

BCC Mtg. Date: Jun. 28, 2016

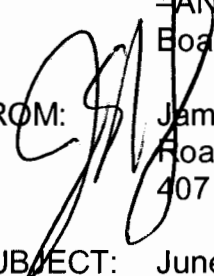


Interoffice Memorandum

AGENDA ITEM

June 6, 2016

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

FROM:  James E. Harrison, Esq., P.E., Chairman
Roadway Agreement Committee
407 836.5610

SUBJECT: June 28, 2016 – Consent Item
Road Network Agreement
New Independence Parkway and C.R. 545/Avalon Road

On August 25, 2015 the Board of County Commissioners approved the Town Center West Road Term Sheet for the development of Corporate Neighborhood 3 of Town Center Village in Horizon West. The Town Center West Term Sheet memorialized a framework by which each landowner in Town Center West would enter into individual road network agreements to insure adequate roadway infrastructure would be funded and constructed on a timely basis including a fair share transportation analysis to determine each owner's fair share contribution to the road network serving Town Center West.

The Roadway Agreement Committee has reviewed a Road Network Agreement for New Independence Parkway and C.R. 545/Avalon Road ("Agreement") among Hamlin Retail Partners West, LLC; Carter-Orange 45 SR 429 Land Trust (collectively "Owners") and Orange County based on the approved Town Center West Term Sheet. Under the terms of the Agreement, Owners agree to design, engineer, permit and construct road improvements and convey any necessary right-of-way for the four-laning of New Independence Parkway from S.R. 429 to Avalon Road/C.R. 545. Owners further agree to conduct all or a portion of a Preliminary Design Study for the four-laning of Avalon Road/C.R. 545 from McKinney Road to Schofield Road up to their proportionate share contribution which totals \$2,908,445.59. County agrees to provide a vested trip allocation in the amount of 2,315 trips in return for the improvements along with road impact fee credits for the amount of the proportionate share payment. Should the

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Road Network Agreement New Independence Parkway and C.R. 545/Avalon
Road

Owners elect to construct additional improvements the parties shall re-negotiate or enter into a new Road Network Agreement.

The Roadway Agreement Committee approved the Road Network Agreement on May 18, 2016.

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

ACTION REQUESTED: Approval and execution of Hamlin West Road Network Agreement New Independence Parkway and C.R. 545/Avalon Road by and among Hamlin Retail Partners West, LLC, Carter-Orange 45 SR 429 Land Trust, and Orange County for the design, engineering, permitting and construction of road improvements for the four-laning of New Independence Parkway from S.R. 429 to Avalon Road/C.R. 545 and to conduct all or a portion of a Preliminary Design Study for the four-laning of Avalon Road/C.R. 545 from McKinney Road to Schofield Road in return for 2,315 vested trips and \$2,908,445.59 in road impact fee credits. District 1

JEH|HEGB:rep

Attachments

BCC Mtg. Date: Jun. 28, 2016

PREPARED BY AND RETURN TO:
JAMES G. WILLARD, ESQUIRE
SHUTTS & BOWEN LLP
300 S. ORANGE AVENUE, SUITE 1000
ORLANDO, FLORIDA 32801

Tax Parcel I.D. Numbers:	20-23-27-0000-00-002	20-23-27-0000-00-018
	20-23-27-0000-00-007	20-23-27-0000-00-027
	20-23-27-0000-00-009	19-23-27-0000-00-012
	20-23-27-0000-00-010	19-23-27-0000-00-022
	20-23-27-0000-00-017	17-23-27-0000-00-013

HAMLIN WEST
ROAD NETWORK AGREEMENT
NEW INDEPENDENCE PARKWAY
AND C.R. 545/AVALON ROAD

THIS ROAD NETWORK AGREEMENT (the “**Agreement**”), is effective as of the latest date of execution by the parties hereto (the “**Effective Date**”), and is made and entered into by and among **HAMLIN RETAIL PARTNERS WEST, LLC**, a Florida limited liability company (the “**Hamlin Retail Partners**”), c/o Boyd Development Corporation, 7586 West Sand Lake Road, Orlando, Florida 32819, and **CARTER-ORANGE 45 SR 429 LAND TRUST** (“**Carter**”), c/o Daryl Carter, Trustee, 3333 S. Orange Avenue, Suite 200, Orlando, Florida 32806, each sometimes hereafter individually referred to as an “**Owner**” and collectively as the “**Owners**” and **ORANGE COUNTY**, a charter county and political subdivision of the State of Florida, whose mailing address is P.O. Box 1393, 201 S. Rosalind Avenue, Orlando, Florida 32802-1393 (“**County**”).

WITNESSETH:

WHEREAS, Owners are the fee simple owners of certain real property shown on the project location map attached as **Exhibit “A”** and more particularly described in **Exhibit “B”**, both of which exhibits are attached hereto and incorporated herein by reference (the “**Property**”); and

WHEREAS, the Property constitutes all of the developable land identified as Phase 1 in the Town Center West Roadway Analysis defined in paragraph 2.8 hereafter (the “**Traffic Study**”); and

WHEREAS, the Property is also described as a majority of Corporate Neighborhood 3 of the Town Center Village as set forth in the Specific Area Plan (the

“SAP”) for the Town Center Village in the Horizon West Planning Area as adopted by the County; and

WHEREAS, Owners intend for the Property to be developed for a mix of uses in accordance with the SAP (the “**Project**”); and

WHEREAS, as a condition of development of the Property pursuant to the SAP, Owners are required to assure that adequate roadway facilities are available in a timely manner to support development of the Property; and

WHEREAS, Owners are willing to design and construct certain roadways which will serve the Project in accordance with plans approved by County; and

WHEREAS, Owners are further willing to convey certain portions of the Property to County for road right-of-way purposes (the “**Conveyed Lands**”) if such right-of-way is determined necessary pursuant to design and construction plans approved by County pursuant to this Agreement; and

WHEREAS, the roadways identified for improvement in this Agreement have been declared by the Orange County Engineer to be impact fee credit eligible roadways; and

WHEREAS, County and Owners desire to set forth herein all of the terms, conditions and agreements among them with respect to required right-of-way contributions, road impact fee credits and roadway design and construction obligations with respect to the Project in a manner consistent with the Town Center West Road Term Sheet approved the Orange County Board of County Commissioners on August 25, 2015 (the “**Term Sheet**”).

NOW, THEREFORE, in consideration of the premises, County and Owners hereby agree as follows:

1. **Recitals**. The foregoing recitals are true and correct and are incorporated herein by reference.

2. **Definitions**. Unless defined elsewhere within this Agreement, the terms set forth below shall have the following meanings when used in this Agreement:

2.1 **Constructing Owner** – shall mean Hamlin Retail Partners West, LLC.

2.2 **DEP** – shall mean “design, engineering, and permitting” as used in conjunction with any road improvement referenced in this Agreement.

2.3 Escrow Agent – shall refer to Shutts & Bowen LLP, a Florida limited liability partnership with offices at:

300 S. Orange Avenue, Suite 1000
Orlando, Florida 32801
Attn: James G. Willard
Email: jwillard@shutts.com
407/423-3200

2.4 Escrow Agreement – shall refer to that certain escrow agreement among Owners, County, and Escrow Agent for the purpose of governing the receipt, use, and disbursement of the Fair Share as more particularly set forth in paragraph 4 of this Agreement. The Escrow Agreement shall be in a form mutually acceptable to Owners, County, and the Escrow Agent.

2.5 Improvement(s) – shall refer to any PDS, DEP, or construction relating to C.R. 545/Avalon Road or New Independence Parkway approved by County and performed or constructed in accordance with the terms of this Agreement.

2.6 Non-Constructing Owner – shall refer to any present or future Owner other than the Constructing Owner.

2.7 Owner – shall refer to either Hamlin Retail Partners or Carter, or their respective successors or assigns as the fee owner of any of the Property or any Parcel (as hereinafter defined) within the Property.

2.8 Parcel – shall mean any lot, tract, or other portion of the Property on which any building requiring a County building permit may be constructed.

2.9 PDS – shall mean “preliminary design study” when used in conjunction with any road improvement referenced in this Agreement.

2.10 Traffic Study – shall mean that certain Town Center West Roadway Analysis dated May 13, 2015 prepared by VHB, Inc. and approved by County as part of its approval of the Term Sheet, a copy of which is on file with County’s Transportation Planning Division.

2.11 Vested Trip(s) – shall mean the gross PM peak hour two-way vehicular trips to be assigned to Owners pursuant to paragraph 8 of this Agreement.

3. **Road Network Deficiency; Fair Share Cost Analysis.** Pursuant to the Traffic Study, development of the Property for the Project will significantly impact the following deficient roadway segments:

<u>Deficient Road Segment</u>	<u>Needed Improvement</u>
New Independence Parkway – from Avalon Road to S.R. 429	Expand from 2 to 4 lanes
Avalon Road/C.R. 545 – from McKinney Road to Schofield Road	Expand from 2 to 4 lanes

Based upon the Fair Share Cost Analysis set forth in the Traffic Study, the cost contribution of the Property attributable to the Project is \$2,908,445.59 (the “**Fair Share**”).

The total Fair Share has been allocated among Owners based on their SAP permitted land use development programs as follows:

<u>Owner</u>	<u>Fair Share</u>
Hamlin Retail Partners	\$2,550,415.94
Carter	<u>\$ 358,029.65</u>
TOTAL	\$2,908,445.59

4. **Scope of Improvements; Timing and Method of Payment of Fair Share.** In accordance with the Term Sheet, Hamlin Retail Partners has elected to serve as Constructing Owner to utilize the Fair Share allocation of all Owners to perform/construct the following Improvements:

- A. First, completion of the DEP and construction of the four-laning of New Independence Parkway from S.R. 429 to Avalon Road/C.R. 545. The value of this Improvement is \$2,724,700.00 based on the Countywide road construction cost utilized in the Fair Share calculation contained in the Traffic Study.
- B. Second, conduct all or such portion of a PDS for the four-laning of Avalon Road/C.R. 545 from McKinney Road to Schofield Road as approved by the County. The remaining portion of the Fair Share available to allocate to this PDS is \$183,745.59 (i.e. \$2,908,445.59 less \$2,724,700.00 equals \$183,745.59).

4.1 Payment by Non-Constructing Owners. Within ninety (90) days after the Effective Date of this Agreement, all Non-Constructing Owners shall pay their respective portions of the Fair Share amount as set forth in paragraph 3, in escrow, to Escrow Agent, to be held and disbursed solely for completion of the Improvements pursuant to the Escrow Agreement. All Fair Share payments shall be in cash.

In the event the Improvements are not commenced within two (2) years after execution of the Escrow Agreement, then, at the option of County, County may direct Escrow Agent to disburse all funds in escrow to County.

4.2 Payment by Constructing Owner. Constructing Owner shall pay its portion of the Fair Share by constructing Improvements having a value not less than Constructing Owner's Fair Share allocation when valued based on the countywide road construction cost utilized in the Fair Share calculation contained in the Traffic Study. All such construction shall occur in accordance with the provisions of this Agreement, including paragraph 5 hereafter.

5. Design, Construction and Funding of Improvements. Completion of the Improvements by Constructing Owner shall be performed in accordance with the terms and conditions set forth below:

5.1 Design. Constructing Owner shall commence DEP for the subparagraph 4.A. Improvements pursuant to consulting contracts and budgets reviewed and approved by County. All such contracts shall name County as a third party beneficiary.

5.2 Construction. Prior to construction of subparagraph 4.A. Improvements, Constructing Owner shall (i) obtain all applicable permits and final County construction plan approval, and (ii) provide satisfactory payment and performance bonds in the amount of the Improvement construction contracts, together with a rider to such bonds identifying County as a dual-obligee.

Upon completion of roadway construction, Constructing Owner shall deliver to County a one year maintenance surety covering all Improvements constructed, such surety to be in form and substance reasonably acceptable to County. From the date of completion of the Improvements until such time as such Improvements are accepted for maintenance by County, Constructing Owner shall be responsible for maintaining such phase of Improvements, at its expense, including landscaping, irrigation, and other improvements within the road right-of-way.

5.3 Funding. The funding of all DEP and construction costs relating to the Improvements undertaken by Constructing Owner pursuant to this Agreement shall be the responsibility of Constructing Owner utilizing Constructing Owner's own allocated

portion of the Fair Share, together with such other Fair Share contributions held under the Escrow Agreement.

5.4 County Review Process. DEP and construction of the Improvements will be reviewed and processed by County as an "E" project in accordance with County policies, procedures, and specifications.

5.5 Roadway Landscaping Maintenance. The parties acknowledge that any roadway constructed by Constructing Owner pursuant to this Agreement may include landscaping, including irrigation, beyond that which is required by County Code. In the event such enhanced landscaping improvements are constructed, either Constructing Owner, or a successor property owners' association created by Constructing Owner, shall maintain such enhanced roadway landscaping for the benefit of the Project. In such event, Constructing Owner shall enter into a County Use Agreement providing for Constructing Owner or its successors to maintain all landscaping improvements constructed within said road rights-of-way.

5.6 Subparagraph 4.B. PDS. Following completion of the subparagraph 4.A. Improvements, Constructing Owner shall use any remaining Fair Share monies to fund the PDS described in subparagraph 4.B. Such study shall be completed in accordance with criteria established by County and in such phases or segments as approved by County. In the event the remaining Fair Share monies are not adequate to fully fund the subparagraph 4.B. PDS in a manner satisfactory to County, County may, at its option, require such remaining Fair Share monies be paid directly to County.

6. **Insurance and Indemnification.** During the course of construction of any Improvements constructed hereunder, the following provisions shall apply:

6.1 Insurance. Constructing Owner and/or its contractor(s) shall procure and maintain, throughout the construction of the Improvements, insurance with limits and terms as specified below:

- Workers' compensation insurance with statutory workers' compensation limits and no less than \$100,000 limit for Employers' Liability with a waiver of subrogation in favor of County, its consultants, agents, employees, and officials.
- Commercial general liability insurance for all operations including but not limited to contractual, products and completed operations, and personal injury with limits of not less than \$1,000,000 per occurrence and an aggregate limit of at least twice the per occurrence limit.

- Business automobile liability insurance for all owned, non-owned, and hired vehicles with limits of not less than \$1,000,000 per occurrence.

Constructing Owner shall be responsible for ensuring that each of its contractors and subcontractors of every tier procure and maintain the insurance specified above and shall furnish to County satisfactory evidence of such insurance prior to commencement of construction. County shall be listed as an additional insured on all insurance policies required herein, except workers' compensation. All coverage shall be primary and not contributory with any insurance or self-insurance maintained by County. County shall be notified not less than thirty (30) days prior to any material change, cancellation, or non-renewal of any policy required herein.

6.2 Indemnification. Constructing Owner shall and shall cause its contractor(s) to defend, indemnify, and hold harmless County, its officials, and employees from and against all liabilities, claims, damages, losses, costs, and expenses (including attorneys' fees) arising out of or resulting from the performance of the construction activities, provided that any such liability, claim, damage, loss, cost, or expense:

- Is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the construction activities themselves) including the loss of use resulting therefrom and,
- Is caused in whole or in part by any act or omission of the contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in whole or in part by a party indemnified hereunder.

Provided, however, if this Agreement or any underlying contract for construction of any Improvements is deemed by a court of competent jurisdiction to be a construction contract under Section 725.06, Florida Statutes, any obligation of the contractors to defend, indemnify, or hold harmless County, its officials, and employees shall be limited to an obligation to indemnify and hold harmless to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the contractors and persons employed or utilized by the contractors in the performance of the construction activities.

The indemnification provisions contained herein shall survive the termination of this Agreement.

7. Utilities. This Agreement does not address utility requirements. Owners 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.

8. **Vested Trip Allocations.** Upon satisfaction of an Owner's obligation to pay its portion of the Fair Share, as set forth in paragraph 3 hereof, the County shall assign to each such Owner the following Vested Trips:

<u>Owner</u>	<u>Vested Trip Allocation</u>
Hamlin Retail Partners	2,030
Carter	<u>285</u>
Total	2,315

With respect to a Non-Constructing Owner, such Vested Trips shall be assigned by County to such Non-Constructing Owner upon payment of its allocated portion of the Fair Share pursuant to the Escrow Agreement.

With respect to Constructing Owner, fifteen percent (15%) of its total Vested Trip allocation, i.e. 305 Trips, shall be assigned to Constructing Owner upon completion of County-approved DEP for the Improvements. The remaining eighty-five percent (85%) of Constructing Owner's Vested Trip allocation, i.e. 1,725 Trips, shall be assigned by County to Constructing Owner at the same times, and in the same percentages of completion, as Credits are awarded to Constructing Owner pursuant to Section 11.2 of this Agreement.

9. **Concurrency Compliance.** Upon allocation of Vested Trips, each Owner's portion of the Property shall be considered in compliance for County transportation concurrency purposes for development not to exceed the number of Vested Trips hereby granted. Vested Trips shall be considered automatically assigned to the Owner of any Parcel within the Property if said Vested Trips are allocated to said Parcel pursuant to any County-approved Development Plan or otherwise specifically assigned by an Owner to a successor Owner of any Parcel within the Property or to another parcel of land lying within the Town Center SAP west of S.R. 429.

10. **Monitoring Trip Generation.**

10.1 **Trip Generation Rates.** Trip generation for development within the Property shall be measured by use of the trip generation rates set forth in Table 2, below. Said trip generation rates were derived from the 9th Edition Institute of Transportation Engineers (ITE) Manual. Trip rates for land uses not listed in Table 2,

below, shall be based on the 9th Edition ITE Manual, with the methodology for determining such trip rates to be agreed to by County.

Table 2
Trip Generation Rates

<u>Land Use</u>	<u>Trip Rate</u>
Single Family (per unit)	1.00
Apartments (per unit)	0.62
Townhouse (per unit)	0.52
Retail (per 1,000 s.f.)	3.71
General Office (per 1,000 s.f.)	1.49
Hotel (per room)	0.47
Industrial (per 1,000 s.f.)	0.97
Community College (per 1,000 s.f.)	2.54

10.2 Trip Monitoring. In conjunction with each Development Plan submitted for any Parcel within the Property, the Owner of each such Parcel shall indicate the total number of Trips to be generated by the development on each Parcel within the Development Plan using the trip generation rate set forth in Table 2 and shall maintain a cumulative record of the projected Trips associated with all such Development Plans. Unless further approved by County pursuant to County's then existing Transportation Concurrency Management System or similar regulations, each Owner's portion of the Property shall not exceed the total allocated Trips as set forth in paragraph 8, above.

11. **Impact Fee Credits**.

11.1 Allocation of Credits. Upon payment of each Non-Constructing Owner's respective portion of the Fair Share, such Owner shall be entitled to receive transportation impact fee credits ("**Credits**") in an amount equal to the Fair Share payment made.

11.2 Timing and Amount of Credits. County shall establish a single transportation impact fee credit account for the benefit of each Owner. Within forty-five (45) days after the payment of each Non-Constructing Owner's portion of the Fair Share, County shall award Credits to such Owner.

With respect to Constructing Owner, after expenditure of all funds held pursuant to the Escrow Agreement, County shall award Credits for sums expended in excess of the Fair Share portions contributed by Non-Constructing Owners:

- Upon completion of County approved study and/or design, permitting, and engineering for any portion of the Improvements and approval of final costs therefor.
- Upon completion of 50% and 100% stages of roadway construction based upon County review and approval of actual construction costs.

At no time shall the total Credits received by Constructing Owner exceed either (i) the cost of Improvements actually incurred by Constructing Owner and approved by County, or (ii) the then applicable average Countywide road construction cost.

11.3 Use/Sale of Credits. All Credits may be used to offset transportation impact fees otherwise payable for any development within the Property. Owner may assign its Credits to any builder or landowner only within the Horizon West area of Transportation Impact Fee Zone 4 for an amount no greater than the County's then applicable impact fee rate.

As transportation 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. County shall make such 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.

Other than as set forth in this Section 11.3, nothing herein shall prevent Owner from assigning Credits as provided for in Section 23.95(e) of the Orange County Code, as may be amended from time to time.

11.4 In consideration of the Credits, Owner shall not be authorized to submit an alternative impact fee study pursuant to Section 23-93 of the County Code.

12. **Road Improvements in Excess of Fair Share.** In the event Constructing Owner, or its successor or assigns, elects to construct additional Improvements, i.e. in excess of the Improvements identified in paragraph 4 of this Agreement, Constructing Owner and County shall negotiate in good faith to either amend this Agreement accordingly or enter into a new Road Network Agreement.

13. **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: Hamlin Retail Partners West, LLC
c/o Boyd Development Corporation
7586 West Sand Lake Road
Orlando, FL 32819
Attn: Scott T. Boyd

With a copy to: Shutts & Bowen LLP
300 S. Orange Avenue, Suite 1000
Orlando, Florida 32801
Attn: James G. Willard, Esquire

As to Owner: Carter-Orange 45 SR 429 Land Trust
c/o Daryl Carter, Trustee
3333 S. Orange Avenue, Suite 200
Orlando, Florida 32806

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

14. **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 any person, firm, corporation, or other entity that may become the successor in interest to the Property or any Parcel. Notwithstanding the foregoing, however, the authority 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.

15. **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 after the Effective Date.

Upon completion of construction of the Improvements and final acceptance for maintenance by the County, the parties may execute and record an appropriate satisfaction to this Agreement to provide record notice that such obligations hereunder have been satisfactorily completed.

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

17. **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.

18. **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.

19. **Limitation of Remedies.** County and Owner(s) 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.

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

- (a) action for specific performance or injunction; or
- (b) 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
- (c) the withholding of development permits and other approvals or permits in connection with the Project and/or the Property; or
- (d) 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 any Conveyed Lands or any other portion of the Property as County may lawfully elect.

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

- (a) action for specific performance; or
- (b) action for injunction; or
- (c) action for declaratory judgment regarding the rights and obligations of such Owner; or
- (d) any combination of the foregoing.

The parties expressly waive their respective rights to sue for damages of any type for breach of, or default under, this Agreement by the other. The 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.

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

21. Counterparts. This Agreement and any amendments may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

22. Conveyance of Land to County by Constructing Owner.

(a) Conveyed Lands. Upon completion and approval by County of the DEP for the New Independence Parkway widening described in subparagraph 4.A. hereof, Constructing Owner shall, within ninety (90) days from such DEP approval, convey to County marketable title (either in fee simple with respect to road right-of-way or perpetual easement with respect to stormwater ponds) to any Conveyed Lands determined necessary by the approved DEP. In the event conveyance does not occur within the aforesaid ninety (90) days, the manager of the Real Estate Management Division, or a designee, may grant an extension of up to ninety (90) 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 sixty (60) 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 further agree that the value of any Conveyed Lands to be conveyed by Owner to County, in return for Credits shall be based upon an agreed-upon fair market value of \$22,500.00 per acre, or a fraction thereof.

(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.

(g) 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, any Credits to which Owner is entitled under the Impact Fee Ordinance, Orange County Code Section 23-95.

23. **Cost Participation by CFX.** In the event the Central Florida Expressway Authority ("CFX") elects to participate in funding the construction cost of the four-laning of New Independence Parkway from S.R. 429 west to C.R. 545 as contemplated in paragraph 4.A. of this Agreement, then Constructing Owner and County agree to apply such CFX funding to pay the initial cost of such four-laning and only after depletion of the CFX funding will the Fair Share funds be applied. To the extent the Fair Share of Owners has not been fully expended on the Improvements set forth in paragraphs 4.A. and 4.B. hereof due to the use of CFX funds, then Constructing Owner and County shall mutually agree upon such additional scope of roadway improvements as needed pursuant to the Traffic Study so as to fully expend Owners' Fair Share. Alternatively, at their option, Owners may deliver to County any unexpended balance of their total Fair Share allocation in satisfaction of their obligations hereunder.

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*
Teresa Jacobs,
Orange County Mayor

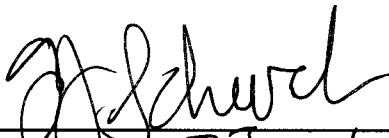

Date: 6.28.16

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

By: *Katie Smith*
Deputy Clerk

Print: Katie Smith


WITNESSES:


Print Name: T.J. Schnwab

Print Name: Heather Easterling

OWNER

HAMLIN RETAIL PARTNERS WEST, LLC,
a Florida limited liability company

By: BK HAMLIN RETAIL PARTNERS
WEST, LLC, a Florida limited liability
company, Its Manager

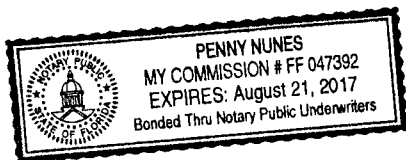

By: _____
Scott T. Boyd, Manager

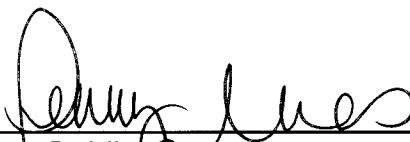
Date: 5/17/16

STATE OF FLORIDA
COUNTY OF ORANGE

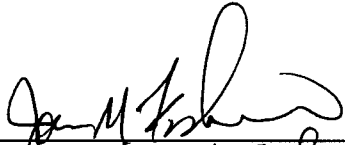

The foregoing instrument was acknowledged before me by Scott T. Boyd, Manager of BK Hamlin Retail Partners West, LLC, a Florida limited liability company, Manager of HAMLIN RETAIL PARTNERS WEST, LLC, a Florida limited liability company, on behalf of the company, and who is known by me to be the person described herein and who executed the foregoing, this 17th day of May, 2015.6. He is personally known to me or has produced N/A as identification and did/did not take an oath.

17th WITNESS my hand and official seal in the County and State last aforesaid this day of May, 2015.6





Notary Public _____
Print Name: Penny Nunes
My Commission Expires: 8/21/17

WITNESSES:


Print Name: Joan M. Fisher

Print Name: Emily Brown

OWNER

CARTER-ORANGE 45 SR 429 LAND TRUST


By: _____
Daryl Carter, Trustee
Date: 05/04/2016


STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by Daryl Carter, Trustee of CARTER-ORANGE 45 SR 429 LAND TRUST, on behalf of the company, and who is known by me to be the person described herein and who executed the foregoing, this 4th day of May, 2016. He/~~she~~ is personally known to me ~~or has produced~~ _____ as identification and ~~did~~/did not take an oath.

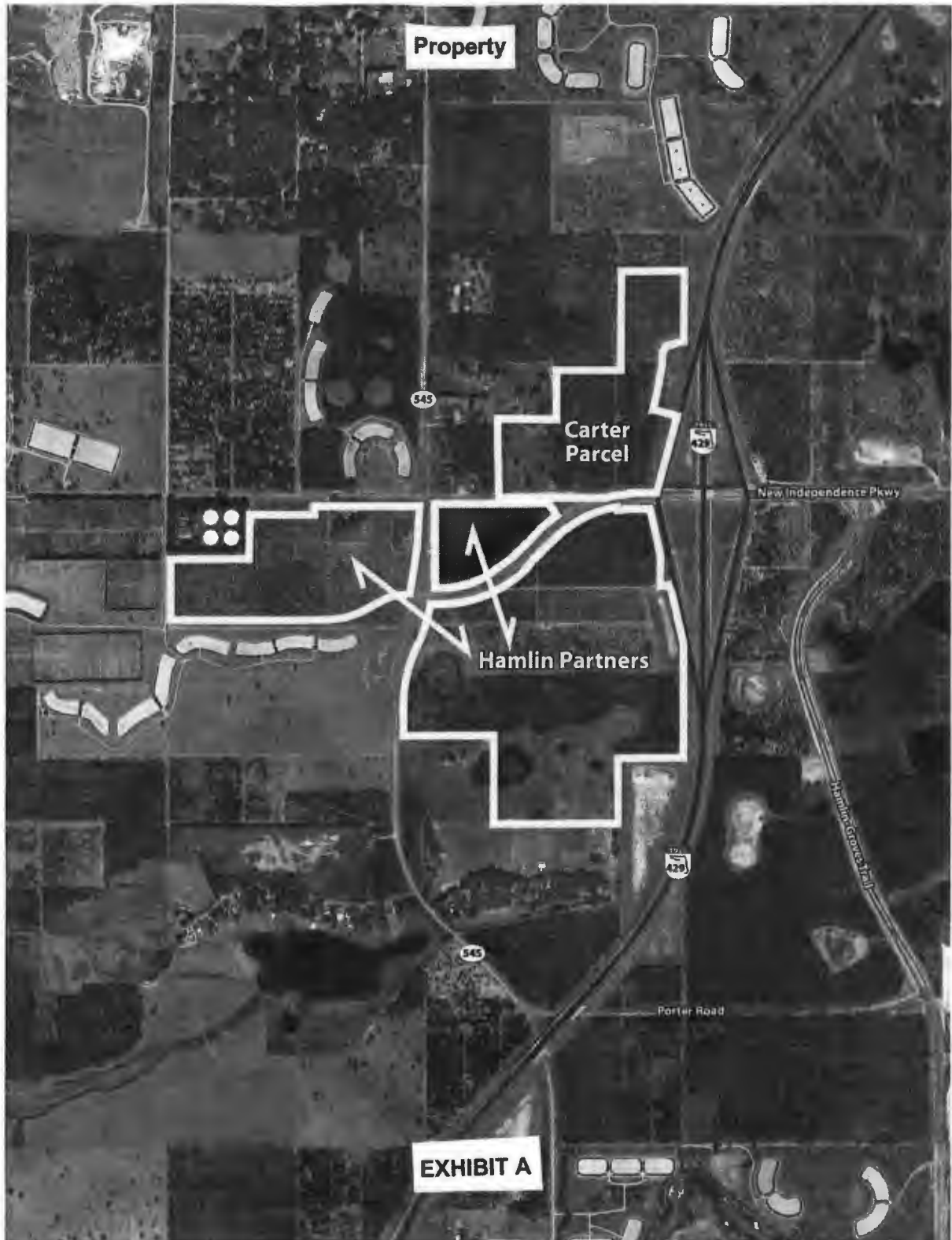
WITNESS my hand and official seal in the County and State last aforesaid this 4th day of May, 2016



JOAN M. FISHER
MY COMMISSION # FF 028166
EXPIRES: July 16, 2017
Bonded Thru Budget Notary Services


Notary Public
Print Name: Joan M. Fisher
My Commission Expires: 07/16/2017

PROPERTY LOCATION



PROPERTY

The following 3 parcels of land owned by Hamlin Partners and Carter to wit:

HAMLIN PARTNERS

The following 4 tracts of land owned by Hamlin Partners:

Tract 1

The North 500.00 feet of the Northeast 1/4 of the Southeast 1/4 of Section 19, Township 23 South, Range 27 East, Orange County, Florida, lying Easterly of State Road 545 (Avalon Road).

AND

The North 500.00 feet of the North 1/2 of the Southwest 1/4 of Section 20, Township 23 South, Range 27 East, Orange County, Florida, LESS the right of way of State Road 545 (Avalon Road).

AND

The South 1/2 of the Northwest 1/4 of Section 20, Township 23 South, Range 27 East, Orange County, Florida, LESS the right of way of State Road 545 (Avalon Road) on the West AND LESS the right of way of McKinney Road on the North, AND LESS that portion taken by Orange County by Order of Taking recorded in O.R. Book 3666, page 916, public records of Orange County, Florida,

ALSO LESS AND EXCEPT those portions of the above-described lands conveyed to the Orlando-Orange County Expressway Authority by deed recorded in O.R. Book 7034, page 1352, public records of Orange County, Florida,

ALSO LESS AND EXCEPT all that part of the South 1/2 of the Northwest 1/4 of Section 20, Township 23 South, Range 27 East, Orange County, Florida, lying North and West of the North Right of Way line of New Independence Parkway.

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Tract 2

THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 LYING EAST OF THE PAVED ROAD, LESS THE NORTH 500 FEET THEREOF AND LESS THE SOUTH 240 FEET IN SECTION 19, TOWNSHIP 23 SOUTH, RANGE 27 EAST. ALSO THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4, LESS THE WEST 660 FEET THEREOF; AND THE NORTH 1/2 OF THE SOUTHWEST 1/4, LESS THE NORTH 500 FEET AND LESS THE SOUTH 240 FEET OF THE WEST 660 FEET, LYING IN SECTION 20, TOWNSHIP 23 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA.

LESS:

ALL THAT PORTION OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 23 SOUTH, RANGE 27 EAST IN THE COUNTY OF ORANGE, STATE OF FLORIDA, INCLUDED WITHIN A PARCEL OF LAND 35.00 FEET OF EVEN WIDTH, THE WESTERLY LINE OF SAID 35.00 FOOT WIDE PARCEL OF LAND BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EASTERLY RIGHT OF WAY LINE OF STATE ROAD NO. 545 AND THE SOUTHERLY LINE OF THE NORTHERLY 818.05 FEET OF SAID NORTHEAST 1/4 OF THE SOUTHEAST 1/4; THENCE SOUTHERLY ALONG SAID EASTERLY RIGHT OF WAY LINE A DISTANCE OF 50.00 FEET.

Tract 3

The South 1/2 of the Northwest 1/4 of Section 20, Township 23 South, Range 27 East, Orange County, Florida

LESS AND EXCEPT right of way of Avalon Road, also known as County Road 545

AND LESS AND EXCEPT, the Easterly 50.00 feet of the Westerly 83.00 feet of the Southerly 35.00 feet of the Northerly 578.67 feet of the Southwest 1/4 of the Northwest 1/4 of Section 20, Township 23 South, Range 27 East, Orange County, Florida

AND LESS AND EXCEPT, A portion of the Northwest Quarter of Section 20, Township 23 South, Range 27 East, Orange County, Florida, being more particularly described as follows: Commence at the Southwest corner of said Northwest Quarter of Section 20; thence run North 00 degrees 05 minutes 51 seconds West, along the West line of the Northwest Quarter of Section 20, a distance of 163.20 feet to a point on the existing

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East right of way line of Avalon Road said point also being a point on a non tangent curve, concave Northwesterly, having a radius of 1433.00 feet and a central angle of 12 degrees 18 minutes 59 seconds; thence run Northeasterly along said curve an arc distance of 308.04 feet from a chord bearing of North 06 degrees 03 minutes 45 seconds East along said Easterly right of way line to a point on said curve; thence run North 89 degrees 54 minutes 15 seconds East, a distance of 2.01 feet; thence run North 00 degrees 05 minutes 51 seconds West, a distance of 317.90 feet for a point of beginning; thence continue North 00 degrees 05 minutes 51 seconds West, a distance of 513.67 feet to the existing South right of way line of McKinney Road; thence departing said Easterly right of way line run North 89 degrees 45 minutes 03 seconds East, 40.01 feet along said South right of way line; thence departing said South right of way line run South 00 degrees 05 minutes 45 seconds East, a distance of 124.66 feet to the point of curvature of a curve to the right, concave Northwesterly, having a radius of 2621.48 feet and a central angle of 06 degrees 52 minutes 12 seconds; thence run Southwesterly along the arc of said curve a distance of 314.33 feet to a point on said curve; thence departing said curve run South 15 degrees 33 minutes 51 seconds West, a distance of 78.45 feet to the point of beginning,

AND LESS AND EXCEPT, right of way of McKinney Road

AND LESS AND EXCEPT right of way of New Independence Parkway, more particularly described as a portion of the West Half of Section 20, Township 23 South, Range 27 East of Orange County, Florida, being more particularly described as follows: Commence at the Southwest corner of the Northwest Quarter of said Section 20; thence run North 89 degrees 38 minutes 51 seconds East along the South line of said Northwest Quarter of Section 20, a distance of 2622.04 feet; thence departing said South line of the Northwest Quarter of Section 20, run North 13 degrees 01 minutes 34 seconds West, a distance of 348.63 feet; thence North 22 degrees 06 minutes 59 seconds West, a distance of 101.27 feet; thence North 13 degrees 01 minutes 34 seconds West, a distance of 200.00 feet; thence North 01 degrees 00 minutes 37 seconds East, a distance of 103.08 feet; thence North 13 degrees 01 minutes 34 seconds West, a distance of 471.78 feet for a point of beginning; thence run North 50 degrees 27 minutes 21 seconds West, a distance of 58.49 feet; thence run South 89 degrees 42 minutes 32 seconds West, a distance of 191.23 feet to a point on a non tangent curve, concave Southeasterly, having a radius of 1123.25 feet and a central angle of 43 degrees 32 minutes 24 seconds; thence run Southwesterly along said curve an arc distance of 853.58 feet from a chord bearing of South 69 degrees 33 minutes 16 seconds West to a point on said curve; thence departing said curve run South 46 degrees 12 minutes 28 seconds West, a distance of 387.26 feet; thence run South 37

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degrees 40 minutes 37 seconds West, a distance of 101.12 feet to a point on a non-tangent curve, concave Northwesterly, having a radius of 1291.23 feet a central angle of 43 degrees 47 minutes 32 seconds; thence run Southwesterly along said curve an arc distance of 986.91 feet from a chord bearing of South 68 degrees 06 minutes 14 seconds West to the point of tangency; thence run North 90 degrees 00 minutes 00 seconds West, a distance of 88.71 feet to a point on the existing Easterly right of way line of Avalon Road (C.R. 545) said point also being a point on a non-tangent curve concave Northwesterly, having a radius of 1433.00 feet and a central angle of 06 degrees 49 minutes 56 seconds; thence run Northeasterly along said curve an arc distance of 170.88 feet from a chord bearing of North 05 degrees 28 minutes 06 seconds East to a point on said curve; thence departing said curve run South 90 degrees 00 minutes 00 seconds East a distance of 72.43 feet to the point of curvature of a curve, concave Northwesterly, having a radius of 1121.23 feet and a central angle of 43 degrees 47 minutes 32 seconds; thence run Northeasterly along said curve an arc distance of 856.97 feet to a point on said curve; thence departing said curve run North 57 degrees 31 minutes 03 seconds East, a distance of 101.98 feet; thence run North 46 degrees 12 minutes 48 seconds East, a distance of 387.26 feet to a point on a non-tangent curve, concave Southeasterly, having a radius of 1286.09 feet and a central angle of 07 degrees 27 minutes 23 seconds; thence run Northeasterly along said curve an arc distance of 167.37 feet from a chord bearing of North 49 degrees 05 minutes 26 seconds East to a point on said curve; thence departing said curve run North 37 degrees 10 minutes 52 seconds West, a distance of 183.84 feet to a point on the existing South right of way line of McKinney Road; thence run North 89 degrees 45 minutes 03 seconds East, along said South right of way line a distance of 1071.27 feet; thence departing said South right of way line run South 13 degrees 01 minutes 34 seconds East, a distance of 106.05 feet to the point of beginning,

AND LESS AND EXCEPT, All that part of the South 1/2 of the Northwest 1/4 of Section 20, Township 23 South, Range 27 East, Orange County, Florida, lying South and East of the South Right of Way line of New Independence Parkway.

Tract 4

THE S1/2 OF NE1/4 OF SEC 19-23-27 (LESS FIRE TOWER LOT 577/386) & (LESS BEG AT NW COR OF SW1/4 OF NE1/4 RUN E 800 FT S 162 FT E 35 FT S 50 FT W 35 FT S 412.50 FT W 800 FT N 574.5 FT TO POB) & (LESS N 30 FT FOR RD R/W) & (LESS ANY PT WITHIN THE 35 FT FOR R/W AS DESC IN DB 402/314) & (LESS PTS TAKEN ON E FOR R/W PER 7221/162 2003-CA-008629) & (LESS THAT PT OF S1/2 OF NE1/4 LYING ELY OF AVALON RD)

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ALSO DESCRIBED AS:

(PER OFFICIAL RECORDS BOOK 6553, PAGE 3295)

South Half of Northeast Quarter (LESS: beginning at a point 742.65 feet North and 35 feet West of the Southeast corner, run West 295.16 feet, North 295.16 feet, East 295.16 feet to a point 35 feet west of East boundary of section, South 295.16 feet to point of beginning) of Section 19, Township 23 South, Range 27 East, Orange County, Florida; AND LESS beginning at the Northwest corner of the said Southwest Quarter of the Northeast Quarter; thence along the North line thereof, North 89°53'24" East 800.00 feet; thence parallel with the West line of the Southwest Quarter of the Northeast Quarter, South 0°05'21" East 574.50 feet; thence parallel with the North line of said Southwest Quarter of the Northeast Quarter, South 89°53'24" West 800.00 feet to said west line of the Southwest Quarter of Northeast Quarter; thence along said West line, North 0°05'21" West 574.50 feet to the point of Beginning; AND LESS that portion lying East of Highway 545.

LESS:

Parcel 110 of the Order of Taking as recorded in Official Records Book 3666, Page 916 of the Public Records of Orange County, Florida.

and Less

30.00 feet of Right-of-Way as recorded in Deed Book 709, Page 125 of the Public Records of Orange County, Florida.

and Less

Right-of-way for County Road 545 and New Independence Parkway

Containing 2,742,636 sq.ft. 62.96 acres, more or less

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CARTER

The Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 20, Township 23 South, Range 27 East (LESS road on South), Orange County, Florida.

AND

The South $\frac{3}{4}$ of the East $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 17, Township 23 South, Range 27 East, Orange County, Florida.

LESS

Those lands as described and recorded in Official Records Book 7034, Page 1148, Public Records of Orange County, Florida.

Being more particularly described as follows:

Commence at the Southeast corner of the Southwest $\frac{1}{4}$ of said Section 17; then run North $00^{\circ}08'31''$ West, along the East line of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of said Section 17, a distance of 300.14 feet to a point on the Westerly line of an existing right of way as recorded and described in said Official Records Book 7034, Page 1148 and the Point of Beginning; thence run Southerly along said Westerly right of way line the following courses and distances; run South $75^{\circ}40'56''$ West, a distance of 206.63 feet; thence run South $41^{\circ}06'22''$ West, a distance of 72.09 feet; thence run South $00^{\circ}32'29''$ West, a distance of 134.36 feet; thence run South $11^{\circ}17'03''$ West, a distance of 126.80 feet to the point of curvature of a curve, concave Northwesterly, having a radius of 5379.58 feet and a central angle of $03^{\circ}41'07''$; thence along the arc of said curve, a distance of 346.02 feet to a point; then run South $75^{\circ}08'16''$ East, a distance of 256.01 feet; thence run South $14^{\circ}51'44''$ West, a distance of 805.83 feet; thence run South $89^{\circ}41'59''$ West, a distance of 225.66 feet to a point on a non-tangent curve, concave Southeasterly, having a radius of 1286.09 feet and a central angle of $15^{\circ}06'06''$; thence on a chord bearing of South $81^{\circ}05'07''$ West, run 338.98 feet along the arc of said curve to a point on the Northerly right of way line of McKinney Road as recorded in Deed Book 881, page 361, Public Records of Orange County, Florida; thence run South $89^{\circ}44'30''$ West, along the Northerly right of way line of McKinney Road, a distance of 456.19 feet to a point on the West line of the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of said Section 20; thence run North $00^{\circ}06'33''$ West, along the West line of the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of said Section 20, a distance of 1297.75 feet to a point on the North line of the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of said Section 20; thence run North $89^{\circ}51'28''$ East, along the North line of the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of said Section 20, a distance of

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665.24 feet to a point on the West line of the East ½ of the Southeast ¼ of the Southwest ¼ of said Section 17; thence run North 00°03'32" West, along the West line of the East ½ of the Southeast ¼ of the Southwest ¼ of said Section 17, a distance of 993.49 feet to a point on the North line of the South ¾ of the East ½ of the Southeast ¼ of the Southwest ¼ of said Section 17; thence run North 89°52'31" East, along the North line of the South ¾ of the East ½ of the Southeast ¼ of the Southwest ¼ of said Section 17, a distance of 663.80 feet to a point on the East line of the Southeast ¼ of the Southwest ¼ of said Section 17; thence run South 00°08'31" East, along the East line of the Southeast ¼ of the Southwest ¼ of said Section 17, a distance of 693.15 feet to the Point of Beginning.

TOGETHER WITH:

The West 287.00 feet of the East 307.00 feet of the South 830.00 feet of the Northwest 1/4 of the Northwest 1/4, LESS the South 30 feet thereof, in Section 20, Township 23 South, Range 27 East, Orange County, Florida.

AND

The South 830.00 feet of the Northwest 1/4 of the Northwest 1/4, LESS the West 733.00 feet and LESS the East 307.00 feet and LESS the South 30 feet thereof, in Section 20, Township 23 South, Range 27 East, Orange County, Florida.

AND

The North Half of the Northeast Quarter of the Southeast Quarter of Southwest Quarter of Section 17, Township 23 South, Range 27 East, Orange County, Florida.

AND

Together with the Non Exclusive Ingress and Egress Easement as created in the Warranty Deed recorded October 3, 1960, in Official Records Book 797, Page 176, Public Records of Orange County, Florida.

Commence at the Northwest corner of the Southwest Quarter of the Southwest Quarter of Section 17, Township 23 South, Range 27 East; thence East along the Northern boundary of the South Half of the Southwest Quarter of aforesaid Section to the Northwest corner of the East Half of the Southeast Quarter of Southwest Quarter of the aforesaid Section; thence due South 30 feet; thence run West parallel to the Northern boundary of South Half of Southwest Quarter of said Section to the Western boundary of the said Section; thence due North 30 feet to the POINT OF BEGINNING.

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