

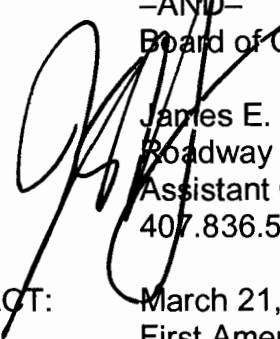


Interoffice Memorandum

AGENDA ITEM

February 27, 2017

TO: Mayor Teresa Jacobs
-AND-
Board of County Commissioners

FROM:  James E. Harrison, Esq., P.E., Chairman
Roadway Agreement Committee
Assistant County Administrator's Office
407.836.5610

SUBJECT: March 21, 2017 – Consent Item
First Amendment to Right-of-Way (R.O.W.) Conveyance and Adequate
Public Facilities Agreement Core Academy PD/UNP/LUP

The Roadway Agreement Committee has reviewed a First Amendment to Right-of-Way (R.O.W.) Conveyance and Adequate Public Facilities Agreement ("First Amendment") by and between Avalon Real Estate Limited LLC and Orange County. The Right-of-Way (R.O.W.) Conveyance and Adequate Public Facilities Agreement ("Agreement") was approved by the Board of County Commissioners on December 1, 2015 and recorded at OR Book/Page 11022/6904. The First Amendment adjusts the timeframe provided for the conveyance of right-of-way to within 120 days of the Execution Date of the First Amendment.

The Roadway Network Agreement Committee approved the First Amendment to Right-of-Way (R.O.W.) Conveyance and Adequate Public Facilities Agreement on March 1, 2017. The Specific Project Expenditure Report and Relationship Disclosure Forms are attached and on file with the Transportation Planning Division.

ACTION REQUESTED: Approval and execution of First Amendment to Right-of-Way (R.O.W.) Conveyance and Adequate Public Facilities Agreement Core Academy PD/UNP/LUP R.O.W. Dedication for CR 545 (Avalon Road) Widening by and between Avalon Real Estate Limited LLC and Orange County to extend the timeframe for the conveyance of right-of-way. District 1

JEH|HEGB:rep
Attachments

BCC Mtg. Date: March 21, 2017

Prepared by and after recording return to:
Juli Simas James, Esquire
Shutts & Bowen LLP
300 S. Orange Avenue, Suite 1000
Orlando, Florida 32801

Parcel I.D. Number: 32-23-27-0000-00-007

**FIRST AMENDMENT TO
RIGHT-OF-WAY (R.O.W.) CONVEYANCE AND
ADEQUATE PUBLIC FACILITIES AGREEMENT**

CORE ACADEMY PD/UNP/LUP

R.O.W DEDICATION FOR CR 545 (AVALON ROAD) WIDENING

THIS FIRST AMENDMENT TO RIGHT-OF-WAY (R.O.W.) CONVEYANCE AND ADEQUATE PUBLIC FACILITIES AGREEMENT (the "First Amendment"), effective as of the latest date of execution ("Effective Date"), is made and entered into by and between **AVALON REAL ESTATE LIMITED LLC**, a Delaware limited liability company, **f/k/a CORE REAL ESTATE LIMITED LLC**, a Delaware limited liability company, whose address is 11661 San Vicente Boulevard, Suite 220, Los Angeles, California 90049 ("Owner"), 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 owner of fee simple title to certain real property, as shown in the project location map identified as **Exhibit "A"**, and as more particularly described on

“Exhibit B” (legal description and sketch of description), both of which are attached hereto and incorporated herein by this reference (the “PD Property”); and

WHEREAS, Owner and County entered into that certain Right-of-Way (R.O.W.) Conveyance and Adequate Public Facilities Agreement approved by the Orange County Board of County Commissioners (“BCC”) on December 1, 2015 and recorded in Official Records Book 11022, Page 6904, in the Public Records of Orange County, Florida (the “Agreement”), which requires conveyance of those certain lands described on **Exhibit “C”** attached hereto and incorporate herein by this reference (the “Conveyed Lands”) under the terms and conditions described therein; and

WHEREAS, County and Owner desire to amend certain terms and provisions of the Agreement as set forth below; and

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

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

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

Section 2. Procedure for Conveyance of Adequate Public Facilities Conveyances to County by Owner. Sections 5(a) and 5(b) of the Agreement are hereby amended to require that conveyance by deed or easement of the Conveyed Lands occur within one hundred twenty (120)

days from the Effective Date of this First Amendment, allowing for one extension of up to an additional 120 days to convey, in accordance with the Agreement, which may be granted by the Manager of the Real Estate Management Division, or a designee.

Section 3. Notice. Any notice delivered with respect to this First Amendment or the Agreement shall be in writing and shall be deemed to be delivered (whether or not actually received) (i) when hand delivered to the person(s) hereinafter designated, or (ii) upon deposit of such notice in the United States mail, postage prepaid, certified mail, return-receipt requested, addressed to the person at the address set forth opposite the party's name below, or to such other address or to such other person as the party shall have specified by written notice to the other party delivered in accordance herewith.

Owner: Avalon Real Estate Limited LLC
11661 San Vicente Boulevard, Suite 220
Los Angeles, California 90049
Attn: Roberty Mautner – EIMSI

With copies to: Shutts & Bowen LLP
300 S. Orange Avenue, Suite 1000
Orlando, Florida 32801
Attn: Juli Simas James, Esquire

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

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

Section 4. Covenants Running with the Land. This First Amendment shall run with the Property and shall be binding upon and shall inure to the benefit and burden of the parties and of the heirs, legal representatives, successors, and assigns of Owner and any person, firm, corporation, or other entity that may become the successor in interest to the Property. Notwithstanding the foregoing, however, the authority under Section 3 of the Agreement to instruct County to make deductions from Owner's road impact fee account shall remain with Owner unless expressly assigned in writing to another by Owner.

Section 5. Recordation of First Amendment. An executed original of this First Amendment shall be recorded, at Owner's expense, in the Public Records of Orange County, Florida within thirty (30) days of the Effective Date.

Section 6. Applicable Law. This First Amendment and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

Section 7. Time is of the Essence. Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this First Amendment and in the Agreement.

Section 8. 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 9. Limitation of Remedies. County and Owner expressly agree that the consideration, in part, for each of them entering into this First Amendment is the willingness of

the other to limit the remedies for all actions arising out of or in connection with this First Amendment.

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

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

In addition to the foregoing, nothing in this First Amendment prohibits or estops County from exercising its power of eminent domain with respect to the Conveyed Lands or any other portion of the Property as County may lawfully elect.

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

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

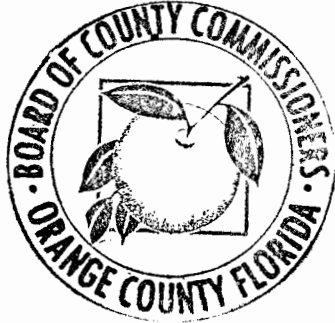
Both parties expressly waive their respective rights to sue for damages of any type for breach of, or default under, this First Amendment by the other. Both parties expressly agree that each party shall bear the cost of its own attorney fees for any action arising out of or in connection with this Amendment. Venue for any actions initiated under or in connection with this First Amendment shall be in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida.

Section 10. Amendments. No amendment, modification, or other change to this First Amendment or the Agreement shall be binding upon the parties unless in writing and executed by all parties hereto.

Section 11. Counterparts. This First 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 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: *Teresa Jacobs*
Teresa Jacobs,
Orange County Mayor

Date: 3.21.17

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

By: *Katie Smith*
Deputy Clerk

Printed name: Katie Smith

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

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

By: Robert S. Mautner

Print Name: Robert S. Mautner

Title: Vice President

Date: February 14, 2017

WITNESSES

Print Name: London Jensen

Print Name: DIEGO RUIZ

STATE OF ARIZONA

§

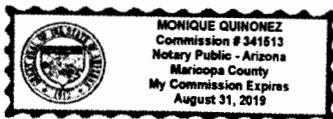
ACKNOWLEDGEMENT

§

COUNTY OF MARICOPA

§

The foregoing instrument was acknowledged before me on this 14 day of February, 2017, by Robert S. Mautner as Vice President of European Investment Management Services, Inc., a Delaware corporation, the Manager of **AVALON REAL ESTATE LIMITED LLC**, a Delaware limited liability company, f/k/a Core Real Estate Limited LLC, a Delaware limited liability company, on behalf of the company. He is [] personally known to me or [x] has produced driver's license as identification.



[SEAL]

Notary Public, State of Arizona

Print Name: Monique Quinonez

Commission No.: 341513

My commission expires: 8/31/2019

Exhibit "A"

Project Location Map



Exhibit "B"

Sketch and Legal of PD Property

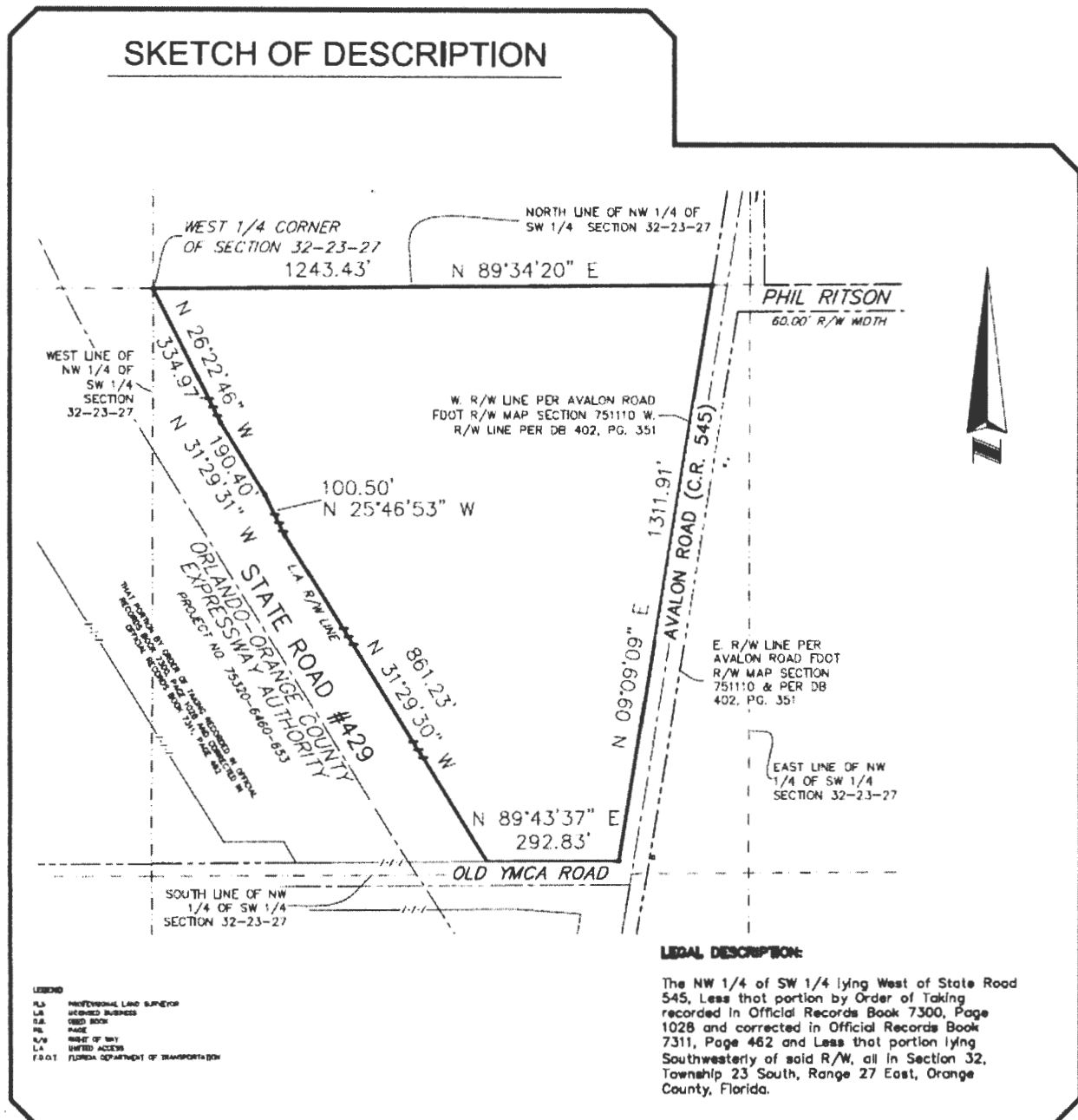


Exhibit "C"

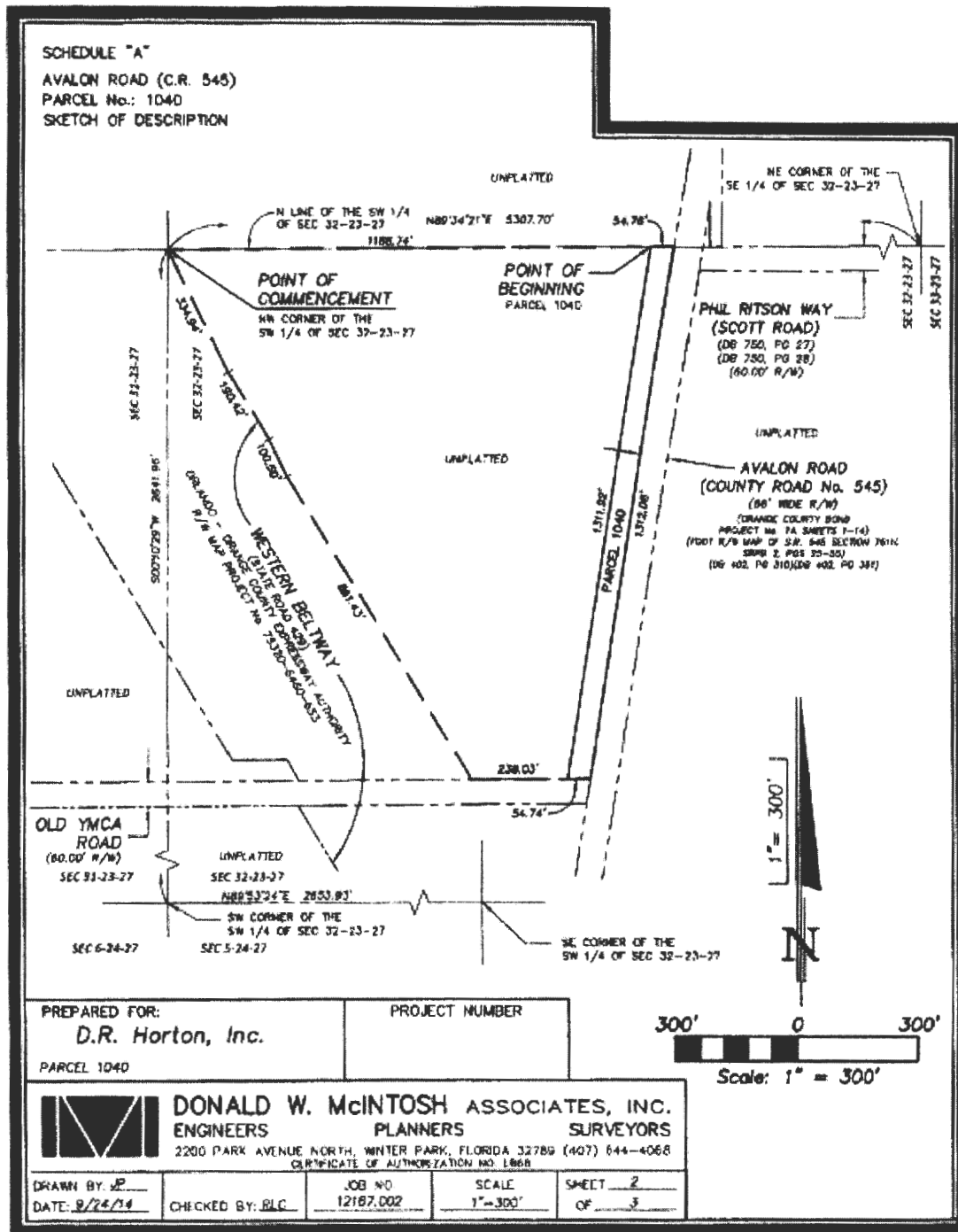
Sketch and Legal of Conveyed Lands

SCHEDULE "A" AVALON ROAD (C.R. 545) PARCEL No.: 1040																																			
LEGAL DESCRIPTION <p><i>DESCRIPTION (prepared by Donald W. McIntosh Associates, Inc.):</i></p> <p>That part of Section 32, Township 23 South, Range 27 East, Orange County, Florida, described as follows:</p> <p>Commence at the Northwest corner of the Southwest 1/4 of said Section 32; thence N89°34'21"E along the North line of the Southwest 1/4 of said Section 32, a distance of 1188.74 feet to the POINT OF BEGINNING; thence continue N89°34'21"E along said North line, a distance of 54.76 feet to the West right-of-way line of Avalon Road (County Road No. 545) per Orange County Bond Project No. 7A and Florida Department of Transportation Right-of-Way Map of State Road 545 Section 75110; thence departing said North line run S08°09'08"W along said West right-of-way line, a distance of 1312.08 feet to the North right-of-way line of Old YMCA Road, a 60.00 foot wide right-of-way recorded in Deed Book 460, Page 241, and Deed Book 460, Page 243, of the Public Records of Orange County, Florida; thence run S89°43'52"W along said North right-of-way line, a distance of 54.74 feet; thence departing said North right-of-way line run N08°09'08"E, a distance of 1311.92 feet to the POINT OF BEGINNING.</p> <p>Containing 1.626 acres more or less, and being subject to any rights-of-way, restrictions and easements of record.</p>																																			
SURVEYOR'S NOTES: <ol style="list-style-type: none"> 1. This is not a Survey 2. Bearings are based on the North Line of the South 1/2 of Section 32, Township 23 South, and Range 27 East, being N89°34'21"E, an assumed meridian. 3. This sketch does not reflect or determine ownership. 4. Legal Description shown herein was prepared by Donald W. McIntosh Associates, Inc. based on information provided by client. 5. A Title Search Report prepared by Fidelity National Title Insurance Company, Agent File No. 0027223/154835, dated September 10, 2013, was reviewed by the surveyor. Exceptions listed therein (if any) which can be delineated or noted, are shown herein. 	LEGEND <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">SEC 32-23-27</td> <td>SECTION 32, TOWNSHIP 23 SOUTH, RANGE 27 EAST</td> </tr> <tr> <td>FDOT</td> <td>FLORIDA DEPARTMENT OF TRANSPORTATION</td> </tr> <tr> <td>DB</td> <td>DEED BOOK</td> </tr> <tr> <td>ORW</td> <td>OFFICIAL RECORDS BOOK</td> </tr> <tr> <td>SAPB</td> <td>STATE ROAD PLAT BOOK</td> </tr> <tr> <td>S.R.</td> <td>STATE ROAD</td> </tr> <tr> <td>PC(S)</td> <td>PAGE(S)</td> </tr> <tr> <td>PC</td> <td>POINT OF CURVATURE</td> </tr> <tr> <td>PCC</td> <td>POINT OF COMPOUND CURVATURE</td> </tr> <tr> <td>PRC</td> <td>POINT OF REVERSE CURVATURE</td> </tr> <tr> <td>PT</td> <td>POINT OF TANGENCY</td> </tr> <tr> <td>NT</td> <td>NON-TANGENT</td> </tr> <tr> <td>PB</td> <td>PLAT BOOK</td> </tr> <tr> <td>PDS</td> <td>PAGES</td> </tr> <tr> <td>R/W</td> <td>RIGHT-OF-WAY</td> </tr> <tr> <td>No</td> <td>NUMBER</td> </tr> <tr> <td>N/A</td> <td>NOT APPLICABLE</td> </tr> </table>	SEC 32-23-27	SECTION 32, TOWNSHIP 23 SOUTH, RANGE 27 EAST	FDOT	FLORIDA DEPARTMENT OF TRANSPORTATION	DB	DEED BOOK	ORW	OFFICIAL RECORDS BOOK	SAPB	STATE ROAD PLAT BOOK	S.R.	STATE ROAD	PC(S)	PAGE(S)	PC	POINT OF CURVATURE	PCC	POINT OF COMPOUND CURVATURE	PRC	POINT OF REVERSE CURVATURE	PT	POINT OF TANGENCY	NT	NON-TANGENT	PB	PLAT BOOK	PDS	PAGES	R/W	RIGHT-OF-WAY	No	NUMBER	N/A	NOT APPLICABLE
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<div style="float: right; text-align: right;"> <small>Donald W. McIntosh, Surveyor and Mapper Certificate No. 4285 NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.</small> </div>																																			

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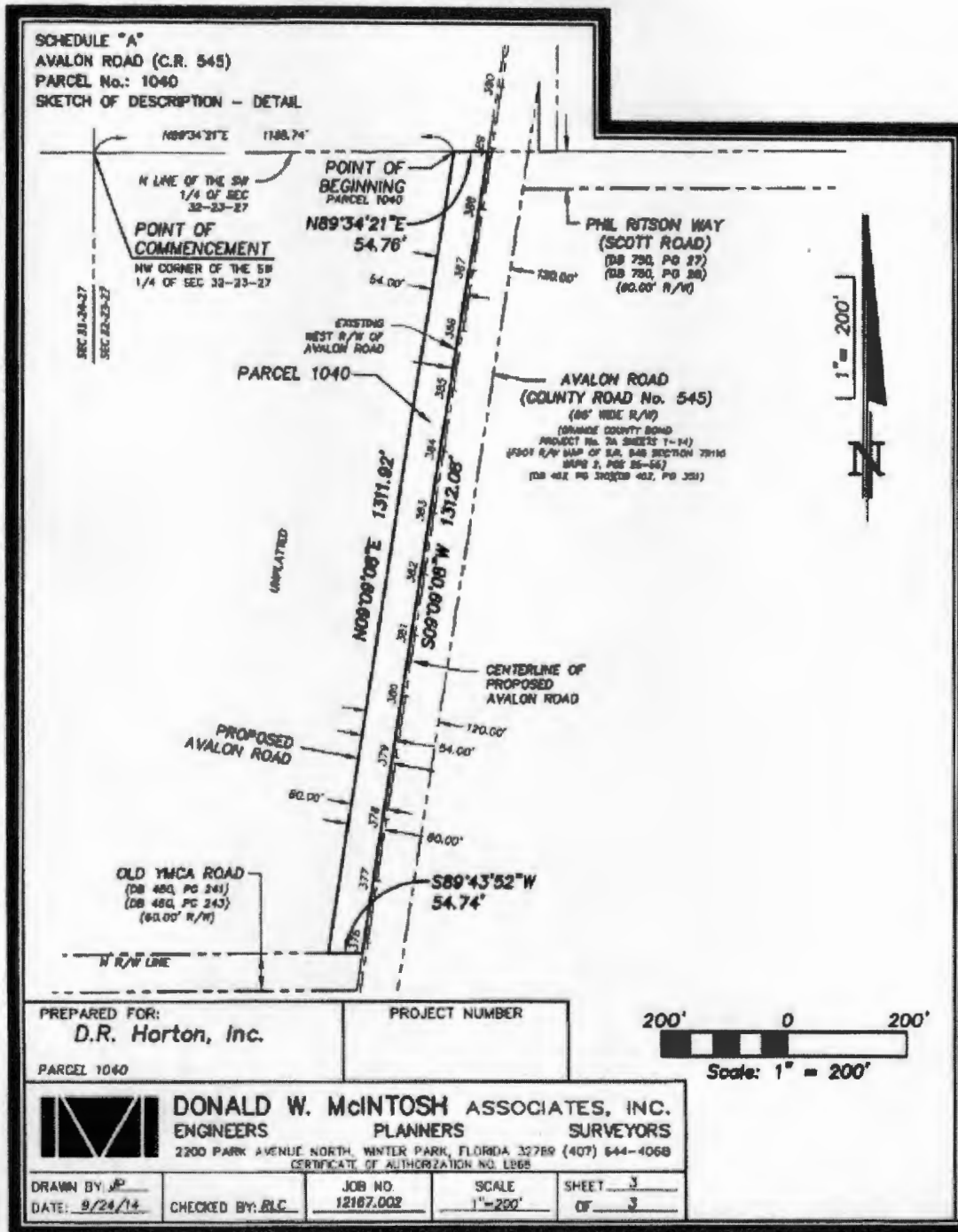
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CS# 14-211(PARCEL 1040)



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CS# 14-211(PARCEL 1040)



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CS# 14-211(PARCEL 1040)

SKETCH OF DESCRIPTION

SHEET 1 OF 2

LEGAL DESCRIPTION (Pond Tract).

A parcel of land comprising a portion of Section 32, Township 23 South, Range 27 East, Orange County, Florida.

Being more particularly described as follows:

COMMENCE at the West 1/4 corner of aforesaid Section 32; thence run South 00°10'39" West along the West line of the Northwest 1/4 of the Southwest 1/4 of said Section 32 for a distance of 1320.94 feet to the Southwest corner of said Northwest 1/4 of the Southwest 1/4 of said Section 32; thence run North 89°43'31" East along the South line of said Northwest 1/4 of the Southwest 1/4 of Section 32 for a distance of 746.15 feet; thence departing said South line run North 00°16'29" West for a distance of 30.00 feet to a point on the Northerly right-of-way line of Old YMCA Road as recorded in Deed Book 460, Page 241 of the Public Records of Orange County, Florida, also being a point on the Easterly limited access right-of-way line of State Road 429 per Official Records Book 7300, Page 1028 as corrected by Official Records Book 7311, Page 462, all of the Public Records of Orange County, Florida; thence run North 31°29'30" West along said Easterly limited access right-of-way line for a distance of 254.63 feet; thence departing said Easterly limited access right-of-way line run North 89°43'31" East for a distance of 406.20 feet to a point on a line parallel with and 54.00 feet West of the Westerly right-of-way line of Avalon Road according to Florida Department of Transportation Right-of-Way Map Section 751110 and per Deed Book 402, Page 351 of aforesaid Public Records; thence run South 09°09'09" West for a distance of 220.74 feet to a point on aforesaid Northerly right-of-way line of Old YMCA Road; thence run South 89°43'31" West for a distance of 238.07 feet to the POINT OF BEGINNING.

Contains 1.61 acres more or less.



16 East Plant Street
Orlando, Florida 32767 • (407) 854-5335

SURVEYOR'S NOTES:

Rev. 8/11/15

THIS IS NOT A SURVEY.

THIS SKETCH IS NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

BEARINGS SHOWN HEREON ARE BASED ON THE WEST LINE OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 32-23-27 BEING AN ASSUMED BEARING OF S00°01'30"W FOR ANGULAR DESIGNATION ONLY.

JOB NO. 20140240

DATE: 6-1-2015

SCALE: 1" = 200 FEET

FIELD BY: N/A

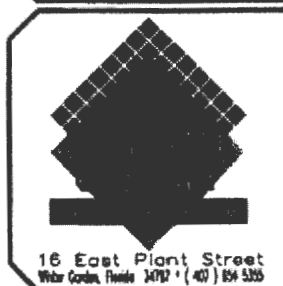
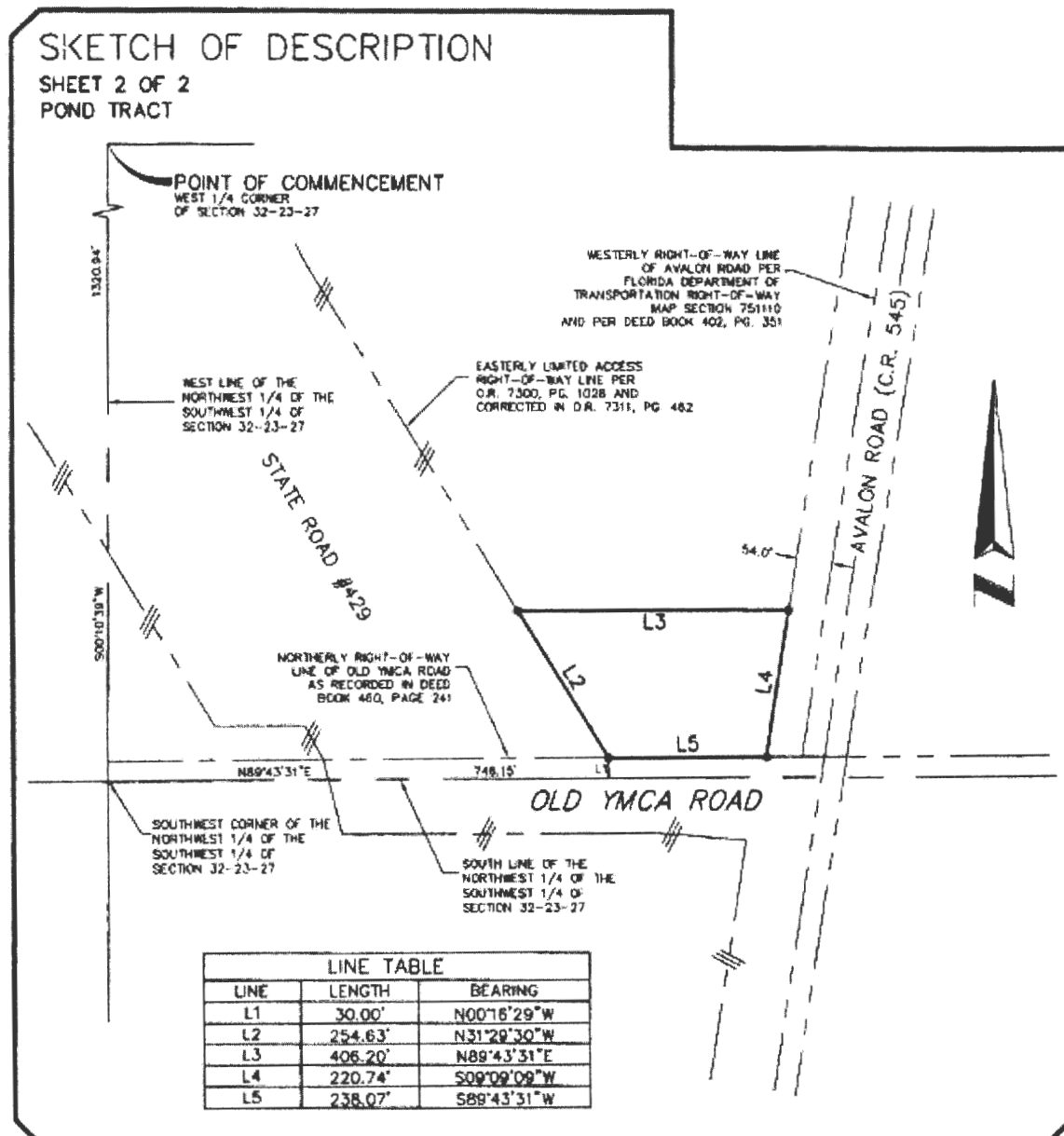
CALCULATED BY: JLR

DRAWN BY: PJR

CHECKED BY: GT

FOR THE LICENSED BUSINESS # 6723 BY:

JAMES L. ROCKMAN P.S.M. # 5633



THIS IS NOT A SURVEY:

- DENOTES CHANGE IN DIRECTION
- R/W DENOTES RIGHT-OF-WAY
- CL DENOTES CENTERLINE
- P.C. DENOTES POINT OF CURVATURE
- P.T. DENOTES POINT OF TANGENCY
- P.R.C. DENOTES POINT OF REVERSE CURVATURE
- P.C.C. DENOTES POINT OF COMPOUND CURVATURE

JLR
Rev 8/11/15

JOB NO. 20140240
DATE 6-1-2015
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CALCULATED BY: JLR
DRAWN BY: PJR
CHECKED BY: GT