

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is dated _____, 2019, effective as provided in Section 5 of this Agreement, and entered into between J & J Cranes, Inc., J & J Cranes Incorporated, and James G. Lacina (Collectively "Owner") and Pinellas County, Florida, a political subdivision of the State of Florida acting through its Board of County Commissioners, the governing body thereof ("County").

R E C I T A L S :

- A. Sections 163.3220 – 163.3243, Florida Statutes, which set forth the Florida Local Government Development Agreement Act ("Act"), authorize the County to enter into binding development agreements with persons having a legal or equitable interest in real property located within the unincorporated area of the County.
- B. Under Section 163.3223 of the Act, the County has adopted Chapter 134, Article VII of Part III, the Pinellas County Land Development Code ("Code"), establishing procedures and requirements to consider and enter into development agreements.
- C. The County cannot justify the requested action absent the restrictions contained in this Agreement and in the deed restriction required in Section 6.1.9, and the County supports the change in zoning and granting of special exception based upon the provisions of the Agreement.
- D. The County and Owner have determined that it would be mutually beneficial to enter into a development agreement governing the matters set forth herein and have negotiated this Agreement in accordance with the Code and the Act.
- E. The County has found that the terms of this Agreement are consistent with the Pinellas County Comprehensive Plan and the Code.
- F. WHEREAS, Owner is the owner of the land described in **Exhibit "A"** attached hereto and by this reference made a part hereof (the "**Property**"), which totals 3 parcels and is approximately 2.6 acres in total size; and
- G. WHEREAS, Owner or its successors and assigns, proposes to construct a 5-story hotel and separate 1-story restaurant (the "**Project**") in conjunction with rezoning petition, and special exception petition, which have been applied for contemporaneously in order to obtain approval for the Project; and
- H. WHEREAS, Owner seeks to develop the Property with a hotel and a restaurant on the 3 parcel Property.
- I. WHEREAS, the Property has been designated E, Employment, on the County's Future Land Use Map pursuant to its Comprehensive Plan;

- J. WHEREAS, the subject parcels are currently zoned with a combination of M-1, Light Manufacturing and Industry, and C-3, Commercial Wholesale Warehousing & Industrial Support, zoning;
- K. WHEREAS, Owner seeks to rezone all the Property to a M-1 zoning category with an additional C-T Transient Accommodation to seek a hotel use with up to 75 units/acre.
- L. WHEREAS, Owner is additionally seeking a special exception to the M-1 zoning to allow for restaurant use on the site to accommodate the surrounding industrial area.
- M. WHEREAS, Code Section 138-1262(d)(1) requires the execution of a development agreement under the Florida Local Government Development Agreement Act, Sections 163.3220 – 163.3243, Florida Statutes, as a condition of the C-T Transient Accommodation Overlay;
- N. WHEREAS, Code Section 138-1262(d)(1)a. provides further that the Owner and the County must enter into a development agreement that addresses the ability of the county, or the applicable service provider, to meet the concurrency management standards identified in Policy 1.5.1 of the Capital Improvements Element of the Pinellas County Comprehensive Plan;
- O. WHEREAS, Code Section 138-1262(d)(1)b. provides further that the Owner and the County must enter into a development agreement that addresses a provision for all transient accommodation uses to comply with all county and local hurricane evacuation plans and procedures to ensure orderly evacuation of guests and visitors pursuant to the Pinellas County Code, Chapter 34, Article III. The Project is not located in the coastal storm area. A plan implementing the closure and evacuation procedures shall be prepared and submitted to the county emergency management coordinator prior to issuance of a certificate of occupancy. This plan will be updated and sent for review when there is a change of ownership or substantive change to the plan or as required by the county emergency management coordinator;
- P. WHEREAS, Code Section 138-1262(d)(1)c. provides further that the Owner and the County must enter into a development agreement that addresses design considerations in subsection 138-1262(d)(3), the transportation concurrency management provisions in subsection 138-1262(d)(4), and the restrictions on transient accommodation use in subsection 138-1262(d)(5);
- Q. WHEREAS, Code Section 138-1262(d)(1)d. provides further that the Owner and the County must enter into a development agreement that addresses a requirement that states the restrictions in subsection 138-1262(d)(1)c. are generally described in a recorded deed restriction, which shall be perpetual and may be amended or terminated only with the consent of the county, which consent shall not be unreasonably withheld;
- R. WHEREAS, the Florida Local Government Development Agreement Act, Sections 163.3220 – 163.3243, Florida Statutes, (the “Act”), authorizes local governments to enter

into development agreements with developers to encourage a stronger commitment to comprehensive and capital facilities planning, to ensure the provision of adequate public facilities for development, to encourage the efficient use of resources, to reduce the economic cost of development and to provide certainty to developers in the approval of development and assurances that they may proceed in accordance with existing laws and policies, subject to the conditions of such development agreements;

- S. WHEREAS, such development agreements strengthen the public planning process, encourage sound capital improvement planning and financing, assist in assuring there are adequate capital facilities for the development, encourage private participation and comprehensive planning and reduce the costs of development;
- T. WHEREAS, the Project will comply with the provisions of the approved Site Plan, and all applicable land development regulations in effect at the time of application for building permits and in accordance with this Development Agreement;
- U. WHEREAS, the construction and operation of the Project will be of significant benefit to the citizens of the County by improving and revitalizing the Property; and
- V. WHEREAS, the Project is consistent with the Pinellas County Comprehensive Plan.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

STATEMENT OF AGREEMENT

In consideration of and in reliance upon the premises, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound and in accordance with the Act, agree as follows:

Section 1. Recitals. The above recitals are true and correct and are a part of this Agreement.

Section 2. Incorporation of the Act. This Agreement is entered into in compliance with and under the authority of the Code and the Act, the terms of which as of the date of this Agreement are incorporated herein by this reference and made a part of this Agreement. Words used in this Agreement without definition that are defined in the Act shall have the same meaning in this Agreement as in the Act.

Section 3. Property Subject to this Agreement. The Property is subject to this Agreement.

Section 4. Ownership. The Property is owned in fee simple by Owner.

Section 5. Effective Date/Duration of this Agreement.

5.1.This Agreement shall become effective as provided for by the Act and shall be contingent upon obtaining final approval, and effectiveness of the M-1 zoning designation with C-T Transient Accommodation Overlay and special exception for restaurant use, as requested on the Property.

5.2.This Agreement shall continue in effect until terminated as defined herein but for a period not to exceed five (5) years.

Section 6. Obligations under this Agreement.

6.1. Obligations of the Owner.

6.1.1. Binding Obligations. The obligations under this Agreement shall be binding on Owner, its successors or assigns

6.1.2 Development Review Process. At the time of development of the Property, Owner will submit such applications and documentation as are required by law and shall comply with the County's Code applicable at the time of the effective date of this Agreement.

6.1.3 Development Restrictions. The following restrictions shall apply to development of the Property.

6.1.3.1 The Property shall be used for a restaurant and hotel only.

6.1.3.2 Development Intensities. Owner shall comply with the building intensities and height required by the Property's zoning and land use designations, with the C-T Transient Accommodation Overlay, unless otherwise modified by this Agreement.

6.1.4 Provision required by Code Section 138-1262(d)(1)a.: The Owner shall meet all applicable concurrency management standards as required by law and set forth in Policy 1.5.1 of the Capital Improvement of the Pinellas County Comprehensive Plan.

6.1.5 Provision required by Code Section 138-1262(d)(1)b.: The Owner shall comply with all county and local hurricane evacuation plans and procedures to ensure orderly evacuation of guests and visitors pursuant to Chapter 34 of the Pinellas County Code. The Project is not located in Coastal Storm Area. This required plan will be submitted to the county emergency management coordinator prior to issuance of a certificate of occupancy. It will updated and sent for review when there is a change of ownership or substantive change to the plan or as required by the county emergency management coordinator.

6.1.6 Provision required by Code Section 138-1262(d)(1)c.: The Owner shall meet the requirements of Code Section 138-1262(d)(3) related to the context-sensitive design, and the scale and placement of the proposed use so as to achieve a harmonious relationship and fit relative to its location and surroundings by developing the building and Property similar to the attached concept plan (“**Exhibit B**”) and attached building design concepts (“**Exhibit C**”) which both demonstrate harmony with:

6.1.6.1 Building scale — including height, width, location, alignment, and spacing.

6.1.6.2 Building design — including elevations, facade treatment, entrance and porch or balcony projections, window patterns and roof forms. Building design considerations are optional for inclusion in the development agreement unless they are required to be included in order to meet requirements of the underlying zoning district or other applicable provision(s) of the county comprehensive plan or Land Development Code (e.g. the County's Historical Preservation Code).

6.1.6.3 Site improvements — including building and site coverage, accessory structures, service and amenity features, walkway and parking areas, open space, and view corridors.

6.1.6.4 Adjoining property use — including density/intensity, and building location, setbacks, and height

6.1.7 Provision required by Code Section 138-1262(d)(1)c.: The Owner shall meet the requirements of Code Section 138-1262(d)(4) by providing a transportation analysis that is required by the C-T Transient Accommodation Overlay zoning code that is consistent with the Metropolitan Planning Organization's (MPO) countywide approach to the application of concurrency management., which includes the following:

6.1.7.1 Recognition of standard data sources as established by the MPO.

6.1.7.2 Identification of level of service standards for state and county roads as established in the Pinellas County Comprehensive Plan.

- 6.1.7.3 Use of proportionate fair share requirements consistent with the Pinellas County Comprehensive Plan and the county's land development regulations.
 - 6.1.7.4 Use of the MPO Traffic Impact Study Methodology.
 - 6.1.7.5 Recognition of the designation of "constrained facilities" as set forth in the most current Pinellas County Concurrency Test Statement.
- 6.1.8 Provision required by Code Section 138-1262(d)(1)c.: The Owner shall meet the requirements of Code Section 138-1262(d)(5) for a transient accommodation. by ensuring the Project complies with the following restrictions:
- 6.1.8.1 No transient accommodation unit shall be occupied as a residential dwelling unit, and a maximum length of stay for any consecutive period of time shall be established by Pinellas County to ensure that any transient accommodation use does not function as a residential use.
 - 6.1.8.2 Transient accommodation units shall not qualify or be used for homestead or home occupation purposes.
 - 6.1.8.3 All transient accommodation units must be included in the inventory of units that are available within a transient accommodation use.
 - 6.1.8.4 No conversion of transient accommodation units to residential dwelling units shall be permitted unless the conversion is in compliance with the Pinellas County Comprehensive Plan with respect to the permitted residential density and, where applicable, the intensity for associated nonresidential uses.
 - 6.1.8.5 A transient accommodation use may include accessory uses, such as recreational facilities, restaurants, bars, personal service uses, retail uses, meeting space, fitness centers, spa facilities, parking structures, and other uses commonly associated with transient accommodation uses. All such uses shall be included in the calculation of allowable floor area ratio.

6.1.8.6 Any license required of a transient accommodation use by Pinellas County and/or a state agency shall be obtained and kept current.

6.1.8.7 Transient accommodation uses shall be subject to all applicable tourist development tax collections.

6.1.8.8 A reservation system shall be required as an integral part of the transient accommodation use and there shall be a lobby/front desk area that must be operated as a typical lobby/front desk area for transient accommodation would be operated.

6.1.8.9 Transient accommodation uses must have sufficient signage that complies with the Pinellas County Land Development Code and is viewable by the public designating the use as a transient accommodation use.

6.1.8.10 The books and records pertaining to use of each transient accommodation unit shall be open for inspection by authorized representatives of Pinellas County, upon reasonable notice, in order to confirm compliance with these regulations as allowed by general law.

6.1.8.11 Pinellas County may require affidavits of compliance with this section from each transient accommodation use and/or unit owner.

6.1.9 Provision required by Code Section 138-1262(d)(1)d.: Recording of Deed Restriction. Prior to the approval of a site plan or issuance of a development permit for the Property, Owner shall record a deed restriction encumbering the Property in the official records of Pinellas County, Florida and deliver a copy of such recorded deed restriction to the Director of the County Planning Department or his designee. The deed restriction shall be approved as to form by the County Attorney (which approval shall not be unreasonably withheld) and shall generally describe the development limitations of this Agreement. The deed restriction shall be perpetual and may be amended or terminated only with the consent of the County, which consent shall not be unreasonably withheld.

6.2 Obligations of the County.

6.2.1 Concurrent with the approval of this Agreement, the Board amends the zoning designation and grants the special exception for the Property as set forth in

the petitions filed by Owner and cited in Recitals K and L and Code Section 5.1 above.

6.2.2 County will process site plan applications for the Property that are consistent with the Project and Plan, and that meet the requirements of the Code at the time of the effective date of this Agreement.

6.2.3 The final effectiveness of the redesignation referenced in Code Section 6.2.1 is subject to:

6.2.3.1 The provisions of Chapter 125 and 163, Florida Statutes, as they may govern such amendments; and

6.2.3.2 The expiration of any appeal periods or, if an appeal is filed, at the conclusion of such appeal.

Section 7. Public Facilities to Service Development. The following public facilities are presently available to the Property from the sources indicated below. Development of the Property will be governed by and must satisfy the concurrency ordinance provisions applicable at the time of the effective date of this Agreement.

7.1. Potable water from Pinellas County.

7.2. Sewer service from City of Largo.

7.3. Fire protection from City of St. Petersburg

7.4. Drainage facilities for the parcel will be provided by Owner.

Section 8. Required Local Government Permits. The required local government development permits for development of the Property include, without limitation, the following:

8.1. Site plan approval(s) and associated utility licenses and right-of-way utilization permits;

8.2. Construction plan approval(s);

8.3. Building permit(s); and

8.4. Certificate(s) of occupancy.

Section 9. Consistency. The County finds that development of the Property consistent with the terms of this Agreement is consistent with the Pinellas County Comprehensive Plan.

Section 10. Termination.

10.1. In the event of termination pursuant to Section 10.2 or failure to commence the development of the subject property within the duration of the Agreement as defined in Section 5 above, the Property shall return to its current land use and zoning designations, and the special exception will be null and void. Owner agrees to cooperate and not contest any administrative procedures necessary to implement restoration of the land use and zoning designations. This obligation survives the termination of the Agreement for the time necessary to accomplish the redesignations.

10.2. If Owner's obligations set forth in this Agreement are not followed in a timely manner, as determined by the County Administrator, after notice to Owner and an opportunity to be heard, existing permits shall be administratively suspended and issuance of new permits suspended until Owner has fulfilled its obligations. Failure to timely fulfill its obligations may serve as a basis for termination of this Agreement by the County, at the discretion of the County and after notice to Owner and an opportunity for Owner to be heard.

Section 11. Other Terms and Conditions. Except in the case of termination, until five (5) years after the effective date of this Agreement, the Property shall not be subject to subsequently adopted laws and policies unless the County has held a public hearing and determined:

11.1. They are not in conflict with the laws and policies governing the Development Agreement and do not prevent development of the land uses, intensities, or densities in this Agreement;

11.2. They are essential to the public health, safety, or welfare, and expressly state that they shall apply to a development that is subject to a development agreement;

11.3. They are specifically anticipated and provided for in this Agreement;

11.4. The County demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement; or

11.5. This Agreement is based on substantially inaccurate information provided by Owner.

Section 12. Compliance with Law. The failure of this Agreement to address any particular permit, condition, term or restriction shall not relieve Owner from the necessity of complying with the law governing such permitting requirements, conditions, terms or restrictions.

Section 13. Notices. Notices and communications required or desired to be given under this Agreement shall be given to the parties by hand delivery, by nationally recognized overnight courier service such as Federal Express, or by certified mail, return receipt requested, addressed as follows (copies as provided below shall be required for proper notice to be given):

If to Owner: James G. Lacina

P.O Box 18169
Clearwater, FL 33762

With copy to: Shaun Amarnani, Esq.
Trenam Law
200 Central Avenue, Suite #1600
St. Petersburg, FL 33701

If to County: Pinellas County Board of County Commissioners
c/o County Administrator
315 Court St.
Clearwater, FL 33756

With copy to: David S. Sadowsky, Esquire
Senior Assistant County Attorney
Pinellas County Attorneys Office
315 Court Street
Clearwater, Florida 33756

Properly addressed, postage prepaid, notices or communications shall be deemed delivered and received on the day of hand delivery, the next business day after deposit with an overnight courier service for next day delivery, or on the third (3rd) day following deposit in the United States mail, certified mail, return receipt requested. The parties may change the addresses set forth above (including the addition of a mortgagee to receive copies of all notices), by notice in accordance with this Section.

Section 14. Right to Cure. Owner will not be deemed to have failed to comply with the terms of this Agreement until Owner shall have received notice from the County of the alleged non-compliance and until the expiration of a reasonable period after receipt of such notice to cure such non-compliance. Whether the time period has been reasonable shall be based on the nature of the non-compliance and shall be determined in the sole judgment of the County Administrator, reasonably exercised.

Section 15. Minor Non-Compliance. Owner will not be deemed to have failed to comply with the terms of this Agreement in the event such non-compliance, in the judgment of the County Administrator, reasonably exercised, as a minor or inconsequential nature.

Section 16. Covenant of Cooperation. The parties shall cooperate with and deal with each other in good faith and assist each other in the performance of the provisions of this Agreement and in achieving the completion of development of the Property.

Section 17. Approvals. Whenever an approval or consent is required under or contemplated by this Agreement, such approval or consent shall not be unreasonably withheld, delayed or conditioned. All such approvals and consents shall be requested and granted in writing.

Section 18. Completion of Agreement. Upon the completion of performance of this Agreement or its revocation or termination, the Owner or his successor in interest shall record a statement in the official records of Pinellas County, Florida, signed by the parties hereto, evidencing such completion, revocation or termination, and shall forthwith deliver a copy of this document to the Director of the County Building and Development Review Services Department or his designee.

Section 19. Entire Agreement. This Agreement (including any and all Exhibits attached hereto, all of which are a part of this Agreement to the same extent as if such Exhibits were set forth in full in the body of this Agreement), constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof.

Section 20. Construction. The titles, captions and section numbers in this Agreement are inserted for convenient reference only and do not define or limit the scope or intent and should not be used in the interpretation of any section, subsection or provision of this Agreement. Whenever the context requires or permits, the singular shall include the plural, and plural shall include the singular and any reference in this Agreement to Owner includes Owner's successors or assigns. This Agreement was the production of negotiations between representatives for the County and Owner and the language of the Agreement should be given its plain and ordinary meaning and should not be construed against any party hereto. If any term or provision of this Agreement is susceptible to more than one interpretation, one or more of which render it valid and enforceable, and one or more of which would render it invalid or unenforceable, such term or provision shall be construed in a manner that would render it valid and enforceable.

Section 21. Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance is declared invalid or unenforceable, the remainder of this Agreement, including any valid portion of the invalid term or provision and the application of such invalid term or provision to circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and shall with the remainder of this Agreement continue unmodified and in full force and effect. Notwithstanding the foregoing, if such responsibilities of any party thereto to the extent that the purpose of this Agreement or the benefits sought to be received hereunder are frustrated, such party shall have the right to terminate this Agreement upon fifteen (15) days notice to the other parties.

Section 22. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to the conflict of laws principles of such state.

Section 23. Counterparts. This Agreement may be executed in counterparts, all of which together shall continue one and the same instrument.

IN WITNESS WHEREOF, the parties have hereto executed this Agreement the date and year first above written.

End of Substantive Provisions, Signature Pages to follow

Owner of Parcel #03-30-16-70884-300-0804

WITNESSES:

Owner: J & J Cranes Incorporated

CKK
Printed Name: Carl Koegler

By: James M. Lacina
JAMES M. LACINA

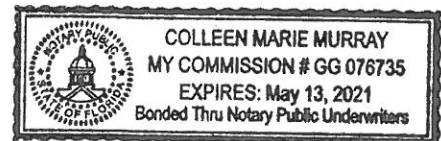
J.F.L.
Printed Name: JOSEPH F. DELUCA

STATE OF FLORIDA
COUNTY OF Pinellas

The foregoing instrument was acknowledged before me this 11 day of December 2019, by James M. Lacina, who is personally known to me or who produced as identification.

Colleen Marie Murray
Notary Public

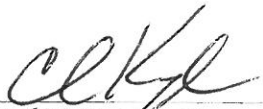
By: _____
Print Notary Name
My Commission Expires:




Owner of Parcel ID # 03-30-16-70884-300-0901

WITNESSES:

Owner: James G. Lacina


Printed Name: Carl Hoegler

By: 
JAMES G. LACINA

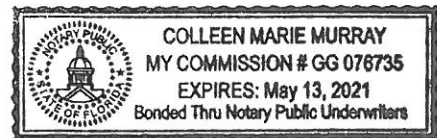

Printed Name: JOSEPH F. DELUGO

STATE OF FLORIDA
COUNTY OF Pinellas

The foregoing instrument was acknowledged before me this 11 day of December
2019, by James G. Lacina who is personally known to me or who produced
as identification.


Notary Public


By: _____
Print Notary Name
My Commission Expires:



Owner of Parcel #03-30-16-70884-300-0904

WITNESSES:

Owner: J & J Cranes, Inc.

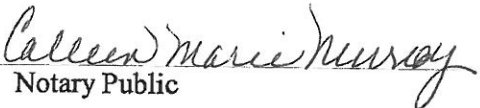

Printed Name: Carl Koegler

By: 
JAMES G. LACINA

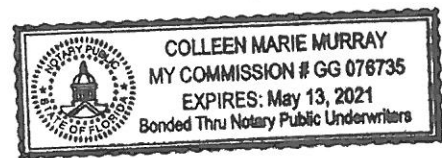

Printed Name: JOSEPH F. DELUCA

STATE OF FLORIDA
COUNTY OF Pinellas

The foregoing instrument was acknowledged before me this 11 day of December, 2019, by James A. Lacina, who is personally known to me or who produced as identification.


Notary Public

By: _____
Print Notary Name
My Commission Expires:



ATTEST:

PINELLAS COUNTY, FLORIDA

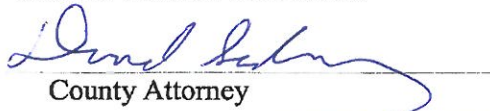
KEN BURKE, CLERK

Deputy Clerk

By: _____

Chairman
Board of County Commissioners

APPROVED AS TO FORM:



County Attorney

Exhibit A

PARCEL 1: - Parcel ID# 03-30-16-70884-300-0804

The North 14.60 feet of the West 204.98 feet of the East 304.98 feet of Lot 9 and the South 85.40 feet of the West 204.98 feet of the East 304.98 feet of Lot 8 in the Southwest 1/4 of Section 3, Township 30 South, Range 16 East, Pinellas Groves as recorded in Plat Book 1, Page 55, of the Public Records of Pinellas County, Florida:

TOGETHER WITH an easement for ingress and egress, 25 feet each side of the following described centerline: From the Southwest corner of Section 3, Township 30 South, Range 16 East, run North 89°40'48" East, 333.47 feet; thence North 01°01'26" West 190.41 feet to the Northerly right of way line of Ulmerton Road; thence North 80°42'46" East, 25.26 feet along said right of way line for a Point of Beginning on the West line of the East 304.98 feet of said Lot 9; Thence run North 01°01'26" West, 552.48 feet to a point of terminus on the South line of above described tract.

PARCEL 2: - Parcel ID# 03-30-16-70884-300-0901

The West 204.98 feet of the East 304.98 feet of the South 200 feet of the North 214.60 feet of Lot 9 in the Southwest 1/4 of Section 3, Township 30 South, Range 16 East, Pinellas Groves as recorded in Plat Book 1, Page 55, of the Public Records of Pinellas County, Florida.

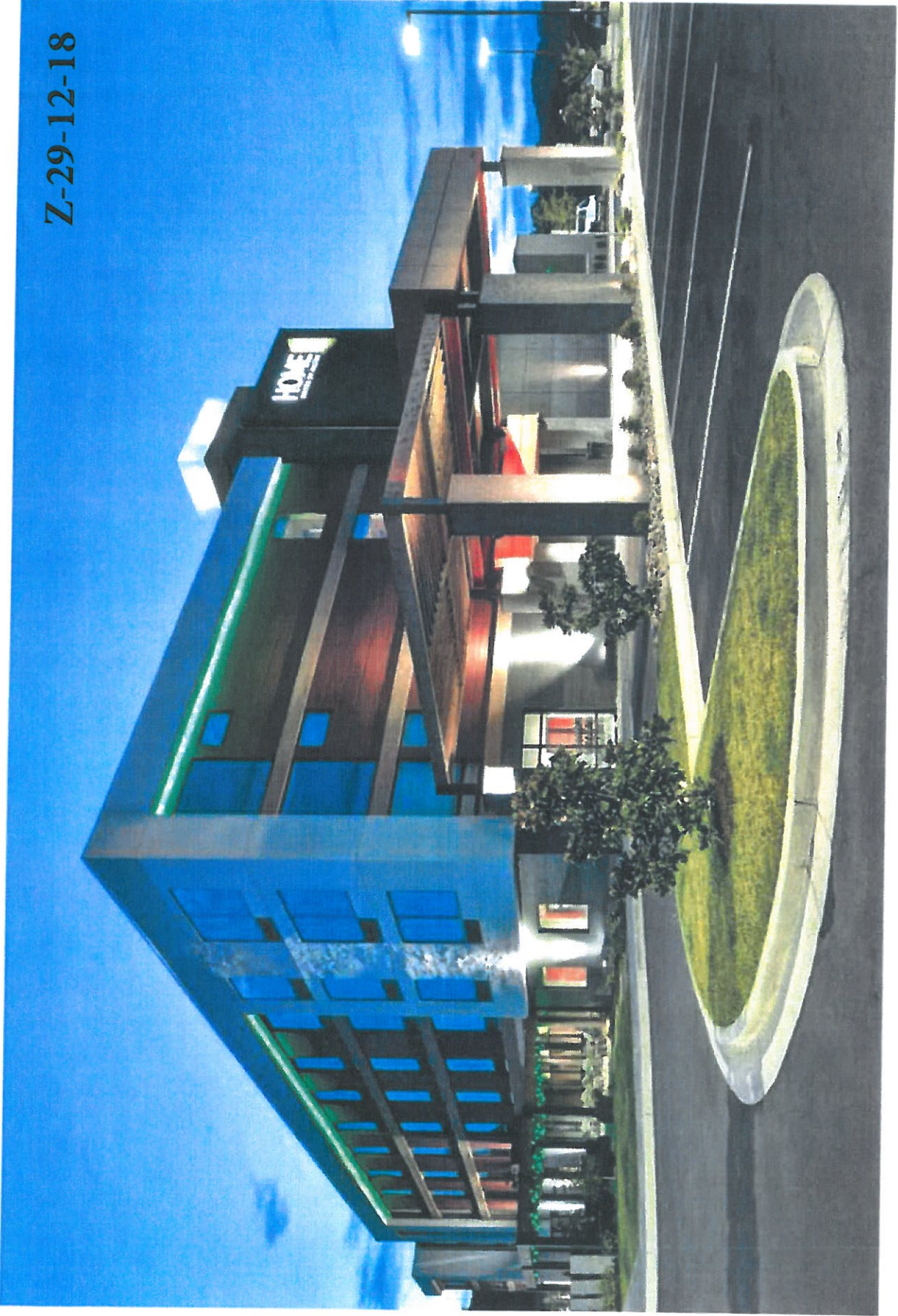
TOGETHER WITH an easement for ingress and egress, 25 feet each side of the following described centerline; From the Southwest corner of Section 3, Township 30 South, Range 16 East, run North 89°40'48" East, 333.47 feet; thence North 01°01'26" West 190.41 feet to the Northerly right of way line of Ulmerton Road; thence North 80°42'46" East, 25.26 feet along said right of way line for a Point of Beginning on the West line of the East 304.98 feet of said Lot 9; Thence run North 01°01'26" West, to a point of terminus 14.60 feet South of the North line of Lot 9.

PARCEL 3: - Parcel ID# 03-30-16-70884-300-0904

The West 204.98 feet of the East 304.98 feet of Lot 9, in the Southwest 1/4 of Section 3, Township 30 South, Range 16 East, Pinellas Groves as recorded in Plat Book 1, Page 55, of the Public Records of Pinellas County, Florida, lying North of the North Right-of-Way line of Ulmerton Road, LESS the North 214.60 feet, and LESS that part lying within the easement for ingress and egress as described in Official Records Book 4115, Page 1419, of the Public Records of Pinellas County, Florida.

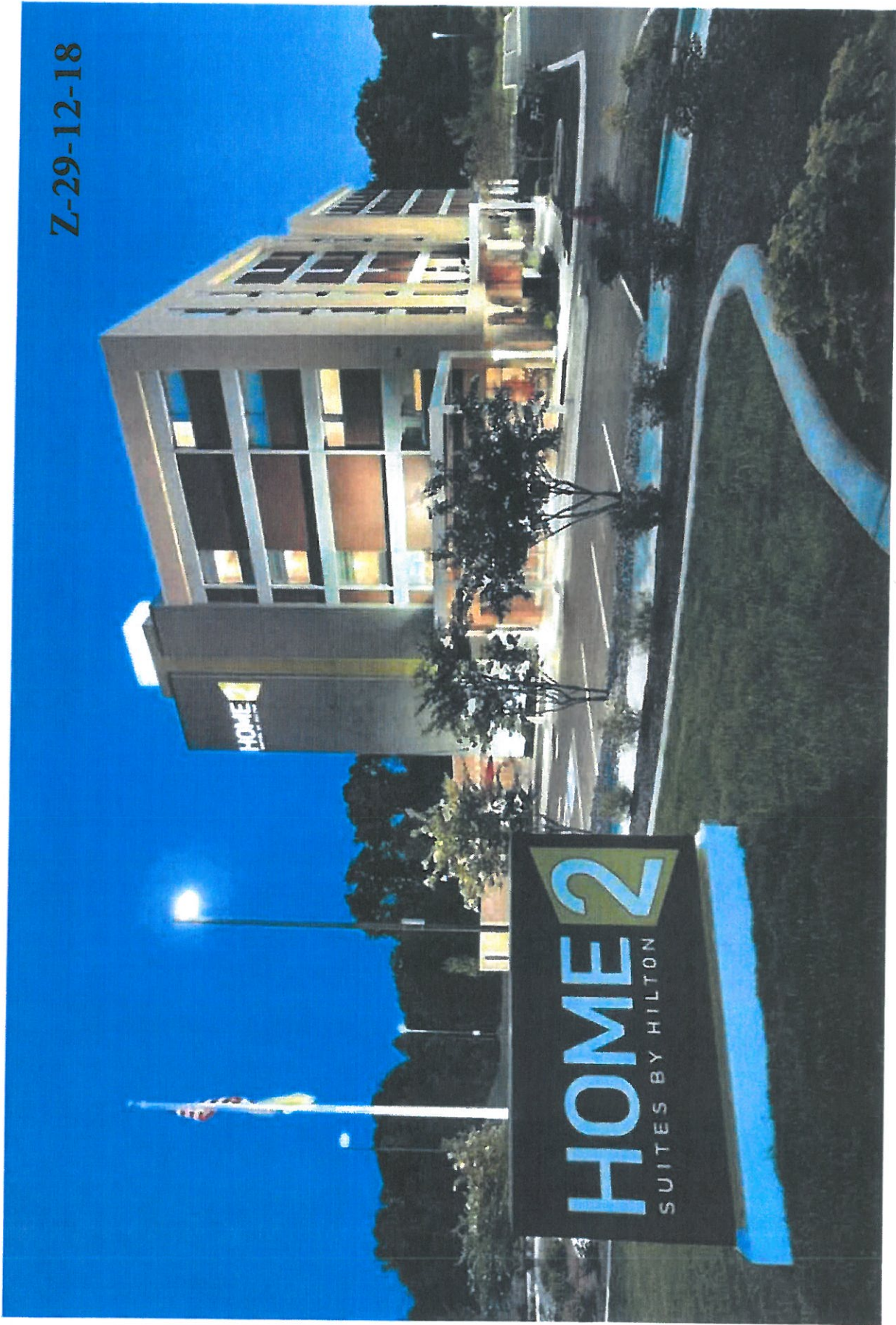
Exhibit B

Exhibit C



Z-29-12-18

Z-29-12-18



Z-29-12-18



Z-29-12-18

