



Interoffice Memorandum

SEE MINUTES
FOR MOTION

NOV 17 2015 CS/BS

AGENDA ITEM

October 26, 2015

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

FROM: James E. Harrison, Esq., P.E., Chairman
Roadway Agreement Committee
407.836.5610

SUBJECT: November 17, 2015 – Consent Item
Transportation Impact Fee Agreement
Asbury Theological Seminary Valencia College Lane

The Roadway Agreement Committee has reviewed a Transportation Impact Fee Agreement ("Agreement") between Asbury Theological Seminary ("Owner") and Orange County for the dedication of right-of-way for Valencia College Lane. Within 120 days of the effective date of this Agreement, the Owner shall convey to Orange County a total of 0.311 acres of right-of-way for Valencia College Lane by warranty deed or by plat. Owner shall be entitled to transportation impact fee credits in the amount of \$119,790 per acre for the 0.311 acres to be dedicated, which equals \$37,254.69 in road impact fee credits.

The Roadway Agreement Committee approved the Transportation Impact Fee Agreement on October 14, 2015.

The Specific Project Expenditure Report and Relationship Disclosure Forms are on file with the Transportation Planning Division.

ACTION REQUESTED: Approval of Transportation Impact Fee Agreement Asbury Theological Seminary Valencia College Lane by and between Asbury Theological Seminary and Orange County for the conveyance of 0.311 acres of right-of-way for Valencia College Lane in return for \$37,254.69 in transportation impact fee credits. District 3

JEH|HEGB:rep

Attachments

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS
NOV 17 2015 CS/BS

Prepared by and after recording return to:
Scott Stuart – KCG, Inc.
1700 North Orange Avenue, Suite 400
Orlando, FL 32804

Project: Valencia College Lane (RAC) (Asbury Theological Seminary)

Tax Parcel I.D. No.:24-22-30-0000-00-044 (a portion thereof)

TRANSPORTATION IMPACT FEE AGREEMENT

ASBURY THEOLOGICAL SEMINARY

Valencia College Lane

This Transportation Impact Fee Agreement (the “Agreement”), effective as of the latest date of execution (the “Effective Date”), is made and entered into by and between Asbury Theological Seminary (“Owner”), a Non-Profit Kentucky Corporation (KCO) whose mailing address is 204 North Lexington Avenue, Wilmore Kentucky 40390, 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 “Property”); and

WHEREAS, Owner is developing the Property as an office/commercial campus (the “Project”); and

WHEREAS, Owner is willing to convey to County certain portions of the Property in return for credits against transportation impact fees to be paid in the future in connection with the Project; and

WHEREAS, the Orange County Engineer has declared Valencia College Lane to be impact fee eligible; and

WHEREAS, County and Owner desire to set forth certain terms, conditions, and agreements between the parties as to the conveyance of such land to County.

NOW, THEREFORE, 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.

(a) *Conveyed Lands.* Within one hundred twenty (120) days from the Effective Date, Owner shall convey to County marketable fee title 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 conveyance does not occur within the aforesaid 120 days, the Manager of the Real Estate Management Division, or a designee, may grant an extension of up to 120 days for the conveyance to take place.

(b) *Procedure.* The conveyance of the Conveyed Lands shall be by plat dedication or general warranty deed, free and clear of all liens and encumbrances, except for easements of record acceptable to County, if any. If by plat dedication, the rest of this paragraph and the following paragraphs (c), (e), and (f) will not apply. Owner shall pay all costs associated with the conveyance of the Conveyed Lands, including all recording fees and documentary stamps related to such conveyance. Ad valorem taxes in connection with the conveyance of the Conveyed Lands shall be prorated as of the date of transfer of title and said prorated amount shall be paid by Owner to the Orange County Tax Collector, in escrow, pursuant to Section 196.295, Florida Statutes, unless the conveyance occurs between November 1 and December 31 of the year of conveyance, in which case ad valorem taxes shall be paid in full by Owner for the year of conveyance.

(c) *Title Policy.* No less than thirty (30) days prior to conveyance of the Conveyed Lands, Owner shall deliver to County, at Owner's sole cost and expense, a commitment to issue an Owner's Policy of Title Insurance naming County as the insured (the "Title Commitment"). The original Owner's Policy of Title Insurance (the "Title Policy") shall be delivered to County within thirty (30) days of the conveyance of the Conveyed Lands.

(d) *Value of Conveyed Lands.* The value of the land to be conveyed by Owner to County has been determined in accordance with Section 23-95, Orange County Code, as may be amended from time to time.

The Parties hereby agree that the value of the Conveyed Lands to be conveyed by Owner to County, in return for credits against transportation impact fees to be paid in the future in connection with the Project, is \$37,254.69. This total results from an agreed-upon fair market value of \$119,790.00 per acre, or fraction thereof, and a total acreage of 0.311 acre(s).

(e) *Environmental Audit.* No less than thirty (30) days prior to conveyance, Owner shall submit to County a current (within 6 months of conveyance to County) Phase I environmental audit of the areas encompassed by the Conveyed Lands. The Phase I environmental audit shall be conducted in accordance with the requirements of the All Appropriate Inquiries Final Rule, or with the standards set forth in the American Society for Testing and Materials (ASTM) E-1527-13. In the event the Phase I environmental audit presents a matter of concern, as determined by County, then prior to the conveyance, Owner shall submit to County a Phase II environmental audit. If the Phase II environmental audit is performed and reveals the need for remediation to the Conveyed Lands, one of the following events shall occur: (i) Owner shall remediate the Conveyed Lands to County's satisfaction prior to the conveyance; or (ii) Owner and County shall negotiate and enter into a separate agreement whereby Owner shall pay the full cost of remediation; or (iii) County may terminate this Agreement at its option.

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

Section 3. Transportation Impact Fee Credits. Promptly upon County's approval of any Environmental Assessments and Title Commitment required under Section 2, and upon approval and acceptance of the general warranty deed or in the case of conveyance by plat dedication, County's acceptance of the plat dedication, County shall credit on its books to the account of Owner, for purposes of Article IV of Chapter 23 of the Orange County Code and any successor code provisions (the "Impact Fee Ordinance"), the aforementioned amount of transportation impact fee credits to which Owner is entitled under the Impact Fee Ordinance.

Such transportation impact fee credits may only be used in transportation impact fee zone 2A. Thereafter, as impact fees become payable from time to time in connection with the Project, and if so instructed by Owner, County shall deduct such amounts payable from Owner's account.

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

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

Section 4. Utilities. This agreement does not address utility requirements. Owner shall coordinate with the Orange County Utilities Director, or a designee, with respect to any utility easements necessary to accommodate appropriately-sized wastewater sewer mains or lines, potable water mains or lines, and/or reclaimed water mains or lines.

Section 5. Notice. Any notice delivered with respect to this Agreement shall be in writing and shall be deemed to be delivered (whether or not actually received) (i) when hand delivered to the person(s) hereinafter designated, or (ii) upon deposit of such notice in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the person at the address set forth opposite the party's name below, or to such other address or to such other person as the party shall have specified by written notice to the other party delivered in accordance herewith.

As to Owner: Asbury Theological Seminary
204 North Lexington Avenue
Wilmore, Kentucky 40390
Attention: Bryan Blankenship

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

Section 7. Recordation of Agreement. An executed original of this Agreement shall be recorded, at Owner's expense, in the Public Records of Orange County, Florida within thirty (30) days of the Effective Date.

Section 8. Applicable Law. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

Section 9. Time is of the Essence. Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this Agreement.

Section 10. 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 11. Limitation of Remedies. County and Owner expressly agree that the consideration, in part, for each of them entering into this Agreement is the willingness of the other to limit the remedies for all actions arising out of or in connection with this Agreement.

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

- (i) action for specific performance or injunction; or
- (ii) the right to set off, against the amounts of impact fees to be credited in favor of Owner under this Agreement, (A) any amounts due to County from Owner under this Agreement but remaining unpaid and (B) the cost to County of performing any action or actions required to be done under this Agreement by Owner, but which Owner has failed or refused to do when required; or
- (iii) the withholding of development permits and other approvals 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 Agreement 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 Agreement, Owner shall be limited strictly to only the following remedies:

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

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

Section 12. Amendment. This Agreement may be amended only in writing, formally executed in the same manner as this Agreement.

Section 13. Counterparts. This Agreement and any amendment(s) may be executed in up to three (3) counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

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



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Teresa Jacobs*

TJ
Teresa Jacobs,
Orange County Mayor

Date: 11.18.15

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: *Noelia Perez*
for Deputy Clerk

Print name: Noelia Perez

Asbury Theological Seminary, a non-profit
Kentucky corporation

By: Bryan P. Blankenship

Print Name: Bryan P. Blankenship, Vice-President

Date: October 15, 2015

WITNESSES:

James C. Brumfield

Print Name: JAMES C. BRUMFIELD

A.V. Van Laningham

Print Name: A.V. Van Laningham

STATE OF KENTUCKY
COUNTY OF JESSAMINE

The foregoing instrument was acknowledged before me by
Bryan P. Blankenship, Vice President of Asbury Theological Seminary, a non-
profit Kentucky corporation, who is known by me to be the person described herein and who
executed the foregoing, this 15th day of October, 2015. S/he is personally known to
me or has produced _____ as identification and did/did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 15th day
of October, 2015.

Rebekah J. Saunders
Notary Public

Print Name: Rebekah J. Saunders

My Commission Expires: July 15, 2015



Exhibit "A" Project Location Map

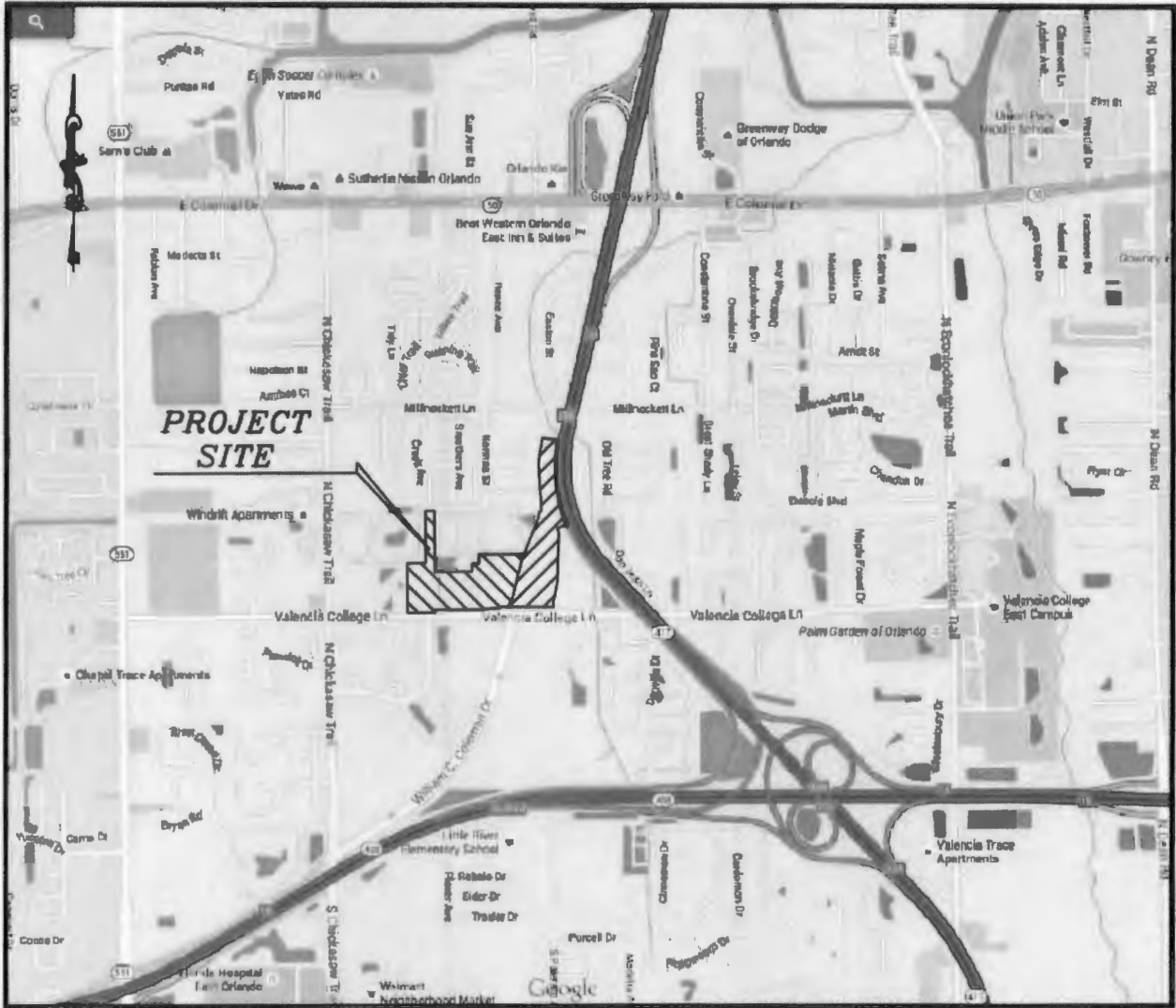
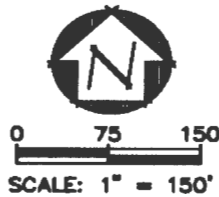


Exhibit "B"
Legal Description and Sketch of Description for Property
(PN# 24-22-30-0000-00-044)



LEGAL DESCRIPTION

(DEED: OR BOOK 6122, PAGES 3016-3020) "GIFTED PROPERTY"

BEGINNING 1356.46 FEET EAST AND 557.49 FEET NORTH OF THE SOUTHWEST CORNER OF THE SOUTHWEST ONE-QUARTER OF SECTION 24, TOWNSHIP 22 SOUTH, RANGE 30 EAST, IN ORANGE COUNTY, FLORIDA, RUN NORTH 767.11 FEET, THENCE WEST 110 FEET, THENCE SOUTH 662.54 FEET, THENCE WEST 228.5 FEET, THENCE SOUTH 105.38 FEET, THENCE EAST 338.6 FEET TO THE POINT OF BEGINNING, LESS THE NORTH 198 FEET.

BOUNDARY SKETCH

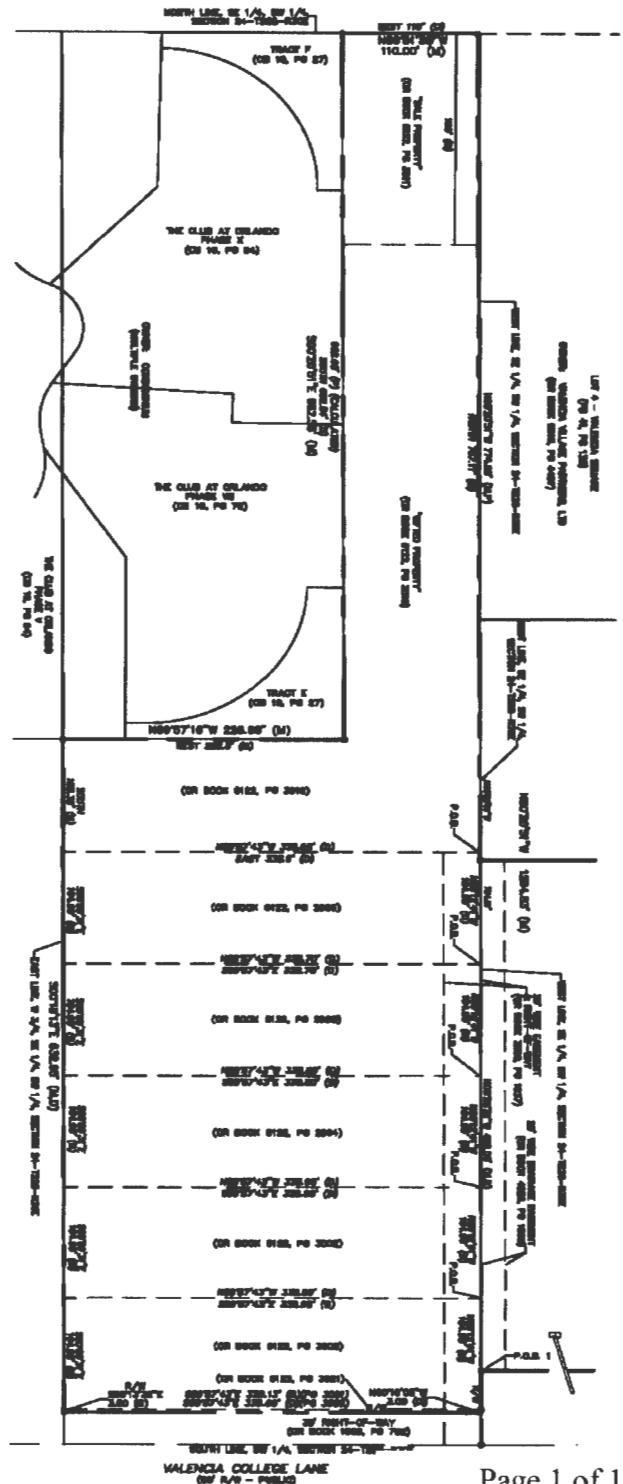


Exhibit "C"
Legal Description and Sketch of Description
for Conveyed Lands

LEGAL DESCRIPTION
SCHEDULE "A"
PARCEL NUMBER : 1090

A STRIP OF LAND LYING IN THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 22 SOUTH, RANGE 30 EAST, ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A 3-1/2" METAL DISK STAMPED "ORANGE COUNTY ENGR. DEPT." LOCATED AT THE SOUTHWEST CORNER OF SECTION 24, TOWNSHIP 22 SOUTH, RANGE 30 EAST, ORANGE COUNTY, FLORIDA; THENCE RUN NORTH 89°57'19" EAST, ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 24, A DISTANCE OF 1017.38 FEET TO A POINT ON THE WEST LINE OF THE EAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 24; THENCE DEPARTING SAID SOUTH LINE OF THE SOUTHWEST QUARTER, RUN NORTH 00°17'52" WEST, ALONG SAID WEST LINE, A DISTANCE OF 30.00 FEET TO A POINT ON THE EXISTING NORTHERLY RIGHT OF WAY LINE OF VALENCIA COLLEGE LANE AS DESCRIBED IN OFFICIAL RECORDS BOOK 1809, PAGE 792, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE CONTINUE NORTH 00°17'52" WEST, ALONG SAID WEST LINE OF THE EAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 40.00 FEET TO A POINT ON A LINE PARALLEL WITH, AND 70.00 FEET NORTHERLY OF, WHEN MEASURED PERPENDICULAR TO, THE AFOREMENTIONED SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 24; THENCE DEPARTING SAID WEST LINE, RUN NORTH 89°57'19" EAST, ALONG SAID PARALLEL LINE, A DISTANCE OF 339.07 FEET TO A POINT ON THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 24; THENCE DEPARTING SAID PARALLEL LINE, RUN SOUTH 00°20'53" EAST, ALONG SAID EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 40.00 FEET TO A POINT ON THE AFOREMENTIONED EXISTING NORTHERLY RIGHT OF WAY LINE OF VALENCIA COLLEGE LANE; THENCE DEPARTING SAID EAST LINE, RUN SOUTH 89°57'19" WEST, ALONG SAID NORTHERLY RIGHT OF WAY LINE, A DISTANCE OF 339.10 FEET TO THE POINT OF BEGINNING.

CONTAINING 13,563 SQUARE FEET, OR 0.311 ACRES, MORE OR LESS

THIS IS NOT A BOUNDARY SURVEY, NOR HAS FIELD WORK BEEN PERFORMED IN ACCORDANCE WITH 5J-17, FLORIDA ADMINISTRATIVE CODE FOR PREPARATION OF THIS SKETCH OF DESCRIPTION.

William E. Byrd 4/01/2010
 WILLIAM E. BYRD
 FLORIDA PROFESSIONAL SURVEYOR AND MAPPER
 LICENSE NUMBER 5442
 520 SOUTH MAGNOLIA AVENUE
 ORLANDO, FLORIDA 32801

NOTE:
 BEARINGS SHOWN HEREON WERE DERIVED FROM THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 22 SOUTH, RANGE 30 EAST, BEING NORTH 89°57'19" EAST.

NOT VALID WITHOUT SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER
 CERTIFICATE OF AUTHORIZATION NUMBER LB 1221

WRITTEN BY: RRC	DATE: 04/01/10	SECTION: 24	VALENCIA COLLEGE LANE-ORANGE COUNTY	
DRAWN BY: RRC	REV.:	TOWNSHIP: 22S	Bowyer-Singleton & Assoc., Inc. 520 SOUTH MAGNOLIA AVENUE ORLANDO, FLORIDA 32801 TELEPHONE: 407-843-5120	DRAWING SCALE: N/A
APPROVED BY: WEB	REV.:	RANGE: 30E		SHEET 1 OF 2
	REV.:			C.I.P. = 5029

Exhibit "C"
Legal Description and Sketch of Description
for Conveyed Lands

