




Interoffice Memorandum

AGENDA ITEM

DATE: July 14, 2020

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

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

**CONTACT PERSON: Eric Raasch, DRC Chairman
Development Review Committee
Planning Division
(407) 836-5523**

SUBJECT: August 11, 2020 — Consent Item
Adequate Public Facilities Agreement for Silverleaf – Horizon
West Town Center PD / RP
Case # APF-19-11-386 / District 1
(Related to Case # LUP-19-09-290)

The proposed Silverleaf Planned Development – Regulating Plan (PD-RP) contains 563 gross acres (280 acres net developable) and is located generally north of Schofield Road and west of Avalon Road. The subject property is located within the Town Center Special Planning Area of Horizon West. The applicant has submitted a request (LUP-19-09-290) to change the current designations on the Town Center Special Planning Area map to CCMU (Corporate Campus Mixed-Use), Schools, Open Space, and Adequate Public Facilities (APF) Park, in order to allow for a mixed-use project with a development program consisting of up to 2,926 residential dwelling units (single-family and multi-family), 2,903,286 square feet of non-residential uses including hotel, commercial, office, and/or light industrial.

Pursuant to Orange County Code Section 30-714, each property owner in a Horizon West PD is required to convey their proportionate share of APF lands, which are based on the ratio of required APF acres to net developable acres within the Special Planning Area. For the Town Center Special Planning Area, the adopted ratio of APF acres to net developable acres is 1.0 to 5.1. 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 Board resolution 2014-M-09. Alternately, they may receive a transfer of surplus APF credits from another property owner in the same Village.

In order to satisfy the requirements of Chapter 30, Article XIV of the Orange County Code ("APF/TDR Ordinance"), the Silverleaf PD-RP is subject to an APF Agreement

that recognizes that the project is responsible for a minimum of 55 acres of APF lands. The project provides 82 acres of APF lands resulting in an APF surplus of 27 acres. The APF lands provided consist of an APF Park and APF Trail, APF Schools (combined Elementary and Middle School site), and rights-of-way for Valencia Parkway, Avalon Road, and Horizon Boulevard/Porter Road, and related stormwater areas including the stormwater area for the school site. The 27 acres of APF land surplus will be available as APF acreage credits which may be sold and/or assigned by the owner to other owners within the same Village.

The APF Agreement for Silverleaf PD-RP received a recommendation of approval from the Development Review Committee on March 11, 2020 and has been placed on the August 11, 2020 consent agenda to be pulled for consideration with the associated PD-RP. Upon approval by the Board, the Agreement will be recorded in the Public Records of Orange County.

ACTION REQUESTED: Approval and execution of Adequate Public Facilities Agreement for Silverleaf-Horizon West Town Center PD/RP by and between JEN Florida 36, LLC and Orange County. District 1

JVW/EPR/jhs
Attachments

1 This instrument prepared by
2 and after recording return to:
3
4 Juli Simas James, Esq.
5 Shutts & Bowen LLP
6 300 S. Orange Avenue, Suite 1600
7 Orlando, Florida 32801
8
9 Cross Reference: 20170435628

Tax Parcel I.D. Numbers:	19-23-27-5836-15-030	19-23-27-5840-11-010	30-23-27-0000-00-004
	19-23-27-5836-15-011	19-23-27-5840-12-090	30-23-27-0000-00-007
	19-23-27-5836-15-010	19-23-27-5836-17-010	30-23-27-0000-00-005
	19-23-27-5840-14-010	19-23-27-5836-16-010	30-23-27-0000-00-010
	19-23-27-5840-13-100	19-23-27-5836-16-110	29-23-27-0000-00-004
	19-23-27-5840-10-000	30-23-27-0000-00-001	

10 **ADEQUATE PUBLIC FACILITIES AGREEMENT FOR**
11 **SILVERLEAF-HORIZON WEST TOWN CENTER PD/RP**

12 **THIS ADEQUATE PUBLIC FACILITIES AGREEMENT FOR SILVERLEAF-**
13 **HORIZON WEST TOWN CENTER PD/RP** (the “**Agreement**”), effective as of the date of
14 execution by the last party to execute this Agreement (the “**Effective Date**”), is made and
15 entered into by and between **JEN FLORIDA 36, LLC**, a Florida limited liability company, with
16 its principal place of business at Unit #111, 1750 West Broadway Street, Oviedo, Florida 32765
17 (“**Owner**”), and **ORANGE COUNTY**, a charter county and political subdivision of the State of
18 Florida, whose address is P.O. Box 1393, Orlando, Florida 32802-1393 (“**County**”) (Owner and
19 County are referred to herein sometimes individually, as a “**Party**” and collectively, as the
20 “**Parties**”). **THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA**, a body corporate
21 and political subdivision of the State of Florida, whose address is 445 West Amelia Street,
22 Orlando, Florida 32801 (“**School Board**” or the “**Joinder Party**”) has joined in and consented to
23 the execution of this Agreement for the purposes and upon the terms expressly set forth herein
24 and in the attached Joinder and Consent instrument.

25 **RECITALS:**

26 A. Owner is the fee simple owner of certain real property located in Orange County,
27 Florida, as generally depicted in **Exhibit “A”** and as more particularly described in **Exhibit “B”**,
28 both of which exhibits are attached hereto and made a part hereof by this reference (the “**PD/RP**
29 **Property**”).

30 B. The PD/RP Property, also known as the Silverleaf-Horizon West Town Center
31 Planned Development Regulating Plan (the “**Silverleaf PD/RP**”), is identified on the Orange
32 County Comprehensive Policy Plan 2010-2030 (the “**Comprehensive Plan**”) Future Land Use
33 Map with the “Village” land use designation and constitutes a portion of Town Center, in
34 Horizon West, as same is described and depicted in the Town Center Specific Area Plan
35 approved by the Board of County Commissioners of Orange County, Florida (the “**BCC**”) on
36 December 14, 2004 (the “**Town Center SAP**”).

37 C. The PD/RP Property is included in the Horizon West Village Land Use
38 Classification Area. The BCC adopted the Horizon West Village Land Use Classification
39 Comprehensive Policy Plan (“**CPP**”) amendment on June 5, 1995. The Horizon West Village
40 Land Use Classification was the result of a public-private partnership between the BCC and
41 Horizon West, Inc. The partnership conducted an extensive visioning and community consensus
42 building process that was summarized in the Horizon West Study Report issued February 7,
43 1995.

44 D. The Silverleaf PD/RP has relied on the prior approvals of the Horizon West Study
45 and the Town Center SAP, and studies included in the SAP.

46 E. The Town Center SAP contemplates a mix of nonresidential and residential uses
47 within the PD/RP Property.

48 F. County and DeWitt Enterprises, Inc., a Florida corporation (“**DeWitt**”), entered
49 into that certain Adequate Public Facilities Agreement for School Site Conveyance (Lake Ingram
50 PD/UNP), as joined in and consented to by School Board, recorded as Instrument No.
51 20170435628 in the Public Records of Orange County, Florida (“**Lake Ingram APF**
52 **Agreement**”), whereby DeWitt was required to convey a 13.5 acre elementary school site with a
53 1.5 acre drainage easement to School Board (“**Ingram School Site**”).

54 G. The Lake Ingram APF Agreement establishes the agreed-upon fair market value
55 for the Ingram School Site as \$22,500.00 per acre, or fraction thereof, for a total of 13.5 acres.

56 H. Owner, as the successor in title to the Lake Ingram PD/UNP property encumbered
57 by the Lake Ingram APF Agreement and the assignee to the Lake Ingram APF Agreement
58 pursuant to that certain Assignment and Assumption of Adequate Public Facilities Agreement for
59 School Site Conveyance (Lake Ingram PD/UNP), recorded as Instrument No. 20190586582 in
60 the Public Records of Orange County, Florida, desires to relocate the Ingram School Site to the
61 PD/RP Property. As part of the application for the Silverleaf PD/RP, the Lake Ingram PD/UNP
62 will be subsumed within the Silverleaf PD/RP.

63 I. Owner desires to develop the PD/RP Property in accordance with the Silverleaf
64 PD/RP submitted by Owner to County, and with the Silverleaf PD/RP zoning application on file
65 with County (the “**Project**”).

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

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

74 L. The Parties have agreed that this Agreement constitutes the aforementioned
75 developer’s agreement referenced in Division 2 of the APF/TDR Ordinance.

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

81 N. It is the intent of the Parties that County will consider approval of the Silverleaf
82 PD/RP with its consideration of this Agreement.

83 O. The PD/RP Property contains approximately 280 acres of **net** developable land,
84 and both the Town Center SAP and Section 30-714 of the APF/TDR Ordinance require 1 acre of
85 public facilities acreage for every 5.10 acres of net developable land (the “**APF Ratio**”).

86 P. When applied to the PD/RP Property, the APF Ratio equals approximately 55
87 acres of public facilities lands.

88 Q. As shown on the Silverleaf PD/RP, and as described in this Agreement, Owner is
89 providing 82 acres of adequate public facilities lands (the “**APF Lands**”) to County, thereby
90 creating an APF surplus of 27 acres.

91 R. As more particularly described herein, the APF Lands will include land for a
92 combined elementary school and middle school site, thereby creating certain rights and
93 obligations of the School Board as more particularly provided in Section 5 (b) of this Agreement
94 and the need for the joinder and consent of the School Board attached hereto.

95 S. As more particularly described herein, the APF Lands will include Stormwater
96 Areas that will serve the APF ROW, the School Site, and the Property as developed pursuant to
97 the Silverleaf PD/RP, which Stormwater Areas will ultimately be owned and maintained by a
98 not-for-profit property owners association (“**POA**”) formed by Owner.

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

102 **AGREEMENT**

103
104 1. **Recitals.** The above recitals are true and correct and are hereby incorporated as
105 material provisions of this Agreement by this reference

106 2. **Conveyance of APF Lands by Owner.** Owner shall convey APF Lands as
107 follows:

108 (a) **APF Right(s)-of-Way.** Rights-of-way for the following transportation
109 improvements/roads (depicted as APF Road ROW on the Silverleaf PD/RP):

<u>APF LAND TYPE</u>	<u>ACREAGE</u>
Valencia Parkway	Approximately 9.96 acres

Avalon Road (C.R. 545)	Approximately 2.36 acres
Horizon Blvd./Porter Rd.	Approximately 9.68 acres

110 It is contemplated by the Parties that wider right(s)-of-way than depicted on the Silverleaf PD/RP
111 may be required in some locations, such as at intersections, to facilitate traffic movement.

112 (b) **Stormwater Areas.**

113 (i) **County Stormwater Area:** Owner shall convey to County a permanent
114 non-exclusive easement for stormwater drainage for the APF Lands, other than the School Site,
115 as follows:

<u>APF LAND TYPE</u>	<u>ACREAGE</u>
Stormwater Areas (sufficient to service all improvements constructed within the APF Lands, other than the School Site (“ County Stormwater Area ”))	Approximately 5.75 acres

116 Any Stormwater Areas that are part of the master drainage system and which service the APF
117 Right-of-Way shall be designed and constructed in a location mutually acceptable to the County
118 and the Owner.
119

120 (ii) **School Site Stormwater Area:** Owner shall convey to School Board a
121 permanent non-exclusive easement for stormwater drainage serving the School Site as follows:

<u>APF LAND TYPE</u>	<u>ACREAGE</u>
Stormwater Areas (sufficient to service all improvements constructed within the School Site (“ School Site Stormwater Area ”) Pond Tract SW-2	Approximately 6.25 acres

122

123 (c) **APF Park and APF Trail.** Owner shall convey APF Lands for a park
124 and a multipurpose path as generally depicted on the Silverleaf PD/RP as follows:

<u>APF LAND TYPE</u>	<u>ACREAGE</u>
APF Park	Approximately 5.0 acres
APF Multipurpose Path (“ APF Trail ”)	Approximately 9.0 acres

125
 126 (d) **APF School Site.** Owner shall convey APF Lands for a combination
 127 elementary school site ("**Elementary School Site**") and middle school site ("**Middle School**
 128 **Site**") as generally depicted on the Silverleaf PD/RP as follows (the Elementary School Site and
 129 the Middle School Site, collectively, the "**School Site**"):

<u>APF LAND TYPE</u>	<u>ACREAGE</u>
APF Elementary School (ES) Site	Approximately 13.5 acres
APF Middle School (MS) Site	Approximately 20.5 acres
TOTAL	Approximately 34 acres

130
 131 The APF Lands identified in clauses (a) through (d) above are referred to herein as the "**Road**
 132 **Right-of-Way**," "**Stormwater Areas**," "**APF Park**," "**APF Trail**" and "**School Site**,"
 133 respectively.

134 3. **APF Surplus.** The Town Center Ratio requires Owner to convey approximately
 135 55 acres of APF Lands. This Agreement provides for conveyance of approximately 82 acres of
 136 APF Lands, thereby creating a 27 acre surplus.

137 4. **APF Acreage Credits.** County hereby acknowledges that the aforementioned
 138 APF Surplus will result in APF acreage credit equivalent to approximately 27 acres of APF
 139 Land, which APF acreage credits may be sold and/or assigned by Owner to other owners within
 140 Town Center Special Planning Area who do not have sufficient land within the boundaries of
 141 their PD(s) to satisfy their APF ratio requirements. Such APF acreage credit may only be used
 142 within Town Center Special Planning Area.

143 5. **Conveyance Procedure.**

144 (a) *Road Right-of-Way, APF Park, and APF Trail.* The conveyance of the
 145 Road Right-of-Way for Avalon Road (C.R. 545) shall be as provided in the Town Center West
 146 (Silverleaf) Road Network Agreement between the County and Owner (the "**Road**
 147 **Agreement**"), which Road Agreement has been approved the County's Road Agreement
 148 Committee and is anticipated to be considered for approval by the County's Board of County
 149 Commissioners contemporaneously with this Agreement. The conveyance of the Road Right-of-
 150 Way for Valencia Parkway and Horizon Boulevard (a/k/a Porter Road Extension), APF Park,
 151 and the APF Trail, which APF Trail shall be maintained by the POA, shall be by plat dedication
 152 or general warranty deed, free and clear of all liens and encumbrances, except for easements of
 153 record acceptable to County, if any. If by plat dedication, the remainder of this paragraph and the
 154 following paragraphs (c), (d) and (e) shall not apply to the conveyance. Owner shall pay all costs
 155 related to such conveyance, including all recording fees and documentary stamps related to such
 156 conveyance. Ad valorem taxes in connection with the conveyance of such APF Lands shall be
 157 prorated as of the date of transfer of title and said prorated amount shall be paid by Owner to
 158 Orange County Tax Collector, in escrow, pursuant to Section 196.295, Florida Statutes, unless
 159 the conveyance occurs between November 1 and December 31 of the year of conveyance, in
 160 which case ad valorem taxes shall be paid in full by Owner for the year of conveyance.

161 (b) *School Site*. The Owner shall convey the School Site to School Board by
162 general warranty deed, free and clear of all liens and encumbrances, except for easements
163 contemplated by this Agreement and matters as provided in the School Site Purchase Agreement
164 (as defined below), no later than the closing date provided in the School Site Purchase
165 Agreement (“**School Closing Date**”). Owner shall pay all costs related to such conveyance,
166 including all recording fees and documentary stamps related to such conveyance. Ad valorem
167 taxes in connection with the conveyance of the School Site shall be prorated as of the date of
168 transfer of title and said prorated amount shall be paid by Owner to the Orange County Tax
169 Collector, in escrow, pursuant to Section 196.295, Florida Statutes, unless the conveyance occurs
170 between November 1 and December 31 of the year of conveyance, in which case ad valorem
171 taxes shall be paid in full by Owner for the year of conveyance. Contemporaneously herewith,
172 Owner and School Board are entering into a Real Estate Purchase Agreement providing the
173 terms and conditions for conveyance of the School Site from Owner to School Board (the
174 “**School Site Purchase Agreement**”).

175 (i) Conditions to Close. The Owner shall be required to fulfill each of
176 the following conditions precedent to closing for the School Site (collectively, the “**School**
177 **Conditions to Close**”) in accordance with the terms of the School Site Purchase Agreement:

178 (1) The School Site shall be free and clear of the presence of
179 any wetlands, endangered or threatened species or the Owner shall, at the Owner's sole cost and
180 expense, mitigate all impacts to FEMA flood zones, associated wetland area impacts, gopher
181 tortoise, sand skink, or other endangered species to the reasonable satisfaction of the School
182 Board and to the extent required to allow use of the School Site for School Board's intended use
183 of the School Site as an elementary school and middle school (“**School Board's Intended Use**”),
184 including necessary submittals of the LOMR and LOMR-F;

185 (2) The Owner shall vacate all existing easements and utilities
186 (other than easements contemplated by this Agreement and the School Site Purchase Agreement
187 and easements of record acceptable to School Board), if any, that are contained on the School
188 Site and which would prevent the utilization of the School Site for the School Board's Intended
189 Use and move such existing easements and utilities to a location that does not conflict with
190 School Board's Intended Use;

191 (3) Certificate of Non-Foreign Status. The Owner shall submit
192 a Certificate of Non-Foreign Status confirming the Owner is not a foreign person or entity for
193 purposes of U.S. income taxation in compliance with Section 1445 of the Internal Revenue
194 Code;

195 (4) The Owner shall submit such partial releases, satisfactions
196 or other instruments necessary to release or remove any outstanding mortgages, liens, or
197 encumbrances which would prevent the utilization of the School Site for the School Board's
198 Intended Use;

199 (5) The Owner shall submit an owner's affidavit in form
200 sufficient to enable the title company to delete all standard title exceptions other than survey
201 exceptions from the title policy to be issued to the School Board as required in the School Site
202 Purchase Agreement;

203 (6) Any Phase I environmental audit shall be conducted in
204 accordance with the requirements of the All Appropriate Inquiries Final Rule or with the
205 standards set forth in the most current version of the American Society for Testing and Materials
206 (ASTM) E-1527. If a Phase II environmental site assessment or audit of the School Site is
207 performed by the School Board in accordance with the School Site Purchase Agreement, based
208 on a Phase I environmental assessment or audit of the School Site performed by the School
209 Board which identifies recognized environmental conditions on the School Site and recommends
210 a Phase II environmental site assessment or audit, and such Phase II environmental site
211 assessment or audit recommends remediation of the School Site, Owner, at no cost or expense to
212 School Board, shall remediate or cause to be remediated the School Site to the reasonable
213 satisfaction of School Board, prior to conveyance of the School Site to School Board. The Phase
214 II environmental audit, if any, shall be conducted in accordance with the requirements of the
215 AAIFR or most current version of the ASTM E-1903. Owner's failure to perform or cause to be
216 performed the required remediation shall be deemed a default under this Agreement;

217 (7) The School Site shall be free and clear of any subsurface
218 condition that would interfere with the School Board's Intended Use as reasonably determined by
219 the School Board and as identified in a geotechnical study or other subsurface investigation or
220 study of the School Site conducted by School Board or the Owner. In the event any such
221 geotechnical studies reveal the need for remediation to the School Site, the Owner, at no cost or
222 expense to School Board, shall cause to be remediated the School Site, to School Board's
223 reasonable satisfaction, prior to the conveyance of the School Site to School Board. Owner's
224 failure to perform or cause to be performed the required remediation shall be deemed a default
225 under this Agreement;

226 (8) Entitlements. The Owner shall, at the Owner's sole cost
227 and expense, use commercially reasonable efforts to obtain zoning approval and preliminary plat
228 approval from the County for use of the School Site for School Board's Intended Use, with the
229 applicable appeal period having expired, and with such matter being approved containing no
230 terms, conditions, or provisions that are unsatisfactory or objectionable to School Board in its
231 reasonable discretion. School Board acknowledges and agrees that School Board has accepted
232 and approved the Silverleaf PD/RP (LUP-19-09-290) and all terms, conditions, or provisions
233 thereof. The Owner shall also use commercially reasonable efforts to obtain approval of any plat
234 that may be required by the County for the development of the School Site for the School
235 Board's Intended Use ("**Plat**"), although the Plat, if required, may be obtained by the Owner after
236 the School Site is conveyed to the School Board pursuant to a post-closing agreement reasonably
237 acceptable to the School Board and the Owner;

238 (9) The Owner shall, at the Owner's cost and expense, remove
239 or otherwise exempt or cause the School Site to be removed or exempt from any homeowners
240 association or property owners association, if applicable, and any obligations, liens, and / or
241 assessments associated therewith so long as the School Site is owned by School Board (the
242 "**Association Exemption**");

243 (10) The Owner shall, at the Owner's cost and expense, cause
244 the School Site to be exempt from any community development district, if applicable, and any

245 obligations, liens, charges, costs and/or assessments associated therewith (the “**CDD**
246 **Exemption**”) so long as the School Site is owned by School Board;

247 (11) There will be no person or legal entity occupying the
248 School Site or asserting a right of possession of the School Site through the Owner;

249 (12) The School Site shall not have been affected by any
250 legislative or regulatory change, or any flood, accident or other materially adverse event that
251 would prohibit the School Board’s Intended Use of the School Site;

252 (13) Temporary Access Improvements. At closing on the School
253 Site, the Owner shall at its sole cost and expense, grant or cause to be granted to School Board a
254 temporary access easement, in form and content reasonably acceptable to School Board and
255 Owner, over such portion of the PD/RP Property as is reasonably acceptable to the School Board
256 and Owner (“**Temporary Access Easement**”), and construct a temporary construction access
257 road to the School Site (“**Temporary Access Road**”), as provided in the School Site Purchase
258 Agreement.

259 (14) Temporary Water for School Board's Construction. From
260 the School Closing Date until such time as School Board’s contractor commences work with
261 lightweight concrete, Owner shall provide temporary, non-potable well water to the School Site.
262 Within thirty (30) days after School Board provides written notice to Owner of School Board’s
263 intent for its contractor to commence work with lightweight concrete on the School Site, Owner,
264 at its sole cost and expense, shall provide temporary potable water with twenty-four (24) psi to
265 the School Site (“**Temporary Water Work**”), until such time as the permanent potable water is
266 substantially completed in accordance with the terms of the Post-Closing Agreement (hereinafter
267 defined).

268 (15) Stormwater Improvements. Owner, at its sole cost and
269 expense, shall design, permit, construct, and convey to School Board at the time of closing on the
270 School Site a permanent non-exclusive stormwater drainage easement over the School Site
271 Stormwater Area (the “**School Site Stormwater Easement**”) to accommodate the reasonable
272 stormwater retention/detention needs of the schools to be constructed upon the School Site, as
273 reasonably determined by School Board's engineer; provided, however, that the maximum water
274 volume and drainage area to be contributed to the offsite drainage system from the School Site
275 shall not exceed an amount based on impervious surfaces covering up to eighty percent (80%) of
276 the School Site. The form and content of the School Site Stormwater Easement shall be
277 reasonably acceptable to School Board and Owner and shall provide that School Site Stormwater
278 Areas will be owned and maintained by the POA as contemplated in Section 5(c)(iii) below;
279 provided, however, the School Site Stormwater Easement shall provide that the School Board
280 shall exercise the stormwater easement rights in compliance with the terms and conditions of the
281 School Site Stormwater Easement and all applicable laws, rules, regulations, regulatory
282 standards and requirements, permits and ordinances. School Board shall be responsible to repair
283 any damage to the School Site Stormwater Area caused by School Board, its employees, agents
284 or contractors, or caused by or related to the failure of School Board, its employees, agents or
285 contractors to comply with the terms of the School Site Stormwater Easement or applicable laws,
286 rules, regulations, regulatory standards and requirements, permits and ordinances. Furthermore,
287 School Board, its employees, agents or contractors shall not cause any hazardous or toxic

288 substance or other contaminant regulated under any local, state, or federal code, law, statute,
289 rule, regulation, and/or requirement to be discharged and/or released into or upon School Site
290 Stormwater Area. In the event of any discharge and/or release by School Board, its employees,
291 agents or contractors in violation of this paragraph, School Board shall have thirty (30) days after
292 the discovery of such to remedy such non-compliance at the School Board's sole cost and
293 expense.

294 (16) Clear, Fill and Grading. Owner, at its sole cost and
295 expense, shall clear, fill and grade the School Site as set forth in the School Site Purchase
296 Agreement and, upon completion, provide density tests and compaction reports in connection
297 with its grading and fill activities in accordance with the School Site Purchase Agreement ("**Fill**
298 **Work**").

299 (17) Design, Engineering and Permitting of Post-Closing
300 Improvements. Owner, at no cost or expense to School Board, shall, or shall cause others to (i)
301 complete the engineering plans, specifications, and drawings for the permitting and construction
302 of the Owner's Post-Closing Improvements in accordance with the Land Development Plans
303 (hereinafter defined) and shall deliver copies of such engineering plans, specifications, and
304 drawings to School Board upon completion of said plans, specifications and drawings; and (ii)
305 obtain the issuance of all Required Permits for the Post-Closing Improvements. "**Required**
306 **Permits**" shall mean all permits, approvals, licenses, authorizations, and development
307 entitlements of/from all Governmental Authorities that are required to construct the Owner's
308 Post-Closing Improvements in accordance with the Land Development Plans. For the purposes
309 of this Agreement, the term "**Governmental Authorities**" shall mean any and all federal, state,
310 county, municipal, or other governmental department or entity, or any authority, commission,
311 board, bureau, court, community development district, or agency having jurisdiction over the
312 Silverleaf PD/RP or any portion thereof, and whose approval is necessary for the construction of
313 the Owner's Post-Closing Improvements, including without limitation, the United States Army
314 Corps of Engineers, the Florida Department of Environmental Protection, the Florida
315 Department of Transportation, the South Florida Water Management District, Orange County,
316 Florida and Orange County Utilities. For the purposes of this Agreement, the term "**Land**
317 **Development Plans**" shall mean the final construction plans, to be prepared by Poulos &
318 Bennett, LLC, for the development of the subdivision grading and infrastructure, roadways,
319 utilities and stormwater drainage, which have not yet been duly approved by the applicable
320 Governmental Authorities whose approval is required in order for Owner to lawfully construct
321 the improvements described therein.

322 (18) Post-Closing Agreement. Owner and School Board shall
323 agree upon the form and content of a separate post-closing agreement ("**Post-Closing**
324 **Agreement**") to be executed at the closing of the School Site as required to complete the
325 following improvements necessary for School Board's Intended Use of the School Site ("**Post-**
326 **Closing Improvements**"):

327 a. Access Improvements. Owner shall design, permit,
328 construct and dedicate as a public right-of-way either by deed or plat, the three (3) lane east/west
329 roadway abutting the south boundary of the School Site, including turn/deceleration lanes to be
330 located within the School Site and traffic signalization at the intersection of CR 545 and the

331 East/West Road (“**Access Improvements**”) at the Owner's sole expense, no later than the date
332 set forth in the School Site Purchase Agreement.

333 b. Access Points. Owner, at Owner's sole cost and
334 expense, shall construct three (3) access points along the south boundary and one (1) access point
335 along the west boundary of the School Site as agreed upon in the School Site Purchase
336 Agreement (collectively, the “**Access Points**”) no later than the date set forth in the School Site
337 Purchase Agreement; provided that such Access Points shall be at the locations reasonably
338 agreed upon by the School Board and such turn/deceleration lanes for the Access Points shall be
339 located on the School Site.

340 c. Utilities. Owner shall design, permit, install,
341 construct, and dedicate permanent potable water, reuse water and sanitary sewer facilities
342 available at the boundary of the School Site, as applicable, in accordance with the terms of the
343 School Site Purchase Agreement no later than the date set forth in the School Site Purchase
344 Agreement, which shall be of sufficient size, pressure, flow and force and have sufficient
345 capacity, including, without limitation, adequate fire suppression flow, to accommodate the use
346 of the School Site for School Board's Intended Use of the School Site as determined by School
347 Board and School Board's engineer, in School Board's reasonable discretion;

348 d. Owner shall use commercially reasonable efforts to
349 ensure that Duke Energy, as to electrical service, and Spectrum, as to telephone, internet and
350 fiber/data service, make available at the boundary of the School Site, no later than the date set
351 forth in the School Site Purchase Agreement, permanent electrical, telephone, internet, and
352 fiber/data facilities of sufficient size and capacity to accommodate the use of the School Site for
353 School Board's Intended Use, as determined by School Board and School Board's engineer, in
354 School Board's sole reasonable discretion.

355 (ii) Deadline to Complete Conditions to Close. The School Site is
356 within the School Board's Five Year Capital Improvement Plan. The Owner shall complete and
357 satisfy the Conditions to Close for the School Site no later than the date set forth in the School
358 Site Purchase Agreement. In the event the Conditions to Close are not satisfied by the Owner by
359 the date set forth in the School Site Purchase Agreement, as applicable, it shall be a default under
360 this Agreement, unless otherwise extended by Owner and School Board pursuant to Section 20
361 below.

362 (c) Stormwater Areas.

363 (i) APF Park, APF Trail and Right-of-Way. In addition to conveying
364 the Road Right-of-Way, APF Park, and APF Trail to County, Owner shall convey to County a
365 permanent non-exclusive easement over the County Stormwater Areas for stormwater drainage
366 sufficient to serve the Road Right-of-Way, APF Park, and APF Trail (the “**County Stormwater**
367 **Easement**”).

368 (ii) School Site. In addition to conveying the School Site to the School
369 Board, the Owner shall convey to the School Board the School Site Stormwater Easement as
370 contemplated in Section 5(b)(i)(15) above.

371 (iii) Owner shall form a POA for the purpose of owning and
372 maintaining the Stormwater Areas and all stormwater drainage improvements constructed
373 therein, and shall thereafter convey the Stormwater Areas to the POA, subject to the County
374 Stormwater Easement and School Site Stormwater Easement.

375 (d) *Title Policy.* No less than ninety (90) days prior to any conveyance to
376 County, Owner shall deliver to County, at Owner's sole cost and expense, an updated
377 commitment to issue an Owner's Policy of Title Insurance naming County as the insured with
378 respect to the fee interest in the applicable APF Lands to be conveyed to County and an
379 easement interest in the County Stormwater Easement (the "**Title Commitment**"). The original
380 Owner's Policy of Title Insurance (the "**Title Policy**") shall be delivered to County within thirty
381 (30) days after the conveyance of each of the Right-of-Way, County Stormwater Easement, APF
382 Park, and APF Trail. Owner's obligations to deliver to School Board the title commitment and
383 title policy for the School Site are provided in the School Site Purchase Agreement.

384 (e) *Environmental Audit.* No less than sixty (60) days prior to any conveyance
385 to County, Owner shall submit to County a current (within 6 months of conveyance to County)
386 Phase I environmental audit of the areas encompassed by the APF Lands being conveyed to
387 County. The Phase I environmental audit shall be conducted in accordance with the requirements
388 of the All Appropriate Inquiries Final Rule or with the standards set forth in the most current
389 version of the American Society for Testing and Materials (ASTM) E-1527. In the event the
390 Phase I environmental audit presents a matter of concern as determined by County, then prior to
391 the conveyance, Owner shall submit to County a Phase II environmental audit. The Phase II
392 environmental audit, if any, shall be conducted in accordance with the requirements of the
393 AAIFR or most current version of the ASTM E-1903. If the Phase II environmental audit is
394 performed and reveals the need for remediation to the APF Lands, one of the following events
395 shall occur: (i) Owner shall remediate the APF Lands to County's satisfaction prior to the
396 conveyance; or (ii) Owner and County shall negotiate and enter into a separate agreement
397 whereby Owner shall pay the full cost of remediation; or (iii) County may terminate this
398 Agreement at its option. The rights and obligations of School Board and Owner with respect to
399 environmental assessment of the School Site are provided in Section 5(b)(i)(6) of this Agreement
400 and in the School Site Purchase Agreement.

401 (f) *Compliance with Section 286.23, Florida Statutes.* Owner shall execute
402 and deliver to County the "Disclosure of Beneficial Interests" required pursuant to section
403 286.23, Florida Statutes.

404 (g) *Entitlement to Impact Fee Credits.*

405 (i) *APF Park and APF Trail.* In accordance with Policy 4.2.1 of the
406 Future Land Use Element of the County's Comprehensive Plan, the APF/TDR Ordinance and
407 Article VI of Chapter 23 of the Orange County Code (the "**Parks and Recreation Impact Fee**
408 **Ordinance**"), the Owner is entitled to obtain impact fee credits at the rate of \$22,500.00 per acre
409 (or such higher amount as may be approved by the Board of County Commissioners following
410 execution of this Agreement but prior to conveyance) for the conveyance of the APF Park and
411 APF Trail.

412 (ii) APF Right-of-Way. In accordance with Policy 4.2.1 of the Future
413 Land Use Element of the County's Comprehensive Plan, the APF/TDR Ordinance and Article IV
414 of Chapter 23 of the Orange County Code (the "**Transportation Impact Fee Ordinance**"), the
415 Owner is entitled to obtain impact fee credits at the rate of \$22,500.00 per acre (or such higher
416 amount as may be approved by the Board of County Commissioners following execution of this
417 Agreement but prior to conveyance) for the conveyance of the Road Right-of-Way for Valencia
418 Parkway and Horizon Boulevard (a/k/a Porter Road Extension). Any entitlement to, and award
419 of, impact fee credits for the conveyance of the Road Right-of-Way for Avalon Road (C.R. 545)
420 shall be in accordance with the Road Agreement.

421 (iii) School Site. The Owner shall be entitled to obtain school impact
422 fee credits for the conveyance of the Elementary School Site and Middle School Site. The Parties
423 and the Joinder Party agree that the value of the Elementary School Site, as determined in
424 accordance with Article V of Chapter 23 of the Orange County Code (the "**School Impact Fee**
425 **Ordinance**") and the prior Lake Ingram APF Agreement, is Two Hundred Fifty-Eight Thousand
426 Seven Hundred Fifty Dollars (\$258,750.00), resulting from an agreed upon fair market value of
427 Twenty-Two Thousand Five Hundred Dollars (\$22,500.00) per net usable acre, or fraction
428 thereof, based upon 11.5 net usable acres of the 13.5 gross acres in the Elementary School Site.
429 The Parties and the Joinder Party agree that the value of the Middle School Site, as determined in
430 accordance with the School Impact Fee Ordinance, is One Million Five Hundred Seventy-Two
431 Thousand Five Hundred Dollars (\$1,572,500.00), resulting from an agreed upon fair market
432 value of Eighty-Five Thousand Dollars (\$85,000.00) per net usable acre, or fraction thereof,
433 based upon 18.5 net usable acres of the 20.5 gross acres in the Middle School Site. Pursuant to
434 the School Site Purchase Agreement, the Owner and the Joinder Party have acknowledged and
435 agreed that, for purposes of calculating the purchase price for the School Site and the amount
436 impact fee credits to which Owner is entitled, the Elementary School Site contains 11.5 net
437 usable acres and the Middle School Site contains 18.5 net usable acres. The Parties and the
438 Joinder Party agree and acknowledge that the agreed upon value includes any and all
439 improvements constructed or installed by the Owner, and as such, Owner shall not be entitled to
440 receive additional school impact fee credits for the cost of (a) certain turn/deceleration lanes
441 benefiting the School Site; or (b) the School Site Stormwater Area.

442 6. Refinement of Size and Location of APF Lands. The size and location of all
443 APF Lands as depicted on the Silverleaf PD/RP is approximate, although the final size and
444 location shall be substantially similar to that shown on the Silverleaf PD/RP. The dimensions
445 and location for a particular component of the APF Lands shall be finalized by County and
446 Owner, or School Board and Owner as to the School Site, prior to County approval of the
447 Preliminary Subdivision Plan or Development Plan ("**PSP/DP**") that includes the particular APF
448 Land, and shall be in full compliance with this Agreement. Parties and Joinder Party agree that
449 the legal descriptions used to convey the APF Lands may be revised based upon final
450 engineering.

451 7. Award of Impact Fee Credits.

452 (a) APF Park Land and APF Trail. Promptly upon the County's approval and
453 acceptance of a General Warranty Deed conveying the APF Park or APF Trail, or in the case of
454 conveyance by plat dedication, the County's acceptance of the plat dedication, the County shall

455 credit on its book to the account of the Owner, for purposes of the Parks and Recreation Impact
456 Fee Ordinance, the aforementioned amount of impact fee credits to which the Owner is entitled.
457 Thereafter, as impact fees become due and payable from time to time in connection with the
458 Project, and if so instructed by the Owner, the County shall deduct such amounts payable from
459 the Owner's parks and recreation impact fee credit account. Park impact fee credits may only be
460 used to satisfy obligations for the payment of parks and recreation impact fees.

461 (b) *Road Right-of-Way.* Promptly upon the County's approval and acceptance
462 of a General Warranty Deed conveying the Road Right-of-Way for Valencia Parkway and
463 Horizon Boulevard (a/k/a Porter Road Extension), or in the case of conveyance by plat
464 dedication, the County's acceptance of the plat dedication, the County shall credit on its book to
465 the account of the Owner, for purposes of the Transportation Impact Fee Ordinance, the
466 aforementioned amount of impact fee credits to which the Owner is entitled. Thereafter, as
467 impact fees become due and payable from time to time in connection with the Project, and if so
468 instructed by the Owner, the County shall deduct such amounts payable from the Owner's
469 transportation impact fee credit account. Transportation impact fee credits may only be used to
470 satisfy obligations for the payment of transportation impact fees.

471 (c) *School Site.* Promptly upon School Board's notice to County of closing of
472 the conveyance of the School Site from Owner to School Board in accordance with the School
473 Site Purchase Agreement, County shall credit on its book to the account of Owner, for purposes
474 of the School Impact Fee Ordinance, school impact fee credits in the amount of the
475 aforementioned value of the School Site, subject to holdback of impact fee credits as security for
476 completion of the Post-Closing Improvements as provided in the Post-Closing Agreement.
477 Promptly upon School Board's notice to County of completion of the Post-Closing
478 Improvements in accordance with the Post-Closing Agreement, County shall credit on its book to
479 the account of Owner the balance of the impact fee credits due Owner. School impact fee credits
480 may only be used to satisfy obligations for the payment of school impact fees.

481 (d) *Stormwater Area.* Owner shall not be entitled to impact fee credits of any
482 type with regard to the conveyance of the County Stormwater Easement to County or the School
483 Site Stormwater Easement to the School Board.

484 (e) For purposes of the foregoing, County shall make deductions from the
485 Owner's impact fee credit accounts from time to time only upon receipt of written direction from
486 the Owner (or from such person or entity to whom the Owner expressly may assign this
487 authority, in writing, in the future), to effect the particular deduction.

488 (f) Nothing herein shall prevent the Owner from assigning impact fee credits
489 as provided for in Chapter 23 of the Orange County Code as it may be amended from time to
490 time.

491 (g) Notwithstanding anything in the foregoing seemingly to the contrary, to
492 the extent that the Owner pays impact fees to the County in connection with the development of
493 the Silverleaf PD/RP and there is thereafter an impact fee credit balance created in favor of the
494 Owner pursuant to above, then upon reasonable request and in compliance with the Orange
495 County Code and its usual procedures, the County shall refund such impact fees to the Owner (or
496 to such person or entity to whom the Owner expressly may assign the right to receive such

497 refund) and shall make deduction from the appropriate impact fee credit account in the amount
498 of any such refund. This Agreement shall serve as the agreement contemplated by Chapter 23 of
499 the Orange County Code, including Section 23-95(d), for the refund of such impact fees.

500 8. **Option on Conveyance.** As an alternative to conveyance prior to or in connection
501 with Silverleaf PD/RP approval, Owner has elected to convey at a later time, as contemplated by
502 Sec. 30-714 of the APF/TDR Ordinance, as more particularly set forth below (the “**Conveyance**
503 **Schedule**”). Conveyance shall be defined as submittal of all conveyance documents, approval by
504 the BCC, and recordation of the deed(s).

505 (a) With respect to the Road Right-of-Way for Avalon Road (C.R. 545), the
506 conveyance to and acceptance by the County shall occur as provided in the Road Agreement.
507 With respect to the Road Right-of-Way for Valencia Parkway and Horizon Boulevard (a/k/a
508 Porter Road Extension), the conveyance to and acceptance by the County shall occur (i) in
509 conjunction with the recording of the deed or plat that contains such Road Right-of-Way, or (ii)
510 no later than one hundred twenty (120) days following the delivery by County and receipt by the
511 Owner of written notice that County desires the consummation of such conveyance, whichever
512 occurs first.

513 (b) With respect to the APF Park and APF Trail, the conveyance to and
514 acceptance by the County shall occur (i) in conjunction with the recording of the deed or plat that
515 contains the APF Park and APF Trail, or (ii) no later than one hundred twenty (120) days
516 following the delivery by County and receipt by the Owner of written notice that County desires
517 the consummation of such conveyance, whichever occurs first.

518 (c) With respect to the County Stormwater Easement, the conveyance to and
519 acceptance by the County shall occur (i) in conjunction with the recording of the plat(s) that
520 contain the County Stormwater Areas, or (ii) no later than one hundred twenty (120) days
521 following the delivery by County and receipt by the Owner of written notice that County desires
522 the consummation of such conveyance, whichever occurs first.

523 (d) With respect to the School Site, the conveyance to and acceptance by the
524 School Board shall occur as provided in the School Site Purchase Agreement.

525 (e) With respect to the School Site Stormwater Easement, the conveyance to
526 and acceptance by the School Board shall occur as provided in the School Site Purchase
527 Agreement.

528 The Parties and the Joinder Party agree that, prior to conveyance to County or School
529 Board, as applicable, the Owner of the APF Lands may continue to use the APF Lands in a
530 manner consistent with the County’s intended use, or School Board’s Intended Use with respect
531 to the School Site and the School Site Stormwater Easement, including, but not limited to, the
532 reasonable right to grade and to import or export fill material upon the APF Lands, subject to and
533 in accordance with an approved grading permit and/or excavation fill permit. Further, the Owner
534 agrees to relinquish control of the Road Right-of-Way for Valencia Parkway and Horizon
535 Boulevard (a/k/a Porter Road Extension), the APF Park, and/or the APF Trail, as applicable, and
536 convey such APF Lands to County, within one hundred twenty (120) days of demand by County
537 in accordance with the Conveyance Schedule set forth above. If a conveyance does not occur

538 within such one hundred twenty (120) day period in accordance with the Conveyance Schedule,
539 the Manager of County's Real Estate Division may grant one extension of up to one hundred
540 twenty (120) days to complete the conveyance.

541
542 As contemplated by the Silverleaf PD/RP, development within the PD/RP Property is
543 permitted to proceed beyond the 5% development cap set forth in Section 30-714(c) of the Code,
544 provided that prior to development proceeding beyond 5% of the approved entitlements for the
545 Silverleaf PD/RP:

546
547 (i) Owner has conveyed the Road Right-of-Way to the County or placed a
548 deed for such Road Right-of-Way into escrow, pursuant to an escrow agreement acceptable to
549 the County;

550
551 (ii) Owner has conveyed the County Stormwater Easement and School Site
552 Stormwater Easement to County and School Board, respectively, or placed such easements into
553 escrow, pursuant to an escrow agreement acceptable to the County and School Board;

554
555 (iii) Owner has conveyed the APF Park and the APF Trail to the County or
556 placed a deed for the APF Park and APF Trail into escrow, pursuant to an escrow agreement
557 acceptable to the County; and

558
559 (iv) Owner has conveyed the School Site to the School Board or placed a deed
560 for the School Site into escrow, pursuant to an escrow agreement acceptable to the School Board.

561
562 With respect to the APF Lands, Owner shall continue to be responsible for any and all
563 risk of injury and property damage attributable to the acts or omissions of its officers and
564 employees and agrees to defend, indemnify, and hold harmless County and School Board and
565 their respective officers, employees, and agents from and against all claims, actions, losses,
566 judgments, fines, liabilities, costs, and expenses in connection therewith. More specifically, to
567 the extent permitted by law, Owner shall indemnify and hold harmless County and School Board
568 and their respective officers, agents, and employees from and against any all claims, liability,
569 demands, damages, surcharges, expenses, fees, fines, penalties, suits, proceedings, and actions
570 (including, without limitation, reasonable paralegal, attorney, and other legal fees and expenses,
571 whether in court, out of court, in administrative proceedings, or on appeal), including damage to
572 property or property rights that may arise and which are proximately caused by the acts, errors,
573 or omissions of Owner, its agents, and/or representatives, arising out of its activities related to
574 the APF Lands. In addition, without limiting the foregoing, in the event that any act or omission
575 of Owner, its agents, and/or representatives, arising from or related to this Agreement, results in
576 any spill or release of hazardous materials or other pollutants, as those terms are defined in
577 federal and state environmental laws and regulations including, without limitation, any
578 petroleum-based substances, then, to the extent permitted by law, Owner shall indemnify and
579 hold harmless County and School Board and their respective officers, agents, and employees
580 from and against any and all claims, liability, demands, damages, surcharges, expenses, fees,
581 fines, penalties, suits, proceedings, and actions, including, without limitation, all reasonable
582 actual cleanup and/or remediation costs and expenses expended by County or School Board at
583 the direction of any federal or state agency having jurisdiction, and further including, without
584 limitation, reasonable paralegal, attorney, and other legal fees and expenses, whether in court, out

585 of court, in administrative proceedings, or on appeal. Owner shall be responsible for the
586 immediate notification to County and School Board of any environmental condition, spill, or
587 release, or any other condition or occurrence of which it becomes aware that may result in a
588 claim for damages, or that occurs as a result of Owner's activities related to the APF Lands.
589

590 In the event that any of the above occurs, County or School Board may refuse to accept
591 conveyance of the applicable APF Lands to be conveyed to County or School Board, and County
592 or School Board may require that Owner (i) pay an APF Fee in lieu of conveyance and/or (ii)
593 convey alternative adequate public facilities land(s) acceptable to County. Notwithstanding
594 anything seemingly or actually to the contrary above, the Parties acknowledge and agree that
595 satisfaction of Owner's APF obligations must take place prior to County approval of the initial
596 plat for the PD/RP Property.

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

599 10. **Limitation of Remedies.** County and Owner expressly agree that the
600 consideration, in part, for each of them entering into this Agreement is the willingness of the
601 other to limit the remedies for all actions arising out of or in connection with this Agreement.

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

605 (i) action for specific performance or injunction; or

606 (ii) the right to set off, against the amounts of impact fees to be
607 credited in favor of Owner, its successors and assigns (a) any amounts due to County from
608 Owner under this Agreement but remaining unpaid, and (b) the cost to County of performing any
609 action or actions required to be done under this Agreement by Owner, but which Owner has
610 failed or refused to do when required;

611 (iii) the withholding of development permits and other approvals or
612 permits in connection with the PD/RP Property; or

613 (iv) any combination of the foregoing.

614 In addition to the foregoing, nothing in this Agreement prohibits or estops County, with
615 respect to the APF Lands and the County Stormwater Easement to be conveyed to County, or
616 School Board, with respect to the School Site and School Site Stormwater Easement to be
617 conveyed to School Board, from exercising its power of eminent domain with respect to the
618 applicable APF Lands or any other portion of the Property as County or School Board, as
619 applicable, may lawfully elect. Notwithstanding the foregoing, in the event of a default by
620 Owner of its obligations under this Agreement pertaining to the School Site, School Board, after
621 providing Owner with thirty (30) days advance written notice and opportunity to cure, may
622 request the County withhold or discontinue the issuance of any development permits, building
623 permits, certificates of occupancy or plat approval in connection with the PD/RP Property; or

624 otherwise discontinue the process for any other approvals for the PD/RP Property until such
625 default has been cured to the reasonable satisfaction of the School Board.

626
627 (b) Limitations on Owner's Remedies. Upon any failure by County to
628 perform its obligations under this Agreement, Owner shall be limited strictly to only the
629 following remedies:

630 (i) action for specific performance; or

631 (ii) action for injunction; or

632 (iii) action for declaratory judgment regarding the rights and
633 obligations of Owner; or

634 (iv) any combination of the foregoing.

635 The Parties expressly waive their respective rights to sue for damages of any type for
636 breach of or default under this Agreement by the other. Venue for any actions initiated under or
637 in connection with this Agreement shall be in the Circuit Court of the Ninth Judicial Circuit in
638 and for Orange County, Florida.

639 11. Binding Effect. This Agreement shall be binding upon and shall inure to the
640 benefit and burden of the Parties hereto, to the Joinder Party only as to the applicable provisions,
641 and to their respective heirs, successors, and assigns and shall run with title to the PD/RP
642 Property and be binding upon any person, firm, corporation, or other entity acquiring any interest
643 in all or any portion of the PD/RP Property.

644 12. Severability. If any provision of this Agreement, the deletion of which would not
645 adversely affect the receipt of any material benefits by either party hereunder or substantially
646 increase the burden of either party hereunder, shall be held to be invalid or unenforceable to any
647 extent by a court of competent jurisdiction, the same shall not affect in any respect whatsoever
648 the validity or enforceability of the remainder of this Agreement.

649 13. Notices. Any notice required or allowed to be delivered hereunder shall be in
650 writing and shall be deemed to be delivered (whether or not actually received) (i) when hand
651 delivered to the person(s) hereinafter designated, or (ii) upon deposit of such notice in the United
652 States mail, postage prepaid, certified mail, return receipt requested, addressed to the person at
653 the address set forth opposite the party's name below, or to such other address or to such other
654 person as the party shall have specified by written notice to the other party delivered in
655 accordance herewith:

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

With a copy to: Orange County Planning, Environmental
And Development Services Department
Manager, Planning Division
Post Office Box 1393
Orlando, Florida 32802-1393

Orange County Planning, Environmental
and Development Services Department
Manager, Transportation Planning Division
Orange County Public Works Complex
4200 S. John Young Parkway
Orlando, Florida 32839-8070

Owner: Jen Florida 36, LLC
Attn: Denver Marlow, Vice President
1750 W. Broadway St., #111
Oviedo, FL 32765

With a copy to: Shutts & Bowen LLP
Attn: Juli S. James, Esq.
300 S. Orange Ave., Ste. 1600
Orlando, FL 32801

School Board: The School Board of Orange County, Florida
445 West Amelia Street
Orlando, FL 32801

With a copy to: Orange County Public Schools
Attn: Facilities Planning
6501 Magic Way, Bldg 200
Orlando, FL 32809

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14. **OCPS Interest in School Site.** Owner and the School Board acknowledge that they are currently negotiating a School Site Purchase Agreement, which will address, among other things, the School Board's right to conduct its desired due diligence into the acceptability of the School Site for School Board's Intended Use and may impose additional obligations on the Owner in connection with the proposed conveyance of the School Site. It shall be a condition precedent to conveyance of the School Site to School Board, and to the School Board's obligation to accept the conveyance of the School Site, that the Owner shall not be in default under any material term or condition of the School Site Purchase Agreement beyond all applicable cure periods at the time of the conveyance of the School Site to the School Board. Notwithstanding anything to the contrary contained in this Agreement, Owner, School Board and County acknowledge and agree that, in the event any right or obligation of Owner and / or School Board with respect to the School Site or School Site Stormwater Easement set forth herein is in conflict with the provisions of the School Site Purchase Agreement, the terms and conditions of such matters shall be governed by the School Site Purchase Agreement.

671 15. **School Board Sole Third Party Beneficiary.** The Parties agree that School
672 Board, as the Joinder Party, shall be an express third party beneficiary to this Agreement with
673 respect to all provisions herein relating to the School Site and School Site Stormwater Easement,
674 including remedies set forth in Section 10. Except as specifically noted, this Agreement is solely
675 for the benefit of the formal Parties hereto and no right or cause of action shall accrue by reason
676 hereof to, or for the benefit of, any third party. Nothing in this Agreement, expressed or implied,
677 is intended or shall be construed to confer upon or give any person or entity any right, remedy or
678 claim under or by reason of this Agreement or any provisions or conditions hereof, other than the
679 Parties hereto, and the School Board with respect to the School Site and School Site Stormwater
680 Easement, and their respective representatives, heirs, successors and assigns.

681 16. **Applicable Law.** This Agreement and the provisions contained herein shall be
682 construed, controlled, and interpreted according to the laws of the State of Florida.

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

689 18. **Attorneys' Fees.** Each party to this Agreement agrees to bear its own attorneys'
690 fees and costs in connection with all actions to be undertaken in compliance with, and
691 enforcement of, this Agreement.

692 19. **Survival.** The obligations of this Agreement shall survive the conveyance of the
693 APF Lands to County and School Board.

694 20. **Amendments.** No amendment, modification, or other change to this Agreement
695 shall be binding upon the Parties unless in writing and formally executed in the same manner as
696 this Agreement. School Board does hereby delegate to and confer upon its Chief Facilities
697 Officer the authority to extend deadlines for performance of Owner's obligations with respect to
698 the School Site provided in this Agreement without formal approval from School Board. To the
699 extent any amendment, modification, or other change to this Agreement does not affect the
700 School Site or School Site Stormwater Easement, School Board's execution of any such
701 amendment, modification, or other change to this Agreement shall not be required.

702 21. **Entire Agreement.** This Agreement embodies and constitutes the entire
703 understanding of the Parties with respect to the subject matter addressed herein, and all prior or
704 contemporaneous agreements, understandings, representations, and statements, oral or written,
705 are merged into this Agreement.

706 22. **Counterparts.** This Agreement may be executed in multiple counterparts, all of
707 which taken together shall constitute one and the same instrument and any party or signatory
708 hereto may execute this Agreement by signing any such counterpart.

709 23. **Authority to Contract.** The execution of this Agreement has been duly
710 authorized by the appropriate body or official of the County, School Board, and the Owner.

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

722

723

ORANGE COUNTY, FLORIDA

724

By: Board of County Commissioners

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727

728

By: _____

729

Jerry L. Demings

730

Orange County Mayor

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732

Date: _____

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735

736

737 ATTEST: Phil Diamond, CPA, County Comptroller

738 As Clerk of the Board of County Commissioners

739

740

741 By: _____

742

Deputy Clerk

743

744 Print Name: _____

745

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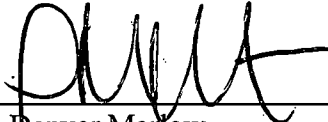
747 Signed, sealed, and delivered
748 in the presence of:

JEN FLORIDA 36, LLC, a Florida limited liability company

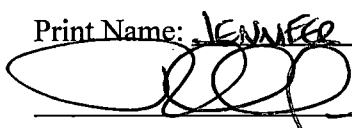
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753 _____
754 Print Name: JENNIFER JERMAN

By: 
Name: Denver Marlow
Title: Vice President

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759 Print Name: RICHARD JERMAN

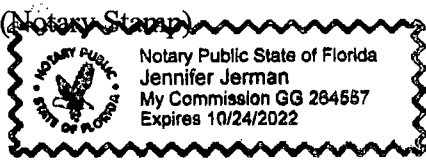
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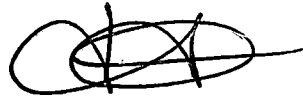
764 STATE OF FLORIDA
765 COUNTY OF SEMINOLE

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The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 19 day of JUNE, 2020, by Denver Marlow, as Vice President of JEN FLORIDA 36, LLC, a Florida limited liability company, on behalf of such company, who is personally known to me or has produced _____ as identification.

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Signature of Notary Public
Print Name: JENNIFER JERMAN
Notary Public, State of FLORIDA
Commission Expires: 10/24/22

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JOINDER AND CONSENT OF SCHOOL BOARD


The School Board of Orange County, Florida, a body corporate and political subdivision of the State of Florida, hereby joins in and consents to the foregoing Adequate Public Facilities Agreement for Silverleaf-Horizon West Town Center PD/RP ("**Agreement**") as a "Joinder Party" for the limited purpose of acknowledging and agreeing to comply with the terms and conditions of the Agreement pertaining to the School Site and the School Site Stormwater Easement, which shall be the only terms and conditions of the Agreement which will run with title to the School Site and the School Site Stormwater Easement area.

Signed, witnessed, executed and acknowledged on this _____ day of _____, 2020.

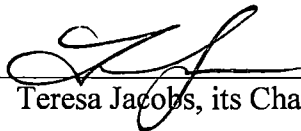
"SCHOOL BOARD"

Signed and sealed in the presence of:


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



Print Name: Martin Compton

By: 

Teresa Jacobs, its Chairman



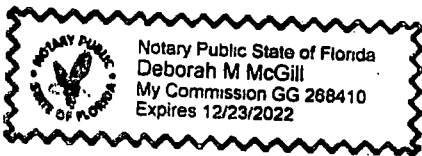
Print Name: Ruth Camacho

Date: July 7, 2020


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

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 7th day of July, 2020, by Teresa Jacobs, Chairman of The School Board of Orange County, Florida, a public corporate body and political subdivision of the State of Florida, on behalf of The School Board, who is personally known to me or had produced _____ (type of identification) as identification.



AFFIX NOTARY STAMP


NOTARY PUBLIC OF FLORIDA
Print Name: Deborah M. McGill
Commission No.: _____
Expires: _____

Signed and sealed in the presence of:

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

[Signature]
Print Name: Arabia Henley

By: [Signature]
Barbara M. Jenkins, Ed.D., as its Superintendent

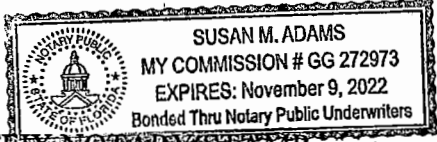
[Signature]
Print Name: Ruth Camacho

Date: July 8, 2020

809 STATE OF FLORIDA)
810) s.s.:
811 COUNTY OF ORANGE)
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813 The foregoing instrument was acknowledged before me by means of physical presence
814 or online notarization, this 8th day of July, 2020, by Barbara M. Jenkins, Ed.D., as
815 Superintendent of The School Board of Orange County, Florida, a public corporate body and
816 political subdivision of the State of Florida, on behalf of The School Board. She is personally
817 known to me or has produced _____ (type of identification)
818 as identification.

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AFFIX NOTARY STAMP

[Signature]
NOTARY PUBLIC OF FLORIDA
Print Name: Susan M. Adams
Commission No.: _____
Expires: _____

Reviewed and approved by Orange County Public School's Chief Facilities Officer

[Signature]
John T. Morris
Chief Facilities Officer

Date: June 25, 2020

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

[Signature]
By: Christopher Wilson, Esq.
Title: Shareholder/Counsel to OCPs

Date: 6/24, 2020

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Exhibit "A"
DEPICTION OF PD/RP PROPERTY

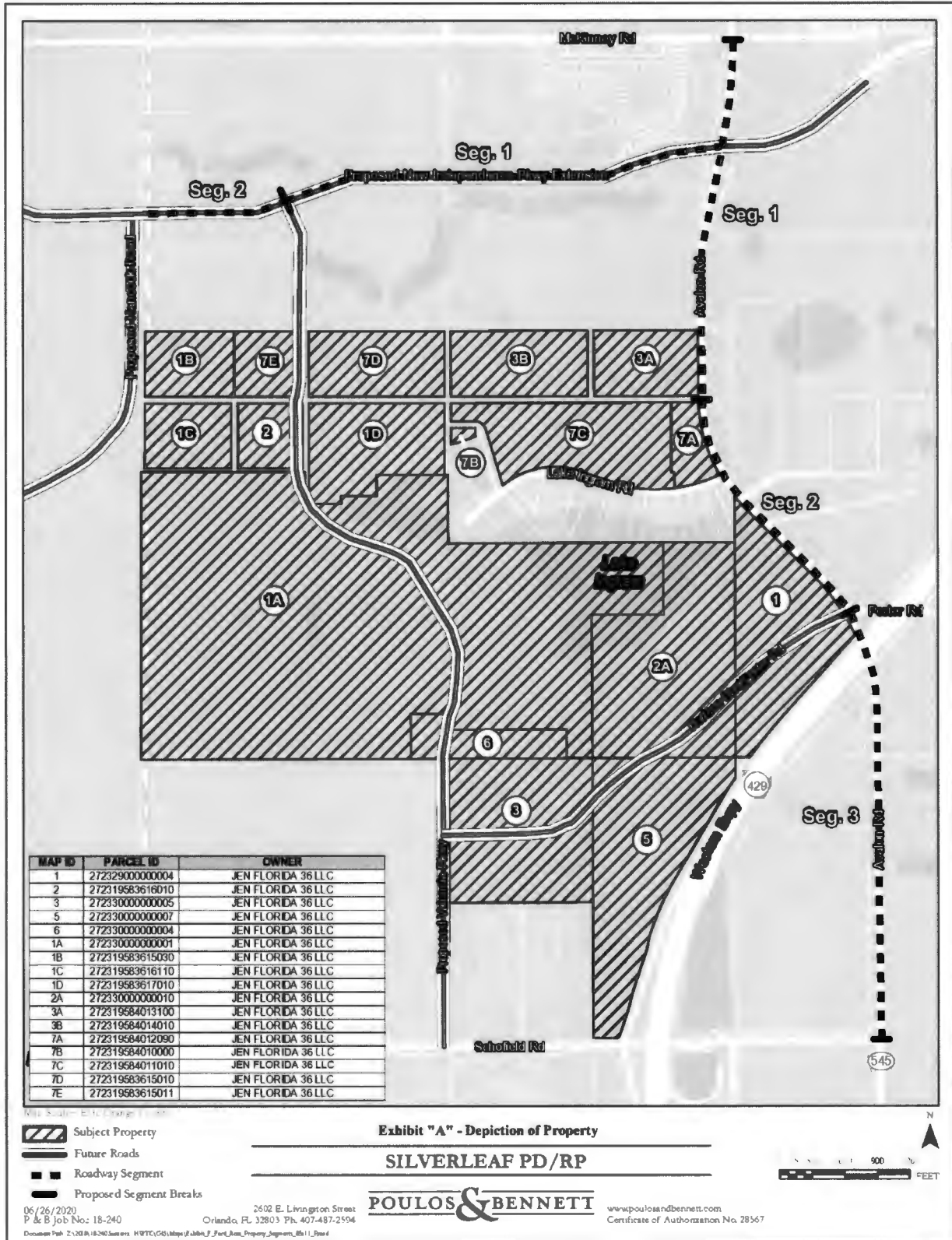


Exhibit "B"

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LEGAL DESCRIPTION OF PD/RP PROPERTY

838 A parcel of land comprising all of Blocks 15, 15-A, 16 16-A and 17 and a portion of the
839 unnamed road right of ways in the Plat of MOUNTAIN PARK HOMESITES according to the
840 Plat thereof as recorded in Plat Book P, Page 88 of the Public Records of Orange County,
841 Florida, lying in Sections 19 and 30, Township 23 South, Range 27 East

842 Together with

843 A portion of Block 9, all of Blocks 10, 11, 12, 13 and 14 and a portion of the unnamed road right
844 of ways in the Plat of MOUNTAIN PARK ORANGE GROVES, according to the Plat thereof as
845 recorded in Plat Book P, Page 91 of the Public Records of Orange County, Florida, lying in
846 Sections 19 and 30, Township 23 South, Range 27 East

847 Together with

848 A portion of the unplatted lands lying in Sections 29 and 30, Township 23 South, Range 27 East,
849 Orange County, Florida

850 Being more particularly described as:

851 BEGINNING at the Northwest corner of the Northwest Quarter of said Section 30; thence run
852 South 89°59'44" East along the North line of said Northwest Quarter for a distance of 30.00 feet
853 to a point on the Southerly extension of the West line of aforesaid Block 16-A; thence departing
854 aforesaid North line run North 00°13'40" East along the West line of Blocks 15-A and 16-A of
855 the aforesaid MOUNTAIN PARK HOMESITES and the Southerly extension thereof for a
856 distance of 1296.48 feet to the Northwest corner of aforesaid Block 15-A, said point lying on the
857 South right of way line of an unnamed 30.00 foot right of way lying North of said Blocks 15 and
858 15-A according to said Plat of Mountain Park Homesites; thence run South 89°59'46" East along
859 said South right of way line for a distance of 2798.78 feet to a point on the West line of the
860 Southeast Quarter of aforesaid Section 19; thence run North 89°54'33" East along the South right
861 of way line of an unnamed 30.00 foot right of way lying North of said Blocks 13 and 14
862 according to the aforesaid Plat of MOUNTAIN PARK ORANGE GROVES for a distance of
863 2318.93 feet to a point on the West right of way line of Avalon Road / County Road 545
864 according to said Plat of MOUNTAIN PARK ORANGE GROVES; thence run the following
865 courses along said West right of way line: South 00°08'53" East for a distance of 601.38 feet to
866 the point of curvature of a curve, concave Easterly having a radius of 1465.70 feet, with a chord
867 bearing of South 15°02'13" East, and a chord distance of 753.21 feet; thence run Southerly
868 through a central angle of 29°46'40" along the arc of said curve for a distance of 761.75 feet to
869 Southeast corner of Lot 10, Block 12 of said MOUNTAIN PARK ORANGE GROVES, being at
870 the intersection with the North right of way line of Lake Ingram Road of said MOUNTAIN
871 PARK ORANGE GROVES and a point on a non tangent curve; concave Northerly having a
872 radius of 1372.70 feet, with a chord bearing of South 90°00'00" West, and a chord distance of
873 1187.98 feet; thence run Westerly through a central angle of 51°16'48" along the arc of said
874 curve for a distance of 1228.57 feet to a point of reverse curvature of a curve; concave Southerly
875 having a radius of 776.80 feet, with a chord bearing of South 82°18'06" West, and a chord

876 distance of 853.83 feet; thence run Westerly through a central angle of 66°40'35" along the arc of
877 said curve for a distance of 903.98 feet to a point on a non tangent line, being the centerline of
878 the unnamed right of way lying West of Block 11 of said MOUNTAIN PARK ORANGE
879 GROVES; thence run North 16°29'18" West along said centerline for a distance of 514.98 feet to
880 the intersection with the Easterly projection of the South line of Block 10; thence run South
881 72°44'19" West along said South line and the Easterly extension thereof for a distance of 349.73
882 feet to the East right of way line of the unnamed road lying East of aforesaid Block 17, of
883 MOUNTAIN PARK HOMESITES; thence run South 00°05'23" East along said East right of
884 way line for a distance of 247.04 feet to the Southwest corner of the Southeast Quarter of
885 aforesaid Section 19 and the Northeast corner of the Northwest Quarter of aforesaid Section 30;
886 thence run South 00°09'08" East along the East line of said Northwest Quarter for a distance of
887 659.90 feet to the Northwest corner of the South Half of the North Half of the Northeast Quarter
888 of aforesaid Section 30; thence run North 89°48'54" East along the North line of said South Half
889 for a distance of 2650.45 feet to the Northeast corner of the South Half of the North Half of the
890 Northeast Quarter of aforesaid Section 30 and the Southwest corner of the Northwest Quarter of
891 the Northwest Quarter of the Northwest Quarter of aforesaid Section 29; thence run North
892 00°09'08" West along the West line off said Northwest Quarter for a distance of 423.65 feet to a
893 point on the Southwesterly right of way line of Avalon Road / County Road 545 as recorded in
894 Deed Book 400, Page 315 of the aforesaid Public Records and a point on a non tangent curve,
895 concave Northeasterly having a radius of 1465.39 feet, with a chord bearing of South 42°16'26"
896 East, and a chord distance of 156.02 feet; thence run the following courses along said
897 Southwesterly right of way line: Southeasterly through a central angle of 06°06'12" along the arc
898 of said curve for a distance of 156.10 feet to a point of tangency; thence run South 45°19'32"
899 East for a distance of 882.37 feet to the point of curvature of a curve, concave Southwesterly
900 having a radius of 1876.86 feet, with a chord bearing of South 35°12'17" East, and a chord
901 distance of 659.58 feet; thence run Southeasterly through a central angle of 20°14'26" along the
902 arc of said curve for a distance of 663.02 feet to a non tangent point on the Northwesterly right of
903 way line of State Road 429 according to the Orlando-Orange County Expressway Authority
904 Project, Map Number 75320-6460-653; thence run the following courses along said
905 Northwesterly right of way line: South 41°47'01" West for a distance of 1009.40 feet to the point
906 of curvature of a curve, concave Southeasterly having a radius of 5160.00 feet, with a chord
907 bearing of South 39°05'51" West, and a chord distance of 483.63 feet; thence run Southwesterly
908 through a central angle of 05°22'20" along the arc of said curve for a distance of 483.81 feet to a
909 point of on a non tangent line and the North line of the Southwest Quarter of aforesaid Section
910 29; thence run South 89°45'00" West along said North line for a distance of 128.70 feet to the
911 Northeast corner of the Southeast Quarter of aforesaid Section 30; thence run South 00°08'22"
912 East along the East line of said Southeast Quarter for a distance of 185.93 feet to the aforesaid
913 Northwesterly right of way line of State Road 429 and a point on a non tangent curve, concave
914 Southeasterly having a radius of 5150.35 feet, with a chord bearing of South 36°01'11" West,
915 and a chord distance of 97.49 feet; thence run Southwesterly through a central angle of 01°05'04"
916 along the arc of said curve for a distance of 97.49 feet to a point on a non tangent curve; concave
917 Southeasterly having a radius of 5162.00 feet, with a chord bearing of South 31°39'29" West,
918 and a chord distance of 208.69 feet; thence run Southwesterly through a central angle of
919 02°18'59" along the arc of said curve for a distance of 208.70 feet to a point of tangency; thence
920 run South 30°30'00" West for a distance of 792.88 feet to the point of curvature of a curve,
921 concave Southeasterly having a radius of 2385.83 feet, with a chord bearing of South 24°35'09"
922 West, and a chord distance of 491.65 feet; thence run Southwesterly through a central angle of

923 11°49'41" along the arc of said curve for a distance of 492.52 feet to a point of tangency; thence
924 run South 18°40'18" West for a distance of 86.29 feet; thence run South 10°42'08" West for a
925 distance of 100.98 feet; thence run South 18°40'18" West for a distance of 400.00 feet; thence
926 run South 14°22'57" West for a distance of 200.56 feet; thence run South 18°40'18" West for a
927 distance of 256.35 feet; thence run South 55°41'40" West for a distance of 24.14 feet; thence run
928 South 89°37'34" West for a distance of 219.03 feet to a point on the West line of the East Half of
929 the Southeast Quarter of aforesaid Section 30; thence run North 00°08'44" West along said West
930 line for a distance of 1254.55 feet to the Southeast corner of the Northwest Quarter of the
931 Southeast Quarter of said Section 30; thence run South 89°46'36" West along the South line of
932 the Northwest Quarter of the Southeast Quarter of said Section 30 for a distance of 1325.08 feet
933 to the Southwest corner of the Northwest Quarter of the Southeast Quarter of said Section 30;
934 thence run North 00°09'08" West along the West line of the Northwest Quarter of the Southeast
935 Quarter of said Section 30 for a distance of 1326.79 feet to the Southeast corner of the Northwest
936 Quarter of said Section 30; thence run South 89°48'53" West along the South line of said
937 Northwest Quarter for a distance of 2849.72 feet to the Southwest corner of the Northwest
938 Quarter of said Section 30; thence run North 00°08'44" East along the West line of said
939 Northwest Quarter for a distance of 2649.05 feet to the POINT OF BEGINNING.