



**Interoffice Memorandum**

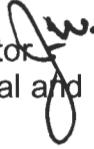
APPROVED BY ORANGE  
COUNTY BOARD OF COUNTY  
COMMISSIONERS

BCC Mtg. Date: May 24, 2016

**AGENDA ITEM**

May 11, 2016

**TO:** Mayor Teresa Jacobs  
—AND—  
Board of County Commissioners

**FROM:** Jon V. Weiss, P.E., Director   
Community, Environmental and Development  
Services Department

**CONTACT PERSON:** **John Smogor, Chairman**  
**Development Review Committee**  
**407 836-5616**

**SUBJECT:** May 24, 2016 — Consent Item  
New Independence Planned Development  
First Amendment to Adequate Public Facilities Agreement  
*(Related to Case # LUPA-16-01-005)*

On May 10, 2016, the Board of County Commissioners (BCC) considered an amendment to the New Independence Planned Development / Unified Neighborhood Plan (PD/UNP). An adjacent 0.37-acre tract was aggregated into the PD and rezoned from A-1 (Citrus Rural District). Because of the aggregation/rezoning, the size of the New Independence PD increased from 61.08 acres to 61.45 acres, with no changes to the previously approved development program that allows for up to 285 single family residential dwelling units.

Pursuant to Orange County Code Section 30-714, each property owner in a Horizon West PD is required to convey their proportionate share of Adequate Public Facilities (APF) lands, which are based on the ratio of required APF acres to net developable acres within the Specific Area Plan (SAP). In the event that APF land requirements cannot be met within a particular PD, an owner may pay a fee to the County equal to the value of the ratio of required APF lands and based upon the average fair market value of land as established by an independent appraiser. For the Town Center SAP, the adopted ratio of APF acres to net developable acres is 1.0 to 5.1.

In order to satisfy the requirements of Chapter 30, Article XIV of the Orange County Code ("APF/TDR Ordinance"), an amendment to the originally approved APF agreement for the New Independence PD dated October 6, 2015 has been prepared to recognize that the project's proportionate share of required APF lands within the Town Center SAP is 10.24 acres. With only 6.51 acres of internal APF lands, the amended PD would carry an APF deficit of 3.73 acres, and would be satisfied according to the terms expressed in the amended Agreement.

Page Two  
May 24, 2016 — Consent Item  
New Independence Planned Development  
First Amendment to Adequate Public Facilities Agreement  
(Related to Case # LUPA-16-01-005)

Finally, the amended New Independence APF Agreement received a recommendation of approval from the Orange County Development Review Committee (DRC) on March 9, 2016. Upon approval by the BCC, the Agreement will be recorded in the Public Records of Orange County, Florida.

**ACTION REQUESTED: Approval and execution of First Amendment to Adequate Public Facilities Agreement for Daryl M. Carter, Trustee of Carter-Orange 45 SR 429 Land Trust by and between Daryl M. Carter, Trustee of Carter-Orange 45 SR 429 Land Trust, and Orange County, Florida for New Independence PD/UNP. District 1**

JVW/JS:rep

Attachment

BCC Mtg. Date: May 24, 2016

**This instrument prepared by and after  
recording return to:**

Daniel T. O'Keefe, Esq.  
Shutts & Bowen LLP  
300 S. Orange Avenue, Suite 1000  
Orlando, Florida 32801

Tax Parcel I.D. No(s): 17-23-27-0000-00-013  
20-23-27-0000-00-009  
20-23-27-0000-00-017  
20-23-27-0000-00-018  
20-23-27-0000-00-001

**FIRST AMENDMENT TO**  
**ADEQUATE PUBLIC FACILITIES AGREEMENT**  
**FOR DARYL M. CARTER, TRUSTEE OF**  
**CARTER-ORANGE 45 SR 429 LAND TRUST**

**THIS FIRST AMENDMENT TO ADEQUATE PUBLIC FACILITIES AGREEMENT FOR DARYL M. CARTER, TRUSTEE OF CARTER-ORANGE 45 SR 429 LAND TRUST** (the "First Amendment"), effective as of the latest day of execution ("Effective Date"), is made and entered into by and between **DARYL M. CARTER, TRUSTEE OF CARTER-ORANGE 45 SR 429 LAND TRUST**, whose mailing address is P.O. Box 568821, Orlando, Florida 32856-8821 ("Owner"), and **ORANGE COUNTY, FLORIDA**, a charter county and political subdivision of the State of Florida whose address is P.O. Box 1393, Orlando, Florida 32802-1393 ("County").

**RECITALS:**

A. On or about October 7, 2015, County and Owner entered into the Adequate Public Facilities Agreement for Daryl M. Carter, Trustee of Carter-Orange 45 SR 429 Land Trust (the "Agreement") recorded October 14, 2015 in Book 10997, Page 7305, Public Records of Orange County, Florida;

B. The County and Owner are desirous of amending certain provisions of the Agreement, as set forth below.

**NOW, THEREFORE**, for and in consideration of the above premises, the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## AGREEMENT

1. Recitals. The above recitals are true and correct and are hereby incorporated as material provisions of this Amendment by this reference.

2. Any capitalized terms not defined herein shall have the same definition as in the Agreement.

3. Property Description. Exhibit "A" to the Agreement is hereby deleted and replaced with Exhibit "A" attached hereto and incorporated herein by this reference.

4. Property Acreage. Recital L. of the Agreement is hereby amended to read as follows:  
"The Property contains approximately 52.24 acres of net developable land, and Section 30-714 of the APF/TDR Ordinance requires one acre of public facilities acreage for every 5.1 acres of net developable land (the "APF Ratio")."

5. APF Requirement. Recital M. of the Agreement is hereby amended to read as follows:  
"When applied to the Property, the APF Ratio requires approximately 10.24 acres of public facilities lands."

6. Additional APF Land Required. Recital O. of the Agreement is hereby amended to read as follows:

"Based upon the application of the High School APF Credits to the Property, the APF Ratio requires approximately 3.73 additional acres of public facilities lands."

7. APF Deficiency. Recital P. of the Agreement is hereby amended to read as follows:  
"As shown on the Plan for the Property, and as described in this Agreement, Owner is providing 0.00 acres of adequate public facilities land (the "APF Land") to County, thereby creating an APF deficiency of 3.73 acres."

8. APF Deficiency. Section 3 of the Agreement is hereby amended to read as follows:  
"APF Deficiency. The APF Ratio requires that Owner convey to County approximately 3.73 acres of APF Land. This Agreement provides for conveyance of approximately 0.00 acres of APF Land, thereby creating a 3.73 acre APF deficiency."

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

As to Owner:           Daryl M. Carter, Trustee  
                                  Attn: Daryl M. Carter  
                                  P.O. Box 568821  
                                  Orlando, Florida 32856-8821  
                                  Telephone: 407.422.3144

With a copy to:       Shutts & Bowen LLP  
                                  Attn: Daniel T. O'Keefe, Esq.  
                                  300 S. Orange Avenue, Suite 1000  
                                  Orlando, Florida 32801  
                                  Telephone: 407.835.6956

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, Planning Division  
                                  Post Office Box 1393  
                                  Orlando, Florida 32802-1393  
                                  Telephone: 407.836.5600

With a copy to:       Orange County Growth Management Department  
                                  Manager, Transportation Planning Division  
                                  Orange County Public Works Complex  
                                  4200 S. John Young Parkway  
                                  Orlando, Florida 32839-9205

10. Covenants Running with the Land. This First Amendment shall run with the Property and shall be binding upon and shall inure to the benefit and detriment of the heirs, legal representatives, successors, and assigns of Owner and any person, firm, corporation, or other entity that may become the successor in interest to the Property, as that term is defined in the Agreement.

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

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

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

14. 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.

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

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

- (i) action for specific performance or injunction; and/or

- (ii) the withholding of development permits and other approvals and/or permits in connection with the PD Property.

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

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

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

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

[SIGNATURES APPEAR ON FOLLOWING PAGES]

First Amendment to Adequate Public  
Facilities Agreement For Daryl M. Carter,  
Trustee of Carter-Orange 45 SR 429  
Land Trust, 2016

IN WITNESS WHEREOF, Owner and County have executed this Amendment in  
manner and form sufficient to bind them on the dates set forth below.



ORANGE COUNTY, FLORIDA  
By: Board of County Commissioners

By: *Teresa Jacobs*

*Teresa Jacobs*  
Teresa Jacobs,  
Orange County Mayor

Date: 5.24.16

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

By: *Craig A. Stopyta*  
Deputy Clerk

Print: Craig A. Stopyta



“OWNER”

**CARTER-ORANGE 45 SR 429 LAND TRUST**

By: [Signature]  
Daryl M. Carter, Trustee

Date: 04/26/2016

WITNESSES:

[Signature]  
Print Name: Joan M Fisher

[Signature]  
Print Name: Sarah Woodbury

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by Daryl M. Carter, Trustee of CARTER-ORANGE 45 SR 429 LAND TRUST, who is known by me to be the person described herein and who executed the foregoing, this 26<sup>th</sup> day of April, 2016. 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 26<sup>th</sup> day of April, 2016



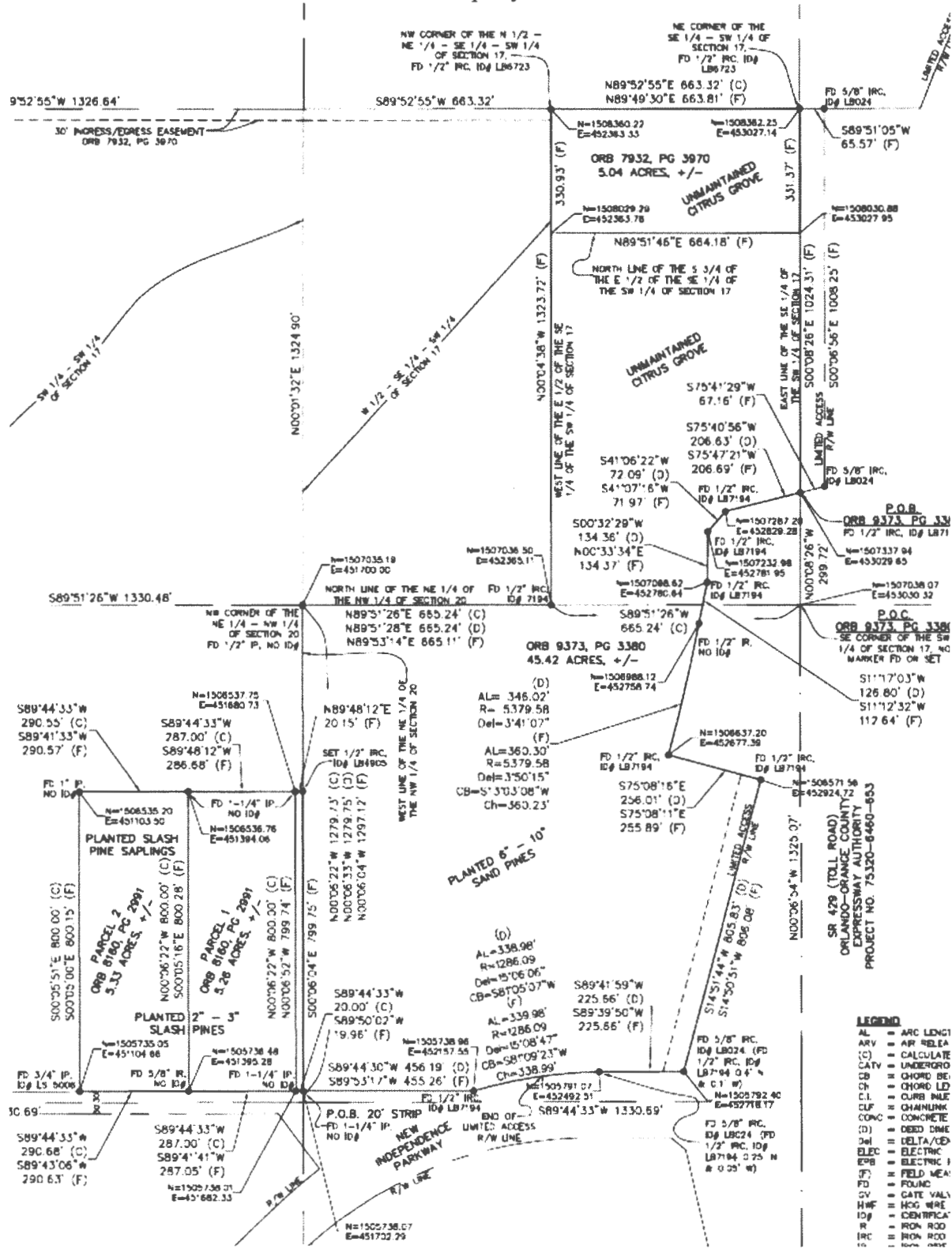
JOAN M. FISHER  
MY COMMISSION # FF 028166  
EXPIRES: July 16, 2017  
Bonded Thru Budget Notary Services

[Signature]  
Notary Public

Print Name: Joan M Fisher

My Commission Expires: 07/16/2017

Exhibit "A"  
Property



**LEGEND**

- ARC = ARC LENGTH
- AR = AIR RELEASE
- CA = CALCULATE
- CATY = UNDERGRO
- CB = CHORD BE
- CH = CHORD LE
- CL = CHORD MIE
- CLF = CHAINLINK
- CONC = CONCRETE
- CO = CED DIME
- DELTA/CD = DELTA/CD
- ELEC = ELECTRIC
- EPB = ELECTRIC
- F = FIELD MEAS
- FO = FOUND
- GV = GATE VALV
- HWF = HED WRE
- ID# = IDENTIFICA
- R = IRON ROD
- IRC = IRON ROD
- IRON = IRON

First Amendment to Adequate Public  
Facilities Agreement For Daryl M. Carter,  
Trustee of Carter-Orange 45 SR 429  
Land Trust, 2016

FROM OFFICIAL RECORDS BOOK 7932, PAGE 3970, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

PARCEL 1 (FEE SIMPLE ESTATE)

THE NORTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 23 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA.

PARCEL 2 (NON EXCLUSIVE EASEMENT ESTATE)

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 178, 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 SOUTHWEST 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.

FROM OFFICIAL RECORDS BOOK 8160, PAGE 2991, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

PARCEL 1

THE WEST 287.00 FEET OF THE EAST 307.00 FEET OF THE SOUTH 830.00 FEET OF THE NW 1/4 OF THE NW 1/4 (LESS THE SOUTH 30 FEET FOR ROAD) IN SECTION 20, TOWNSHIP 23 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA.

PARCEL 2

THE SOUTH 830 FEET OF THE NW 1/4 OF THE NW 1/4 (LESS THE WEST 733 FEET AND THE EAST 307 FEET THEREOF AND LESS THE SOUTH 30 FEET FOR ROAD), SECTION 20, TOWNSHIP 23 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA.

FROM OFFICIAL RECORDS BOOK 8373, PAGE 3380, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 20, TOWNSHIP 23 SOUTH, RANGE 27 EAST (LESS ROAD ON SOUTH), ORANGE COUNTY, FLORIDA.

AND

THE SOUTH 3/4 OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 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 1/4 OF SAID SECTION 17, THENCE RUN NORTH 00°08'31" WEST, ALONG THE EAST LINE OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 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 79°40'56" WEST, A DISTANCE OF 208.83 FEET; THENCE RUN SOUTH 4°00'22" WEST, A DISTANCE OF 72.09 FEET; THENCE RUN SOUTH 00°32'29" WEST, A DISTANCE OF 134.38 FEET; THENCE RUN SOUTH 1°11'03" 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°41'07"; THENCE ALONG THE ARC OF SAID CURVE, A DISTANCE OF 346.02 FEET TO A POINT; THENCE RUN SOUTH 79°08'18" EAST, A DISTANCE OF 256.01 FEET; THENCE RUN SOUTH 1°21'44" WEST, A DISTANCE OF 805.83 FEET; THENCE RUN SOUTH 89°41'59" WEST, A DISTANCE OF 225.88 FEET TO A POINT ON A NON-TANGENT CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 1206.09 FEET AND A CENTRAL ANGLE OF 19°08'08"; THENCE ON A CHORD BEARING OF SOUTH 81°05'07" WEST, RUN 338.88 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 887, PAGE 381, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN SOUTH 89°44'30" WEST, ALONG THE NORTHERLY RIGHT OF WAY LINE OF MCKINNEY ROAD, A DISTANCE OF 436.19 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 20, THENCE RUN NORTH 00°08'33" WEST, ALONG THE WEST LINE OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 20, A DISTANCE OF 1297.75 FEET TO A POINT ON THE NORTH LINE OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 20, THENCE RUN NORTH 89°51'28" EAST, ALONG THE NORTH LINE OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 20, A DISTANCE OF 885.24 FEET TO A POINT ON THE WEST LINE OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 17; THENCE RUN NORTH 00°03'32" WEST, ALONG THE WEST LINE OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 17, A DISTANCE OF 993.49 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH 3/4 OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 17; THENCE RUN NORTH 89°52'31" EAST, ALONG THE NORTH LINE OF THE SOUTH 3/4 OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 17, A DISTANCE OF 863.80 FEET TO A POINT ON THE EAST LINE OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 17, THENCE RUN SOUTH 00°08'31" EAST, ALONG THE EAST LINE OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 17, A DISTANCE OF 683.15 FEET TO THE POINT OF BEGINNING.

TOGETHER ALSO WITH A 20 FOOT WIDE STRIP OF LAND BEING THE EAST 307.00 FEET OF THE SOUTH 830.00 FEET OF THE NW 1/4 OF THE NW 1/4 (LESS THE SOUTH 30 FEET FOR ROAD AND LESS WEST 287.00 FEET OF THEREOF) IN SECTION 20, TOWNSHIP 23 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE INTERSECTION OF THE EAST LINE OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 20 WITH THE NORTH RIGHT-OF-WAY LINE OF MCKINNEY ROAD AND RUN S89°50'02"W, ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 19.98 FEET TO THE SOUTHEAST CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS PARCEL 1 IN OFFICIAL RECORDS BOOK 8160, PAGE 2991, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, THENCE N62°06'52"W, ALONG THE EAST LINE OF SAID PARCEL 1, A DISTANCE OF 789.74 FEET TO THE NORTHEAST CORNER OF SAID PARCEL 1; THENCE N89°48'12"E, ALONG THE EASTERLY EXTENSION OF THE NORTH LINE OF SAID PARCEL 1, A DISTANCE OF 22.15 FEET TO THE EAST LINE OF SAID NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 20, THENCE S00°06'04"E, ALONG SAID EAST LINE, A DISTANCE OF 799.75 FEET TO THE POINT OF BEGINNING CONTAINING 0.37 ACRE, MORE OR LESS.

### Project Area Location Map

