard, Suite 220, Los Angeles, California 90049, 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. Owner and County may sometimes be referred to herein individually as a “Party” and collectively as the “Parties.”

**WITNESSETH:**

**WHEREAS**, Owner is the owner of fee simple title to certain real property, as shown on 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**, Owner is developing the Property as a multi-family residential development containing three hundred forty eight (348) multi-family residential units pursuant to

that certain Development Plan for Core Academy PD / UNP / Alta Horizon West DP (Case No. DP-20-09-251) (the “Project”); and

**WHEREAS**, as set forth in that certain Village H Horizon West Road Network Agreement (C.R. 545) recorded in Official Records Book 10525, Page 6172, Public Records of Orange County, Florida, as amended by that certain First Amendment to Village H Horizon West Road Network Agreement (C.R. 545) recorded in Official Records Book 10851, Page 626, Public Records of Orange County, Florida, as amended by that certain Second Amendment to Village H Horizon West Road Network Agreement (C.R. 545) recorded in Official Records Book 10870, Page 7689, Public Records of Orange County, Florida, as amended by that certain Third Amendment to Village H Horizon West Road Network Agreement (C.R. 545) recorded as Doc# 20170656057, Public Records of Orange County, Florida, as amended by that certain Fourth Amendment to Village H Horizon West Road Network Agreement (C.R. 545) (the “Fourth Amendment”) recorded as Doc #20190634374, Public Records of Orange County, Florida, as amended by that certain Fifth Amendment to Village H Horizon West Road Network Agreement (C.R. 545) recorded as Doc #20210063422, Public Records of Orange County, Florida (the “Fifth Amendment” and collectively, the “Village H Road Agreement”), the County and the Owners (as defined in the Village H Road Agreement) have determined that certain road improvements must be constructed to address the transportation impacts of the Owners’ developments, as more particularly set forth in the Village H Road Agreement (the “Village H Road Improvements”); and

**WHEREAS**, pursuant to Section 3 of the Fourth Amendment, the Owners and the County determined that certain traffic signalization improvements at the intersection of Avalon

Road (CR 545) and Phil Ritson Way (the “Improvements”) may be warranted in the future, and the County is willing to design and construct the Improvements; and

**WHEREAS**, while the Improvements constitute a portion and continuation of the overall Village H Road Improvements to be constructed pursuant to the Village H Road Agreement, the Village H Road Agreement does not provide a mechanism by which the Improvements are to be designed, funded, and constructed; and

**WHEREAS**, in the interest of cooperation with the County, Owner is willing to participate and fund the design and construction of the Improvements in accordance with the provisions of this Agreement; and

**WHEREAS**, the Orange County Engineer has declared Avalon Road (CR 545) to be impact fee eligible; and

**WHEREAS**, the County has agreed that because the Improvements constitute a portion and continuation of the overall Village H Road Improvements, Owner shall receive credits against transportation impact fees to be paid in the future in connection with the Project, in an amount equal to the Improvement Funds (as defined below); and

**WHEREAS**, County and Owner desire to set forth certain terms, conditions, and agreements between the parties as to the design and funding of the Improvements.

**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. Design, funding, and construction of the Improvements.**

(a) As set forth in the Fourth Amendment, the County has determined that the design and construction of traffic signal improvements at the intersection of Avalon Road (CR 545) and Phil Ritson Way (collectively, the “Improvements”) are necessary to address public safety concerns, and desires to design and construct the Improvements to address such public safety concerns.

(b) The estimated total cost to design and construct the Improvements (collectively, the “Improvement Costs”) will be substantially less than the transportation impact fees Owner will be required to remit to the County in connection with development of the Project, which at current transportation impact fee rates (\$2,524 per multi-family residential unit) will equal Eight Hundred Seventy-Eight Thousand Three Hundred Fifty-Two and No/100 Dollars (\$878,352.00) (the “Impact Fees”).

(c) Pursuant to that certain Right of Way (R.O.W.) Conveyance and Adequate Public Facilities Agreement – Core Academy PD/UNP/LUP – R.O.W. Dedication for CR 545 (Avalon Rd.) Widening, recorded as Document No. 20150628476, as amended by virtue of that certain First Amendment to Right-of-Way (R.O.W.) Conveyance and Adequate Public Facilities Agreement - Core Academy PD/UNP/LUP - R.O.W. Dedication for CR 545 (Avalon Rd.) Widening, recorded as Document No. 20170159212, all in the Public Records of Orange County, Florida, Owner currently is the owner of Sixty Five Thousand Five Hundred Sixty Five and No/100 Dollars (\$65,565.00) in transportation impact fee credits (the “Existing Credits”), which may be applied to offset the transportation impact fees due in connection with the Project.

(d) In order to (i) promptly provide County with the funds required for the Improvements and (ii) ensure that Owner is able to develop the Project without substantial delay,

the Parties agree that within ninety (90) days after the Effective Date of this Agreement, Owner shall pay an amount equal to the Impact Fees, less the amount of the Existing Credits, for a total of Eight Hundred Twelve Thousand Seven Hundred Eighty-Seven and No/100 Dollars (\$812,787.00) (the "Improvement Funds") to the Orange County Board of County Commissioners, delivered to the attention of the Orange County Public Works Fiscal & Operations Division for deposit to the Orange County Traffic Engineering Traffic Signal CIP Accounting Line 1004-072-2720-6320, which the County shall use to design and construct the Improvements. Any portion of the Improvement Funds that is not expended by the County to construct the Improvements shall be applied by the County for transportation improvements in transportation impact fee zone 4.

(e) The Owner may not receive any certificate of occupancy for the Project prior to delivery of the Improvement Funds to the County, as set forth above.

(f) The Parties agree that the County will design and construct the Improvements and shall utilize the Improvement Funds for such purpose.

**Section 3. Transportation Impact Fee Credits.** Upon payment of the Improvement Funds to the County, County shall credit on its books to the account of Owner, for purposes of Article IV of Chapter 23 of the Orange County Code and any successor code provisions (the "Impact Fee Ordinance"), transportation impact fee credits in the amount of the Improvement Funds. Such transportation impact fee credits may only be used in transportation impact fee zone 4. Thereafter, as impact fees become payable from time to time in connection with the Project, and if so instructed by Owner, County shall deduct such amounts payable from Owner's account.

For purposes of the foregoing, County shall make deductions from Owner's account from time to time only upon receipt of written direction from Owner (or from such person or entity to whom Owner expressly may assign this authority, in writing, in the future) to effectuate the particular deduction.

Nothing herein shall prevent Owner from assigning transportation impact fee credits as provided for in Section 23-95(e) of the Orange County Code, as may be amended from time to time.

**Section 4. Notice.** 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 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:           Avalon Real Estate Limited LLC  
                                Attention: European Investment Management Services  
                                11661 San Vincente Boulevard, Suite 220  
                                Los Angeles, California 90049

With a copy to:       WP South Acquisitions, L.L.C.  
                                Attention: Bryan Borland  
                                636 W. Yale Street  
                                Orlando, Florida 32804

With a copy to:       Juli Simas James, Esq.  
                                Shutts & Bowen LLP  
                                300. S. Orange Avenue, Suite 1600  
                                Orlando, Florida 32801

As to County:           Orange County Administrator  
                                P.O. Box 1393

201 S. Rosalind Ave  
Orlando, Florida 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 Agreement shall run with the Property and shall be binding upon and shall inure to the benefit and burden of the heirs, legal representatives, successors, and assigns of the parties and to any person, firm, corporation, or other entity that may become a successor in interest to the Property. Notwithstanding the foregoing, however, the authority under Section 3 to instruct County to make deductions from Owner's transportation impact fee account shall remain with Owner unless expressly assigned in writing to another by Owner.

**Section 6. Recordation of Agreement.** An executed original of this Agreement shall be recorded, by Owner and at Owner's expense, in the Public Records of Orange County, Florida not later than thirty (30) days after the Effective Date.

**Section 7. Applicable Law.** This Agreement 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 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 Agreement is the willingness of the other to limit the remedies for all actions arising out of or in connection with this Agreement.

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

- (i) action for specific performance or injunction; or
- (ii) the right to set off, against the amount(s) of impact fees to be credited in favor of Owner under this Agreement, (A) any amount(s) due to County from Owner under this Agreement but remaining unpaid and (B) the cost to County of performing any action or actions required to be done under this Agreement by Owner, but which Owner has failed or refused to do when required; or
- (iii) the withholding of development permits and other approvals and permits in connection with the Project and/or the Property; or
- (iv) any combination of the foregoing.

(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 following remedies:

- (i) action for specific performance; or
- (ii) action for injunction; or
- (iii) action for declaratory judgment regarding the rights and obligations of Owner; or
- (iv) any combination of the foregoing.

Both parties expressly waive their respective rights to sue for damages of any type for breach of, or default under, this Agreement by the other. Both parties expressly agree that each party shall bear the cost of its own attorney and legal fees for any action arising out of or in connection with this Agreement. Venue for any action 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.

**Section 11. Amendment.** This Agreement may be amended only in writing, formally executed in the same manner as this Agreement.

**Section 12. Counterparts.** This Agreement and any amendment(s) may be executed in up to two counterparts, each of which shall be deemed an original and both of which shall constitute one and the same instrument.

**Section 13. Potential Future Easement.** The Parties agree that in the event the County, in its reasonable discretion, desires an easement over that certain portion of the Property more particularly described in **Exhibit "C"** attached hereto and incorporated by reference (the "Easement Area") in order to construct, operate, and/or maintain the Improvements, the Owner will grant a non-exclusive easement to the County (the "Easement") in form mutually agreeable to both Parties. The Easement shall in no event be larger than five (5) feet in width by twenty (20) feet long, and shall not interfere with the Project or result in any additional impacts, costs, or expenses to Owner in connection with Owner's development of the Project, including but not limited to any modification of or interference with the approved Development Plan (Case No. DP-20-09-251) for the Project. In the event such grant of the Easement by Owner to the County, the County shall be responsible for any and all costs associated with the granting of the Easement, including document preparation, documentary stamp taxes, obtaining any title policy

desired by the County, and performing any and all due diligence on the Easement Area (including but not limited to any environmental studies of the Easement Area desired by the County), and the Owner shall have no responsibility to fund or perform any such actions, other than executing the Easement and delivering the executed Easement to the County.

[Signatures appear on following pages]

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

**ORANGE COUNTY, FLORIDA**

By: Board of County Commissioners

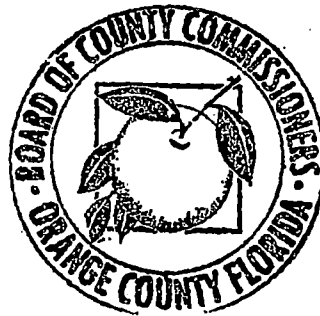
By: *Jerry L. Demings*  
for Jerry L. Demings  
Orange County Mayor

Date: JUN 08 2021

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

By: *Katie Smith*  
Deputy Clerk

Printed name: Katie Smith



WITNESSES:

[Signature]

Printed Name: [Signature]

[Signature]

Printed Name: [Signature]

**AVALON REAL ESTATE LIMITED LLC,**  
a Delaware limited liability company, f/k/a CORE  
REAL ESTATE LIMITED LLC, a Delaware  
limited liability company

By: European Investment Management Services,  
Inc. a Delaware corporation, its Manager

By: Robert S Mautner

Printed name: ROBERT S MAUTNER

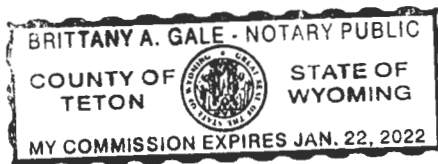
Title: V.P. of the MANAGER

STATE OF Wyoming  
COUNTY OF Teton

The foregoing instrument was acknowledged     in person before me or X by online  
notarization by Robert S. Mautner, as Vice President of European  
Investment Management Services, Inc., a Delaware corporation, the Manager of Avalon Real  
Estate Limited LLC, a Delaware limited liability company, on behalf of the company, this 3<sup>rd</sup>  
day of May, 2021. She is personally known to me or has produced                       
as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 3<sup>rd</sup> day  
of May, 2021.

[Signature]  
Notary Public



Print Name: Brittany A. Gale

My Commission Expires: January 22, 2022

**Exhibit "A"**  
**Project Location Map**



**Exhibit "B"**

**Legal Description and Sketch of Description for Property**

**The NW ¼ of SW ¼ lying West of State Road 545, Less that portion by Order of Taking recorded in Official Records Book 7300, Page 1028 and corrected in Official Records Book 7311, Page 462 and Less that portion lying Southwesterly of said R/W, all in Section 32, Township 23 South, Range 27 East, Orange County, Florida.**

**Less and except:**

**Commence at the Northwest corner of the Southwest ¼ of said Section 32, thence N89°34'21"E along the North line of the Southwest ¼ of said Section 32, a distance of 1188.74 feet to the POINT OF BEGINNING; thence continue N89°34'21"E along said North line, a distance of 54.76 feet to the West right-of-way line of Avalon Road (County Road No. 545) per Orange County Bond Project No. 7A and Florida Department of Transportation Right-of-Way Map of State Road 545 Section 75110; thence departing said North line run S09°09'08"W along said West right-of-way line, a distance of 1312.08 feet to the North right-of-way line of Old YMCA Road, a 50.00 foot right-of-way recorded in Deed Book 460, Page 241, and Deed Book 460, Page 243, of the Public Records of Orange County, Florida; thence run S89°43'52"W along said North right-of-way line, a distance of 54.74 feet; thence departing said North right-of-way line run N09°09'08"E, a distance of 1311.92 feet to the POINT OF BEGINNING.**

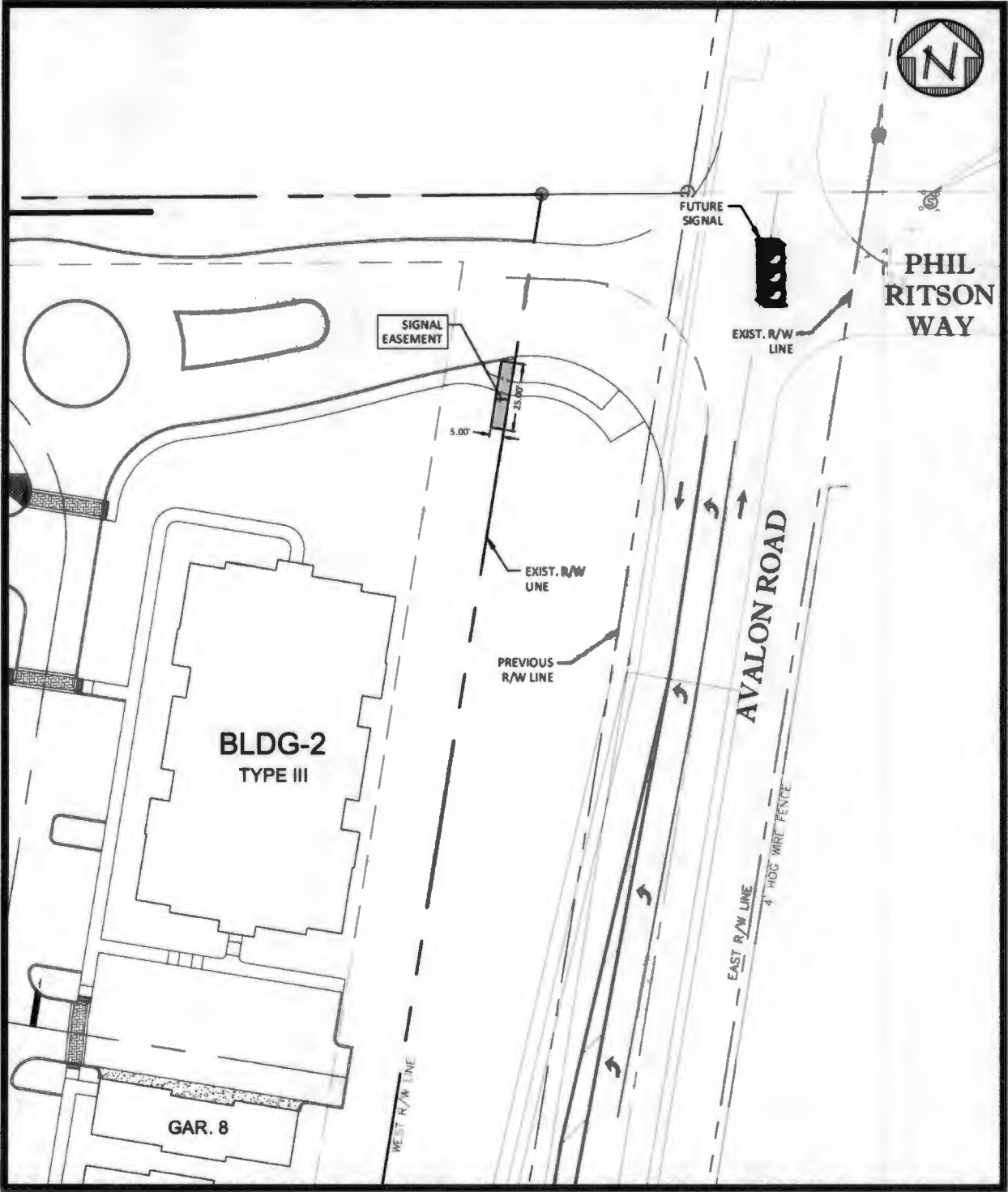
**Containing 1.626 acres more or less, and being subject to any rights-of-way, restrictions and easements of record.**

**Exhibit "C"**

**Easement Area**

**[SW CORNER OF INTERSECTION OF CR 545 / AVALON RD AND PHIL RITSON  
WAY – SEE FOLLOWING PAGE]**





KELLY, COLLINS & GENTRY, INC.	Scale: 1" = 50'		EXHIBIT "C"
	Date: 03/23/21		
	S:	T: R:	Exhibit: SIGNAL EASEMENT
	Job # :1375.000		
ENGINEERING / PLANNING	Drawn by: CAD		Source:
	Appvd. by: JAB		Area: 1 of 1