



Interoffice Memorandum

REAL ESTATE MANAGEMENT ITEM 4

DATE: October 13, 2021

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

THROUGH: Mindy T. Cummings, Manager
Real Estate Management Division *MTL*

FROM: Tamara L. Pelc, Senior Title Examiner
Real Estate Management Division *LM for TP*

CONTACT PERSON: Mindy T. Cummings, Manager

DIVISION: Real Estate Management
Phone: (407) 836-7090

ACTION REQUESTED: Approval and execution of Right of Entry Agreement between Orange County and Jen Florida 36, LLC

PROJECT: Town Center West (Silverleaf) RAC

District 1

PURPOSE: To provide access to Jen Florida 36, LLC, its employees, contractors, consultants, and agents to enter upon and install 1,300 linear feet of 16-inch DIP watermain on certain Water Conserv II lands

ITEM: Right of Entry
Revenue: None/Donation
Total size: 1.44 acres
Term: Until the date County's interest is transferred from Orange County Utilities to Orange County Public Works or at such time the work has been completed

APPROVALS: Real Estate Management Division
County Attorney's Office
Utilities Department
Risk Management Division

REMARKS: The right of entry allows for access to a portion of Conserv II Property located at Avalon Road, Winter Garden, Florida 34787, bearing Orange County Property Appraiser's Parcel Identification Number 19-23-27-0000-00-010 in order to install, at Jen Florida 36, LLC's sole cost and expense 1,300 linear feet of 16-inch DIP watermain.

This Right of Entry will not be recorded.

RIGHT OF ENTRY AGREEMENT

THIS RIGHT OF ENTRY AGREEMENT (the "**Agreement**"), effective as of the last date of execution below (the "**Effective Date**"), is made by and between **ORANGE COUNTY**, a charter county and political subdivision of the State of Florida ("**County**" and/or "**Owner**") and **JEN FLORIDA 36, LLC**, a Florida limited liability company, ("**Licensee**"). County and Licensee are individually referred to herein as a "**Party**" and collectively referred to as the "**Parties**."

RECITALS

A. County owns certain real property located in Orange County, Florida, located at Avalon Road, Winter Garden, Florida 34787, bearing Orange County Property Appraiser's Parcel Identification Number 19-23-27-0000-00-010 (the "**Conserv II Property**").

B. Licensee has requested a right of entry license for access to the portion of the Conserv II Property described on **Exhibit A** (the "**License Area**") in order to install, at Licensee's sole cost and expense, 1,300 linear feet of 16-inch DIP watermain in the License Area in accordance with those plans attached as **Exhibit B** (the "**Work**").

C. The Parties desire to enter into this Agreement for the purposes of evidencing their respective rights and obligations in connection with Licensee's request.

NOW THEREFORE, for and in consideration of the mutual promises and obligations set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. Recitals; Exhibits. The foregoing recitals are true and correct. The recitals and exhibits attached to this Agreement are hereby incorporated into this Agreement by reference.

2. License; No Grant of Easement. The Owner hereby grants Licensee a non-exclusive license over, upon, and across the License Area for the purposes, and under the terms and conditions, set forth in this Agreement (the "**License**"). This Agreement is intended and will be construed only as a temporary license to enter the License Area and complete the Work at Licensee's sole cost and expense. This Agreement does not grant an easement to Licensee or anyone else or create or confirm any ownership or possessory interest in any portion of the License Area to Licensee or anyone else. The Owner reserves the right to use the License Area in any manner whatsoever.

3. Purpose of the License. The sole purpose of the License is to permit Licensee and its employees, contractors, consultants, and agents (collectively, the “Entrants”) to enter upon the License Area to complete the Work.

4. No Interference with Owner’s Operations Permitted. Under no circumstances may Licensee block any operation of the Owner or impede or restrict the normal operation of the Owner on the License Area without the prior written consent of the Owner. Any interference with operations of the Owner as determined by the Owner in the Owner’s sole discretion may result in immediate suspension or termination of this Agreement. If the Owner determines that Licensee’s activities, in whole or in part, unreasonably interfere in any way with the convenient, safe, or continuous use, maintenance, or improvement of the License Area, Licensee will, upon receipt of notice, immediately alleviate the interference at no cost to the Owner.

5. Term. This Agreement will commence upon the Effective Date and, except as otherwise provided in this Agreement, will remain in effect until the earlier of: (a) the date that County’s interest in the License Area is transferred from Orange County Utilities to Orange County Public Works, or (b) at such time as the Work has been completed and Licensee has satisfied its obligations under Section 6 (Property Restoration) (the “Term”). **Notwithstanding the foregoing, this Agreement is terminable at will by the Owner.**

6. Property Restoration. Licensee will restore the License Area to a condition as good as, or better than, the condition existing prior to the commencement of Work. This Section will survive any termination of this Agreement or revocation of the License.

7. Inspections. All work, materials, and equipment are subject to inspection and approval by the Owner at any time.

8. Presence of Abnormal Conditions. In the event Licensee or the Entrants encounter any abnormal condition which may indicate the presence of a hazardous substance, toxic waste, or pollutants, Licensee must immediately cease all work within the License Area and immediately contact the Owner. Abnormal conditions may include, but are not limited to, discolored earth or groundwater, visible fumes or smoke, abnormal odors, excessively hot soil or water, tanks or barrels, or other conditions which appear abnormal. The Owner will notify Licensee of any suspension or revocation of the License to allow for contamination assessment and remediation. The suspension or revocation will remain in effect until otherwise notified by the Owner.

9. Regulatory Compliance. Licensee will ensure that the Work is performed in compliance with all applicable laws, rules and regulations, and will obtain all permits necessary for the conduct of the Work. Licensee will locate utilities on the License Area prior to any invasive work on the License Area.

10. Indemnification. Licensee agrees to indemnify, defend, and hold harmless the Owner from and against any and all claims, suits, actions, causes of action, damages, liabilities, injuries, judgments, fines, attorneys’ and other professionals’ fees, penalties, losses, costs, or expenses (“Claim”) arising from Licensee’s use of the License Area or from the exercise by Licensee of any rights granted by this Agreement, provided that Licensee has no obligation to

indemnify or hold harmless the Owner against that portion of any Claim to the extent caused by or resulting from the negligence of the Owner. Nothing herein will be construed to waive the Owner's sovereign immunity protections or the limitations of liability established under Florida law, including those limitations established in Section 768.28, Florida Statutes. This Section will survive any termination of this Agreement or revocation of the License.

11. Insurance. During the term of this Agreement, Licensee will maintain, and will ensure that the Entrants performing Work on the License Area maintain, general liability and automobile insurance with limits of not less than \$1,000,000 per occurrence and workers' compensation insurance or self-insurance as required by Florida Statutes chapter 440. All such insurance or self-insurance must be primary to, and not contribute with, any insurance or self-insurance maintained by the Owner. The Owner must be listed as an additional insured on all such insurance policies except for workers' compensation coverage. Licensee must provide the Owner with notice of any material change, cancellation, or non-renewal of any insurance policy required by this Section at least 30 days prior to the occurrence thereof.

12. No Liens. Licensee must keep the License Area free and clear of all liens and encumbrances arising from the exercise by Licensee of its rights under this Agreement.

13. Limitation of Liability. The Owner makes no representations about the condition of the License Area. This Agreement is conditioned upon Licensee's use of the License Area "AS IS" and "WITH ALL FAULTS." Licensee and the Entrants will enter upon the License Area at their own risk, and the Owner will not be held responsible or liable for injury, damage, or loss incurred by Licensee or any Entrants arising out of or in connection with activities under this Agreement.

14. No Partnership. Nothing contained in this Agreement will be deemed or construed by the Parties or by any third party to create the relationship of principal and agent, or of partnership, or joint venture, or of any other association between the Owner and Licensee.

15. Notices. Any notice, request, direction, instruction, payment, or other communication required or permitted to be made or given by any Party must be in writing and sent to the addresses set forth below or to such other address as the recipient may designate in writing to all Parties and must be (i) delivered in person, (ii) sent registered or certified mail, return receipt requested, or (iii) sent Federal Express, USPS Express Mail, UPS or other overnight delivery service with delivery confirmation.

If to the County:

Director, Utilities Department
9150 Curry Ford Road
Orlando, FL 32825-7600

with a copy to:

Manager, Real Estate Management
400 E. South Street, 5th Floor
Orlando, FL 32802-2816

If to Licensee:

Jen Florida 36, LLC
Attn: Denver Marlow
1750 W Broadway #111
Oviedo, Florida 32765-9618

With a copy to:

Shutts & Bowen LLP
Attn: James G. Willard
300 South Orange Avenue, Suite 1600
Orlando, Florida 32801-3382

16. Attorneys' Fees. The Parties agree that each Party will bear the cost of its own attorney fees, paralegal fees, professional fees, and other incidental costs incurred for any action arising out of or in connection with this Agreement.

17. Enforcement. If any Party fails to perform or breaches any obligation, requirement, duty, or covenant contained in this Agreement, the non-defaulting Party will have the right, at their option, in addition to any of its other rights, privileges, or remedies otherwise stated elsewhere in this Agreement, to bring an action for specific performance in a court of competent jurisdiction. The failure to enforce any other terms or provisions of this Agreement, however long continued, will in no event be deemed a waiver of the right to enforce the same thereafter as to the same breach or violation, or as to any other breach or violation occurring prior to or subsequent thereto. The Parties waive their right to a jury trial for any dispute or legal action resulting from or associated with this Agreement.

18. Applicable Law. This Agreement will be governed by and construed under and in accordance with the laws of the State of Florida. The Parties consent and agree that Orange County, Florida, will be the exclusive, proper and convenient venue for any legal proceeding in federal or state court relating to this Agreement, and each Party hereby waives any defense, whether asserted by motion or pleading, that Orange County is an improper or inconvenient venue.

19. Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to Licensee's access to the License Area and supersedes all previous discussions, understandings, and agreements between the Parties relating to the subject matter of this Agreement.

20. Amendments. This Agreement may not be modified or amended in any respect except by written agreement entered into by the Parties in the same a manner as this Agreement.

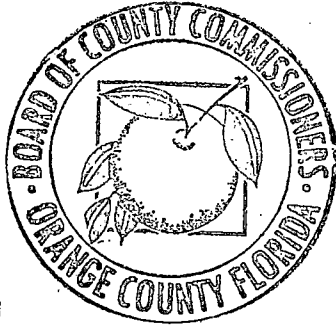
21. Authority. Each Party to this Agreement warrants and represents that such Party has full and complete authority to enter into this Agreement and each person executing this Agreement on behalf of a Party warrants and represents that he/she has been fully authorized to execute this Agreement on behalf of such Party and that such Party is bound by the signature of such representative.

22. Third Party Beneficiary. There are no intended or unintended third-party beneficiaries of this Agreement.

23. Assignment. Licensee may not assign or transfer any interests, rights, or duties under this Agreement to any other party without the prior written consent of the Owner.

**[REMAINDER OF PAGE LEFT BLANK;
SIGNATURES APPEAR ON FOLLOWING PAGES]**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year written below their signatures.



ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

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

Date: 26 October 2021


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


By: *Noelia Perez*
for Deputy Clerk

Print: Noelia Perez


IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year written below their signatures.

WITNESSES:


Print Name: James P Dunn


Print Name: All A. Jernan

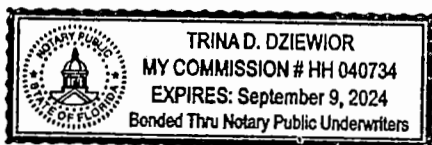
JEN FLORIDA 36, LLC,
a Florida limited liability company

By: 
Print Name: Denver Marlow
Title: Manager - VP
Date: 10/05/21

STATE OF FLORIDA)

COUNTY OF SEMINOLE

The foregoing instrument was sworn to, subscribed and acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 6 day of SEPTEMBER, 2021 by Denver Marlow, as Manager of Jen Florida 36, LLC, a Florida limited liability company, on behalf of the company. He ☒ is personally known to me, or ☐ has produced _____ as identification.



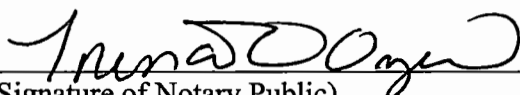

(Signature of Notary Public)
Print Name: Trina D DzieWOR
Notary Public, State of Florida
Commission No.: HH 040734
My Commission Expires: 9/9/2024

Exhibit A

License Area

LEGAL DESCRIPTION

A Parcel of land lying in the Southeast Quarter of Section 19, Township 23 South, Range 27 East, Orange County, Florida, being more particularly described as:

Commencing at the Northeast corner of the Southeast Quarter said Section 19; thence run North 89°59'52" West along the North line of said Southeast Quarter for a distance of 255.49 feet to a point on the Westerly right line of Avalon Road/County Road 545 as shown on the State Road 429 Right of Way map, Section 75320-6460-653 and the POINT OF BEGINNING; thence run the following courses along said Westerly right of way line: South 00°15'46" East for a distance of 101.41 feet; thence run South 11°10'04" West for a distance of 227.83 feet to the point of curvature of a curve, concave Easterly having a radius of 2342.00 feet, with a chord bearing of South 05°30'30" West, and a chord distance of 461.90 feet; thence run Southerly through a central angle of 11°19'07" along the arc of said curve for a distance of 462.66 feet to a point on a non tangent line; thence run North 89°50'57" East for a distance of 17.00 feet; thence run South 00°09'46" East for a distance of 538.09 feet to a point on the South line of the Northeast Quarter of the Southeast Quarter of aforesaid Section 19; thence run South 89°54'35" West along said South line for a distance of 65.82 feet; thence departing said South line run North 00°08'53" West for a distance of 531.96 feet to the point of curvature of a curve, concave Easterly having a radius of 1497.00 feet, with a chord bearing of North 05°30'36" East, and a chord distance of 295.17 feet; thence run Northerly through a central angle of 11°18'57" along the arc of said curve for a distance of 295.65 feet to a point of tangency; thence run North 11°10'04" East for a distance of 506.67 feet to a point on the aforesaid North line of said Southeast Quarter of Section 19; thence run South 89°56'49" East for a distance of 10.19 feet to the POINT OF BEGINNING.

Containing 62,830 square feet or 1.44 acres, more or less.

SHEET 1 OF 3
SEE SHEET 2 FOR SKETCH
SEE SHEET 3 FOR TABLES



16 EAST PLANT STREET
Winter Garden, Florida 34787 • (407) 654-5355

SURVEYOR'S NOTES:

1. THIS IS NOT A SURVEY.
2. THIS SKETCH IS NOT VALID UNLESS SIGNED AND SEALED WITH AN EMBOSSED SURVEYOR'S SEAL.
3. BEARINGS SHOWN HEREON ARE BASED ON NORTH LINE OF THE SE 1/4 OF SECTION 19-23-27 AS BEING N 89°59'52"W (ASSUMED FOR ANGULAR DESIGNATION ONLY)
4. THE RECORDING INFORMATION SHOWN HEREON WAS OBTAINED FROM THE ORANGE COUNTY PUBLIC ACCESS SYSTEM.
5. DELINEATION OF THE LANDS SHOWN HEREON ARE AS PER THE CLIENT'S INSTRUCTIONS.

JOB NO. 20180571

DATE: 6/24/2021

SCALE: 1" = 200'

CALCULATED BY: DY

DRAWN BY: DY

CHECKED BY: MR

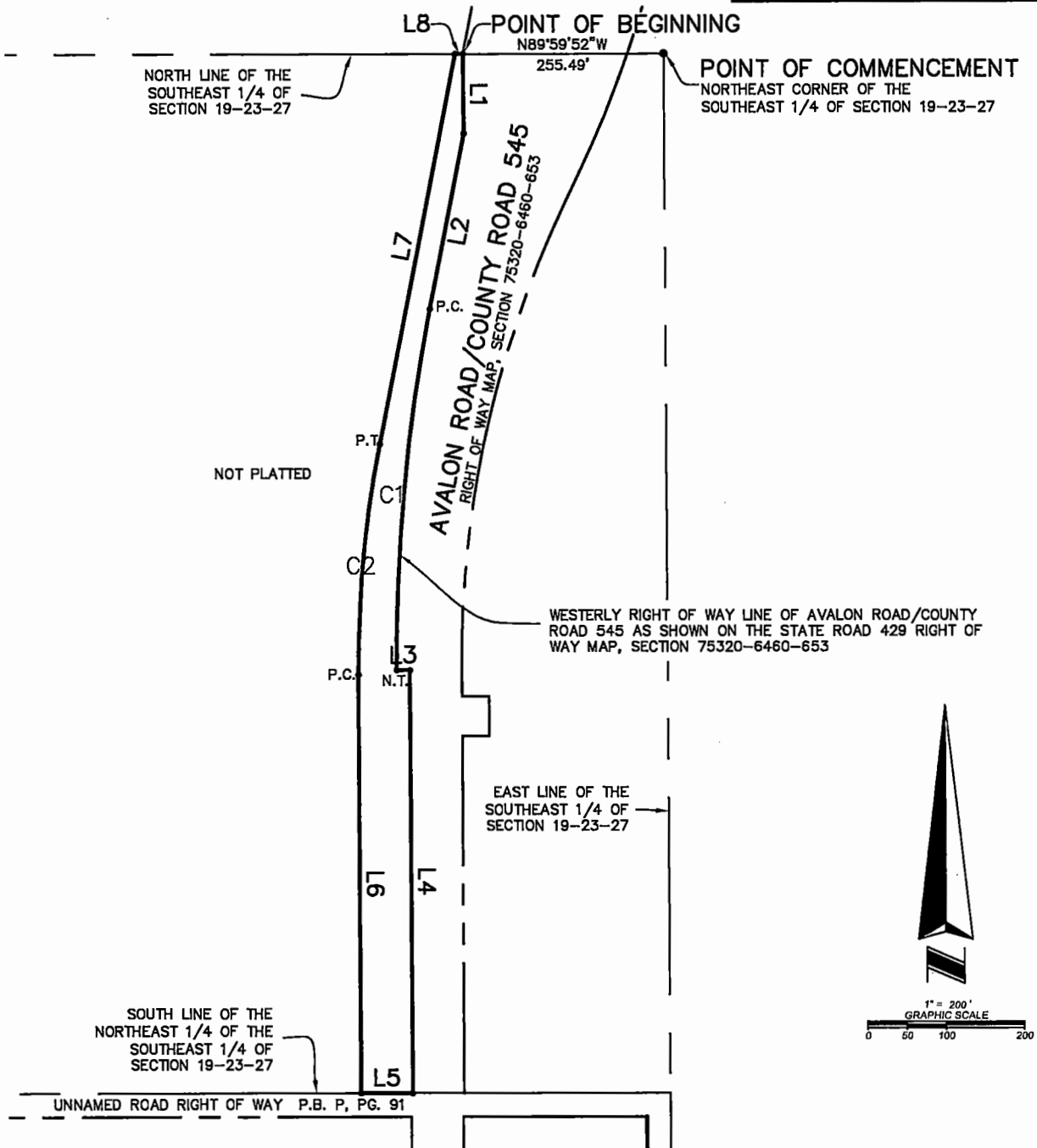
FOR THE LICENSED BUSINESS #6723 BY:



Digitally signed by
James L. Rickman
Date: 2021.06.28
14:04:37 -04'00'

JAMES L. RICKMAN, P.S.M. #5633

SKETCH OF DESCRIPTION



LEGEND

- P.C. POINT OF CURVATURE
- P.T. POINT OF TANGENCY
- N.T. NON TANGENT
- CHANGE IN DIRECTION

SHEET 2 OF 3
SEE SHEET 1 FOR DESCRIPTION
SEE SHEET 3 FOR TABLES

JOB NO. 20180571

DATE: 6/24/2021

SCALE: 1" = 200'

DRAWN BY: DY



16 EAST PLANT STREET
Winter Garden, Florida 34787 • (407) 654-5355

SKETCH OF DESCRIPTION

LINE TABLE		
LINE	BEARING	LENGTH
L1	S00°15'46"E	101.41'
L2	S11°10'04"W	227.83'
L3	N89°50'57"E	17.00'
L4	S00°09'46"E	538.09'
L5	S89°54'35"W	65.82'
L6	N00°08'53"W	531.96'
L7	N11°10'04"E	506.67'
L8	S89°56'49"E	10.19'

CURVE TABLE					
CURVE	RADIUS	BEARING	CHORD	DELTA	LENGTH
C1	2342.00'	S05°30'30"W	461.90'	11°19'07"	462.66'
C2	1497.00'	N05°30'36"E	295.17'	11°18'57"	295.65'



16 EAST PLANT STREET
Winter Garden, Florida 34787 • (407) 654-5335

LEGEND

P.C. POINT OF CURVATURE
P.T. POINT OF TANGENCY
N.T. NON TANGENT
• CHANGE IN DIRECTION

SHEET 3 OF 3
SEE SHEET 1 FOR DESCRIPTION
SEE SHEET 2 FOR SKETCH

JOB NO. 20180571

DATE: 6/24/2021

SCALE: 1" = 200'

DRAWN BY: DY

Exhibit B

Work Plans

[illegible]

Project Name:
**SILVERLEAF PD-RP
PHASE 1
OFFSITE UTILITY
EXTENSION**

Exhibit B
Page 3 of 3

Submittal To:
ORANGE COUNTY, FL

Sheet Title:
AVALON ROAD - WM
PLAN & PROFILE

Sheet No. _____

C3.03

Seal



This form has been electronically signed and sealed by Niles Daniel for use for this submission to the court under a NIA confidentiality order. File

POULOS & BENNETT

Poulos & Bennett, LLC
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Tel. 407.487.2394 www.poulosandbennett.com
Eng. Div. No. 28367

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