

1 THIS INSTRUMENT PREPARED BY  
2 AND AFTER RECORDING RETURN TO:  
3  
4 Lowndes, Drosdick, Doster, Kantor & Reed, P.A.  
5 Attn: M. Rebecca Wilson  
6 215 North Eola Drive  
7 Post Office Box 2809  
8 Orlando, FL 32801-3344  
9 (407) 843-4600

10  
11 Tax Parcel ID(s):  
12 24-22-29-4501-01-000  
13

14 **SCHOOL IMPACT FEE AGREEMENT**  
15 **REGARDING AN ALTERNATIVE IMPACT FEE CALCULATION**  
16  
17 **FOR BROADSTONE LAKEHOUSE**  
18 **#20-002**  
19

20 This SCHOOL IMPACT FEE AGREEMENT REGARDING AN  
21 ALTERNATIVE IMPACT FEE CALCULATION FOR 111 LAKE HOUSE JV, LLC (the  
22 “Agreement”), effective as of the latest day of execution (the “Effective Date”), is made  
23 and entered into by and among 111 LAKE HOUSE JV, LLC, a Delaware limited liability  
24 company whose mailing address is 174 W Comstock Ave., Suite 111  
25 Winter Park, FL 32789 (“Owner”); CITY OF ORLANDO, whose mailing address is 400  
26 South Orange Avenue, Orlando, Florida 32801 (“Municipality”); THE SCHOOL BOARD  
27 OF ORANGE COUNTY, FLORIDA, a body corporate and political subdivision of the  
28 State of Florida, whose address is 445 West Amelia Street, Orlando, Florida 32801  
29 (“OCPS”), and ORANGE COUNTY, a charter county and political subdivision of the State  
30 of Florida, whose mailing address is c/o County Administrator, P.O. Box 1393, Orlando,  
31 FL 32802-1393 (“County”). Owner, OCPS, Municipality and County are sometimes  
32 collectively referred to herein as the “Parties.”

33 **WITNESSETH:**

34 WHEREAS, Owner holds fee simple title to certain real property, as shown as site  
35 on Exhibit “A” and as particularly described on Exhibit “B,” both attached hereto and  
36 incorporated herein by this reference (the “Property”);

37 WHEREAS, pursuant to MPL2017-00006, Owner intends to develop all or a  
38 portion of the Property as a multifamily apartment complex with 252 multifamily units  
39 known as Broadstone Lakehouse (the “Project”); and

40 WHEREAS, the Project’s physical characteristics include apartments in a nine (9)  
41 story building; an integrated parking garage; and a density of 102 units an acre;

42 WHEREAS, on or about January 8, 2019, Owner paid to the City of Orlando its  
43 Orange County School Impact Fee at the rate of \$5,919 per unit in accordance with the  
44 general Multi-Family rate per “Orange County Public Schools School Impact Fee Study  
45 Update Final Report” dated February 5, 2016;

46 WHEREAS, the Owner gave written notice to the City that such Orange County  
47 School Impact Fee was “Paid Under Protest”;

48 WHEREAS, on February 19, 2019, the City made a transfer payment of ONE  
49 MILLION FOUR HUNDRED FORTY-SIX THOUSAND EIGHT HUNDRED FORTY  
50 DOLLARS AND THIRTY-SIX CENTS (\$1,446,840.36) (“OCPS Transfer Amount”);

51 WHEREAS, the OCPS Transfer Amount is equal to \$1,491,588 School Impact Fee  
52 paid less the \$44,747.64 processing fee to the City;

53 WHEREAS, on or about May 28, 2019 Tindale Oliver submitted its Orange County  
54 Public Schools School Impact Fee Update Study prepared for Orange County Public  
55 Schools (“OCPS Study”);

56 WHEREAS, the OCPS Study includes an analysis of student generation rates for  
57 high-rise multi-family development (“Multi-Family High Rise”) defined as having the  
58 following physical characteristics: (i) height of seven (7) stories or more (including  
59 parking); (ii) Density of 70 dwelling units per acre or more; and (iii) a parking structure;

60 WHEREAS, the OCPS Study determined that projects which had the physical  
61 characteristics of Multi-Family High Rise development has a Student Generation Rate of  
62 0.013 per unit as compared to 0.280 for general Multi-Family (95% reduction);

WHEREAS, although not yet adopted by the OCPS Board, the OCPS Study recommended a rate of \$307.00 per unit for Multi-Family High Rise;

WHEREAS, Owner submitted a request for an Alternative Impact Fee calculation in order that the impact fee paid be proportional and reasonably connected to and have a rational nexus with the expenditures of the funds collected and the school benefits accruing to the Multi-Family High Rise development as required by Florida Statutes section 163.31801; and

WHEREAS, on July 9, 2020, County conditionally accepted Owner's Alternative Impact Fee calculation with an anticipated Alternative Impact Fee calculation of \$307.00 per unit, subject to the terms and conditions hereafter set forth.

WHEREAS, the Parties are entering into this Agreement in order to implement the Alternative Impact Fee for a refund of ONE MILLION THREE HUNDRED SIXTY-NINE THOUSAND FOUR HUNDRED SEVENTY-SIX DOLLARS AND THIRTY-SIX CENTS (\$1,369,476.36).

NOW, THEREFORE, in consideration of the premises contained herein and other good and valuable consideration exchanged by and among the Parties, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto stipulate and agree as follows:

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

2. ***Conditional Acceptance of Alternative Impact Fee Calculation.*** Subject to the terms and conditions set forth in sections 3, 4 and 5 of this Agreement, County conditionally accepts the Alternative Impact Fee calculation submitted by Owner of \$307.00 per unit.

3. ***Establishment of Student Threshold and Threshold Amount.*** Owner, County, Municipality, and OCPS hereby agree and accept that the student generation rate for the Project as set forth in the Alternative Impact Fee calculation submitted by Owner



shall be 0.013 per multifamily residential dwelling unit (“SGR”), for a total of 3 (three) students generated for the Project (“Student Threshold”) as of the Effective Date. Owner, County, Municipality and OCPS hereby agree and acknowledge that Owner shall pay to Municipality on behalf of OCPS the Alternative Impact Fee in the amount of \$77,364.00 for the Project.

4. ***Monitoring.***

(a) Within the applicable time frame, defined below, “monitoring” shall be conducted by OCPS. For purposes of this Agreement, the term “monitoring” shall mean the monitoring and auditing process and reporting process as set forth below:

(i) Monitoring and auditing process: No more than two (2) times per year for a period of five (5) consecutive years from the date upon which the Project is completed and ready for occupancy by tenants as evidenced by obtaining the first certificate of occupancy for the Project (“Monitoring Term”), OCPS, at the sole cost and expense of the Owner, which such cost and expense shall not exceed the amount set forth in Section 5(a) of this Agreement, shall conduct an audit of the number of students generated by the Project to determine if the student generation rate for the Project exceeds the Student Threshold set forth herein and calculated pursuant to the adopted Alternative Impact Fee calculation by reviewing the actual number of school age children generated at the address associated with the Project (“Audited SG”); provided that OCPS shall conduct the monitoring and auditing of the Project based on the student enrollment data for the Project prepared and compiled biannually by OCPS in October and February of each year.

(ii) Reporting process: The Parties recognize that, in order to ensure adequate capacity is available as and when needed, OCPS needs as much lead time as possible to address any significant influx of new students generated by the Project over and above the anticipated Student Threshold. The Parties also recognize that it is possible that such a potential influx of students might not be discovered in time for OCPS to make arrangements to accommodate them if such potential students become residents at the



Project shortly after one of OCPS' semi-annual audits. Therefore, during the Monitoring Term, Owner agrees that it shall, to the extent permitted by applicable housing and privacy laws, if any, maintain an ongoing record of the number and address of school age children who reside in the Project as their primary and permanent residence for purposes of establishing school attendance. If at any time during the Monitoring Term such number exceeds the Student Threshold by five percent (5%) Owner shall, within ten (10) days after becoming aware of same, report such number in writing to OCPS (the "Reported SG"). During the Monitoring Term upon thirty (30) days from written request from OCPS but no more than two (2) times per year, Owner, at Owner's sole cost and expense, shall provide a written report to OCPS of the Reported SG. Owner further agrees, at Owner's sole cost and expense, to promptly and diligently provide written notice to OCPS of any material modifications to the permanent physical characteristics and limitations of the Project, including any material changes to the composition of occupied units within the Project by Owner, which could reasonably be expected to cause an increase in the student generation rate for the Project during the Monitoring Term.

(b) The SGR identified in the Alternative Impact Fee calculation and Student Threshold shall be the benchmark value for comparison against the monitoring results.

5. ***Payments.***

(a) Within thirty (30) days of the Effective Date, Owner shall pay to OCPS an amount equal to Two Thousand and No/00 Dollars (\$2,000.00) to cover the anticipated costs of conducting the monitoring over the Monitoring Term ("Monitoring Fee"). If during the Monitoring Term, in the event OCPS is required to expend any funds in excess of the Monitoring Fee or otherwise retain or engage an independent consultant to conduct the monitoring required hereunder ("Additional Monitoring Costs"), OCPS shall provide written notice to Owner of the actual costs incurred by OCPS to conduct the monitoring and Owner shall be responsible for paying OCPS any Additional Monitoring

Costs within thirty (30) days of receipt of any invoice from OCPS; provided, however, in no event shall Owner be responsible for additional monitoring fees in excess of Four Thousand and No/00 Dollars (\$4,000.00) total during the Monitoring Term of this Agreement.

(b) If the Audited SG or Reported SG (either, the “Actual SG”) exceeds the Student Threshold and SGR set forth in the Alternative Impact Fee calculation, Owner shall pay the difference between the Alternative Impact Fee accepted by the Municipality under section 2 above, and any additional fee shown to be owing pursuant to this paragraph (the “Additional School Impact Fee Amount”). The Additional School Impact Fee Amount shall be calculated by multiplying the difference between Actual SG and Student Threshold by Net Impact Cost Per Student Station, in effect at the time of the monitoring, as shown below:

$$(\text{Actual SG} - \text{Student Threshold}) \times \text{Net Impact Cost Per Student Station} = \text{Additional School Impact Fee Amount}$$

Upon payment of any Additional School Impact Fee Amount, the Student Threshold shall be increased to the Actual SG as the benchmark for additional / forthcoming monitoring by OCPS and self-reporting by Owner.

(c) OCPS shall provide written notice to Owner and Municipality outlining the Actual SG, Student Threshold and Additional School Impact Fee Amount (“Additional Fee Notice”). Owner shall pay the Additional School Impact Fee Amount to Municipality within thirty (30) days of Owner’s receipt of the Additional Fee Notice.

(d) If monitoring shows a decreased SGR, Owner shall not be entitled to any refund.

(e) Once paid to Municipality, the Alternative Impact Fee, Monitoring Fee, and/or Additional School Impact Fee Amount are all non-refundable.

170 (f) Notwithstanding anything herein seemingly to the contrary, the total  
171 amount of Owner's payment(s) of the Alternative Impact Fee and any Additional School  
172 Impact Fee Amount(s) shall not exceed the total amount of the school impact fee that would  
173 have been payable pursuant to the fee schedule set forth in Article V of Chapter 23 of the  
174 Orange County Code (the "School Impact Fee Ordinance") which was in effect on the  
175 Effective Date.

176 6. ***Expansion of Development.*** This Agreement is effective only for the limits  
177 and scope of the Project as identified, described, and approved for development by  
178 Municipality as of the Effective Date. In the event the Project materially expands or is  
179 materially altered after the Effective Date, Owner, its successors, and/or assigns shall be  
180 subject to Municipality's development review process and OCPS' capacity and  
181 concurrency processes as set forth in that certain First Amended and Restated Interlocal  
182 Agreement for Public School Facility Planning and Implementation of Concurrency (as  
183 may be amended from time to time), which may include payment of additional school  
184 impact fees as applicable and pursuant to the fee schedule set forth in the School Impact  
185 Fee Ordinance at that time.

186 7. ***Successors and Assigns.*** This Agreement shall be binding upon, and shall  
187 inure to the benefit and burden of, the heirs, legal representatives, successors, and assigns  
188 of the Parties and shall run with Property. The obligations of this Agreement shall only be  
189 binding upon the successors and assigns, if any, of Owner and upon any person, firm,  
190 corporation, or entity who may become a successor in interest to Property.

191 8. ***Notices.*** Any notice delivered with respect to this Agreement shall be in  
192 writing and shall be deemed to be delivered (whether or not actually received) (i) when  
193 hand delivered to the person(s) hereinafter designated, or (ii) upon deposit of such notice  
194 in the United States Mail, postage prepaid, certified mail, return receipt requested,  
195 addressed to the person at the address set forth opposite the Party's name below, or at such



196 other address or to such other person as the party shall have specified by written notice to  
197 the other Party delivered in accordance herewith:

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199 As to Owner: 111 Lake House JV, LLC  
200 174 W. Comstock Ave., Suite 111  
201 Winter Park, FL  
202 Attn: John Zeledon  
203

204

205 With copy to: Lowndes, Drosdick, Doster, Kantor & Reed, P.A.  
206 215 N. Eola Drive  
207 Orlando, FL 32801  
208 Attn: M. Rebecca Wilson, Esq.

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210 As to County: Director, Orange County Public Works Department  
211 4200 South John Young Parkway  
212 Orlando, FL 32839

213

214 With copies to: Orange County Public Works Department  
215 Manager, Traffic Engineering Division  
216 4200 South John Young Parkway  
217 Orlando, FL 32839

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219 Orange County Planning, Environmental,  
220 and Development Services Department  
221 Manager, Fiscal and Operational Support Division  
222 201 South Rosalind Avenue  
223 Post Office Box 1393  
224 Orlando, FL 32802-1393

225

226 As to OCPS: The School Board of Orange County, Florida  
227 Facilities Planning  
228 6501 Magic Way, Building 200  
229 Orlando, FL 32809

230

231 With a copy to: The School Board of Orange County, Florida  
232 Office of Legal Services  
233 445 West Amelia Avenue  
234 Orlando, FL 32801  
235 Attn: Jad Brewer, Esq.

236

237 As to Municipality: City Planning Division, Economic Development  
238 Department  
239 City of Orlando  
240 400 S. Orange Avenue  
Orlando FL 32802-4990

With a copy to: City Attorney's Office  
City of Orlando  
400 S. Orange Avenue  
Orlando FL 32802-4990

9. ***Recordation of Agreement.*** The Parties hereto agree that this Agreement shall be recorded in the Public Records of Orange County, Florida, at Owner's expense, within ten (10) business days of the Effective Date.

10. ***Applicable Law.*** This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida, and in accordance with the Orange County Code.

11. ***Specific Performance.*** County, Municipality, OCPS, and Owner shall each have the right to enforce the terms and conditions of this Agreement only by an action for specific performance. Notwithstanding the foregoing statement, nothing herein precludes Municipality from imposing a lien(s) against the Property for non-payment of impact fees as such would be due as set forth herein. Venue for any action(s) 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.

12. ***Attorney Fees.*** In the event any Party hereto brings an action or proceeding, including any counterclaim, cross-claim, or third party claim, against another Party arising out of this Agreement, each Party in such action or proceeding, including appeals therefrom, shall be responsible for its own attorney and other legal fees.

13. ***Amendments.*** No amendment, modification, or other change to this Agreement shall be binding upon the Parties unless in writing and executed by all the Parties hereto.

14. **Construction of Agreement.** Captions of the sections of this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

15. **Counterparts.** This Agreement may be executed in up to four (4) counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

16. **Termination.** This Agreement shall automatically terminate upon the expiration of the Monitoring Term and payment of the Additional School Impact Fee Amount, if any. Provided herein the provisions of Section 6 survive the Termination hereof.

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

**COUNTY**  
ORANGE COUNTY, FLORIDA  
By: Board of County Commissioners

By: \_\_\_\_\_  
Jerry L. Demings  
Orange County Mayor

Date: \_\_\_\_\_

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

By: \_\_\_\_\_  
Deputy Clerk

Print name: \_\_\_\_\_



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ATTEST:

By: \_\_\_\_\_  
Denise Aldridge, City Clerk

**MUNICIPALITY**

CITY OF ORLANDO, FLORIDA, a municipal  
corporation, organized and existing under the  
laws of the State of Florida (SEAL)

By: \_\_\_\_\_  
Mayor / Mayor Pro Tem

Date: \_\_\_\_\_

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STATE OF FLORIDA

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COUNTY OF ORANGE

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The foregoing was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 2020, By \_\_\_\_\_, Mayor / Pro Tem and \_\_\_\_\_  
\_\_\_\_\_, City Clerk, who is personally known to me who did (did not) take an oath.

\_\_\_\_\_  
Name  
Notary Public  
Serial Number: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_


FOR THE USE AND RELIANCE OF  
CITY OF ORLANDO ONLY.


Approved as to form and legality,

\_\_\_\_\_  
Melissa Clarke, Esq.  
Assistant City Attorney  
City of Orlando, Florida

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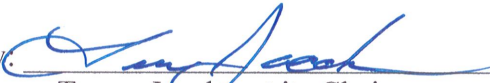
Signed, sealed and delivered in the  
presence of:

  
Print Name: Marlin Gutierrez

  
Print Name: Arabia Henry

“OCPS”

**THE SCHOOL BOARD OF ORANGE  
COUNTY, FLORIDA**, a public corporate  
body and political subdivision of the State of  
Florida

By:   
Teresa Jacobs, at its Chair

Date: 10/20/20

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340 STATE OF FLORIDA           )  
341   ) s.s.:  
342 COUNTY OF ORANGE       )

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344 The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of  
345 October, 2020, by Teresa Jacobs, as Chair of The School Board of Orange  
346 County, Florida, a public corporate body and political subdivision of the State of Florida,  
347 on behalf of The School Board. She is personally known to me or had produced  
348 \_\_\_\_\_ (type of identification) as identification and has  
349 acknowledged that she signed the instrument voluntarily for the purpose expressed in it.

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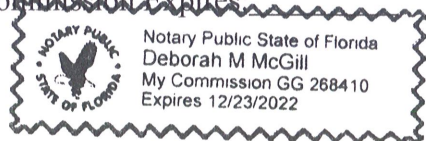
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Notary Public  
Printed Name: Deborah M. McGill  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



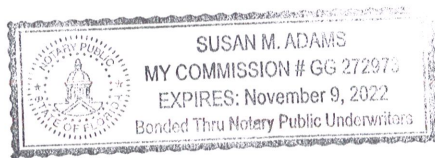
363 **WITNESSES:**

364  
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371 Print Name: Martin Gutierrez

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375  
376 Print Name: Arabia Henley

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379 STATE OF FLORIDA )  
380 ) s.s.:  
381 COUNTY OF ORANGE )  
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383 The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of  
384 October, 2020, by Barbara M. Jenkins, Ed.D., as Superintendent of The  
385 School Board of Orange County, Florida, a public corporate body and political subdivision  
386 of the State of Florida, on behalf of The School Board. She is personally known to me or  
387 had produced \_\_\_\_\_ (type of identification) as identification and  
388 has acknowledged that he/she signed the instrument voluntarily for the purpose expressed  
389 in it.



**THE SCHOOL BOARD OF ORANGE  
COUNTY, FLORIDA**, a public corporate  
body and political subdivision of the State of  
Florida

By: [Signature]  
Barbara M. Jenkins, Ed.D.,  
as its Superintendent

Date: October 21, 2020

[Signature]  
Notary Public  
Printed Name: Susan M. Adams  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Approved as to form and legality by  
legal counsel to The School Board  
of Orange County, Florida this 15<sup>th</sup>  
day of October,  
2020, for its exclusive use and  
reliance.

By: [Signature]  
Jad Brewer, Esquire  
Staff Attorney III

Reviewed and approved by Orange County  
Public Schools Chief Facilities Officer this  
14<sup>th</sup> day of OCT, 2020.

By: [Signature]  
John T. Morris, Chief Facilities Officer



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WITNESSES:

“OWNER”

**111 Lake House JV LLC**  
a Delaware limited liability company

By: **111 LH Member Manager LLC**  
a Florida limited liability company  
its Manager

By: [Signature]  
Name: John A. Zeledon  
Title: Manager  
Date: 9/10/20

[Signature]  
Print Name: Erik K. Halverson  
[Signature]  
Print Name: Kristy Horan

398

399 STATE OF FLORIDA  
400 COUNTY OF ORANGE

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402 The foregoing instrument was acknowledged before me this 10TH day of  
403 SEPTEMBER, 2020, by JOHN A. ZELEDON, as MANAGER of  
404 111 Lake House JV, LLC, a Delaware limited liability company, on behalf of the company.  
405 He (She) ☒ is personally known to me or ☐ has produced  
406        as identification.

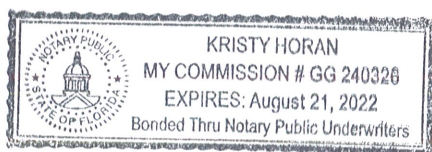
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408 (NOTARY SEAL)

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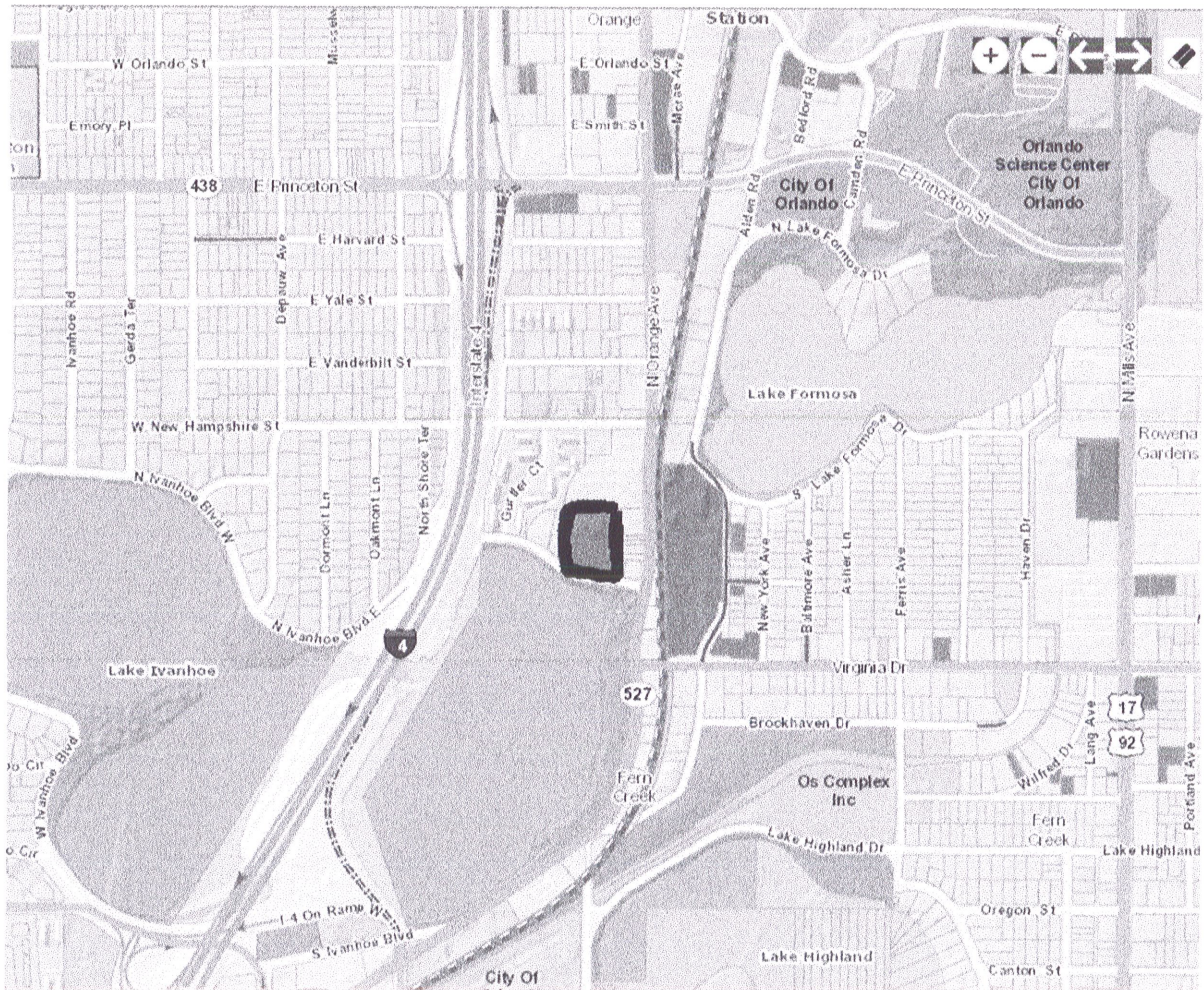
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[Signature]  
Notary Public Signature  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

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**Exhibit "A"**



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**Exhibit "B"**

**REAL PROPERTY DESCRIPTION**

THAT PART OF STRALEY'S IVANHOE SUBDIVISION AS RECORDED IN PLAT BOOK Q. PAGE 49 AND KEMP'S COLISEUM ADDITION TO ORLANDO AS RECORDED IN PLAT BOOK R, PAGE 9 IN THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF LOT 1, BLOCK 'B' IN SAID STRALEY'S IVANHOE SUBDIVISION, RUN N.00°00'19"E. 246.64 FEET ALONG THE EAST LINE OF LOTS 1, 3, AND 4 IN BLOCK 'B' TO THE NORTHEAST CORNER OF SAID LOT 4; THENCE S.87°51'47"W. ALONG THE NORTH LINE OF LOT 4 88.06 FEET. THENCE N.00°01'10"E. 125.74 FEET; THENCE S.87°39'30"W. 201.16 FEET; THENCE S.03°42'59"W. 283.79 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF IVANHOE BOULEVARD (A 60 FOOT RIGHT OF WAY); THENCE RUN S.50°30'29"E. ALONG SAID NORTHERLY RIGHT OF WAY LINE A DISTANCE OF 1.80 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE NORTHEASTERLY, SAID CURVE HAVING A RADIUS OF 254.97 FEET, A CENTRAL ANGLE OF 146.37 FEET TO THE POINT OF TANGENCY; THENCE S.83°23'58"E. A DISTANCE OF 174.24 FEET TO THE POINT OF BEGINNING.