

MEMORANDUM

TO:

Central Florida Expressway Authority

Client-Matter No.: 19125.0082

Board Members

FROM:

David A. Shontz, Esq.

DATE:

June 26, 2017

RE:

State Road 429 Wekiva Parkway, Project 429-204

Subordination of Easements Agreement with Duke Energy Florida LLC d/b/a

David a. Shortz

Duke Energy as to Parcels 241, 242 and 259

Shutts & Bowen LLP, as Right-of-Way counsel, submits the attached Subordination of Easements Agreement between the Central Florida Expressway Authority ("CFX") and Duke Energy Florida LLC d/b/a Duke Energy ("Duke Energy") and requests the CFX Board approve this agreement relating to Parcels 241, 242 and 259 of the State Road 429 Wekiva Parkway Project, Section 429-204.

DESCRIPTION AND BACKGROUND

As part of the acquisition of Parcels 241, 242 and 259 in Section 429-204 of the Wekiva Parkway Project, Duke Energy held perpetual easements for the transmission and distribution of electricity encumbering the above-referenced parcels. Duke will be able to re-establish the distribution lines on these parcels to provide service to the remaining improvements. Accordingly, Duke has agreed to subordinate its easement interests in the above-referenced parcels.

Please find attached hereto the Subordination of Easements Agreement by and between the CFX and Duke for Parcels 241, 242 and 259 which was executed on behalf of Duke on April 17, 2017. This Subordination Agreement eliminates any reference to indemnification by the CFX. Right-of-way counsel requests the CFX Board authorize execution of the Subordination of Easements Agreement on behalf of the CFX.

It is in the best interest of the Central Florida Expressway Authority to approve this Subordination of Easements Agreement, and will result in savings of both time and monies for CFX. The Right of Way Committee recommended the agreement at its June 28, 2017 meeting.

REQUESTED ACTION

Right-of-way counsel respectfully requests the CFX Board approve execution of the attached Subordination of Easements Agreement as to Parcels 241, 242 and 259 of the State Road 429 Wekiva Parkway Project, Section 429-204.

ATTACHMENTS

Subordination of Easements Agreement by and between the Central Florida Expressway Authority and Duke Energy Florida LLC d/b/a Duke Energy as to Parcels 241, 242 and 259 with sketches of legal description for the affected parcels.

Reviewed by: Joseph Hamistone

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Prepared By and Return To: David A. Shontz, Esquire Shutts & Bowen LLP 300 South Orange Avenue, Suite 1000 Orlando, Florida 32801

SUBORDINATION OF EASEMENTS AGREEMENT, PARCELS 241, 242 AND 259

THIS SUBORDINATION OF EASEMENTS AGREEMENT, entered into this day of ______, 2017, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a public corporation of the State of Florida (the "Authority"), having an address of 4974 ORL Tower Road, Orlando, Florida 32807, and DUKE ENERGY FLORIDA, LLC, d/b/a Duke Energy (the "Utility"), having an address of P.O. Box 14042, St. Petersburg, Florida 33733.

RECITALS:

WHEREAS, the Utility has perpetual easement(s) for the transmission and distribution of electricity encumbering certain lands hereinafter described that have been determined necessary for expressway purposes; and

WHEREAS, the proposed use of these lands for expressway purposes shall require subordination of the interest in such lands by the Utility to the Authority; and

WHEREAS, the Utility has the authority to subordinate its interest as hereinafter set forth; and

WHEREAS, the Authority is willing to replace Utility's perpetual easements with new easements encumbering different lands and pay for the removal or relocation of Utility's facilities.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties hereto, Utility and Authority agree as follows:

- 1. Recitals. The foregoing recitals are true and correct and are hereby incorporated herein by this reference.
- 2. <u>Subordination</u>. The Utility subordinates to the Authority, its successors and assigns, any and all of its easements only to the extent they encumber listed property in the lands described as follows, to wit:

[See Composite Exhibit "A" attached hereto and incorporated by reference herein]

for the purpose of constructing, improving, maintaining and operating an expressway and appurtenant improvements over, through, upon, and/or across such lands.

- 3. Reservation of Rights. The Utility reserves the right to construct, operate, maintain, improve, add to, upgrade, remove, or relocate facilities on, within, and upon the lands described herein in accordance with the Authority's current minimum standards, as may be amended, for such facilities as required by the State of Florida Department of Transportation ("FDOT"), Utility Accommodation Guide.
- 4. Relocation of Easements. Should the Authority require the Utility to alter, remove, adjust, or relocate its facilities located within any portion of the above-described lands, the Authority hereby agrees to pay the direct costs of such alteration, adjustment, relocation or removal including, but not limited to the cost of acquiring appropriate replacement easements to cover the relocated facilities. Any relocation, alteration or removal of the Utility's facilities not required by the Authority shall be performed at the Utility's sole cost and expense.

5. Maintenance Access by the Utility.

- a. The Utility shall retain the reasonable right to enter upon the lands described herein for the purposes outlined in Paragraph 3 above, including the right to trim such trees, brush, and growth which might endanger or interfere with such facilities, provided that the exercise of such rights does not unreasonably interfere with the operation and safety of the Authority's expressway. The Utility shall pay tolls for the entry and exit of all its equipment and vehicles and those of its contractor at the prevailing rate.
- b. In the exercise of the rights and privileges under Paragraphs 3 and 5a. above, the Utility shall not damage or disturb any improvements located outside of the easement areas and, upon completion of any work, shall repair and restore any damage to the Authority property or improvements to the satisfaction of the Authority. The Utility shall be responsible for the proper construction, operation, maintenance and repair of the facilities installed and maintained by the Utility, and the Authority shall assume no responsibility or liability for the maintenance, repair or safe operation of such facilities. All entries upon property owned by the Authority by Utility, its employees, agents and contractors, shall be at Utility's risk and expense. The Utility shall agree to indemnify the Authority against any loss or damage directly resulting from the Utility's exercise of its rights outlined in Paragraphs 3 and 5a, above.
- 6. Non-Interference with Facilities. The Authority covenants not to interfere with the Utility's facilities within the easement area on the above-described property.
- 7. Notice of Construction. Except in case of emergency, the Authority shall give a minimum of forty-eight (48) hours' notice to the Utility's local office prior to the commencement of construction over the Utility's easement areas in the above-described property. In emergency situations, Authority shall notify the Utility's office as soon as possible.

General Provisions. No failure of either party to exercise any power given 8. hereunder or to insist upon strict compliance with any obligation specified herein shall constitute a waiver of either party's right to demand strict compliance with the terms hereof. This Agreement contains the entire agreement of the parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. Any amendment to this Agreement shall not be binding upon any of the parties hereto unless such amendment is in writing and executed by the parties. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, personal representatives, successors and assigns. Time is of the essence of this Agreement. The headings inserted at the beginning of each paragraph are for convenience only, and do not add to or subtract from the meaning of the contents of each paragraph. This Agreement shall be interpreted under the laws of Florida. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

[SIGNATURE PAGES TO FOLLOW]

Signed, sealed and delivered in our presence as witnesses:	CENTRAL FLORIDA EXPRESSWAY AUTHORITY			
	Ву:			
	Joseph A. Berenis			
(Print Name)	Deputy Executive Director			
(Print Name)				
APPROVED AS TO FORM AND LEGALITY FOR USE AND RELIANCE BY THE CENTRAL FLORIDA EXPRESSWAY AUTHORITY:				
Shutts & Bowen, LLP				
By: David A. Shontz	By: Linda Brehmer Lanosa Deputy General Counsel			
STATE OF FLORIDA COUNTY OF ORANGE The foregoing instrument was a	cknowledged before me this day of			
, 2017, by <u>Joseph A. Ber</u> FLORIDA EXPRESSWAY AUTHORITY, a	renis as Deputy Executive Director of CENTRAL municipal corporation, who is personally known to as identification and who did/did not take an oath.			
Ī	Notary Public			
Ĩ	Print Name			
	Notary Public, State of Florida Commission No.			
	My commission expires:			

Signed, scaled and delivered in our presence as witnesses:	DUKE ENERGY FLORIDA, LLC, d/b/a Duke Energy
Catherine A. Mai	Ву:
(Print Name)	Print Name: Keis Tietig
Shelley C Wolch	Title: Manager - Land Services
Shelley C Welch (Print Name)	CRAVIFORD & OWELL P.A.
STATE OF Florida COUNTY OF Seminole	BY: BC PATE THEFT
Florida, LLC, d/b/a Duke Energy, on behalf	acknowledged before me this 17th day of as Manager Land Services of Duke Energy of the limited liability company, who is personally as identification and who did/did not take
	Notary Public Coffee A. Mai
V.	Catherine A. Mori
CATHERINE A MORU MY COMMISSION # GG 083392 EXPIRES: March 27, 2021 Bonded Thru Budget Notary Services	Notary Public, State of Florida Commission No. My commission expires:
CATHERINE A MORI MY COMMISSION # GG 083392 EXPIRES: March 27, 2021	Print Name Notary Public, State of Florida Commission No.

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COMPOSITE EXHIBIT 'A'

LEGAL DESCRIPTIONS WEKIVA PARKWAY PROJECT 429-204

PARCEL 241

PARCEL 242

PARCEL 259

LEGAL DESCRIPTION

PARCEL 241

PURPOSE: LIMITED ACCESS RIGHT OF WAY

ESTATE: FEE SIMPLE

THAT PART OF THE NW 1/4 OF THE NE 1/4 OF SECTION 12, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, BEING THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 5576, PAGE 4295 AND BOOK 5576, PAGE 4297, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 20 SOUTH, RANGE 27 EAST (A 1/2" IRON ROD IN WELLBOX AS NOW EXISTS); THENCE, SOUTH 89°21'11" WEST ALONG THE NORTH LINE OF THE NORTHEAST 1/4, A DISTANCE OF 1341.45 FEET; THENCE DEPARTING SAID NORTH LINE, SOUTH 00°21'32" WEST A DISTANCE OF 30.00 FEET TO A POINT ON THE EXISTING SOUTH RIGHT OF WAY LINE OF ONDICH ROAD TO THE POINT OF BEGINNING, ALSO BEING THE EAST LINE OF THE EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 12; THENCE, DEPARTING SAID EXISTING SOUTH LINE, CONTINUE SOUTH 00°21'32" WEST ALONG SAID EAST LINE, A DISTANCE OF 1298.54 FEET; THENCE, DEPARTING SAID EAST LINE, SOUTH 89°17'05" WEST A DISTANCE OF 674.56 FEET TO A POINT ON THE WEST LINE OF THE EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 12; THENCE, NORTH 00°21'28" EAST ALONG SAID WEST LINE, A DISTANCE OF 1299.34 FEET TO A POINT ON SAID EXISTING SOUTH RIGHT OF WAY LINE; THENCE, DEPARTING SAID WEST LINE, NORTH 89°21'11" EAST ALONG SAID EXISTING SOUTH LINE, A DISTANCE OF 674.58 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH ALL RIGHTS OF INGRESS, EGRESS, LIGHT, AIR, AND VIEW TO, FROM OR ACROSS ANY STATE ROAD 429 RIGHT OF WAY PROPERTY WHICH MAY OTHERWISE ACCRUE TO ANY PROPERTY ADJOINING SAID RIGHT OF WAY.

CONTAINING 20.112 ACRES, MORE OR LESS.

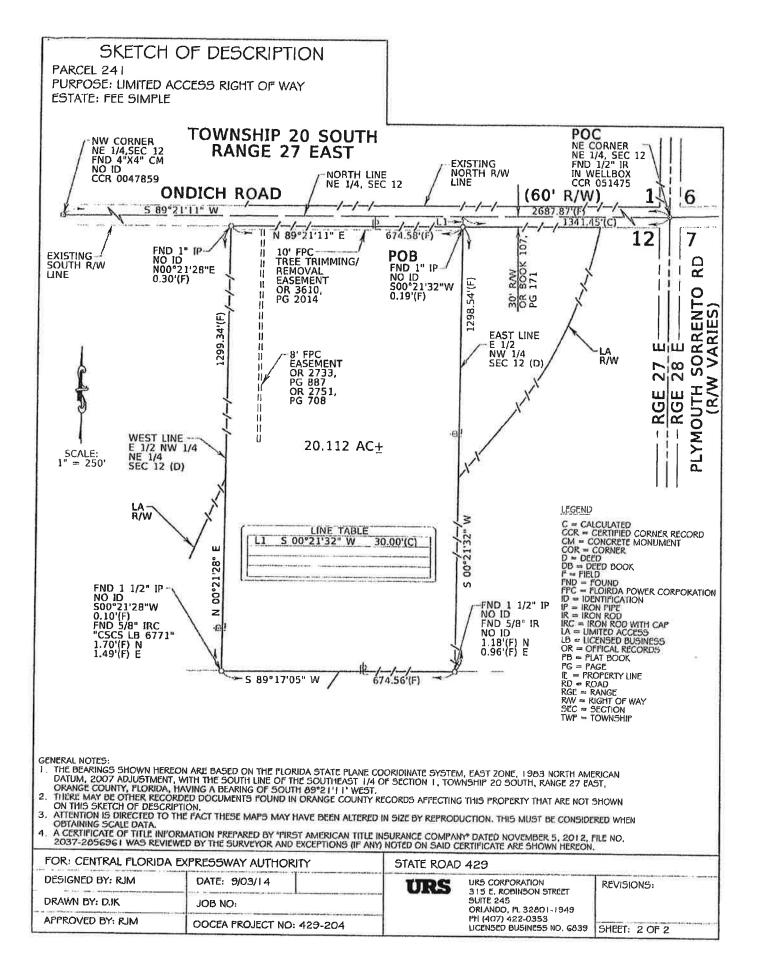
I HEREBY CERTIFY THAT THIS LEGAL DESCRIPTION AND SKETCH IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER CERTIFY THAT THIS LEGAL DESCRIPTION AND SKETCH MEETS THE MINIMUM TECHNICAL STANDARDS AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO CHAPTER 472 OF THIS FLORIDA STATUTES. SUBJECT TO NOTES AND NOTATIONS SHOWN HEREON.

RUSSELL J. MARKS, PSM NO. 5629

NOT VALID WITHOUT SIGNATURE AND ORIGINAL RAISED SEAL

DATE

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 429 DESIGNED BY: RJM DATE: 9/03/14 URS CORPORATION REVISIONS: URS 315 E. ROBINSON STREET SUITE 245 DRAWN BY: DJK JOB NO: ORLANDO, FL 32801-1949 PH (407) 422-0353 APPROVED BY: RJM OOCEA PROJECT NO: 429-204 UCENSED BUSINESS NO. 6839 SHEET: 1 OF 2



LEGAL DESCRIPTION

PARCEL 242

PURPOSE: LIMITED ACCESS RIGHT OF WAY

ESTATE: FEE SIMPLE

THAT PART OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 20, SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, BEING A PORTION OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 07417, PAGE 0819, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 20 SOUTH, RANGE 27 EAST (A 1/2" IRON ROD IN WELLBOX AS NOW EXISTS); THENCE SOUTH 89°21'11" WEST ALONG THE NORTH LINE OF SAID SECTION 12, A DISTANCE OF 1341.45 FEET; THENCE DEPARTING SAID NORTH LINE SOUTH 00°21'33" WEST, A DISTANCE OF 30.00 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF ONDICH ROAD AND A POINT ON THE WEST LINE OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 12, SAID POINT ALSO BEING ON THE EAST BOUNDARY OF LAND DESCRIBED IN OFFICIAL RECORDS BOOK 5576, PAGE 4295 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, AND THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 00°21'33" WEST ALONG SAID WEST LINE, A DISTANCE OF 732.21 FEET; THENCE DEPARTING SAID WEST LINE NORTH 39°34'28" EAST. A DISTANCE OF 218.87 FEET POINT OF CURVATURE; THENCE NORTHEASTERLY ALONG THE ARC OF A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 1,294.00 FEET, A CENTRAL ANGLE OF 28°09'01" AND A CHORD BEARING OF NORTH 25°29'58" EAST TO A POINT ON SAID SOUTH RIGHT OF WAY LINE OF ONDICH ROAD; THENCE SOUTH 89°21'11" WEST ALONG SAID SOUTH RIGHT OF WAY LINE, A DISTANCE OF 405.82 FEET TO THE POINT OF BEGINNING

TOGETHER WITH ALL RIGHTS OF INGRESS, EGRESS, LIGHT, AIR AND VIEW TO, FROM OR ACROSS ANY STATE ROAD 429 RIGHT OF WAY PROPERTY WHICH MAY OTHERWISE ACCRUE TO ANY PROPERTY ADJOINING SAID RIGHT OF WAY.

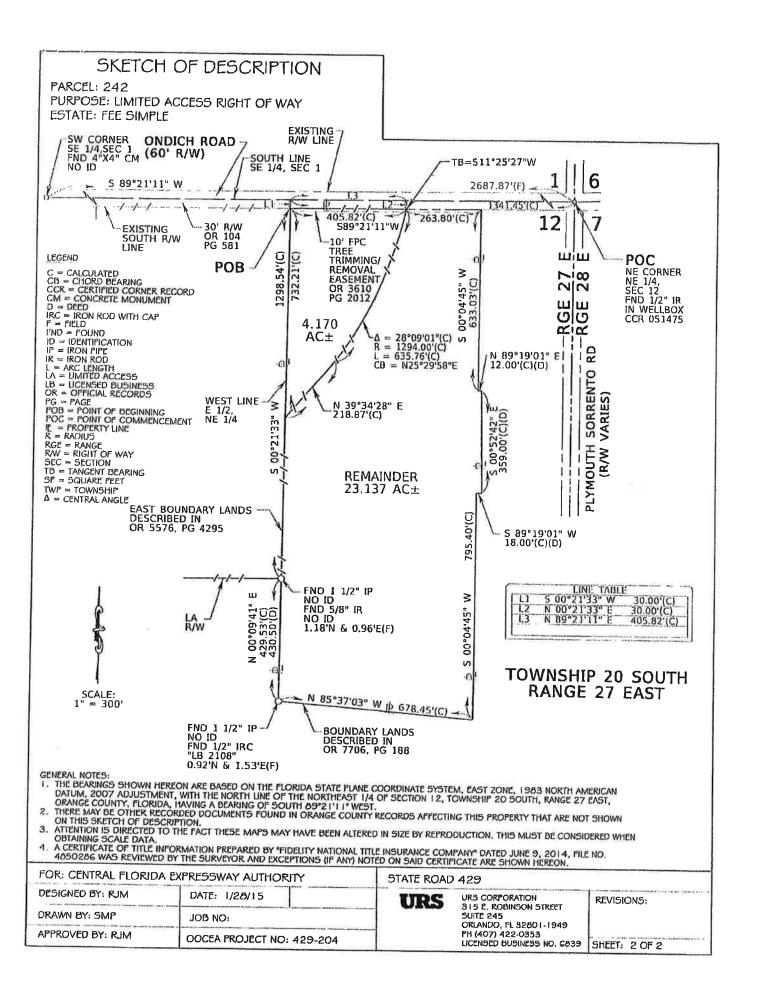
CONTAINING 4.170 ACRES, MORE OR LESS.

I HEREBY CERTIFY THAT THIS LEGAL DESCRIPTION AND SKETCH IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER CERTIFY THAT THIS LEGAL DESCRIPTION AND SKETCH MEETS THE MINIMUM TECHNICAL STANDARDS AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO CHAPTER 472 OF THE FLORIDA STATUTES. SUBJECT TO NOTES AND MOTATIONS SHOWN HEREON.

RUSSILL J. MARKS, PSM NO. 5623

NOT WALID WITHOUT SIGNATURE AND ORIGINAL RAISED SEAL

FOR: CENTRAL FLORIDA	EXPRESSWAY AUTHORITY	STATE ROAD	0.429	÷.
DESIGNED BY: RJM	DATE: 1/28/15	URS	UR9 CORPORATION	REVISIONS:
DRAWN BY: SMP	JOB NO:		315 E. ROBINSON STREET SUITE 245 ORLANDO, PL 32801-1949 PH (407) 422-0353 LICENSED BUSINESS NO. 6839	
AFPROVED BY: RJM	OOCEA PROJECT NO: 429-2	04		SHEET: 1 OF 2



LEGAL DESCRIPTION

PARCEL 259

PURPOSE: LIMITED ACCESS RIGHT OF WAY

ESTATE: FEE SIMPLE

THAT PART OF THE S 1/2 OF THE SE 1/4 OF THE SE 1/4 OF SECTION 1, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, BEING THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 8458, PAGE 4756, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

"THE N 1/2 OF S 1/2 OF SE 1/4 OF SE 1/4 OF SE 1/4 OF SECTION 1, TOWNSHIP 20 SOUTH, RANGE 27 EAST, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA. (LESS RIGHT OF WAY ON EAST)"

TOGETHER WITH ALL RIGHTS OF INGRESS, EGRESS, LIGHT, AIR, AND VIEW TO, FROM OR ACROSS ANY STATE ROAD 429 RIGHT OF WAY PROPERTY WHICH MAY OTHERWISE ACCRUE TO ANY PROPERTY ADJOINING SAID RIGHT OF WAY.

CONTAINING 2.443 ACRES, MORE OR LESS.

I HEREBY CERTIFY THAT THIS LEGAL DESCRIPTION AND SKETCH IS CORRECT TO THE BEST OF MY KNOWNLEDGE AND BELIEF. I FURTHER CERTIFY THAT THIS LEGAL DESCRIPTION AND SKETCH MEETS THE MINUMUM TECHNICAL STANDARDS AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTET, SJ-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO CHAPTER 472 OF THE FLORIDA STATUTES. SUBJECT TO NOTES AND NOTATIONS SHOWN HEREON.

RUSSELL MAKKS, PSM NO. 5023

12/18/13

NOT VALID WITHOUT SIGNATURE AND ORIGINAL RAISED SEAL

FOR: ORLANDO ORANGE COUNTY EXPRESSWAY AUTHORITY		STATE ROAL	STATE ROAD 429		
DESIGNED BY: RJM	DATE: 121/18/13	URS	URS CORPORATION 315 E. ROBINSON STREET SUITE 245 ORLANDO, FL 32801-1949 FM (407) 422-0353 LICENSED BUSINI:55 NO. G839	REVISIONS:	
DRAWN BY: DJK	JOB NO:				
APPROVED BY: RJM	OOCEA PROJECT NO: 429-204			SHEET: 1 OF 2	

