



## Interoffice Memorandum

January 3, 2023

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

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

SUBJECT: January 24, 2023 – Consent Item  
Second Amendment to Right-of-Way and Proportionate Share  
Agreement Avalon Pointe  
C.R. 545 (Avalon Road)

The Roadway Agreement Committee has reviewed a Second Amendment to Right-of-Way and Proportionate Share Agreement Avalon Pointe C.R. 545 (Avalon Road) ("Second Amendment") by and between Prose Avalon Pointe Venture, LP and Orange County to amend the terms of the Right-of-Way and Proportionate Share Agreement Avalon Pointe ("Agreement") approved by the Board on July 27, 2021 and recorded as Document #20210467159, as amended. The Second Amendment extends the timeframe in Section 2(a) of the Agreement to provide for the conveyance of right-of-way within 120-days of the effective date of the Second Amendment, with the opportunity for additional 120-day extensions to be granted by the Manager of the Real Estate Management Division.

The Roadway Agreement Committee recommended approval on December 14, 2022. The Specific Project Expenditure Report and Relationship Disclosure Forms are on file with the Transportation Planning Division.

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

**ACTION REQUESTED: Approval and execution of Second Amendment to Right-of-Way and Proportionate Share Agreement Avalon Pointe C.R. 545 (Avalon Road) by and between Prose Avalon Pointe Venture, LP and Orange County to extend the time frame for conveyance of right-of-way. District 1**

JVW/NC/js  
Attachment

BCC Mtg. Date: January 24, 2023

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

Tax Parcel I.D. No.:31-24-27-0000-00-063

**SECOND AMENDMENT TO  
RIGHT-OF-WAY AND PROPORTIONATE SHARE  
AGREEMENT**

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**AVALON POINTE**

**C.R. 545 (AVALON ROAD)**

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

**WITNESSETH:**

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

WHEREAS, Owner and County entered into that certain Right-of-Way and Proportionate Share Agreement approved by the Orange County Board of County Commissioners (“BCC”) on

July 27, 2021 and recorded on August 3, 2021 as Instrument Number 20210467159 of the Public Records of Orange County, Florida (the “Agreement”); and

WHEREAS, Owner and County entered into that certain First Amendment to Right-of-Way and Proportionate Share Agreement approved by the Orange County BCC on April 5, 2022 and recorded on April 13, 2022 as Instrument Number 20220240401 of the Public Records of Orange County, Florida (the “First Amendment”); and

WHEREAS, the First Amendment amended certain terms and provisions within the Agreement; and

WHEREAS, Owner desires, and County has agreed, to further amend certain terms and provisions of the Agreement and First Amendment to extend the deadline for Owner to convey land to County, as set forth below; and

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

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

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

**Section 2. Conveyance of Land to County by Owner.**

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

- (a) *Conveyed Lands.* Within one hundred twenty (120) days after the Effective Date

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

***Section 3. Transportation Impact Fee Credits.***

Section 4(a) of the Agreement is hereby deleted and replaced with the following:

Section 4(a). Transportation Impact Fee Credits. The Owner hereby waives any right, claim, or entitlement to Transportation Impact Fee Credits for contributions of land that might otherwise have been available to the Owner, his [her, its] heirs, successors or assigns, pursuant to the County's Transportation Impact Fee Ordinance, Chapter 23, Section 23-95, Orange County Code, and any amendments thereto, for the conveyance of the Property.

***Section 4. Notice.*** Any notice delivered with respect to the Second Amendment, the First Amendment or the Agreement shall be in writing and shall be deemed to be delivered (whether or not actually received) (i) when hand delivered to the person(s) hereinafter designated, or (ii) upon deposit of such notice in the United States mail, postage prepaid, certified mail, return-receipt requested, addressed to the person at the address set forth opposite the party's name below, or to such other address or to such other person as the party shall have specified by written notice to the other party delivered in accordance herewith.

As to Owner:	Prose Avalon Pointe Venture, LP 7135 E. Camelback Road, Suite 360 Scottsdale, Arizona 85251
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With a copy to: Alliance Residential Company  
222 West Comstock Avenue, Suite 115  
Winter Park, Florida 32789

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

As to County: Orange County Administrator  
P.O. Box 1393  
201 S. Rosalind Ave  
Orlando, 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 Second Amendment shall run with the Property and shall be binding upon and shall inure to the benefit and burden of the parties and of the heirs, legal representatives, successors, and assigns of Owner and any person, firm, corporation, or other entity that may become the successor in interest to the Property.

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

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

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

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

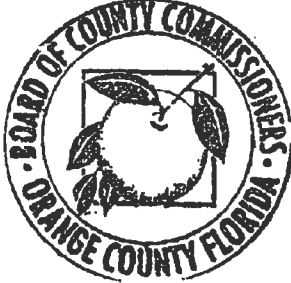
**Section 10. Limitation of Remedies.** County and Owner expressly agree that the consideration, in part, for each of them entering into this Second Amendment is the willingness of the other to limit the remedies for all actions arising out of or in connection with this Second Amendment. Accordingly,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

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

**Section 12. Counterparts.** This Second Amendment may be executed in up to two (2) counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

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



ORANGE COUNTY, FLORIDA  
By: Board of County Commissioners

By: *Ronald B. Brown*

for Jerry L. Demings,  
Orange County Mayor

Date: January 24, 2023

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

By: *Katie Smith*  
Deputy Clerk

Printed name: Katie Smith

“OWNER”

Prose Avalon Pointe Venture, LP, a Delaware  
limited partnership

By: Prose Avalon Pointe Alliance GP, LLC, a  
Delaware limited liability company, general partner

By: Prose Avalon Pointe Alliance, LLC, a Delaware  
limited liability company, its sole member

By: Robert C. Anderson

Print Name: Robert C. Anderson

Title: Member

Date: 12-29-22

WITNESSES:

[Signature]

Print Name: Elliott Summonds

Ermer

Print Name: Sarah Ermer

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me, a Notary Public, by means of ☒ physical presence  
or ☐ online notarization this 29<sup>th</sup> day of December, 2022, by Robert C. Anderson, as  
Member of Prose Avalon Pointe Alliance, LLC, a Delaware limited liability, sole member of Prose  
Avalon Pointe Alliance GP, LLC, a Delaware limited liability company, general partner of Prose Avalon Pointe  
Venture, LP limited partnership, on behalf of said limited partnership, who ☒ is personally known to me or ☐ has  
produced (type of identification) \_\_\_\_\_ as identification.



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

Susan M. Maret  
Notary Public

Print Name: Susan M. Maret

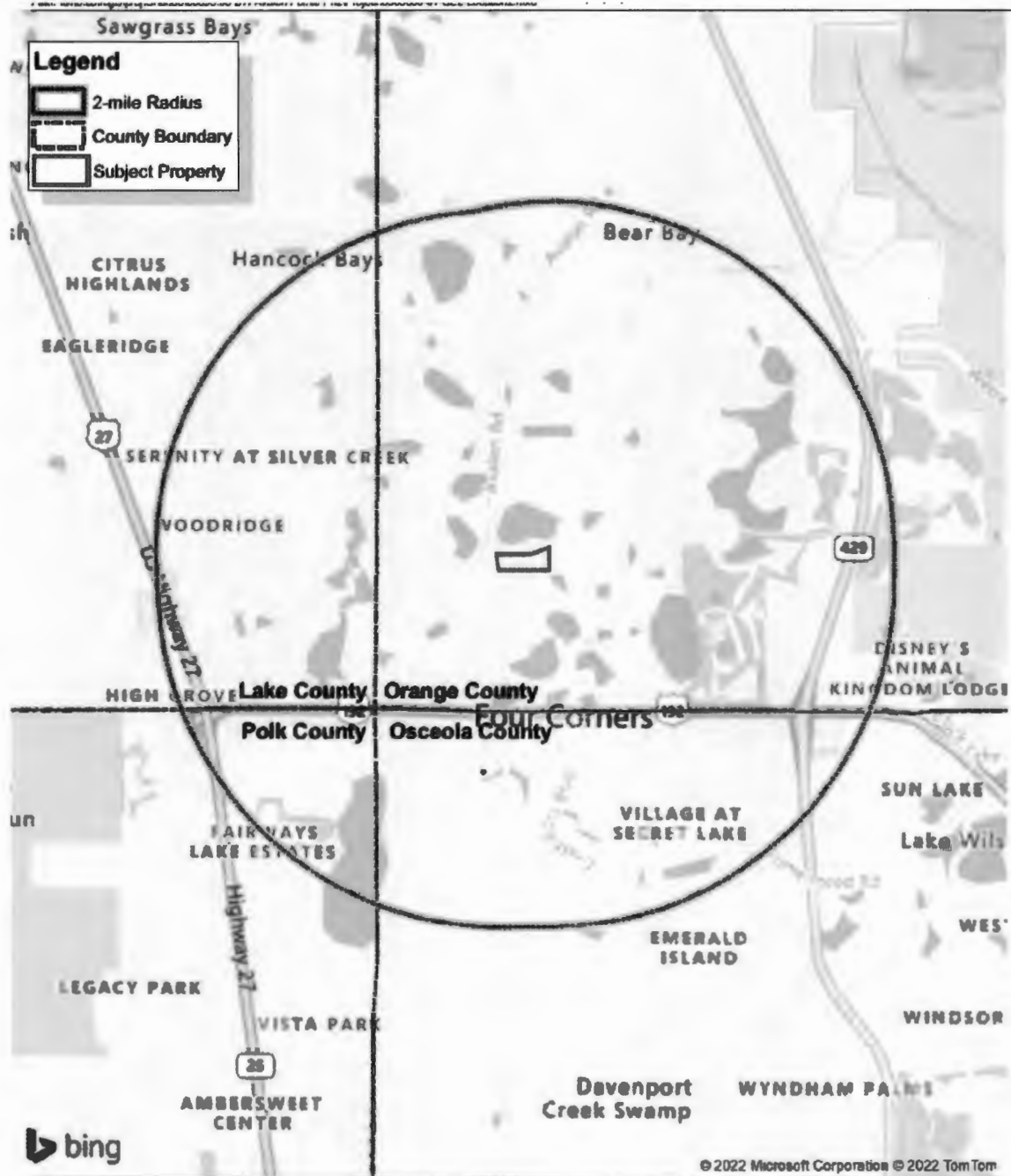
My Commission Expires: Sept 19, 2025



**Exhibit "A"**

**Project Location Map**

[See attached 1 page]



## **Exhibit "B"**

### **Legal Description**

The land referred to herein below is situated in the County of Orange, State of Florida, and is described as follows:

**Parcel 1:**

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

Commencing at the Northeast corner of the Northeast Quarter of said Section 31; thence run South 00°22'41" West along the East line of said Northeast Quarter for a distance of 126.27 feet to a point on the Southerly right of way line of Hartzog Road as recorded in Official Records Book 3390, Page 523 and Deed Book 841, Page 293 of the Official Records of Orange County, Florida, said point being on a non-tangent curve concave Southeasterly having a radius of 1252.32 feet, with a chord bearing of South 70°47'31" West, and a chord distance of 37.15 feet; thence run Southwesterly along said Southerly right of way line through a central angle of 01°41'59" along the arc of said curve for a distance of 37.15 feet to the point of Point of Beginning; thence departing said right of way line run South 00°22'41" West for a distance of 679.96 feet; thence run South 89°36'30" West for a distance of 1542.59 feet; thence run South 00°23'30" East for a distance of 16.70 feet; thence run South 89°36'30" West for a distance of 50.00 feet; thence run North 07°37'22" West for a distance of 16.83 feet; thence run South 89°36'30" West for a distance of 32.80 feet to a point on the East right of way line of Avalon Road, State Road 545 according to Road Book 3, Page 121 and Official Records Book 9078, Page 4456 of the Public Records of Orange County, Florida; thence run North 07°32'20" West along said right of way line for a distance of 447.27 feet to the intersection with the aforesaid Southerly right of way line of Hartzog Road; thence run South 88°19'20" East for a distance of 740.60 feet to the point of curvature of a curve, concave Northerly having a radius of 1462.69 feet, with a chord bearing of North 77°54'40" East, and a chord distance of 696.15 feet; thence run Easterly through a central angle of 27°32'00" along the arc of said curve for a distance of 702.89 feet to a point of tangency; thence run North 64°08'40" East for a distance of 170.04 feet to the point of curvature of a curve, concave Southeasterly having a radius of 1252.32 feet, with a chord bearing of North 67°02'36" East, and a chord distance of 126.66 feet; thence run Northeasterly through a central angle of 05°47'51" along the arc of said curve for a distance of 126.71 feet to the POINT OF BEGINNING.

**Parcel 2:**

Non-exclusive temporary easement for ingress and egress and for the purpose of Grantee performing the Construction of Drainage and Utility Improvements as more particularly set forth in that certain Temporary Construction Access Easement and Cost-Sharing Agreement, dated June 9, 2021, and recorded June 10, 2021, in Official Records Document No. 20210348868, Public Records of Orange County, Florida.

**Exhibit "C"**

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

[See attached 2 page(s)]

## LEGAL DESCRIPTION

A parcel of land lying in the Northeast 1/4 of Section 31, Township 24 South, Range 27 East, Orange County, Florida;

being more particularly described as follows:

Commencing at the Northeast corner of the Northeast Quarter of said Section 31; thence run South 89°30'19" West along the North line of said Northeast Quarter for a distance of 1775.70 feet to a point on the East right of way line of Avalon Road/County Road 545 as recorded in County Road Bond Project 75A and Official Records Book 9078, Page 4456 of the Public Records of Orange County, Florida; thence run South 07°32'20" East along said East right of way line for a distance of 374.08 feet to the intersection with the South right of way line of Lake Gifford Way (formerly known as Hartzog Road) as recorded in Plat Book 12, Page 73 and Official Records Book 3390, Page 523 of the Public Records of Orange County, Florida and the POINT OF BEGINNING; thence run South 88°19'20" East along said South right of way line for a distance of 57.30 feet; thence departing said South right of way line run South 42°01'39" West for a distance of 32.37 feet; thence run South 07°37'22" East along a line 65.00 feet East of and parallel with the centerline of Avalon Road/County Road 545 for a distance of 421.18 feet; thence run South 89°36'30" West for a distance of 32.80 feet to a point on the aforesaid East right of way line of Avalon Road/State Road 545; thence run North 07°32'20" West along said East right of way line for a distance of 447.27 feet to the POINT OF BEGINNING.

. Containing 14,698 square feet, 0.34 acres more or less

SHEET 1 OF 2  
SEE SHEET 2 FOR SKETCH



18 EAST PLANT STREET  
Orlando, Florida 32801 (407) 999-0000

© Where shown ALLEN-CORPORATION Desktop Plotter 1 - right of way

### SURVEYOR'S NOTES:

1. THIS IS NOT A SURVEY.
2. THIS SKETCH IS NOT VALID UNLESS SIGNED AND SEALED WITH AN ENDORSED SURVEYOR'S SEAL.
3. BEARING SHOWN HEREIN ARE BASED ON THE NORTH LINE OF THE NE 1/4 OF SECTION 31-34-27 AS BEING BECOTTE'S LARSEN FOR AMERICAN RECONSTRUCTION ONLY.
4. THE RECORDING INFORMATION SHOWN HEREIN WAS OBTAINED FROM THE ORANGE COUNTY PUBLIC ADDRESS SYSTEM.
5. DELINEATION OF THE LANDS SHOWN HEREIN ARE AS PER THE CLIENT'S INSTRUCTIONS.

JOB NO. 20180448

DATE 1/16/2020

SCALE 1" = 100'

CALCULATED BY: JLR

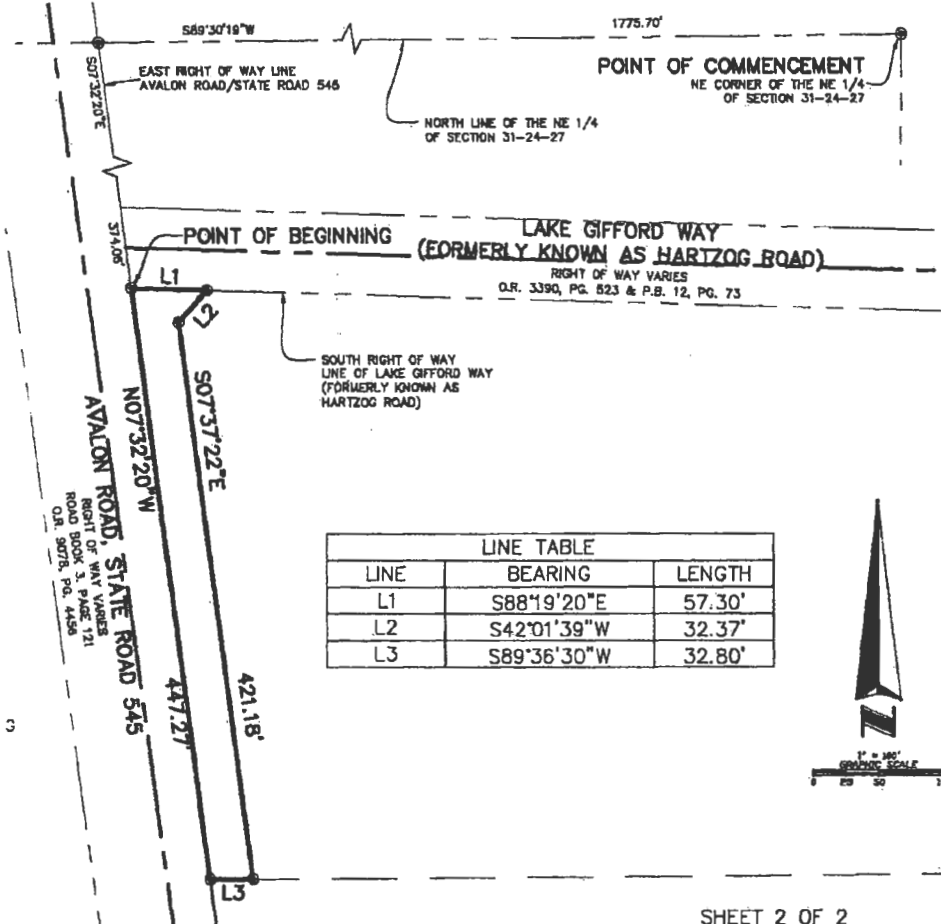
DRAWN BY: SY

CHECKED BY: MR

FOR THE LICENSED BUSINESS #8783 BY:

JAMES L. ROSS, P.E.M. #8633

# SKETCH OF DESCRIPTION



SHEET 2 OF 2  
SEE SHEET 1 FOR DESCRIPTION



16 EAST PLANT STREET  
Maiter Center, Florida 34701 • (407) 854-5335

## LEGEND

O.R. OFFICIAL RECORDS BOOK  
P.B. PLAT BOOK  
O.B. DEED BOOK  
CCR CERTIFIED CORNER RECORD  
© CHANGE IN DIRECTION

JOB NO. 20180446

DATE: 1/16/2020

SCALE: 1" = 100'

DRAWN BY: DY

\\hwb\gbl\proj\Orlando\63545.00 Alliance-Avalon Points\cad\Consultants\Incoming\Survey\2020-01-21\_ROW Dedication Sketch and Legal\sketch 1 - right of way